

Notes from Discussion of a County Urban Tree Bill, March 7, 2011 meeting

Present: Bob Kaufman, Maryland National Capital Building Industry Association
Caren Madsen, representing Conservation Montgomery
Clark Wagner, Bozzuto
Dusty Rood, Rodgers Consulting
Marcia Rucker, Glen Echo Heights Citizens Association
Carter Wilson, Carter, Inc.
Chuck Sullivan, Renewing Montgomery and Chuck Sullivan Homes
Ginny Barnes, representing Conservation Montgomery and West Montgomery County Citizens Association
Larry Cafritz, Laurence Cafritz Builders
Christina Sorrento, Associate General Counsel, M-NCPPC

The discussion was the second of what we hope will be a continuing dialogue and beginning of negotiations on a tree bill by members of the public, building and environmental communities in Montgomery County. The first meeting in January was an informal discussion to share thoughts on the draft DEP amendments to the Forest Conservation Law (FCL).

Situation:

The County Executive will sponsor a tree bill to make good on his 2006 campaign promise to tackle the problem of urban tree loss in Montgomery County, MD. Over the past two to three years, efforts have been made on the part of the Planning Board, M-NCPPC and Councilmembers Berliner and Elrich's office to address this issue. A set of amendments to the current Forest Conservation Law (FCL) was introduced in 2007 with no success. The bill died in the Transportation and Environment Committee of the Council when the committee failed to understand what was being presented and no agreement was reached by the regulated and environmental communities of stakeholders.

DEP has over the past two years attempted to develop a new concept as an alternative to the 2007 amendments. Meanwhile, the State of Maryland amended its Forest Conservation Act, prompting Council Bill 53-10 in the fall of 2010. Recently, a draft bill was circulated by DEP and has been reviewed by stakeholders over the past few months.

Both environmentalists and builders alike are not satisfied with this draft bill for various reasons. Builders do not like having to pay for an amount of tree canopy eliminated that is based on the same 5,000 square feet of disturbance as the sediment control law. They do not like not being able to replant their own trees on their own project sites and thus, not getting credit for replanting that they are paying for.

The environmental community does not like the vagueness of the law and the fact that there is no conservation ethic in the draft bill. Both sides see this as a "cut-and-pay" scenario and accomplishing primarily generation of a fund to replant trees once they are destroyed.

Builders have said that trees sell houses and that they will make more money on homes and other projects where they can build with existing tree canopy on or around the site. They have also expressed some of the difficulty in saving trees on a site where the footprint of a building, setback spaces established in the zoning code and stormwater management practices often mean taking down trees.

The current county-wide forest canopy, as noted in a recent M-NCPPC assessment is 50%. This is a good indication that the FCL, passed in the early 1990s to address loss of upland forest (and to comply with the State Forest Conservation Act), is showing results. However, we are seeing significant loss of trees or urban forest in urbanized sections of the Down County.

Here are some recent percentages from an M-NPPC report:

Percentage of tree canopy in a few of our urban county areas

| | |
|-------------------------------------|-----|
| ⊙ Bethesda CBD | 24% |
| ⊙ Clarksburg Town Center | 33% |
| ⊙ Cloverleaf Center | 23% |
| ⊙ Damascus Town Center | 33% |
| ⊙ Flower/Piney Branch/Arliss Center | 13% |
| ⊙ Friendship Heights | 31% |
| ⊙ Germantown Town Center | 19% |
| ⊙ Glenmont | 41% |
| ⊙ Grosvenor | 41% |
| ⊙ Montgomery Hills | 8% |
| ⊙ North Bethesda | 23% |
| ⊙ Olney Town Center | 21% |
| ⊙ Shady Grove | 22% |
| ⊙ Silver Spring CBD | 14% |
| ⊙ Twinbrook | 16% |
| ⊙ Westbard | 26% |
| ⊙ Wheaton CBD | 19% |

American Forests uses the following standards for what is considered healthy canopy levels:

- ⊙ Average tree cover counting all zones: 40%
- ⊙ Suburban residential zones: 50%
- ⊙ Urban residential zones: 25%
- ⊙ Central business districts: 15%

Monday’s conversation was a brainstorming session to determine what can be done to address increasing canopy in our urban communities where we see an increase in infill development to avoid sprawl and loss of green fields in rural sections of Montgomery County. We discussed what incentives might be included in new legislation that would encourage saving existing trees that are healthy native trees. We also discussed how the new M-NCPPC tree canopy assessment tool can be used to target areas where it is most critical to plant new trees. (Note: Katherine Nelson from M-NCPPC will present on this new data product at the March 15th Forest Conservation Advisory Committee meeting.)

Here are areas of consensus (so far) between the members of the development and environmental/civic communities:

- 1) There is no support for the merging of FCL amendments with tree canopy. The two should be treated separately, possibly as 2 separate articles within a single bill.
- 2) DEP proposal lacks a conservation ethic to work toward preservation of healthy mature canopy trees on smaller lots or to educate the public on value of tree/forest canopy stewardship.
- 3) Trees sell houses and it is expensive to take down existing trees but the DEP draft bill has no real incentives for builders to save existing trees.
- 4) DEP draft bill only provides a fund for DEP to replant trees. No options for builders to replant on site. The proposal lacks flexibility that builders need.

- 5) The DEP proposal is vague, lacks detail. Anticipates the same DPS staff that administers sediment control/SW management to implement a tree canopy bill. Not a good scenario since this would add responsibility for implementation of a new law in DPS with no mechanism or staff for the work. DPS does not have expertise in tree-save measures or in evaluating the condition of trees on a development site to determine which are higher quality and most worth saving.
- 6) Current SW Management requirements contribute to tree removal, especially on smaller building lots.
- 7) Builders and enviros/civic representatives would like to explore starting over with a new bill called “The Montgomery County Urban Tree Bill.” We would like for it to be straightforward, easy to read, understand and comply with – and offering a combination of tree preservation policy, replanting and landscaping formulas, best practices for building with trees in place, flexibility on stormwater practices to avoid tree loss, and community education.

Additional Discussion Points regarding the DEP proposal:

1. Bill applies only to builders, not all property owners.
2. Need for multiple strategies to reach canopy goals. What are our canopy goals? DEP Proposal does not cover.
3. Builders object to use of canopy as a descriptive for legislation. Prefer urban tree bill.
4. Why are trees and forest never counted toward SW management requirements? (This led to some discussion of how to adjust requirements to save trees onsite and/or give SW credit for retaining trees, which led to questions about how ESD might help in tree conservation. Worth further exploration.
5. How to incorporate recent MNCPPC *Report on Montgomery County's Existing and Possible Tree Canopy*, Md. State No Net Loss and current and upcoming ESD requirements?

Discussion points and ideas that go beyond DEP proposal

- Consider the absorption capacity of trees when writing a new bill or new article of the FCL draft bill.
- Consider requiring/creating a landscape plan and use eventual canopy size as a goal to determine how many and what kinds of trees to plant on a site. (i.e. if 1000 sq. ft. per tree and 20 year canopy growth of 700 sq. ft., how many trees to plant per how many sq. ft. of building lot)
- Provide guidelines for what is required to plant on a site in terms of optimal survival and diversity of species.
- Explore allowing builders to plant street in ROW and get credit. Could this be a partial solution to lack of County money for street tree planting program? (Note that trees along the ROW contribute to curb appeal of individual house and neighborhood)
- Consider an opportunity for this group is to write an urban tree bill rather than attempt to re-write proposed DEP bill..
- Writing a set of best practices for tree-save techniques during construction. (Build those into law in some way through a tree manual that accompanies the bill. Use the Gaithersburg manual as a model or the Arlington Tree Manual as a model.)
- A simple standard should be developed for replacement of trees taken down for construction that is based on frontage or lot size.
- One idea raised: For each building permit issued, write a requirement into law for a minimum on two or three 2” to 2 and a half-inch caliper trees at dbh to be planted on the site. (Note: This should depend on the land use category and square footage of the site, for each lot, etc. It should be within scale of what is taken down for construction. In many cases, a 60-square foot lot is what we are addressing.) (Carter)
- Another idea raised: Use the eventual canopy size based on the species and rate of growth for that particular species as part of the standard. As the lot size increases, add the amount of canopy based on an established goal. For example, use 50% as a tree canopy goal for each section of the county. Create a formula for canopy increase over a period of time. (Clark)

- One builder raised the idea of setting a tree planting requirement based on the sq. ft. of the lot. We suggested one tree for every 5000 sq. ft. of lot had to be added to the lot.
- Builders would rather plant their own trees on the same lot or within the same neighborhood instead of paying a DEP fee for tree demolition on top of replacing trees taken down on a site. Builders would prefer to create their own amenity and get credit for it.
- Build in guidelines for planting and for landscape plans.
- On small lots, builders should get credit for what they are able to save and leave in place in terms of quality native trees.
- The replanting requirement could be decreased based on the builder's ability to save existing trees on a construction site.
- Stormwater practices that lead to tree loss should be researched in order to determine if we can eliminate or modify stormwater management practices in order to save healthy native trees on a site.
- Re credits: If installation of a stormwater device causes removal of a tree, then the county could/should allow for an exception or waiver for that stormwater device.
- Reducing current fees for construction (some permits) could become an incentive for saving trees.
- Homeowners should be required to perform tree replacement within the same community or watershed, as builders might be required to do under a new law. However, there should be a fund, coupon program or community tree planting program in place, or some type of economic buffer, for homeowners who may not be in a financial position to replant as builders do. Idea: tax credit for replanting for homeowners?
- Builders could/should be able to replant trees in the county rights of way and get credit for it.
- Builders should/could be able to get credit for saving trees or taking special precautions to save existing healthy native trees in the margins of a lot. For example, the back of a lot.
- Alternatives to current practices for stormwater runoff from sites should be explored to see if newer methods could replace traditional practices. Example: silt fences vs. silt socks.
- A maintenance requirement should be built into the law when replanting or tree-save is performed.
- A checklist outlining the process for DPS should be part of site plan review for building with trees in place and/or plans for replanting combined with tree-save.
- Flexibility needs to be addressed as part of the incentive program for increasing urban tree canopy. Is there room for flexibility in zoning codes? Can requirements be addressed in amendments to the county sediment control law? Or the current FCL?
- Any law written needs to address the fact that there is no "one-size-fits-all" scenario for building with retaining trees as a goal and replanting. Each site and project has to be reviewed within context of master plans, the site itself, county goals for redevelopment or infill building and so on.
- The question was raised: Would expedited review of plans and permitting be incentive for tree-save? For example, if a builder was held to a legally binding plan for saving existing trees on a site and replacement of trees taken down, could that builder's plans be moved to "the front of the line"? Time is money for the business community. So would this be an appropriate incentive? Caren posed the question. But the builders said: "It'll never happen."

NEXT STEPS:

- 1- All in the meeting were invited to the March 15th Forest Conservation Advisory Committee.
- 2- We would like to continue our discussions with a goal of negotiating a bill.
- 3- Bob Kaufman will circulate notes to attorneys with BIA to see if ideas discussed are allowable in laws.
- 4- Conservation Montgomery will meet again with DEP.
- 5- A larger stakeholder meeting will be planned for this spring in the near future.
- 6- We would like to meet with DEP and stormwater engineers to see if there is a way to modify current sw practices to save more trees.