



Tree Project Oversight Advisory Committee

Meeting #3, **Draft** Meeting Summary

Monday, March 09, 2015

1900 Building, 1900 SW 4th Ave, Portland, OR 97201

Room 2500A

10:00 AM - 12:00 PM

MEMBERS PRESENT

Linda Bauer, Pleasant Valley Neighborhood Association

Mark Bello, Urban Forestry Commission

Phil Damiano, Design Review Advisory Committee

Kris Day, Urban Forestry Commission

Jeff Fish, Fish Construction NW

Bob Kellett, SE Uplift

Arlene Kimura, Hazelwood Neighborhood Association (Co-chair)

Jim Labbe, Audubon Society of Portland

Nancy Seton, SW Hills Residential League

Susan Steward, Building Owners and Managers Association (Co-chair)

Justin Wood, Home Builder's Association

MEMBERS ABSENT

Helen Ying, Old Town China Town Neighborhood Association

STAFF PRESENT

Jenn Cairo, City Forester

Mike Hayakawa, Tree Project Manager

Patti Howard, Policy Advisor to Commissioner Fritz

Mieke Keenan, Tree Project Program Coordinator

Anne Pressentin, EnviroIssues Consultant

Lauren Wirtis, Tree Project Staff

Welcome and Introductions

Arlene Kimura opened the meeting by thanking everyone for coming and having everyone introduce him/herself. She reminded the Committee, in light of emails transmitted since the last meeting, that discussions regarding positions on issues should not be discussed outside of a meeting setting. Clarifying questions may be asked or issues posed to be addressed at the next meeting, but email discussion should be kept to a minimum. She also mentioned that the City Attorney should not be contacted directly by members but through Tree Project staff.

Approval of February Meeting Summary

ACTION: *February Meeting Summary approved as drafted.*

Public Comment Opportunity

Arlene Kimura acknowledged this opportunity for public comment. No member of the public was present.

Definition of Success

Anne Pressentin presented the draft definition of success based on discussion at the February meeting (<https://www.portlandoregon.gov/trees/67056>). She went through the three different parts of the definition of success, including the code, committee process, and educational outreach.

Question: Where the first line says “development process,” this refers to what the Committee is doing and not development outside on the ground, correct?

Answer: That is correct and it could be reworded to make that clearer.

Question: Could we get rid of the last three words?

Answer: Yes.

Question: Should we have success defined as “exceeding” tree canopy targets? This raises a perception issue for the development community.

Answer: To say “meet and exceed” tree canopy targets does create a sense of aspiring. Staff should check in with planners at BPS involved in code development to determine the original intent.

Question: Is it necessary to include an education and outreach section in the definition of success since that is not within the scope of this committee?

Answer: It was included since education was emphasized during last month’s discussion about what success would look like.

Other Committee Member Comments:

- There are many small businesses in Portland and not everyone reads the code. This Committee should make sure these people have access to the rules.
- If it is not a benchmark of success for the committee, it is a role members take on individually to go back to their respective groups and educate people about the regulations.

Question: How is tree canopy measured?

Answer: Using LIDAR and it is reported every 10 years.

Question: Should there be a benchmark for a yearlong committee with a 10-year timeframe?

Answer: We can reword the goal so that the Committee’s work is said to be contributing to this goal as laid out in the Urban Forestry Plan.

Other Comments:

- From the Commissioner’s perspective, what she wants from the Committee is to determine what is or isn’t working on the ground during early implementation and how to fix those issues.

ACTION:

- **Revise the definition of success to reflect what was discussed.**
- **Staff will examine the intent of “exceeding canopy targets”**

Draft Committee Workplan and Schedule

Mike Hayakawa reviewed the different categories of issues and the eight issues that the Committee had been charged with so far (<https://www.portlandoregon.gov/trees/67056>). He said that as committee decisions are made about how to address the various issues, staff will be recommending the most appropriate avenue by which to make the change the Committee has proposed (code guide, administrative rule, code amendment, etc.).

Mike Hayakawa then passed around a list of issues that Committee members Kris Day and Jim Labbe had put together and submitted to staff to potentially be included in the list of addressed issues (attached).

Kris Day and Jim Labbe said that, in creating the list of issues, they tried to prioritize items. Each bullet has the theme of the issue in bold followed by a description of what specifically needs to be looked at. It is a wide range of issues, some of which staff may recommend need to be looked at beyond the timeframe of the Committee, because answers will require more hard data on whether current policies are working.

Other Committee Member Comments:

- Some of these issues should be checked by BPS. If the policy was the result of a long discussion (i.e. exempted base zones), that is something that should not be overturned by the Committee. Instead, it should be monitored over a longer timeframe and addressed if it is clearly a persistent problem.
- The Committee still needs more direction regarding the purpose of our efforts, what the monitoring report will accomplish, and the timeline on which to address these issues.

ACTION:

- **Examine issues listed by Kris Day and Jim Labbe for inclusion in Committee’s work.**
- **Provide a clearer sense of the Committee’s scope of work.**
- **Share the scope of the monitoring plan with the Committee.**
- **Create a proposed timeline/framework to address issues.**

Tree Code Implementation - Issue #5, Definition of “Building” and “Attached Structure”

Lauren Wirtis provided an overview of Issue #5, using presentation slides (located online <https://www.portlandoregon.gov/trees/67056>). Currently the tree code lacks a definition for “building” or “attached structure.” At the same time, Type A removal permits are issued for trees within 10 feet of a building or attached structure. Instances have occurred where homeowners are placing a structure

within 10 feet of a tree in order to remove it. Lauren presented example definitions from other jurisdictions and proposed the following definitions for consideration:

- Building: Permitted Structure that has a roof, is enclosed by at least 50%, and has an in ground foundation that covers at least 10sqft
- Attached Structure: Any permanent structure with an in ground foundation that covers at least 10sqft that is attached to a building by a common wall, a roof, or by structural connections that allows pedestrian access to both structures.

Discussion:

- A 200 square foot structure requires a demolition permit in order to be removed. An addition of a 200 square foot structure also would trigger an Urban Forestry review for tree code compliance. The same criteria could be used here.
- Under the old code, any trees (healthy or not) causing damage to infrastructure (e.g. patios, patios), would be allowed to be removed. It would be good to add this concept to the definition.
- Question: Would sidewalk problems fall under Title 33 or Title 11?
 - Answer: Title 11. Information about permitting for infrastructure issues could be placed in a Code Guide.
 - Title 33 also applies. Recommend a Program Guide where more verbiage can be used for specificity.
 - It would be good to have consistency across codes.
- Question: What is the functional difference between the different guidance?
 - Answer: Each have differing levels of notice and legal weight. Will bring definitions to next meeting.
- Request drawings or sketches for each issue under discussion to help illustrate intent and increase understanding.
- Next step: Look at instances of where a building permit is required and whether that definition may be applied.

ACTION:

- **Provide explanation of code guide, admin rule, city code and the process to develop each at next meeting.**
- **Refine structure definition based on discussion and recommendation for best venue to address (e.g. code guide, rule or city code)**

Tree Code Implementation - Issue #7, Tree Replacement Waiver Policy

Mike Hayakawa reviewed Issue #7 where the code allows the City Forester to waive mitigation requirements if such mitigation would impose an “unreasonable burden.” However, what constitutes an “unreasonable burden” is not defined in *Title 11, Trees*. Staff proposes using the same metric as the Water Bureau (60% below the poverty line) and utilizing the Water Bureau’s list of people who are

eligible for waivers. Under this system it is the applicant's responsibility to submit documentation of income level.

Question: What if your site is small and it is not feasible for the owner to replace trees? Will there be a waiver for replanting?

Answer: The City Forester and Tree Inspectors have the ability to use their discretion to determine that and staff can create a paper trail to keep track of how different situations are addressed.

Question: PBOT doesn't have a definition of 'unreasonable burden' and they use a simple form that asks the applicant to make their case for why they should be exempt from the regulation. This would allow for one form to cover both financial and site-specific issues.

Answer: Urban Forestry has been asked to be very transparent about their requirements in this area, so it would be better to have set benchmarks for waivers. Urban Forestry is working with the PDC so that tree removal can be added to the list of items for which they provide financial assistance.

Question: Issue #7, as it is presented on the issues tracking sheet, is about a waiver for replanting -- not financial hardship. Is this the issue we should be talking about right now?

Answer: Addressing "unreasonable burden" was seen as low-hanging fruit and is part of the same section of the code (11.40.060) that the Committee could address more easily. Staff will add financial hardship as a separate issue, so that it isn't conflicting.

Other Comments: If code said unreasonable "financial" burden, the second part of this issue would be easier to understand.

ACTIONS:

- ***Create financial hardship policy for Committee approval in April.***
- ***Clarify issue tracking sheet to separately address waivers based on financial hardship and site density.***

Miscellaneous Items

Kris Day requested that the issue of the \$1200 cap on mitigation fees for private tree removal be addressed as soon as possible.

ACTION:

- **Initiate a discussion Issue #3 from the tracking sheet at the next meeting.**

ADJOURN: 12:00 PM

-----Original Message-----

From: Jim Labbe [<mailto:jlabb@urbanfauna.org>]

Sent: Thursday, March 05, 2015 12:19 PM

To: Hayakawa, Mike; Howard, Patti; Keenan, Mieke; Wirtis, Lauren

Cc: Abbaté, Mike; Commissioner Fritz

Subject: Title 11 Oversight Committee Proposed Issues

Mike, Patti, Mieke and Lauren,

Please see our proposed Title 11 Oversight Committee issues attached. We developed and prioritized these issues jointly.

Thanks

Jim Labbe & Kris Day

Title 11 Implementation Oversight Committee - Additional/Proposed Issues to Address

Submitted by Jim Labbe and Kris Day, Title 11 Oversight Committee members Top Priority Issues:

1. Pending policies for Tree mitigation in non-development situations: Does the new policy provide a disincentive to remove trees outside the development review process? Does it fully mitigate tree loss?
2. Tree preservation and mitigation standards in development situations: Are Tree Preservation Standards on development sites preserving trees as intended? To what degree are developers opting to cut trees and pay the capped \$1200 fee in-lieu of preservation? Is the capped fee in-lieu of preservation adequately mitigating loss of the environmental functions provided by trees? Would a graduated fee in lieu of preservation more fully mitigate tree loss in more circumstances and provide a stronger incentive for tree retention where practical?
3. Data Collection and Performance Monitoring: What data is the City collecting to track implementation? What is the most important and cost-effective information to track to assess the effectiveness of code in achieving its purpose (11.05.010)?
4. Programmatic Permit: Is the programmatic permit working as intended? Is it functioning to preserve and plant trees, especially in City Capital Improvement Projects?
5. Land Divisions: Are the new Title 33 (Zoning) criteria for tree preservation during land division functioning to preserve trees? Is the 10-year sunset for tree plans sufficient?
6. Exempted Industrial and Commercial Zones: The purpose of Title 11 is to implement the Urban Forest Plan including the City-wide Urban Forest Canopy Targets. However Title 11 exempts some expansive industrial and commercial zones. How is the City monitoring

implementation on industrial and commercial properties currently exempted from the code? Should exempted areas be included in the future?

Other Important Issues:

1. Development Impact Areas: Should the larger "development impacts area" (defined 11.80.020.13) be required to determine the "Required Tree Area?" Should this broader area be required for projects on City land or publicly owned land?
2. Tree Planting Credit: Is the City providing tree planting credit option for mitigation? Is it being used?
3. Mixed Use Zone Project: Is the Mixed-Use Zone Project addressing trees in proposed changes to zoning and design standards? How will proposed zone changes impact tree preservation and planting? Are there sufficient provisions to ensure adequate space for trees or to require burying of power lines for healthier tree canopy?
4. Greenstreets: How does the City make decisions about tree removal for green street construction? Could greenstreet construction replace a street tree planting requirement if both are not feasible?