



URBAN FORESTRY COMMISSION

Meeting Minutes

June 20, 2019

City Hall, Lovejoy Room

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| Commission Members present: | Chair Vivek Shandas, Anjeanette Brown, Gregg Everhart, Brian French, Lorena Nascimento, Daniel Newberry, Damon Schrosk, Thuy Tu |
| Commission Members absent: | Barbara Hollenbeck, Megan Van de Mark, Bruce Nelson |
| Urban Forestry staff present: | Jenn Cairo, City Forester; Brian Landoe, Analyst I |
| City staff present: | Tony Garcia, City Attorney's Office (Phone-in) |

Public Comments

Portland Youth Climate Council

- The council advises the city on policy related to climate change.
- They are focusing on the Tree Code given the climate change implications and the need to increase carbon sequestration, decrease heat island impacts, etc.
- The PYCC noted that low-income neighborhoods that don't have large trees won't have the opportunity to have large trees if the small ones are removed.
- The Commission expressed a strong interest in staying engaged with the Portland Youth Climate Council and their work.

Doug Klotz

- Requested that the UFC continue to engage closely with the Streets 2035 process.
- Expressed concern about heat island affects due to lack of street trees, particularly downtown.
- Mr. Klotz also noted that there needs to be a balance between tree retention and improving housing density.

Forestry Report – Jenn Cairo, City Forester

- Parks budget has been formally adopted, including the significant cuts taken by the bureau.
- The FY20 Trees fee schedule has been approved by City Council and will go into effect July 1.
- The City will be rolling out a new online permit application and payment system on July 1.
 - The initial roll out will include tree removal and replanting permits, root pruning permits, and self-issued street tree pruning permits.
- The first city staff meeting for Streets 2035 is scheduled for July.

Urban Forestry Commission

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Heritage Tree Delisting Request

- Commissioner Fish's office requested this issue be heard by the Urban Forestry Commission as soon as possible given the ongoing development review process.
- Jenn Cairo presented the following information regarding the Heritage Tree Delisting request
 - City code requires documented permission of the property owner at the time of designation for a private property tree to become a Heritage Tree.
 - In 1999, 5 American sycamore trees at 230 SW 2nd Avenue were designated by Council as Heritage Trees in public right-of-way. They were private property trees.
 - The current property owner informed the city that the trees are not Heritage Trees because no record of property owner consent at the time of Council designation exists.
 - This claim was researched and no record of property owner consent for Heritage Tree designation in 1999 was found.
 - The City Attorney's office advised that the trees had been designated erroneously in 1999 because no property owner consent was obtained.
 - The current owner of 230 SW 2nd Avenue has engaged in the Early Assistance process to develop the property, currently a parking lot, into a six-story mixed residential and commercial use building.
 - Urban Forestry and City Attorney met with the property owner's representatives and expressed that the trees were valued by the City as Heritage Trees. Urban Forestry voiced that the property owner could choose to design the property development to protect and retain the trees, offering the example of the Millar Library at PSU.
 - To apply for these or other trees to be Heritage Trees, a completed application form and signed property owner consent form are required.
- Kristi White, land use attorney for the developer and owner of the site, provided testimony:
 - The history of the case is not disputed.
 - The opinion of the owner is the original ordinance designating the trees as Heritage Trees contained an error in noting the trees as street trees. They were private trees at the time.
 - City code at the time and currently stipulates that no tree on private property can be designated as a heritage tree without the property owner consent.
 - The development is a half block within an historic district which present restrictions which make it impossible to retain the trees
 - The development will also include affordable housing units under the City's inclusionary zoning regulations.
- The UFC asked if the property owner is able to provide proof that the trees were entirely on private property at the time they were designated as Heritage Trees. Ms. White responded that a survey is not available but that this can be deduced from the current size and location of the trees.
 - Tony added that if the City wants to maintain that these were street trees in 1999, it would need to present evidence supporting that claim.
- City Code in 1999 required property owner consent for any tree standing on private property in order to be designated a Heritage Tree.
- The UFC also asked whether the City had performed work on the trees given its responsibility to maintain publicly owned Heritage Trees.
 - Urban Forestry staff reviewed permit data and at times the trees were treated as private Heritage Trees and others as City Heritage Trees.
- A clarification was made that delisting a Heritage Tree does not require a public hearing per Title 11. City Code does require a public hearing if the Urban Forestry Commission is approving the removal of a Heritage Tree.
- The UFC asked why the Heritage Tree status had not been challenged by previous and current property owners over the last 20 years. The lack of legal challenge over that time period could be considered tacit approval of their status as Heritage Trees.

- Ms. White responded that the law does not allow tacit approval, primarily because the implications of what responsibilities and restriction of Heritage Tree status places on the property owner.
- Tony added that the City Attorney did consider whether adverse possession would apply. That issue would need to be pursued by City Council.
- Damon made a motion to defer the decision to next month.
 - The motion was not seconded following additional explanation on how soon City Council is expected to consider this issue.
- Anjeanette made a motion to defer this issue to City Council.
- Gregg offered a friendly amendment to note that the UFC is declining to recommend delisting and refers the issue to City Council given their greater capacity to research the underlying legal and land use implications.
 - Second: Brian French
 - Yay: Vivek Shandas, Anjeanette Brown, Gregg Everhart, Brian French, Lorena Nascimento, Daniel Newberry, Damon Schrosk, Thuy Tu
 - Nay: None.

Large Tree Amendment – Emily Sandy & Stephanie Beckman, BDS

- Emily introduced the data requested by the Urban Forestry Commission.
- The Large Tree Amendment changed the fee-in-lieu of preservation from a flat amount to a tiered system based on the size of the tree. The amendment was required that all trees larger than 36” DBH must be included in the trees to be preserved. That amendment included a provision to revert to the previous code language on January 1, 2020.
- BDS compared pre-amendment data to post-amendment data and conducted clean-up to account for permit revisions over the course of the development.
- Given the timeline to ensure this issue returns to City Council before the end of the year, the UFC will likely need to make its recommendation by the August meeting.

The meeting was adjourned at 11:30am.