

## Notes from Discussion of a County Urban Tree Bill, June 15, 2011 meeting

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**Present:** Bob Kaufman, Maryland National Capital Building Industry Association  
Caren Madsen, representing Conservation Montgomery  
Diane Cameron, Audubon Naturalist Society and Conservation Montgomery  
Ginny Barnes, West Montgomery Citizens Association and Conservation Montgomery  
Marcia Rucker, Glen Echo Heights Citizens Association  
Larry Cafritz, Laurence Cafritz Builders  
Mark Pfefferle, Maryland-National Capital Parks and Planning Commission (administers the current Forest Conservation Law in Montgomery County)  
Mark Buscaino, Casey Trees Executive Director (is a Certified Arborist and Urban Forester)

The discussion was the fifth of a continuing dialogue with members of the public, building and environmental communities in Montgomery County.

A discussion draft was presented at the beginning of the meeting that Caren had worked on the night before. The meeting did not begin positively but ended well. At the beginning of the meeting and before the discussion draft was reviewed by the group, there was a misunderstanding regarding the discussion draft. The draft was intended as a means of fleshing out the previous outline -- and in some cases revising or adding new ideas -- so that items could be discussed more fully and within the context of a proposal to share with the County Executive. The discussion draft is intended to include a variety of ideas and solutions for maintaining and increasing tree canopy. A few items we clarified as some of the frustrations were aired:

- BIA was under the impression that points covered in the previous outline of components of a tree law that have been under discussion represented full agreement and consensus.
- Environmental and civic representatives noted a builder's (Chuck Sullivan) caveat from several previous meetings that there are stakeholders outside of our working group discussions who will need to review whatever is presented to the County Executive by this working group. Therefore, what we might reach some consensus on in the working group meetings may or may not be what a broader stakeholder community (both builders and enviro/civics alike) will feel comfortable with.
- It was noted that some of the language added into the draft (examples: Sections on enforcement and penalties and exceptions) was based on language from the DEP draft bill. Rationale: The language has already been massaged by a county attorney and contains standard passages that be required in a tree law, per State of Maryland.
- We are still in negotiations and presenting ideas and options but the deadline imposed by the County Executive to get a proposal from this workgroup is still within reason.
- The discussion draft is intended to flesh out ideas and give the workgroup -- and eventually the County Executive and Council -- something more substantial than an outline for their consideration.

Caren noted that the draft was prepared with a vision in mind that encompasses more than the nuts and bolts of what affects developers and construction sites: The vision is to develop a county urban forestry program that does not exist now and is needed as a complement to the Forest Conservation Program managed by the Maryland-National Capital Parks and Planning Commission. A program and an urban forester are necessary to administer what will eventually become the urban tree law for Montgomery County. As noted in the meeting, one of the areas where we felt the DEP draft bill was incomplete was in *how* the DEP proposal would be carried out. Along with a conservation ethic and incentives for builders to save more existing canopy trees in Montgomery County, that administrative element was missing in the DEP proposal.

Ginny raised the issue of the environmental and civic stakeholders have listened to the problems that developers face in building on smaller lots and took those discussions to the point of developing a detailed technical standard (prepared by Diane Cameron) for using trees in stormwater management plans. Ginny noted that

discussions and areas where we agree have largely been based on trying to build in 1) flexibility and 2) regulatory incentives, for builders.

Caren also visited several sites where one of the builders from the working group is building houses and looked at the site plans with the builder at the actual sites to get a better idea of the space requirements for installing drywells. Once some of the frustrations were aired and the misunderstanding was cleared up, the group proceeded with Caren walking everyone through the key sections of the discussion draft. Key points raised:

- Agriculture has to be added to definitions and exceptions.
- Terms tree save areas and tree protection zones are synonymous.
- Definitions will be revised so that they match with contents of the document.
- There was discussion as to including the need for a “Certified Arborist and Licensed Tree Expert” in the language since the use of these professionals adds to the builders’ cost. Mark Buscaino said that in using professionals, their expertise and the consultation they provide can in and of itself become part of a paradigm shift in the way that environmental and tree issues are considered in the County. He compared using Certified Arborists and Licensed Tree Experts to using architects to design houses and civil engineers to design stormwater management plans, etc.
- Mark P. noted that the discussion draft is good but can be shortened or cleaned up a bit. He flagged areas where there is crossover between discussion draft language and the current FCL.
- Under the “exceptions” section, Diane Cameron questioned the language regarding electric generation facilities. Mark P. said it’s part of the standard state language that must be included.
- Larry flagged protection for trees on adjacent properties. Caren provided the example of a 55” tree in her yard with a CRZ threatened by construction next door. Because the builder in that case was uncooperative about adding protection for the root zone of the tree, the homeowner on the adjacent site had to hire a Certified Arborist and then a lawyer to write a letter verifying the risk to the health of the tree and requesting that proper root pruning and measures be taken by a Certified Arborist and Licensed Tree Expert. This could have been avoided if there was something codified to address adjacent trees. This is *not* intended as a way to thwart construction and stop development. The goal is to protect and maintain tree canopy as well as to avoid adverse impact on adjacent property. It is not unlike the drainage bill that Councilmember Floreen sponsored.
- Enforcement. It was raised that not releasing the bond for sediment control is enough enforcement if a builder does not meet requirements.
- Section XX-XX on page 14 on can be deleted, per Mark P’s suggestion.
- We have not reached consensus on the table regarding replacement and mitigation or saving existing trees and the quantity of trees and use of lots in this formula. We deleted the second table, which had been added to the discussion draft (NOTE: This table came from notes taken at the last meetings of the tree bill working group convened by Councilmembers Berliner and Elrich in 2007-08. Builders, including Larry were involved in that workgroup).
- The table and replacement or number of trees, etc. will be discussed within BIA and then discussed again in the larger working group in the June 22<sup>nd</sup> meeting.
- Builders still do not want to see a Tree Conservation Fund included. The fund was included in the discussion draft as a way of presenting an option for builders who do not want to do their own planting and would prefer to pay the fee in lieu so that the County could do the planting and move on. Kaufman said his goal would be to get trees planted rather than pay into a fund.

### **NEXT STEPS:**

- 1- Caren is revising the discussion draft and will send to the group in the June 15<sup>th</sup> meeting first for their review – to make sure nothing is missing from the discussion.
- 2- Diane is still working with DPS and vetting the standard she prepared.
- 3- We have a next meeting set for June 22<sup>nd</sup> at 11:00 at BIA.

4- We are still waiting for comments from engineers builders asked to review the standard that Diane prepared.