

Notes from Discussion of a County Urban Tree Bill, June 22, 2011 meeting

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 Buscaino, Casey Trees Executive Director (is a Certified Arborist and Urban Forester)
Chuck Sullivan, Chuck Sullivan Homes and Renewing Montgomery
Carter Willson, Carter, Inc.

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

We reviewed the discussion draft that was revised based on our June 15th meeting. Bob Kaufman suggested that we consider the June 15th discussion draft was a “progressive” document and that discussion be based on moving forward on what we had not had time to discuss in the June 15th meeting. Bob views the work on this bill as “progressive,” which means that the preference is to avoid repeated discussions of the same topics. Builders want “trees, not bureaucracy,” and to “keep it simple.”

We started by going around the table to express items that were giving each of us “heartburn” about the discussion draft components.

The language will be tweaked based on everyone’s individual suggestions and these tweaks will be discussed in our June 22nd meeting.

Heartburn or most significant concerns listed:

- Caren – Once reviewed on a page, the table with the replacement scenario is inadequate for replacing canopy lost. This has to be revisited as a major item of discussion. Looking at replacement of trees or planting based on lot size alone will not replace lost canopy. For example: If you remove a 30” White Oak, replanting a 1 ½ - 2-inch sapling will not provide the same services as the mature tree. Let’s please find the best formula based on more research in this area. Would like to look at other ordinances and tree bills of surrounding jurisdictions and use those as potential models. Recommend looking at Fairfax County and Arlington County to see what they use.
- Mark Buscaino – Pointed out that outdated tree laws offer a 1:1 replacement rate on tree replacement and noted that most trees planted in an urban environment don’t survive. Examples provided: If you plant 7 trees, one tree might survive to full maturity. He provided examples of formulas for replacement that are used in other jurisdictions. One example: If a tree 55” in circumference is taken down, 7 trees would need to be replanted to replace the canopy and environmental services that had been provided by that 55” mature canopy tree.
- Chuck -- Feels that simplification is key. Wants to avoid policy and mission creep.
- Carter – Is strongly opposed to the administration section where a county Urban Forestry Program is the vehicle. Is against any measure that might add more fees or more cost to developers. Kaufman said builders were concerned that any new bureaucracy had a tendency to grow. (**CLARIFICATION:** *We are not proposing to add positions that do not already exist in county government or a new budget item. We are proposing to consolidate existing services in county government and proposing to make the best use of county resources. The proposal in the discussion draft aims to take a comprehensive approach to urban forest management in Montgomery County, not to add a “bureaucracy” as has been suggested.*

This program would become a companion to the Water Resources Division within DPS, where we have identified as the correct place for administration of an urban tree bill.)

- Larry – expressed concerns about moving the street tree maintenance program out of DOT and into DPS where the urban forester would administer the County Urban Forestry Program.
(CLARIFICATION: The DOT Street Tree Maintenance Program has experienced two consecutive years of having its budget completely suspended. This has resulted in the following impact, a backlog of services from this division in DOT:
 - 1,750 street trees in poor condition that present a hazard to public safety due to old age, disease and storm damage
 - Almost 3,000 street trees that have not been replanted due to budget cuts to the program
 - About 1,400 street trees in need of pruning so that the trees are better maintained and have more years of life in them
 - 3,300 tree stumps due for removal
 - A 7-month backlog of new inspections of trees in the public right of way
- Larry – Expressed that there is no tree ordinance or tree law in his neighborhood and that the trees and canopy are fine, and “...how do you explain that?...” Mark Buscaino of Casey Trees pointed out that there are studies showing a relationship between a higher survival rate of trees in neighborhoods on the upper socioeconomic scale. Survival rate of urban trees is generally low since the environment in urban settings, particularly for street trees, is harsh compared to rural areas or areas where there is low density development. Larry said that off-site tree plantings don't make a lot of sense to him, unless they are in the immediate vicinity of the building lot, e.g. in the Right of Way in front of the lot.
- Builders still do not want to see a Tree Conservation Fund included as a means of funding off-site tree planting. 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. This item warrants additional discussion since builders were not aware of the possibility of using an existing fee in lieu fund that is already set up under FCL administration and managed by M-NCPPC.
- Marcia noted that from the perspective of her group in Glen Echo Heights, it's crucial that any tree bill cover small lots well- lots that are between about 8,000 and 12,000 sq. ft. Glen Echo Heights citizens want to be sure to give credits to builders, including stormwater and other types of credits, so that builders will have an incentive to save trees and integrate trees into their designs from Day One of any project.

Clarification on role of the County Urban Forester under a Montgomery County Urban Forestry Program – as discussed:

- County Urban Forester can help with oversight and decisions on which tree species are most appropriate for planting and what the survival rate would be for specific tree species. This would ultimately enhance the county urban canopy.
- County Urban Forester would train inspectors in the DPS Water Resources Division so that the trees would become integral components of stormwater management plans. The County Urban Forester would advise on stormwater management and use of trees.
- County Urban Forester would be available for professional consultations on Tree Conservation Plans (which would be part of the Sediment Control Permit Application process and stormwater management plans). The Urban Forester would make recommendations, as needed, on particular issues on individual sites where tree-save measures are used during construction activity.

- County Urban Forester would provide expertise and knowledge to DPS Water Resources Division, and to the DPS Director, in order to integrate trees and stormwater management practices.
- Inspections regarding tree law implementation might be done on as-needed and within context of sediment control permit inspections instead of adding a new standard layer of inspections.

Other:

Setting up a fund – Should convey that, while the builders tend to oppose establishing a new separate fund, they are amenable to using the pre-existing FCL-based fund that is already in place and is administered by Parks and Planning. There is concern that a fee-in-lieu if not carefully crafted, could become a tax.

NEXT STEPS:

- 1- Next meeting is June 22nd at 11:00 a.m. at BIA.
- 2- We are still waiting for comments from engineers builders asked to review the standard that Diane prepared.