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Sent: Thursday, August 20, 2009 9:51 AM
To: Hughes, Jennifer
Cc: Rogalin, Ellen
Subject: Recommendations on the Tree Ordinance

Attachments: Recommendations on Tree Ordinance.doc

Unfortunately I will have to miss the next task force meeting on 8-27-09. In my place will be Ed Riddle.

As we approach the end of this phase of the process it has become clear that the job of writing a new ordinance through

a task force is complicated and laborious. I wish we could have been more efficient, but with so many ideas being

presented on such a complicated subject I guess we did the best we could. You have done a good job of filtering through

the ideas and offering suggestions on the ordinance content.

Having spent over 3 years reviewing tree ordinances around the nation, meeting with experts and attending tree

preservation conferences and workshops, I hope I have been able to contribute some useful ideas. There is much more to say and I hope to continue to have an opportunity to share some of the information I have learned

as we continue toward adoption and implementation of our tree preservation ordinance.

I am sending you my comments and recommendations dealing with some final aspects of the ordinance content, as well as

the parking lot issues. You may share these recommendations with the task force. Thanks again for your help.

Bob Murch

Recommendations for the Tree Preservation Ordinance

Ordinance Structure

While it is likely the draft ordinance will incorporate many of our suggested revisions, I am concerned that we must present a structure that allows the public the best possible opportunity for a clear understanding of the ordinance intent. In that regard I make the following suggested revisions regarding the order of the sections:

- 1020.05 Tree Removal Permit Required
- 1020.06 Tree Removal Permit Application Submittal Requirements
- 1020.07 Tree removal Permit Approval Criteria
- 1020.08 Mitigation for Removed Trees
- 1020.09 Tree Protection and Maintenance
- 1020.10 Appeal
- 1020.11 Violation
- 1020.12 Remedies
- 1020.13 Fines

Comments on Revised Sections

1020.05 (Tree Removal Permit Required)

We must be very careful not to confuse the reading of the ordinance by including remedies, fines or mitigation in this section. Those issues need to be addressed in appropriate separate sections.

I believe 1020.05(A) is fine as written.

In 1020.05(B) I recommend that this is a good place to make a statement establishing the burden of proof of the applicant to establish that removal of a tree was within the ordinance criteria. I would suggest the following be added to (B):

“ In any action under this ordinance, or to enforce a provision of this ordinance, the property owner has the burden to prove that the criteria for granting a tree removal permit has been satisfied, or the removal of the tree or trees is allowed without a permit. Failure to do so will result in the tree removal to be in violation of this ordinance”

To avoid confusion I recommend moving the remaining sections as follows:

- 1020.05(C)(1) to Approval Criteria
- 1020.05(C)(2) to Mitigation
- 1020.05(D) to Mitigation
- 1020.05(E) to Approval Criteria
- 1020.05(F) to Approval Criteria
- 1020.05(G) to Approval Criteria

1020.05(H) to Approval Criteria

1020.06 (Tree Removal Permit Application Submittal Requirements)

This section is fine as written except we may want to show the cost of the permit application.

1020.07 (Tree Removal Permit Approval Criteria)

Paragraph (D) is the inclusion of an unqualified view approval criteria. This is entirely too subjective, and will create challenges that could negatively impact the otherwise effective regulations in the ordinance. One persons view could be another's eyesore. A view can include the skyline, a valley, historical landmark, other buildings, a cityscape, or maybe just a view of other trees. The list goes on!

The only views that should qualify are ones established through a view easement or the maintenance of existing views. I don't believe removal of trees to establish a new view should be allowed.

1020.08 (Mitigation for Tree Removal)

I think it is important to make a reference to mitigation requirements anywhere in the ordinance where tree removal is allowed. For example in 1020.07 (Tree Permit Approval Criteria) the first paragraph says, "A Tree Removal Permit shall be approved if the applicant provides evidence substantiating compliance with at least one of the following criteria". I would suggest adding, "providing the mitigation requirements of this ordinance are met." In this way the applicant is made aware of the fact that tree or trees may be approved for removal, but compliance with the ordinance also requires replanting new trees according to the mitigation requirements.

I believe using the 2" caliper requirement for replacement trees is appropriate, but the formula for the number of trees to use as replacements needs to be something more than one to one. A good reference is through ISA Guidelines located at ISA-Arbor.com.

My recommendation for replacement relates to the diameter of the tree being removed.

Trees greater than 8" and up through 12"---- 4 trees for 1 removed.

Larger than 12" ----- 1 tree per 2 caliper inch

(Example- 24" tree would equal 12 trees)

This method helps maintain canopy and provides some incentive to the applicant to save rather than remove trees. The idea of increasing the number of trees to accommodate the removal of the large diameter trees needs to be specific and not subjective, to assist in proper administration of the ordinance.

1020.09 (Tree Protection and Maintenance)

The wording as proposed is adequate to send the message that tree protection is required as part of any tree removal application, especially related to land development or construction.

What is lacking is a statement that explains the consequences of not meeting the protection requirements. While failure to comply with the protection requirements implies consequences, I think we need to make a definitive statement to put the applicant on notice.

My suggested wording is as follows:

“Damage to protected non-exempt trees, not approved for removal, that results in death or substantial damage, or the unauthorized removal of protected trees, will be treated as though the tree or trees were removed without a permit, in violation of this ordinance, and such action will result in fines and remedies stipulated in this ordinance.”

Comments on additional recommended ordinance sections

Violation

I strongly believe we need to have a separate section for Violation that allows the applicant the opportunity to understand what constitutes a violation of the ordinance. All who intend to remove trees and simply expect to pay the fines, as a cost of doing business, will be put on notice of the consequences of their acts. In the long run we really want to avoid unnecessary tree removal, rather than simply mitigating the consequences. The Violation section will help.

My suggested wording is as follows:

“A. A violation shall be deemed to have occurred if it is determined that a tree, or trees have been removed or otherwise destroyed contrary to the specific requirements of this ordinance. Evidence of such violation can be from the physical appearance of the land where the trees were removed, as well as testimony from witnesses. Removal of stump material that would prove a violation of the ordinance will be deemed to be evidence that such a violation has occurred.

B. When a tree or trees are approved for removal with conditions, and more trees are removed than authorized, or non-exempt trees are damaged during the removal process, any removal or damage to non-exempt trees will be considered a violation of the ordinance. Each tree removed or damaged that had not been authorized for removal under the tree removal permit will be considered a separate violation.

C. If the applicant misrepresents any material fact in the tree removal application, the approved permit may be revoked, and any trees removed based upon the

misrepresentations in the application will be viewed as having been removed in violation of the ordinance.

D. A violation of this ordinance will result in revocation of the tree removal permit, as well as requiring mitigation remedies and fines as stipulated in this ordinance.

Remedies

In situations where trees have been removed in violation of the ordinance, remedies should be identified that will penalize the wrongdoer by requiring them to mitigate the consequences of the loss of trees and tree canopy. While fines deal with direct monetary consequences, the mitigation remedy deals with righting the wrong through replanting. If the property owner refuses to replant the trees then the fine can be assessed based on the value of the tree removed.

I think the remedy should be to replant the trees as would be required in the mitigation section of the ordinance. I believe a violation of the conditions of approval of the tree removal permit voids the permit and replanting should not reestablish the permit.

Fines

Virtually all tree preservation ordinances have fines built into the ordinance, thus allowing the citizens to be fully aware of all the consequences of a violation of the ordinance.

The Oregon Department of Forestry suggests that the enforcement and fine provisions be incorporated in the ordinance. In the document titled “Developing an Urban Forest Practices Ordinance” they say, “The local agency responsible for enforcement, the penalties for violating the program regulation, and the method of enforcement should be included in the Urban Forest Practices program.”

While I understand the County has a separate fine and penalty section within the ZDO’s, I sincerely believe we must find a way to incorporate the fines within the tree protection ordinance. This is a critical issue. Governmental entities and experts on tree protection throughout the nation support this fact.

The message I hear is that a tree protection ordinance without a clearly defined fine section incorporated within the actual ordinance is dangerous in that there will be misinterpretations by those the ordinance is designed to impact. That clearly is something we don’t want to do!

That being said, it is clear that the fines must be adequate to be viewed as a deterrent to prevent unnecessary removal of trees. No longer can a developer decide that the fines are simply the cost of doing business. In the “Area of Application” section a statement has been made dealing with the prohibition of building anything other than a single family dwelling if trees are removed in violation of the ordinance. Under the fines section, after

the money costs are identified, I would recommend a simple reference back to the “Area of Application” and the “Remedy” section as a reminder that fines are just part of the price the applicant must pay for violating the ordinance.

Parking Lot Issues

Due to time constraints I will comment on only one area, and reserve the option of further submissions at a later date.

Urban Forestry Commission

In virtually every situation where a local governmental entity has developed a tree protection ordinance, it has been in conjunction with the creation of a defined urban forest protection program that included an Urban Forestry Commission, or a similar oversight body. The general responsibility of such a body is to oversee the functioning of the ordinance and to promote and expand the community responsibility to preserve and protect urban forests.

We need look no further than the City of Portland, the City of Wilsonville and the City of Vancouver to obtain guidance in the creation of our Urban Forestry Commission.

The duties of such a Commission might include:

1. Administration over site of the Tree Preservation Ordinance.
2. Monitor and evaluate the results of the ordinance.
3. Manage the distribution of money in the Tree Fund.
4. Develop plans to further preserve and protect the urban tree canopy.
5. Gather data that would allow future revisions to the ordinance.
6. Assist in developing and maintaining a public education program designed to:
 - A. Educate the public regarding the ordinance.
 - B. Help explain the benefits of trees to the community.
 - C. Create programs that would bring together citizens and members of the business community to support tree preservation.
 - D. Help create a web site to support community understanding of the ordinance and the importance of effective stewardship of urban trees.
7. Facilitate gathering of data on trees through a tree canopy survey.
8. Act as an appeal body regarding appeals arising under the ordinance.

The City of Vancouver has a great urban forestry program, administered in part by the Urban Forestry Commission. The stated mission of their program and their Forestry Commission is as follows:

“Maximize the aesthetic, environmental and economic benefits that trees provide to the city residences and visitors by preserving, managing, and enhancing existing trees and other vegetation, and promote the reforestation of the urban area through an active integrated program with community support and participation.”

I think Clackamas County would be well served by adopting similar language and creating an Urban Forestry Commission in support of the tree preservation ordinance, and to prove that the County is serious about tree preservation. Staffing of the Commission would be by appointed volunteers with the support of the County arborist.

The success of the ordinance will depend on many factors, the most important of which will likely be the creation of the Urban Forestry Commission.