



## CITY OF PORTLAND, OREGON - PORTLAND TREES

Bureau of Development Services • Portland Parks & Recreation

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### Tree Project Oversight Advisory Committee

Meeting #12, Meeting Summary

Monday, November 9, 2015

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

Room 2500B

10:00 a.m. - 12:20 p.m.

#### MEMBERS PRESENT

Arlene Kimura, Hazelwood Neighborhood Association (Co-chair)

Bob Kellett, SE Uplift

Kris Day, Urban Forestry Commission

Linda Bauer, Pleasant Valley Neighborhood Association

Jim Labbe, Audubon Society of Portland

Mark Bello, Urban Forestry Commission

Nancy Seton, SW Hills Residential League

#### MEMBERS ABSENT

Helen Ying, Old Town Chinatown Community Association

#### STAFF PRESENT

Jenn Cairo, City Forester/ City Nature Zone Manager

Stephanie Beckman, BDS, Land Use Services

Tim Crail, Office of Commissioner Fritz

Mieke Keenan, BDS, Land Use Services

Breah Pike-Salas, BDS, Land Use Services

Kimberly Tallant, BDS, Land Use Services

Emily Sandy, BDS, Customer Service and Communications

Jill Grenda, BDS, Land Use Services

Jeff Ramsey, PP&R, Urban Forestry

Anne Pressentin, EnviroIssues, Facilitator

Bridger Wineman, EnviroIssues, Note-taker

#### OTHERS PRESENT

Bob Bernstein

Eileen Stark

Paul Steele

Richard Weber

Sabrina Pearson

Stephanie Kaza

## **Welcome and Introductions**

Arlene Kimura opened the meeting and led introductions.

## **Update from the office of Commissioner Fritz**

Tim Crail is standing in for Patty Howard from the office of Commissioner Fritz. Commissioner Fritz has heard from many people concerned about the cutting of extremely large trees. Commissioner Saltzman talked about a possible moratorium on cutting trees larger than 70 inches diameter at breast height (DBH). The City Attorney's office is concerned about the legality of a moratorium. Commissioner Fritz floated the idea of an inch-per-inch fee for cutting trees larger than 48 inches DBH and would like to get input to see if the proposal should move forward or be amended. Commissioner Fritz has not said she expects the proposal to be enacted as drafted, but would like input on it. Unfortunately, that message was not heard and four OAC members resigned.

Tim said some context is important to understand the current situation. One of the OAC resignation letters said protecting very large trees conflicts with the City's goals for housing. The number of development permits issued in the first three quarters of 2015 was 4,800. Eleven of those permits included trees over 48 inches DBH, with a total of 18 trees. Some permits included more than one tree. Permits included 659 trees of less than 48 inches DBH. The proposal would not impact housing density to the extent people are concerned. The proposal is before the OAC for the committee's input.

Tim said he has not had a chance to talk to Commissioner Fritz about the future of the OAC, but is interested in committee members' thoughts on how to move forward.

## *Discussion*

- Question: Is the threshold of 48 inches DBH a place to begin discussion in regard to the process the OAC has been following?

Response: It was one idea for how to move forward.

- Jenn Cairo said there is an agenda item to discuss the draft memo, which has been updated to reflect the group's discussions to this point regarding recommended protections of very large trees. Commissioner Fritz considers the recent proposal a stop-gap measure in response to community concern while other more comprehensive measures are put in place. More comprehensive changes to the code will take about a year to take effect. The memo the OAC is working on would still be considered as part of the larger process.

## **OAC membership discussion and path forward**

Anne Pressentin suggested the OAC reflect on how the committee's work will proceed given the recent resignations of four of 12 members. The OAC protocol established a quorum of two-thirds of members for decision-making. With a committee of eight people, six would be needed for quorum.

- Comment: It is critical the OAC continue its work, make recommendations, and that City Council take those recommendations seriously. The resignations were intended for dramatic effect and to criticize the proposal. To disband the committee would encourage this behavior.

- Comment: The OAC has worked to get this far and it would be pointless to stop now. We want to continue meeting and move forward through the remaining two meetings and to make a recommendation to City Council.
- Tim Crail suggested the possibility of reaching out to the members who resigned to see if they would like to rescind their resignations.
- Comment: If those members want to come back to the committee they are welcome.
- Comment: The open seats from those who resigned the committee should not impede the OAC's work.

**Action:** The OAC will continue its work plan with the eight remaining members and continue with the original protocols requiring two-thirds (six of eight) members to establish quorum for decision-making.

Arlene noted the members must communicate with staff if they are unable to attend any future meeting.

#### **Approval of October Meeting Summary**

The group reviewed the October meeting summary. Nancy Seton noted there was a mistake on page 2 where Elizabeth Bennet was called Elizabeth Benton.

**Action:** The October meeting summary was accepted with one correction of Elizabeth Bennett's name.

#### **Public Comment**

##### **Stephanie Kaza, citizen**

Ms. Kaza woke to chain saws cutting down maple trees to make room for new development on Nov. 5. The trees' canopy previously spread across Northeast Couch Street and covered a large area. Ms. Kaza was dismayed that she and other neighbors received no notice of the tree removal and the development plans.

The stump of the largest of the cut trees is 49 inches wide and others were also large. Having a number of large trees cut was disturbing. There is no way to replace them. Planting new trees would not mitigate what was lost.

Ms. Kaza said permits to remove trees are too easily granted. She supports stricter regulations which take into account canopy. Incentives for development conflict with Portland climate planning and currently used tree replacement values do not account for the ecological services provided by trees, which can be calculated and occur over a large area. Ms. Kaza is concerned neighborhood notification is inadequate. Notification of neighbors should be required at the time of permit approval.

Ms. Kaza said she appreciates the work the OAC is doing.

##### **Richard Webber, citizen**

Mr. Webber said the Nov. 3 memo proposing stop-gap measures to Title 11 sets criteria where trees larger than 48 inches DBH would have increased removal costs. He said this is a move in the right direction, but there are very few trees that would meet that criteria. Mr. Weber counted a total of 346 trees in in Wilshire Park, out of which only two were greater than 48 inches DBH; a very small percentage of total trees which would meet the criteria suggested in the memo. The Douglas firs in the Clinton neighborhood would have been too small to be worthy of extra protection as well.

The presentation on large trees to the OAC showed a small percentage of large trees. For the proposal to have an impact the threshold should be significantly reduced. A better starting point is 24 inches DBH.

Mr. Webber said Title 11 needs an overhaul. He suggested the City look to Vancouver, B.C. where developers must preserve every tree that is not in a building footprint. The prescriptive formula is a fast track to clear cutting. Portland should prioritize preservation instead of development.

**Eileen Stark, citizen**

Ms. Stark said tree size matters, but so do young trees, when it comes to preserving trees. Very large trees are few, but allowing 12-inch and larger trees to be removed without review will result in fewer large trees in the future.

Ms. Stark said all trees are not created equal. Tree species should be considered as well as size. Many native trees never get close to 48 inches in diameter. Certain types of trees support the invertebrate herbivores like caterpillars which are the foundation of the food web. Other species feed on the caterpillars to survive. Oak is an important tree species for invertebrate herbivores. The native white oak are slow growers; needing 200 years to grow to 48 inches in diameter. Cherries, birch, aspen, cottonwood and pines are also very productive. With some exceptions, most trees do not grow to a large diameter. Ms. Stark said she would like to see properties with trees over 12 inches DBH subject to a type II permit review.

**Bob Bernstein, citizen**

Mr. Bernstein said, much like salmon, it matters if trees are removed from the food chain when they are mature. The housing crisis is not a closed system problem and would not be solved by adding more units. If it was a closed system, more units would drive prices down. With housing demand so high we cannot build and give away Portland's livability. It is an open system with a huge demand.

Mr. Bernstein said trees are a community resource that provide many services. Developers do not pay the total cost of development. Current residents subsidize new development and should have a voice.

Mr. Bernstein said a large portion of canopy has been lost in some places and it could also happen in Portland. If the developers on the OAC feel like posturing, he does not think a hand should be extended to them. There are likely other developers in town who could sit at the table. The number of large trees is so small. Mitigation is a farce, as replacement in 40-50 years is not adequate. The Portland Plan goal of no net loss of habitat is a joke.

**OAC feedback on Commissioner Fritz' "stop-gap" code amendment proposal**

Jenn Cairo summarized the proposed code amendment to Title 11 which would apply to private trees, street trees and City trees. Under the proposal, removal of trees 48 inches DBH and greater would require a fee-in-lieu of preservation based on size. At the current fee-in-lieu rate of \$300/inch, cutting a 48 inch tree would require a fee of \$14,400. The fee would go to the tree preservation and planting fund established under Title 11. Tree planting through the fund would be at least a year out.

- Question: Under the proposal, are City projects bound by the same restrictions for tree removal?

Answer: Yes, the policy would apply to City projects and would not change the Capital Improvement Project process by which projects are considered.

- Question: Under the proposal, does the fee-in-lieu apply to the two-thirds portion of trees on the site which may be cut?

Answer: Yes, the fee would apply to any tree of that size removed as part of a development permit subject to Title 11 preservation standards.

- Comment: The chart shows that only about 4 percent of trees cut were larger than 30 inches DBH. Data on the number of trees with DBH of 36 inches and 48 inches would also be useful. Most native tree species do not reach 48 inches DBH. Can the OAC discuss a more useful size threshold? A better threshold is likely 30-some inches DBH, and data is needed to back it up.

Response: Stephanie said the City does not track information on individual private tree sizes in the TRACS permit database. Staff reviewed site plans to compile the information provided on the number of 45-inch trees permitted for removal in the first three quarters of 2015 and on trees over 12 inches on residential permits during August 2015. Staff cannot commit to conducting this data compilation again for different size thresholds.

- Question: Can the OAC request data on tree removal permits, including land divisions and building permits, with tree sizes for the month of October?

Response: Data was compiled for the month of August.

- Comment: Commissioner Fritz's proposal was intended as a stop-gap measure that would be revised after the OAC concludes its work.
  - Propose the OAC respond to the proposal by suggesting a threshold of 48 inches DBH is too large. It is not clear there was a factual basis for the 48-inch threshold. A threshold closer to 30 inches DBH would be more appropriate.
  - There is a question of whether the proposal would protect small lots for development; does it apply to sites under 5,000 square feet?
  - The proposal should include a provision to increase notice requirements because of the impact on surrounding properties and the neighborhood from cutting large trees. A 30-day notice would be more appropriate.
  - The OAC should ask the City Council to reconsider a prohibition on tree removal as a stop-gap measure. The City Attorney advice that a moratorium would not be legal did not consider if "prohibition" could be used instead.
- Comment: Another OAC member agreed a threshold of 48 inches DBH for protection of large trees is too large. A threshold of 30 or 36 inches is likely more appropriate. A notice period of just seven days is too short.

Anne noted the OAC has also been working on its own recommendation for protection of large trees. The OAC should consider whether it will respond to the proposal from Commissioner Fritz or make recommendations as part of its existing draft memo.

- Comment: As a stop-gap measure, the Commissioner's proposal does not preclude the previous OAC work. Both may proceed.
- Comment: The stop-gap measure would likely be temporary. The code amendment, as written, would uphold the interim administrative rule, which the UFC has said goes too far in allowing the cutting of trees. The OAC and the UFC are actively working on a longer-term code amendment.

Jenn Cairo responded to a number of issues and questions she heard during OAC member remarks:

- Urban Forestry would like to have a city-wide tree inventory, but it does not exist. There is an inventory of street trees which is nearly complete.

- The 48-inch DBH threshold came from prior discussions with BDS staff indicating that it is rare to see trees larger than 48 inches DBH in land use cases.
- The mitigation proposal does not affect other parts of the code. The exemption for lots of less than 5,000 square feet would not change.
- Jenn said Harry Auerbach from the City Attorney office said the concern with the use of a moratorium on the cutting of trees is that it would constitute a taking if it was shown to eliminate all potential economic gain from a property.
- Regarding data on tree sizes, sampling is likely the best method available, as complete counts are not feasible.
- The intention of the stop-gap proposal is to take action in short order to address community concerns. The intent is not to end further discussion regarding the code. The City recognizes the code amendment will take about a year to put in place. The stop-gap measure is intended to go into effect as work on the code continues. The stop-gap would be enacted on an emergency timeline. There would be hearings with public comment and input from stakeholder groups as well as from the Planning and Sustainability Commission in December. The earliest the stop-gap could reach City Council is likely late February, 2016. It is expected the stop-gap could be enacted more quickly than a more comprehensive package the OAC has been discussing.

Comment: Propose the OAC respond to the stop-gap proposal by stating:

- The proposed threshold of 48 inches DBH is too large and should be in the 30-inch range.
- The notice requirement of seven days is too short. Cutting should not take place until a month after notice is provided.
- City Council should consider if a prohibition on cutting could work as a stop-gap measure. This should be suggested at the same time as the suggestion for using a smaller DBH threshold.
- Question: Should the OAC also include the draft on protection of exceptional trees in response to the proposal, or keep it separate?

Response: Jenn suggested the response to the proposal should be separate from the OAC memo.

Jill Grenda, BDS, said she is concerned with the idea of extending the required notification period. BDS would like more specificity on how a property owner would show they have complied with the notification requirement. It is also useful to state the purpose of the notification period. BDS hears complaints from people who call the contact numbers distributed for various notifications, but the applicant does not respond. It is not clear a month-long notice requirement is better than one of seven days under those circumstances.

- Comment: The notice period allows the community to organize, protest and reach out to the developer to find another solution. This has been successful in the past. Cutting of large trees is traumatizing to the community. The notice period respects the community that depends on the trees.

Jill said protests can organize rapidly. She is concerned about the OAC making decisions without representation from the development community.

Jenn said BDS may provide input through the review process.

- Comment: The OAC should be clear about the purpose of the notice period. Delays and good neighbor agreements can be discussed. The OAC needs data on which to base a recommendation and a procedure for creating and approving the recommendation.

Response: Anne read the portion of the OAC charter which describes how the group may adopt an action through a majority vote.

Stephanie reviewed presentation slides including a chart with tree size information the City compiled from 110 residential permits issued in August 2015, which included 185 trees. The data showed only two trees over 42 inches DBH. Over 100 trees were removed, most of which were small. The information was gathered individually from site plans submitted with permit applications.

- Comment: The TRACS system only tracks an average number of inches.

Stephanie said it may not be feasible to have the BDS planners enter information on each individual tree size.

Jill said because Title 11 does not differentiate based on trees size, there was no need to program tree size information in TRACS.

Jenn said Urban Forestry would like to include tree sizes in the ITAP system which is replacing TRACS.

- Comment: Tree size information in TRACS would be helpful for city goals in the Urban Forestry Management Plan.
- Comment: There is still a question of how the OAC will respond to the proposal from Commissioner Fritz. Will the proposal move ahead without comment from the OAC? Prefer making a counter-proposal which includes a notification period of 21 days, changes the DBH threshold to 30 inches and reconsiders placing a prohibition on cutting large trees.
- Comment: The OAC should take a methodical approach to creating a proposal. The group should be supportive of a stopgap measure but a threshold of 48 inches DBH will result in the loss of many trees. Propose a series of questions to the group to determine a path forward, including: if the OAC is in favor of a making a proposal, if the group recommends a smaller DBH threshold, and a recommendation on the duration of the notification period.

The OAC members indicated their agreement on a series of questions for a response to the stopgap proposal.

- To provide comment to Commissioner Fritz in response the stopgap proposal
- To favor a stopgap measure to protect large trees while additional work on Title 11 code amendment continues.
- To recommend a threshold of less than 48 inches
- Question: Can requesting data to determine the best threshold be part of the OAC's ongoing considerations?
- Comment: The OAC should recommend looking further into prohibiting cutting large trees when it does not limit all economic viability of the property as a taking. Suggest including the recommendation for a larger fee as well.
- Question: What would a "prohibition" mean, and would it be legal?
- Comment: Suggest including the timeframe for the stop-gap; it should be in place until the changes to Title 11 are considered and adopted. A sunset clause would increase the probability the OAC will get the development community back to the table.

- Question: How does a notice period work for over-the-counter permits?

Response: Permits with a notice requirement could not be issued over the counter.

- Comment: There are details to work out to clarify the notification process and how it would be implemented. Notice should be required before a permit is issued.

**ACTION:** The OAC wishes to respond to the proposed stop-gap code amendment. Based on Aug. 2015 data, the OAC recommends decreasing the threshold where inch-per-inch mitigation is required to 35 inches, increasing the notification period to 21-30 days, re-considering a prohibition on cutting large trees, and including a sunset clause until more comprehensive code amendments are in place.

**ACTION:** Staff will draft a memo based on results of discussion and forward to members for review.

### **Policy recommendation memo on how to preserve very large, healthy trees in development situations**

Stephanie said she made some changes to the draft memo following discussion at the last OAC meeting. The memo details multiple recommendations from OAC members.

- Recommendation 1A retains the prescriptive path for trees over 12 inches DBH. There is a question of if there should be a separate standard and a possible land use review for very large trees. Most people thought the current, more prescriptive standard approach should be retained.
- There was also a request to look closer at land use review option. Page 4 of the memo provides more information through a zoning code example taken from plan districts and overlay zones with standards that apply to some trees. This would look at a threshold for additional tree regulations citywide. Standards would allow tree removal only if it conflicted with proposed development. If standards are not met that would trigger a land use review to consider if reasonable use of the site can be retained without tree removal. This was reviewed at the last meeting, but additional detail has been added about the review procedure types. Currently all tree reviews are Type II land use review procedures with public comment and local appeal. The biggest difference in the different possibilities is whether there is an option of a local appeal.
- Recommendation 1B suggests a change to the preservation standard to encourage the preservation of large trees. Right now one-third of trees on site must be preserved. There were comments that considering the total tree diameter for the site could better encourage preservation of larger trees.
- Recommendation 1C looks at providing more flexibility in the zoning code to make it easier to preserve trees. It recognizes impacts to adjacent properties from cutting trees. Most of that flexibility is available in multi-dwelling and commercial zones currently. Some things that could help preserve trees include allowing reduced setbacks, reduced minimum parking requirements, and allowing the required outdoor area and parking in the front setback.
- The OAC has previously discussed the appropriate level for a fee-in-lieu. Recommendation 2A is to update the fee to reflect current costs to the City. Urban Forestry drafted new cost estimates for tree planting and maintenance. Based on this estimate, updating the fee to current costs would roughly double the current fee.
- Recommendation 2B is creation of a graduated cost schedule that would increase for larger trees rather than the flat fee of \$1,200 for each removed tree. The OAC also discussed a cap on the total number of replacement trees. An example graduated cost schedule is included in the memo. It should be noted that the dollar figures do not include any increase in planting cost proposed under recommendation 2B. For comparison, the tree replacement requirements for the environmental zones are greater. The fee is a little more than what was proposed by the development community representatives formerly on the OAC.



*Discussion: Policy recommendation memo*

- Question: Is replacing trees that are cut an option?  
Response: There is no replanting option. Trees must be preserved or the fee applies. The fee is based on the estimated cost of the number of replacement trees calculated. The current code calls for a fee that corresponds to the cost of planting and maintaining two trees. The proposed change would require a fee to pay for more trees. Removing a 30-inch tree would require payment for the estimated cost of planting and maintaining five trees in the example provided.
- Comment: Recommend removing the example from the memo so it does not color the proposal. Also suggest changing recommendation 1A so it does not suggest the land use review would replace the prescriptive process. Perhaps add a sentence that the land use review process can be added as an option.

Response: It would be helpful to have a recommendation from the committee on which to do. A land use review cannot be triggered under the current standard. Including the land use review would be a major change to the recommendation.

- Comment: There may be three possible review pathways: using prescriptive standards, a review process, or a hybrid of the two. Recommend that all three paths are included in the memo.
- Comment: The OAC previously discussed considering the different ecological values of trees by species. Is that still an option, or would it be too complex?

Response: The draft memo was formulated based on responses to the email to the OAC members. The idea of considering tree species did come up, but was not heard from a majority of the committee and did not move forward in the memo. The OAC may still consider that option, but it would add some complexity to the process, especially for building permits as arborist reports would be needed.

- Comment: Portland's environmental overlay zones recognize environmental benefits which accrue beyond the site. Very large trees are also an environmental asset. The OAC should consider recommending individualistic permit review for large trees, or as an option to paying the prescriptive fee, unless it is too complicated to address right now. There is review required for many permits, why not removal of a 48 inch Douglas fir?
- Comment: Recommend removing the graduated mitigation example and adding a sentence to Recommendation 1A to add a land use review process in addition to the prescriptive path; either as an option or requirement for certain exceptional trees. A developer might choose to go through the land use review if they felt the prescriptive standard was too rigid or was convinced by the neighborhood to do so. There is a lot a frustration in the community and a desire to find better outcomes for development and trees. The OAC should provide opportunities for optimization. Can we leave the question of the exact recommended size threshold until there is additional process and data?

Response: Applicants likely would not choose to go through land use review unless they could get an incentive like lower mitigation or modified set-backs.

- Comment: Many people think there should be more flexibility in the code. Recommend keeping the option of discretionary review on the table.
- Comment: The optional land use review could be tied to flexible development standards.

**ACTION:** Stephanie will update the draft memo for distribution before the next OAC meeting according to feedback from the group, which included to:

- Remove the example for fee-in-lieu.
- Include a discretionary review into the recommendation for trees meeting a certain size threshold to Recommendation 1A.
- Add the comment about differentiating requirements based on tree species.
- Ensure the graduated fees include more than just two levels.

### **OAC work plan**

Anne reviewed the OAC issue-tracking table and recent changes. It would be useful to identify the issues of highest priority. Issues that are not complete by the end of the OAC work plan would have to be moved to a different committee. The committee should note that staff is proposing to combine several items into one broader issue regarding coordination of the tree code with other city policies.

The right column of the table provides space for marking priorities. Closed issues are identified, but there is a question of how to proceed on the open issues. Issues which may be addressed by staff are identified in the table.

### *Discussion: OAC work plan*

- Comment: Addressing trees in the right-of-way is very important. This should be a new project for the City, including a public process.
- Comment: The OAC should work to agree on the method of prioritizing the remaining issues in the work plan and discuss it at the next meeting. The group should agree on the method of prioritization.
- Comment: Any issues from the work plan recommended for another committee should be framed as priorities identified by the OAC, not as directive to the other committee.
- Comment: Propose changing item R to read: "Development Impact Areas. Should they be required in some instances?"
- Comment: Mark Bello would like to facilitate moving ongoing work on key issues to the UFC policy subcommittee.

**ACTION:** OAC members will email their comments and priority suggestions to Stephanie. Stephanie will compile the list of priority issues and bring it back to the OAC.

ADJOURN: 12:20 PM