

Forest Conservation Advisory Committee

Minutes

June 22, 2010

Prepared by: Linda Silversmith

ATTENDEES

Members

Paul Allen (WSSC), ex officio
Rick Brush, (DPS) ex officio
Mark Buscaino
Andrew Der
Ken Ferebee
Dan Landry
Brett Linkletter (DPWT), ex officio
Norman Mease
Laura Miller (DEP), ex officio
David Post
Jeff Schwartz
Linda Silversmith
Kevin Smith
Dan Snyder
Bryan Straathof
Clark Wagner

Absent members

Ginny Barnes
Don Galloway
Caren Madsen
Bill Pastor
Mark Pfefferle (M-NCPPC), ex officio
David Plummer (MSCD), ex officio

Others attending

No others attended

- I. Minutes of May 25 meeting: reviewed and approved
- II. Other logistics: welcome to new member Dan Snyder, a county resident with 20 years of experience in residential development
- III. Roadside tree law
 - A. How would a roadside tree law affect the current DEP proposal based on forest and tree canopy? Would a roadside tree law come from “Park & Planning” (the M-NCPPC)? Would it be in addition to state law? (latter has addressed when roadside trees can be taken down since 1914 – with aim of stopping people from taking down trees in the rights-of-way).
 - B. While the county DOT manages street trees, citizens can circumvent DOT, going to the state to get a permit that DOT might have turned down. The committee discussed one such incident in which someone got a state permit to take down old red cedars in No. Potomac. State law supercedes county law, and Mont. Co. has not sought delegation because of the cost and other reasons. (The state is understaffed too). Just recently the state has agreed to be more proactive in telling people to contact the county DOT (i.e., DPWT) (thanks in part to one member’s activism), but DOT thinks the state is not yet consistent about doing this. Changes to the State Roadside Tree Law involved that if people want a building permit that will affect roadside trees, they have to get the roadside tree permit from the state before local jurisdictions can issue building permits, and that the state has given local jurisdictions (some) authority. It was also noted that the changes

to the State Forest Conservation Act included lowering the threshold for land disturbance to 20K from 40K sq. ft.

- C. In Mont. Co., DPS is involved in driveway permits. It was reported that some inspectors are good about requiring applicants to have a plan in place in advance about their trees.
- D. Should the FCAC advise the county to seek delegation? Is the new informal cooperation sufficient?
- E. More on processes: It was further discussed that when you apply for a DPS permit, if you say that what you are doing will affect trees, then you have to get a state permit from the MD Forest Service – and you should also go to Montgomery County DOT Highway Services. The permit is needed if a tree will be impacted in any way (not just removal) (e.g., pruning). A tree professional ought to be involved although that has not always happened in the past. One member recommended contractor education (after giving an example in which a tree service topped a tree that should not have been topped). Before the state can enforce, the DNR police have to have seen what was happening. And DNR has very limited manpower but has been more responsive lately.
- F. Two issues that were mentioned are (1) pruning in the right of way and (2) the October-effective revision of the law concerning land disturbance outside the right of way that could affect critical root zones. DPS can't do reviews of these situations so long as the county hasn't sought delegation of this law. A concern was voiced about how it can take several years for trees to die from root zone damage. While 24-inch trees are supposed to be shown on plans under the Forest Conservation Law, this often does not happen on plans not regulated by the FCL. Education programs were suggested on costs/benefits of trees; this could be worthwhile. In one member's long experience, problems continually persist.
- G. Another member suggested that improvements in state/county communications could improve the permitting process. If the state and DPS sent a copy of tree permits and building permit waivers to DOT, then DOT would be better informed and could act on more requests. Currently, DOT is largely unaware of the permits issued by DNR FS and DPS. This would not require DPS to hire staff with tree expertise. (The state does get payments for its permits.) This may take care of several issues. But one issue that remains a concern involved the property owners who unknowingly damage trees, especially roots (often by heavy equipment on a property).
- H. One member suggested that what is needed are comprehensive management plans for trees, which development processes currently do not have at all. It was indicated that the Forest Conservation Law covers this in the situations in which it kicks in.
- I. It was stated that exceptions (exemptions?) can cost a lot (\$2-3K) and take several months. Also, that infill (existing) lots smaller than 40K don't have to go to P&P for processing, that P&P does not get everything that involves sediment control and building permits. The fact that an area is protected during construction does not mean that its trees cannot be taken down later (unless covered by an easement). Another wondered if a type 2 easement around trees is still being used or not; this is a less formal process.
- J. One member summarized that plans for subdivisions and lots greater than 40K sq. ft. in size must show trees; smaller lot sizes are not required to show anything; DPS could require showing the trees, but has no power to change anything about them, so why do it?

It was clarified that street trees that are included in a forest conservation plan under the Forest Conservation Law do not need roadside tree permits; otherwise, they come under the roadside tree law.

- K. It was noted that the state law is strong enough – that the problem is enforcement. At one time, forest rangers directly supervised tree-trimming crews that worked for utilities; now there is only one ranger per two counties. Someone ought to be driving around the county looking for trees being affected. One member remarked on having been involved with a volunteer program once, but another stressed the importance of involving professionals, saying that Casey Trees decided volunteers would be too huge a liability issue.

IV. Tree Ordinance – What would it look like in Montgomery County?

A. One member, who was heavily involved in the ordinance for Gaithersburg, suggested a compilation of tree ordinances around the area (e.g., Arlington, Falls Church, Rockville, Takoma Park) and around the country - - to see which are better and where should be our own starting point. Information is also needed on how many trees are coming down, the actual size of the county tree canopy, and what size it should be. There may be a tree ordinance website, and the Arbor Day Foundation may have recommendations.

B. Another member wondered how a tree ordinance would fit with DEP's proposal that uses tree canopy. Does the latter cover what's needed for a tree ordinance? It was clarified that actions that require a sediment control permit would be required to look at all trees, but for tree removals or disturbance too small to require a sediment control permit, separate legislation and threshold(s) would be needed. DEP did not propose anything for these latter lot sizes as yet, thinking the county could not implement it at this time. It was observed that a tree ordinance would be about tree protection, which is not really in the DEP proposal. The current law provides no protection for individual trees except during construction, which is not supposed to disturb critical root zones. Implementing review of individual trees would be too burdensome for P&P staff.

C. One member indicated that tree protection in different laws comes down to diameter (or circumference) control. For example, in DC, if a tree more than 18 inches in circumference is removed, either a new one must be planted or a payment made to DC. In Takoma Park, an arborist gives the reason for removing a tree, and a tree commission can make the final decision. If canopy decreases too much, one could increase the circumference ranges under protection; if the canopy were to stay stable, one could instead decrease the protected circumference ranges.

D. As Montgomery County does not yet have the canopy data (few places do), one question is whether to go ahead or to wait 5 years for that information. One could choose a reasonable level, such as arbitrarily 20 inches and greater, and see how this fits with what is learned later. Currently DC says that 75% of its tree canopy includes trees of 9 inches and up. The fees charged for removing trees can help fund staffing (unless, as in DC, the monies sometimes get sidetracked into the general fund).

E. A member wondered whether the forest mitigation planned for the ICC (Intercounty Connector highway) will result in a net gain. **Action:** Mark P. of P&P will be asked whether he has this information as part of county statistics and is it reported in the

County's FCL numbers. Reportedly, the ICC's wetland mitigation is exceeding what is required.

F. It was suggested that the FCAC could participate in education, perhaps as participants on a speaker's bureau for county organizations and public audiences. **Possible action:** Possibly the FCAC could recommend continuing education courses – for home improvement contractors, tree experts, surveyors – concerning the laws and impacts, such as the value of staying away from trees. Does DPS provide a primer on tree protection? Not at this time, DPS inspectors do not get training in how to save trees, but that possibly P&P provides this. It was mentioned that inspectors are trained re trees in Fairfax County. Could training be part of a sediment control class every 2 or 3 months – adding a module on tree protection (and perhaps one extra hour for this). **Action:** Rick will talk about this idea with the head of the inspectors. It was suggested that one incentive could be if monetary fees were charged for disturbance of critical root zones.

G. One member asked if a tree ordinance would be focused on protection or on “pay to play”. Another has seen both and thinks that a cultural shift concerning property rights needs to be involved - - getting people to be responsible and understand the importance of trees. A third proposed a role for the FCAC in seeing that educational materials are given to developers and residents who come for permits and to realtors as well.

V. Other topics

A. Other education could be of contractors - - concerning the way the (huge) overuse of mulch severely affects tree mortality. **Action:** Laura mentioned “mulch meters” and will provide these at the next meeting. **Possible action:** a letter to the editor from the FCAC on this topic

B. Future topics for FCAC meetings: (1) a DPS talk on how the permitting process works. It was noted that if the DEP proposed canopy law passes, DPS would be responsible for some implementation. Also it was pointed out that the costs of a tree ordinance will need to be looked at. (2) Conflicts between stormwater management and tree saving (e.g., silt fences), which is not in the new state stormwater manual. (3) P&P's level of enforcement (4) Additional focus on how to get people to do the right thing without needing enforcement.

C. **Action:** Mark B. will research tree ordinances (although he will be out of the state at the time of the July meeting). He wonders how many small lots are developed without going through review and how much imperviousness there is. Statistics are also needed on tree health as well as on forest and tree canopy levels. Forest canopy = 29%. **Action:** Rick will check with Mark P. and Dale Tibbitts and see what statistics he can come up with.

D. A member asked about our goal and purpose and whether we can clarify our mission for the agenda. For example, what thoughts might we want to report on to the county council and administration?

The meeting was then adjourned.