



## **Tree Project Oversight Advisory Committee**

Meeting #6, **Draft** Meeting Summary

Monday, June 8, 2015

1900 Building, 1900 SW 4<sup>th</sup> Ave, Portland, OR 97201

Room 2500B

9:00 AM - 12:00 PM

### **MEMBERS PRESENT**

Linda Bauer, Pleasant Valley Neighborhood Association

Mark Bello, Urban Forestry Commission

Kris Day, Urban Forestry Commission

Jeff Fish, Fish Construction NW

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

Helen Ying, Old Town Chinatown Community Association

Phil Damiano, Development Review Advisory Committee

Bob Kellett, SE Uplift

### **MEMBERS ABSENT**

### **STAFF PRESENT**

Jenn Cairo, City Forester/ City Nature Zone Manager

Mike Hayakawa, Tree Project Supervising Planner

Patti Howard, Policy Advisor to Commissioner Fritz

Mieke Keenan, Tree Project Program Coordinator

Anne Pressentin, EnviroIssues Consultant

Kimberly Tallant, BDS Supervising Planner

Nicole Pexton, BDS Management Assistant

Jeff Ramsey, Urban Forestry Botanic Specialist

### **OTHERS PRESENT**

Eric Sorenson

## **BUSINESS**

### **Welcome and Introductions**

Susan Steward opened the meeting by thanking everyone for coming and having everyone introduce him/herself.

### **Approval of May Meeting Summary**

***ACTION: May Meeting Summary approved.***

### **Public Comment Opportunity**

#### ***SW Portland Tree Removal***

There was no public comment, but Susan Steward took the opportunity to discuss a tree removal that happened in January in SW Portland that was recently featured in the Oregonian. The property owner did remove the trees before obtaining a permit, and had to replace them with six new trees. A permit was applied for and awarded after the fact. According to aerial photos in Mapworks the trees were located on the property, but the adjacent property owner told the media they were her trees. Determining the location of the property line is a civil dispute for the two property owners to work out. Urban Forestry has focused on education and outreach, rather than pursuing violations to the highest extent.

Question: How to tell whether it is a tree or a hedge from an aerial photo?

Answer: Urban Forestry staff members always conduct a site visit for violation cases and review documentation.

Question: What happens when a tree straddles a property line?

Answer: Urban Forestry staff members determine which side of the property line the tree is predominantly on.

Question: Can you use survey pins to determine which side of the property line a tree is on?

Answer: Often survey pins don't coincide with property lines, especially for small dimensions. Urban Forestry does not use surveys. Determining the location of a property line is a civil dispute between property owners.

Question: Is there a posting requirement for tree permits?

Answer: No, there is not.

Comment: Urban Forestry differs from BDS in that violations are tied to property owners, not the property itself. With Title 11, Urban Forestry can also pursue third party violators and involve them in remediation.

### ***Eastmoreland Sequoias***

There were three large sequoias permitted for removal under a development permit. The lot could not be developed without cutting the trees. Urban Forestry calculated the replacement value at \$108,000 and the service value at \$113,000, but the code caps the fee in lieu of mitigation at \$1,200 per tree. There is concern that the \$1200 tree does not come close to replacing the value of the trees.

Question: How does Urban Forestry do the value calculation?

Answer: Staff members use a variety of technologies, including a tool called i-Tree from the USDA Forest Service, which factors in the size of the tree, its condition, and its species when determining value.

Comment: For developers, it's easier to pay the fee than go through the necessary process to preserve trees, because the protection costs can be onerous. Getting a contractor to put up a 6 foot high fence with 8 foot posts could be \$600. Arborist visits and inspections also add time and money, which make it easier to pay the fee in lieu – even if the tree is not going to be cut down.

Comment: The committee should not rely on anecdotes when assessing policy. We need to use data.

***ACTION: Come back to a future meeting with more information on fencing requirements.***

### **Definitions of Building and Attached Structure**

Mike Hayakawa presented the proposed definitions of building and attached structure for the Tree Code. These definitions are necessary because applicants have the potential of manipulating what counts as a building to justify removing trees. Both definitions also contain specific examples of what is included and excluded in the definition, which can be helpful when interpreting code. The proposal received no comments from City staff and is similar to other definitions.

Proposed definition:

*Building. A structure that*

- *Has a roof;*
- *Is enclosed on at least 50 percent of the areas of its sides;*
- *Is built on a permanent foundation.*

*Attached structure. Any structure that is attached to another structure by a common wall, by a roof, or by structural connections that allow pedestrian access to both structures.*

Question: What do the exemptions mean? If I have a dog kennel, can I remove trees?

Answer: Dog kennels are not considered structures, so they do not qualify for tree removal.

Question: Is a slab considered a permanent foundation?

Answer: Yes.

Comment: A property owner could build a concrete pad and consider it a foundation, then put a storage shed greater than 200 square feet on it to justify removing trees.

Question: Is there a difference between foundation and slab in the building code?

Answer: Not necessarily.

Question: In the definition of attached structure there are four bullet points. Does a structure need to satisfy all four conditions to meet the definition?

Answer: Yes, and that needs to be clarified in the code language.

Question: Are these definitions going to include existing non-conforming structures?

Answer: Will need to clarify that issue in a revision by adding "and" at the end of all three points.

Jenn Cairo suggested that Tree Inspectors should review the language for fatal flaws, since they deal with situations where trees are 10 feet away from structures on a daily basis.

**ACTION:**

- ***The committee approved the definitions, contingent on input from the Tree Inspectors.***

**Comments from Committee Members on Tree Code Issues for Deliberation**

Mike gave an overview of the memo from staff to committee members responding to comments from Kris Day and Jim Labbe on tree code issues proposed for discussion by the group. The memo was submitted prior implementation of the interim rule. He encouraged Committee members to read the document carefully and add any issues they would like to the Committee to consider to the work plan.

Discussion:

Issue 1: Does the new policy provide a disincentive to remove trees outside the development review process?

Answer: The monitoring and evaluation report should also help answer this question. Effects of the interim rule on tree removals also can be reported on and considered in the committee's final report to

council. The interim rule implemented a matches the mitigation amounts between development and non-development situations, which are both limited to a fee in lieu of \$1200 per tree.

Question: Could a customer be charged less than \$1200 per tree?

Answer: The cap used to be \$300 per inch, but only trees 12 inches or larger would have the fee applied. A tree that size would never be worth less than \$1200, but the code language is vague and subject to interpretation.

Comment: The interim rule addresses private development situations, but not city agencies such as PBOT.

Question: Is there an opportunity for the Committee to give feedback on Issue 1 before the interim rule comment period is over?

Answer: The comment deadline for bureau and Committee is August 12<sup>th</sup>, after which staff will incorporate any changes and send out public notice on August 26<sup>th</sup>. The deadline for public comment is September 10<sup>th</sup>. Staff can provide data at the August meeting.

Issue 6: Exempted industrial and commercial zones.

Comment: The Bureau of Planning and Sustainability's Mixed Use zoning project is going to change industrial and commercial zones, and there may not be an equivalency to today's zones. The CS zone exemption will not directly translate to the proposed CM 1, 2, 3, and 4 zones. Is the city going to exempt all trees in all new commercial zones? Are we exempting the right zones? The committee should look at new proposed zones and examine whether we want to continue the exemption.

Comment: The exemption came from the 100% building coverage and lack of landscaping requirements that are common in commercial zones. BPS is still weighing options for development standards, including landscaping, for the new commercial zones. There will not be a public draft released of the mixed use zones until August.

Comment: All zones should have robust green infrastructure, but other options may be more appropriate for mixed use zones besides trees.

Question: How will the tree code fit into other BPS projects, such as the institutional zoning project and the employment zoning project?

Answer: Both projects will happen after the comprehensive plan update. John Cole is the lead for the institutional zoning project and Steve Kountz is the lead for the employment zone project. They could be invited to future meetings.

Question: Can we work incentives in to incorporate interior trees or larger trees, or to allow bonuses for green infrastructure elements?

Question: What are we supposed to be doing as an OAC? We seem to be rehashing discussions that happened during tree stakeholder meetings.

Answer: The Committee is asked to report on implementation in the short term. There are questions that can't be evaluated in that time frame, so the Committee will have to put forward recommendations to the Commissioner and the City Council on longer term issues. That recommendation could be for the City to continue monitoring long term questions.

Comment: One recommendation to City Council could be to factor trees and tree preservation requirements into the buildable land inventory developed by Metro and the City of Portland. If there is a priority for preserving trees, it needs to be taking into account.

Comment: The Urban Forestry Commission may be more able to look at longer term questions like the buildable land inventory.

**ACTIONS:**

- ***Members should review the memo and submit comments, questions and any topics for discussion at future meetings.***
- ***Provide revised interim rule schedule to committee members (complete)***
- ***Add discussion of Issue 1 and any available data to the August 10<sup>th</sup> meeting agenda.***
- ***Invite BPS staff to future meeting to discuss mixed use zoning project and institutional zoning project and how Title 11 applies.***

**Draft Committee Workplan and Schedule**

Susan and Arlene explained that the goal is for the Committee to get through all the issues on the work plan list by October, then spend the last two months developing a report to City Council. Staff will update the schedule for the next meeting.

Question: How do we know whether we have accomplished what we set out to accomplish? Is the work plan a good strategy for accomplishing work?

Answer: Staff will gray items out on the work plan as the Committee addresses them. They will also add columns for the status of each item and the action or goal.

Question: Could we address sidewalk improvements on this list?

Question: Could we make a recommendation to PBOT to include trees as a factor when considering street improvement?

Answer: Both of these items are included as part of item 15 on the work plan (Greenstreets), but that item could be moved higher up on the priority list.

Question: What is the outcome of these work plan items? Are we proposing code amendments or commenting on code amendments?

Answer: The intent is to determine a solution for each identified issue, which may be a code amendment.

***ACTION: Staff will circulate an updated version of this work plan to discuss at the July meeting.***

***ACTION: Staff will invite PBOT to talk about street trees at a future meeting.***

**Interim rule; replanting requirements for tree removal on private property, city-owned and managed sites and public rights-of-way**

Anne Pressentin led the Committee through each item listed on the Comments on Interim Rule on mitigation planting memo, to clarify any necessary action items.

***Item 1: Public hearing process for administrative rule review***

The public hearing would be held in front of staff, but whether or not a public hearing is requested will not impact the Committee's opportunity for comment. September 10<sup>th</sup> is the deadline for requesting a public hearing.

The committee can pursue commenting on the rule in three potential ways:

- 1) A consensus report from the Committee;
- 2) One report from the Committee that incorporates majority and minority discussions; or
- 3) Everyone submits comments individually

Patti Howard commented that it is useful for City Council to know the areas where the Committee agreed and disagreed.

**Next steps:** There is no need for further discussion, since the process for commenting will not change. Staff will assist the committee with compiling comments.

**Item 2: The \$1200 cap**

There needs to be discussion on the basis for the \$1200 number. The Committee could look at the alternative proposals that were considered for context. Is the cap applied to city owned projects as well?

Comment: The cap is not intended to be punitive. The fee allows existing lots to be developed instead of needing to extend the urban growth boundary.

Comment: The interim rule only deals with the cap in the context of specific non-development situations and streets, so feedback should be restricted to those issues.

Comment: The Committee should look for ways besides the \$1200 cap to mitigate issues like the removal of the giant sequoias in Eastmoreland. There may be opportunities to pursue other solutions in a code amendment.

**Next steps:** Place this issue at the top of the agenda for July's meeting.

**Item 3: Public works projects that result in tree removal**

It would be helpful to have someone come to a meeting train the Committee on how those processes work.

**Next steps:** Have a PBOT representative provide training on public works projects at the July meeting.

**Item 4: Role of the Urban Forestry Commission**

The Urban Forestry Commission wants to be part of the administrative rule process, so they decided to hold a public meeting on the topic in the first week of August. Notice about the meeting will go out to the public, and the meeting will service as an opportunity to be transparent about the rule and incorporate public comment.

Comment: Title 11 has changed the role of the Urban Forestry Commission. It could look at gaps between policy and implementation. The Commission more closely resembles a special function planning commission than a decision-making body or an advisory commission.

Question: How will people be notified about Urban Forestry's public meeting?

Answer: The Commission will work with Anne and Mike to ensure they have proper outreach for the meeting. One option is to get the word out through neighborhood associations.

**Next steps:** No need for comment from the Oversight Advisory Committee. The broader role of the Urban Forestry Commission regarding the tree code could go into the report to City Council, but not comments on interim rule.

**Item 5: City Forester discretion versus prescriptive standards**

The interim administrative rule added a prescriptive standard to provide certainty, but that standard was based upon the knowledge and experience of implementation. There could be supportable changes to the interim administrative rule, since Council took the standard for a particular situation and applied it everywhere.



Comment: Jenn said that Urban Forestry has always used discretion judiciously, and uses standards for applying mitigation. Decision making criteria on standards are available, and are applied while factoring in forest management and cultural parameters. Urban Forestry also factors in how other cities use mitigation.

**Next Steps:** Add discussion to next meeting's agenda to consider an alternative approach to implement the code.

**Item 6: Interim Rule Process**

**Next Steps:** No additional discussion needed. The Committee will add its concerns about the process of implementing the interim rule in its comments on the rule.

**Item 7: Incorporating Committee comments into staff work on the permanent rule.**

**Next Steps:** Continue process of compiling comments. No additional discussion necessary.

**Item 8: Tree credits**

Previously a property owner could earn tree credits, meaning they could plant fewer trees if the species were of higher service value. Tree inspectors had tables they could use to adjust mitigation requirements.

Question: Were tree credit decisions made on site?

Answer: No, but a site visit was often included in the process.

**Next steps:** Add discussion item to next agenda to determine recommendation.

**General Process Questions**

Question: What is the process for integrating comments from the OAC and generating a proposal on changes to the administrative rule?

Answer: Staff will go through the next steps for each item and determine whether those items will go into the final comments.

Comment: City should be held to a higher standard of tree mitigation as a model for the private sector on city-owned land and right-of-way projects.

Comment: Request that staff provide a specific proposal for members to react to and shows comparison of existing policy to interim rule.

***ACTION: Staff will present draft comments at the next meeting for discussion, then revise and finalize them.***

### **Tree Code Monitoring and Evaluation Report**

Jeff Ramsey gave an overview of the monitoring and evaluation plan. The goal is to use a program evaluation approach or systematically collecting and analyzing data to answer questions about how effective the tree code is. Is the code accomplishing what it intended? Jeff has been working with the Bureau of Technology Services to build new reports in TRACs to pull info and answer questions the Committee may be interested in. The plan that was circulated to the Committee contains all the development and non-development data in the permitting system that can be reported.

Question: Average diameter of tree removals does not give enough information on the size of each tree being removed. For example, are we losing trees that measure 10.5 inches in diameter because they don't meet the 12 inch minimum? Can a range of tree diameter be reported?

Answer: All that is reported in TRACs is the total number of trees removed and the total diameter of those trees, so there is no data available on individual trees. Answering that question would require intensive site resources to go through individual site plans.

Question: When does a baby tree count as part of the overall tree canopy?

Answer: Tree canopy is assessed using aerial photos and other technologies.

Comment: The Committee is evaluating implementation of the Tree Code, not the overall canopy.

Comment: This evaluation plan does not contain any sample statistics. The Committee should not limit its discussion to data that are currently available.

#### ***ACTION:***

- ***Members should email any questions or comments to Jenn, and Mike.***
- ***Staff will present specific data to discuss at the July meeting.***

### **RICAP 8**

Morgan Tracy presented the work plan for RICAP 8. It contains 12 minor policy items and 10 technical fixes. There are several items related to the Tree Code as part of RICAP 8 instead of RICAP 9, because there was enough concern about aspects of the code that we need solutions quickly. An item appearing on the work plan does not necessarily mean BPS will make changes. BPS will do public outreach and develop a code concept to make any changes. The Committee is already addressing some items on the RICAP 8 work plan, included the definitions of building and attached structure and adding lien authority for non-payment of penalties.

Question: There is no requirement for tree protection fencing in the performance path. What if an arborist is silent on fencing?

Answer: The intent of the performance standards was to offer an alternative to cyclone fencing. If beefing up performance standards is an outcome of items 13-16 on the work plan, then it could be included in RICAP 8. The public comment period for RICAP 8 would be the appropriate time to raise this question, but if it doesn't get addressed it could be part of RICAP 9 or the Committee's recommendations to City Council.

Question: On the item about requiring chain link fence protecting around trees on the opposite side of construction activity (item 13), does that include public and private paved surfaces? Could gravel streets be included as well?

Question: Are all proposals in the regulatory improvement database that were submitted prior to Title 11 void now?

Answer: Those items are still in the database, but many were addressed through the tree project. All items were considered, but changes may not have occurred.

Question: For items related to tree protection and preservation plans, how will BPS interact with Urban Forestry staff?

Answer: BPS will work with Urban Forestry to address any issues, and will discuss any changes with the Urban Forestry Commission.

Question: Who is currently authorized to enforce liens?

Answer: BDS Code Enforcement, but Parks is working to get lien authority for Urban Forestry.

ADJOURN: 12:00 PM