

Notes from Discussion of a County Urban Tree Bill, July 11, 2011 meeting with the County Executive and Members of Executive Agencies

Present:

County Executive Isiah Leggett
Bob Hoyt, Director of the Department of Environmental Protection (DEP)
Jennifer Hughes, Acting Director of the Department of Permitting Services
Kathleen Boucher, Special Assistant to the County Executive
*Laura Miller, Forest Conservation Coordinator, DEP
*Stan Edwards, DEP Division Director for Sustainability Programs
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
Larry Cafritz, Laurence Cafritz Builders
*Mark Buscaino, Certified Arborist and Executive Director of Casey Trees
Chuck Sullivan, Chuck Sullivan Homes and Renewing Montgomery
Carter Willson, Carter, Inc.

**Are members or staff supporting the County Forest Conservation Advisory Committee appointed by the Executive and confirmed by the County Council.*

The discussion was the meeting whereby our group was responding to the Executive's request in his April 14th letter. (posted on the website for this project). Documents presented at this meeting:

- 1) A discussion draft noting areas where consensus was not reached.
- 2) Separate list of points where we agreed or disagreed
- 3) Copies of a PowerPoint overview of the process for coming up with a discussion draft as a work product
- 4) Position paper presented by BIA
- 5) Position paper presented by Conservation Montgomery

After introductions around the room, Caren Madsen presented a short set of slides to provide an overview. The overview concluded. Bob Kaufman made a brief statement about structure of the discussion draft. He said the work group agreed that the urban tree bill should be enforced through the DPS sediment control permitting process and the bond release. He said the major area of disagreement was in regard to the tables of requirements for trees on individual lots.

The Executive thanked everyone for their interest and participation in the effort. He said the County wants an emphasis on saving mature trees on lots being developed. Kaufman countered that mature trees are hard to preserve on small lots where there are teardowns and that planting new trees is typically the option builders have to use.

Ginny Barnes interjected that the civic and environmental community representatives in the work group meetings had worked hard to come up with a technique to use trees in stormwater management plans. She said we have addressed giving the builders flexibility in planting. For example, we did research to find out if replanting or transplanting trees in to the public Right of Way is an option for builders. She said we have worked hard to emphasize the value of mature trees and the environmental services they provide. She noted that runoff from adjacent properties has been a problem when mature trees are removed and lots are clear-cut. She said "We have listened carefully to the builders, heard their side of things and tried to address their concerns."

The Executive turned to the pages of the discussion draft (pp.16-17) where the tables are included. (Tables are in this summary below.)

Executive: “I want to get to the meat of this. I want to make this simple and I want conservation in a bill.. These numbers (presented by the builders in Table 1) are pretty low. I’m having trouble getting my arms around 1 tree for every 5,000 square feet of lot. How are we supposed to justify that number at that level? It’s difficult for numbers like this to pass the smell test.”

Kaufman: “It’s hard for builders to force trees onto lots that are 5,000 to 10,000 square feet...”

Executive: “I can see the difficulty at the first two levels. That becomes a challenge when you’re fitting trees, utilities, and so forth onto that area but you are using the same formula going all the way up to 40,000 square feet...”

Kaufman: “Is that number of 8 trees (on the chart) the right number? We don’t know...”

Builders then raised the understory tree notations in their chart and said understory trees were added to increase the number of trees on the chart. Mark Buscaino and Caren Madsen confirmed that, while understory trees add to the aesthetic value in landscaping, they do not provide shade and stormwater value to property that larger canopy trees provide.

Buscaino: “We’re looking at a hard forestation issue here. We are eliminating the ability to regrow canopy when we do rebuilds. We need a fee-in-lieu to keep canopy. The numbers of trees per lot are extremely conservative when you consider the canopy you lose. You can put additional canopy onto a 7,000 square foot lot.”

Kaufman said that the number of houses affected by this law would be about 100 houses a year. (This number is unconfirmed.)

Executive: (showing irritated over the builders’ chart) “The chart doesn’t show me that you’re replacing canopy disturbed. I have a bill now that I’m ready to introduce in Council that I think does that. Now you give me enough trees and enough money (to replace canopy) or I’ll go forward with my legislation. I’m leaving now because you’re wasting my time. You can stay here and figure this out. Thank you for coming.”

The Executive left. Kaufman stood to leave and urged the builders to leave with him because, “There’s nothing more for us to discuss.” Ginny Barnes urged them to stay and talk with the head of DEP and DPS and staff at the meeting as well as the members of the civic and environmental communities.

For almost another hour, the group had a lively discussion about the table and disagreement over administration of the proposed law. Ginny Barnes expressed the discussions of number of trees as “playing poker with trees” and said “We’re not just playing poker with trees; we’re talking about replacing canopy. Caren Madsen said that given the very low number of trees that builders have proposed as required numbers to retain or plant on individual lots, she is more inclined to support the DEP approach of charging fees for the amount of canopy destroyed. She said a hybrid of the discussion draft and the DEP bill – using the best elements of both -- may be the best answer.

Larry Cafritz said he would like to see an overlay where canopy is calculated. Stan Edwards said DEP had met with builders, including Cafritz in 2008 and had shared the tree mitigation calculator with them. He said the idea was that the calculator would provide this overlay. He said the County prefers planting trees to replace

canopy lost.

Kaufman said administration of a tree fund would be the equivalent of creating a tax for a canopy bank. “We pay for DPS through fees,” he said. Then he mentioned the builders’ objection to having an arborist at DPS to administer a tree program based on the legislation under discussion.

Jennifer Hughes said that she had talked to Rick Brush (Acting head of the Land Management Division in DPS) and that DPS wants to look at ways to incorporate tree save on stormwater management plans. She said they would like to have discussions about saving trees using nonstructural methods. She noted that there is commonality in using trees in stormwater management in the work group. She said the goal of the DEP fee is to encourage preservation of trees instead of taking them down.

Kaufman replied that, “You’re asking to change behavior by adding a tax. Why not replace the canopy? Why raise the fee?”

Buscaino pointed out that you can possibly accomplish what is needed for canopy replacement by looking at the fair market value of a tree. For example, you might pay about \$250 for two trees on a lot. If you have two more trees to plant and there is no room on a lot, then you could pay the money into a tree fund as is done in other jurisdictions, per their tree ordinances.

Chuck Sullivan said small lots require more flexibility. He said Ike had reminded us of the challenges of building on small lots.

Larry Cafritz said there is a new law requiring that all stormwater management has to be managed onsite. Jennifer Hughes said that trees and stormwater management are not mutually exclusive issues. Larry said, “the idea is to manage runoff, not tear down trees.”

Discussion moved to looking at urban canopy goals. Kaufman asked how many trees would be needed to reach an urban canopy goal of 25% for example. Buscaino said you would need to do some calculations and that it would depend on the species of trees involved.

Jennifer Hughes noted at one point that the bill under discussion is not one that is just for the year 2011. It is supposed to take us into the future in the County in terms of managing the urban canopy and projecting what is needed for the future.

Laura Miller said two of the biggest areas of concern are the Bethesda-Chevy Chase areas and urban areas of the county where we are building densely and losing more mature trees. Mark Buscaino agreed strongly that it’s not just the Bethesda-Chevy Chase urban areas that are of concern in terms of lower canopy percentages in the county.

Ginny pointed out the example of the Chesapeake, VA formula of using 400 square feet per large canopy tree for replacement. Buscaino said again that there has to be a cost involved for mitigation and that is where the DEP mitigation fee approach comes into play.

Bob Hoyt said there has to be a reimbursement cost for lost tree canopy.

Carter Willson said the tree table had an element of certainty about it and was simple to understand and said that using the sediment control permitting process is a simple trigger for a tree bill.

The meeting concluded with Jennifer Hughes and Bob Hoyt agreeing to reconvene the group for another discussion. Jennifer emphasized that discussions will not go on for long because the Executive wants to introduce a bill before the Council goes into the August 2011 recess.

Chart 1 -- The Builders' Chart: The chart on the next page is based on requiring 1 tree for every 5,000 square feet of an individual lot in Montgomery County.

Size of Lot	Minimum number of Canopy Trees required (Existing or planted)	Minimum Number of Understory Trees required
0 to 5,000 sq. ft.	1 tree	
5000 to 10,000 sq. ft.	2 trees	
10,000 to 15,000 sq. ft.	3 trees	
15,000 to 20,000 sq. ft.	5 trees	1 tree
20,000 to 25,000 sq. ft.	5 trees	2 trees
25,000 to 30,000 sq. ft.	6 trees	3 trees
30,000 to 35,000 sq. ft.	7 trees	4 trees
35,000 to 40,000 sq. ft.	8 trees	5 trees

Chart 2: The table (to date, may warrant additional research) from members of the civic and environmental community in our workgroup meetings is below. This is presented as a placeholder until we have input from the County Executive and more information:

Size of Lot	Minimum number of Canopy Trees required (Existing or planted)	Minimum Number of Understory Trees required
	* Numbers are still under discussion in this stakeholder community and fluid.	
0 to 5,000 sq. ft.	1 tree	1 tree
5000 to 10,000 sq. ft.	3 trees	2 trees
10,000 to 15,000 sq. ft.	4 trees	2 trees
15,000 to 20,000 sq. ft.	5 trees	2-3 trees
20,000 to 25,000 sq. ft.	8 trees	4 trees
25,000 to 30,000 sq. ft.	10 trees	5 trees
30,000 to 35,000 sq. ft.	12 trees	5 trees
35,000 to 40,000 sq. ft.	14 trees	5 trees