

CLACKAMAS COUNTY TREES TASK FORCE
MEETING AGENDA
8-11 A.M., JULY 9, 2009
DEVELOPMENT SERVICES BUILDING, OREGON CITY

Time	Topic	Presenter/Coordinator
8 a.m.	Welcome/introductions	Eileen Eakins, Task Force Chair
8:05	Public comment	Eileen Eakins
8:10	Agenda review	Eileen Eakins
8:15	<i>Area of Application</i>	Jennifer Hughes
8:20	<i>Exempt Trees</i>	Jennifer Hughes
8:30	<i>Tree Removal Permits</i>	Jennifer Hughes
9:15	<i>Mitigation</i>	Jennifer Hughes
10:00	<i>Administration and Submittal Requirements</i>	Jennifer Hughes
10:30	<i>Definitions</i>	Jennifer Hughes
10:45	Public comment	Eileen Eakins
10:50	Next steps	Eileen Eakins
11:00	Adjourn	Eileen Eakins

NOTE: All task force members and visitors are asked to turn off cell phone sounds to avoid meeting interruptions. Thank you.

Meeting tasks:

- Review and approve of draft ordinance subsection: *Exempt Trees*
- Review, discuss and approve draft ordinance subsection: *Tree Removal Permits*
- Discuss and give staff direction on *Mitigation*
- Discuss and give staff direction on *Administration and Submittal Requirements*
- Discuss *Definitions*; identify missing elements

Clackamas County Trees Task Force

Meeting Summary, June 11, 2009

Development Services Building, Oregon City

Attendance

Task Force members: Catherine Blosser, Bryon Boyce, Eileen Eakins, Bill Howe, John Landon, Bob Murch, Trish Nixon, Ernie Platt, Eric Shawn, Dick Shook, Ruth Toler, Jim Wick
Staff: Jennifer Hughes, Ellen Rogalin
Visitors: Tom Herman, Carol Mastonarde

Welcome

Eileen welcomed task force members and visitors to the meeting. She reviewed the meeting agenda and said the Board of County Commissioners has asked that the task force complete its work by August and report to the Board in September.

Public Comment

Carol Mastonarde thanked the people who have volunteered their time to serve on the task force. She said she hopes the County will have enough money to implement the trees ordinance and include it with Title XIII requirements.

Progress To-Date

Ordinance Components -- Jennifer shared *Ordinance Components*, which lists the parts of an ordinance and shows where the task force is in development of a tree ordinance. The purpose section is done. Two sections – *Area of Application* and *Exceptions* – are in progress. *Development Standards* should basically focus on how to determine if a request to remove a regulated tree should be approved or denied. At the July meeting, Jennifer will bring draft language for the sections on *Submittal Requirements* and *Administration*.

Work Program -- Jennifer said that, while the work program has been on the agenda several times, the task force has never had a chance to discuss it. The Board has now asked to see a draft ordinance at a study session in September, along with the parking lot issues list, which the Board will consider whether and how to address. Therefore, at this point the plan is for the task force to get to the end of the ordinance components list by the end of the July meeting and use the August meeting to review, finalize and prepare the September report for the Board.

Parking Lot Issues – Jennifer referred to a list of parking lot issues. She explained that the long-term issues are for items that won't directly be a part of the ordinance; short-term issues could be part of the ordinance. She asked task force members to add topics that staff missed. Eric asked if it was critical to differentiate between short-term and long-term issues. Jennifer said the list that eventually goes to the Board will probably not be split into categories. It's only critical to identify the issues that should be addressed by the draft tree ordinance. Eric said he liked the list. He asked how the task force ensures that what it does fits with the Board-approved Action Plan for a Sustainable Clackamas County. Trish said trees are mentioned in the sustainability action plan, but only briefly as one of many, many other items. Ernie asked that mitigation measures be added to the parking lot. He said it could be something that would be part of the development process and just referred to in the tree ordinance.

Bob said we can't try to be all things in this ordinance. He noted that it's a process that will be adjusted over time.

Trish read the section about trees from the Action Plan for a Sustainable Clackamas County:

Goal: Become carbon neutral

Action: Retain the tree canopy, both urban and rural

Tasks (2008-2013):

- a. Assess the current tree canopy in the urban and rural county lands and develop future goals.*
- b. Develop a tree conservation ordinance within the urban growth areas of the County that focuses on preserving these critical elements of our urban ecosystems. Initiate a task force to address this in 2009.*
- c. Ensure that codes require adequate space and soil for newly planted street trees to become fully mature canopy trees.*
- d. Develop mitigation requirements for the removal of trees within the urban area over a certain size.*
- e. Develop a list of acceptable canopy trees for street trees in accordance with International Society of Arboriculture (ISA) standards.*

Jennifer noted that the Task Force is dealing with most of the tree-related issues in the action plan. Street trees will be a bigger issue that needs to still be addressed.

Catherine said the task force needs to include industrial and commercial issues.

Jennifer pointed out that the introduction to the area of application makes it clear that all land is covered except for some single-family-zoned land – that means that industrial and commercial areas are covered by the ordinance.

Bill noted there's no one on the task force who represents the commercial/industrial sector.

Trish said that, as chair of the Clackamas County Design Review Committee, she will make sure that group is aware of what the task force is doing.

Area of Application Subsection

Jennifer reviewed the latest draft that incorporates changes from the last task force meeting, and reviewed a map to show the current impact of the ordinance on unincorporated Clackamas County.

Eric asked if five years is sufficient disincentive for clear-cutting or would it just be part of the cost of doing business.

Ernie said it could be both.

Bob noted that was a good point. He said we need enough teeth in the ordinance to make a difference and suggested that 10 years would be more effective.

Bryon said he supported 10 years. He said problems arise when people don't follow the rules, and 10 years would make the ordinance stronger.

Bill said he thinks five years is sufficient, and he suggested staff ask county counsel to look at the issue. He also noted that CC&Rs in 3b should be "conditions" instead of "codes."

Jennifer said a definition of CC&R can be added.

Catherine said she didn't want to discourage development, but she supports 10 years. She asked what was being done about the loophole with two property owners combining their property to get around the ordinance.

Jennifer said it's not possible to write an ordinance to cover all eventualities, but she could look at adding language that applies a five-year development restriction to people who combine lots.

Bob said we could probably just let that issue go since there are probably lots of exceptions that we're not thinking of.

John asked if the language in the ordinance could be written more clearly.

Jennifer said she would try; Ellen said she would draft a version for the non-lawyer.

Jim said he thinks 10 years is excessive and gave the example of a Boy Scout camp in Happy Valley that thins trees every year.

Eileen noted that would not be a problem as long as permits were applied for or if the trees were within the allowed size. She asked for a vote on whether the ordinance should have a five-year or 10-year moratorium on building after cutting.

Vote: 10 years: 6 (Catherine, Bob, Trish, Eric, Bryon, Dick);
5 years: 6 (Bill, John, Jim, Ruth, Ernie, Eileen);

The group expressed comfort with the language of this section, with the understanding that whether five or 10 years will be included is still to be decided.

Exceptions Subsection

Jennifer reviewed the proposed language for this subsection and noted that it applies to land not already exempted from the ordinance.

Subsection A

Bob said the overriding consideration is to preserve the tree canopy and 10% is a lot of trees.

Perhaps a permit should be required. There should be a mitigation component. He said he prefers no percentage, but could live with it. If a percent is permitted, there should be replacement provisions.

Eric said this is a loophole. If a person has 10 trees and can remove two per year, they can clear-cut their property in five years. Why would we require a permit for the removal of diseased or hazardous trees, but not healthy trees?

John said that, in Subsection B, some ordinances go for 8" or 10" DBH (diameter at breast height); 6" DBH is pretty small. He suggested the task force consider increasing to 8", 10" or even 12" DBH.

Jim said he still supports 10% and doesn't want to require a permit for every tree that's cut. He could go 10% or two trees every two years. We need to give flexibility to landowners.

Catherine asked whether people with lots of trees would have forest deferral.

Jim said they would not necessarily have forest deferral.

Catherine said that she's concerned about people in neighborhoods with large canopy trees.

Jennifer said right now the ordinance does not discriminate between a home site and other areas of the property.

Catherine said Wilsonville requires a permit for removing up to three trees.

Jennifer said it's like registering – it's never denied and people are offered a free tree. The city is tracking canopy and problem trees.

Catherine said she doesn't like two trees or 10% per year. She thinks a permit should be required no matter what.

Ernie said the section is adequate as written, and to require a permit for every tree to be removed would be a big expense for the county. In addition, in order to determine 10%, the property owner would have to take an inventory of all trees on their property. He suggested adding orchard trees to the list and asked where former Christmas tree plantations fall into the discussion.

Eileen asked for a vote on Subsection A.

Vote: Subsection A is ok as is: 6; Subsection A should have a lower exception rate: 6

Bob said A is ok as it is (note: which changes the vote to 7), but keeping track of the canopy is important through an application process, and mitigation is needed.

Bill said the task force is supposed to solve the clear-cutting problem. We can't make policy based on bad actors. Two trees or 10% takes care of the clear-cutting issue. Ten percent is a diminishing number as the total number of trees on the property is reduced. We have no tree ordinance at all now and still have a lot of trees. We need to trust the public.

Bryon said he supports 2 trees or 10%, but it should be monitored and may need to be refined. There needs to be some sort of accountability.

John said he likes the idea of 2 trees or 10% every two years, but best to leave it as it is now. There should be a process for monitoring.

Ruth said she agrees with 2 trees or 10%. She said she's concerned about the cost to the county. If people have to do a survey of their trees, it will be very expensive for property owners. She said she is opposed to permitting.

Catherine expressed support for 2 healthy trees or 10% every two years, with mitigation, with a plot plan of the site and a permit, but not necessarily a fee, for trees at least 30 feet away from the house. She suggested no permit at all for trees closer to the house.

Jennifer said there are currently four code inspectors for the entire county, dwindling funds and reduced staffing. She noted the county does charge fees for most services, but the fees don't cover 100% of the cost. If the task force requires a permit, there should be a purpose for it – tracking and reporting back, for example. She suggested it would be best to direct the county's efforts toward the most serious concerns.

Eileen asked for another vote on Subsection A.

- 4 – A is acceptable as it is
- 0 – A is acceptable as it is, with permitting
- **9 – A is acceptable as it is, with two healthy trees or 10% of trees permitted to be cut without a permit every two years.**
- 3 people did not favor any of the above, believing A to be either too restrictive (Ruth, Ernie) or not restrictive enough (Catherine, who said it needs more teeth and doesn't preserve tree canopy)

Subsection B

John said some trees get to 6" DBH so quickly that they need to be thinned.

Bill noted Wilsonville allows removal of trees that interfere with healthy growth of other trees.

Bob said that would be part of administrative grounds of approval.

Catherine said some mature trees are 6" DBH, and suggested that the group differentiate between conifers and deciduous trees.

Eileen asked for a vote on Subsection B.

- 2 – B is acceptable as is (Dick and Catherine)
- 10 – B is acceptable as is, with DBH changed from 6" to 8"

Subsection C

The group agreed that C is acceptable as it is.

Subsection D

Jennifer said she used Bryon's list of nuisance trees as the definition of nuisance trees.

Jim said he assumes the list could be changed as needed.

Bryon said there could easily be more nuisance trees. He said the trees on his list are those that are actively spreading in wild areas now. He said the county could tie its list to a list on the State of Oregon website for trees that are becoming invasive species, but he said that list is slanted to species that may still be controllable.

Jennifer said it would make sense to add in other species as needed.

Dick expressed support for Jennifer's statement.

The group expressed general support for Subsection D as written.

Subsection E

Bob said a dead tree is a hazardous tree, and some people can't correctly identify a tree as dead.

Hazardous trees include dead, dying or diseased trees, with a report from an arborist.

They could also qualify under emergency removal.

Ernie said this is a minor issue.

Dick said dead trees provide habitat for birds and other wildlife. He would like the county to provide public education about the value of dead trees and that dead trees may not necessarily be hazardous.

Jim said he would object to having to have an arborist tell him that a tree is dead.

Eileen asked for a vote.

- **9 – Subsection E is acceptable as it is**
- 3 (Bob, Bryon, Catherine) – Bob would like dead trees included as hazardous trees. Bryon and Catherine would like people to have to submit photos.

Additional Subsection

Bryon suggested we use the term "agricultural orchards" instead of "orchard trees" – and Christmas trees are different.

Ernie said orchard trees don't add to the canopy and should be exempted.

Bob asked whether orchard and Christmas tree farms get farm deferral.

Jennifer said they don't necessarily get deferral.

John asked about homeowners with mini home orchards with 20 trees. He said it shouldn't be limited to agricultural orchards.

The group agreed to exempt orchards – Jennifer will add a definition.

Jennifer will also add a definition of Christmas trees for commercial harvesting.

Subsection F

Jennifer asked whether an arborist report should be required, what would be required in an emergency and what can an arborist tell the county after an emergency.

Bob said that most hazardous trees are removed by a professional, so there would be some kind of documentation/photo record from the tree remover.

Bill suggested leaving F as is or applying an arborist's report or other credible evidence to all diseased and hazardous trees. He opposes creating extra burden or expense for property owners.

Eileen asked for a vote:

- 11 – F is acceptable as it is
- Bill would prefer that credible evidence other than an arborist’s report be permitted for all diseased or hazardous trees, but said he can live with F as it is.

Subsections G, H and I

Bill said Ashland prohibits trees being placed in a way that interferes with solar panels. He noted that probably has fairly limited applicability. He noted more and more people are looking for homes with lots of light, whether because of SAD (seasonable affective disorder) or other reasons. Others may need to remove one or more trees to make room for a wheelchair ramp or other disability accommodation. View protection is important – for some people, the view adds a major value to the property and trees can reduce that.

Bob said some of these are discretionary issues that are dealt with in the administration process.

Eric said most of the time the two trees or 10% will address the items Bill mentioned. For view protection – would the concern be to maintain an existing view or create a new one?

Bill said it could be either, but generally he was thinking of maintaining an existing view. Most situations will be covered by the 2 or 10% rule, but there will be exceptions.

John said the place to address this is in the criteria for approval. Someone could go completely overboard on view protection.

Catherine said research shows that contact with nature can benefit one’s health.

Eileen asked for a vote.

- 2 – add in solar/light, disability and view protection as exceptions (Bill, Ruth)
- **9 – leave solar/light, disability and view protection out of this section and add to application criteria**
(Ernie had left by this point.)

Development Standards/Approval Criteria

Jennifer referred task force members to options from Discussion Worksheet #2 – the first is from the Urban Green draft ordinance, the second is from Metro’s Title 13 ordinance and the third is from the City of Wilsonville’s ordinance.

Jennifer said the group needs to consider what to allow people to remove trees for. Consider submittal requirements. The applicant has the burden of proof – the county doesn’t do studies, tree surveys, hire arborists or take other actions. She asked the group to consider what they are trying to achieve with the ordinance and what is a reasonable expectation of submittal. She said she will bring draft mitigation language to the July meeting.

Bob commented on Option 1, which was taken from the Urban Green draft ordinance. He said Section A has been in a number of ordinances and is very profound. Section B puts the burden of proof on the property owner and Section C is to open the door to discussion. He said it’s not really development standards, but application evaluation standards. He said Wilsonville has a great ordinance which has evolved over the past few years. He said he prefers the criteria in the Wilsonville ordinance, with the addition of the language from Urban Green’s sections A and B.

Eric asked whether there is a functional distinction between the three options, and which is most functional and easiest to understand.

Jennifer said that an introductory paragraph like A is needed, but a section like B may not be needed because it’s all part of the zoning ordinance.

Bob said the tree ordinance should be able to stand alone.

Jennifer said it is good for the language to be as clear as possible, and that Wilsonville's language is probably the clearest. Option #2 is something the county already has to do for Habitat Conservation Areas, so from that standpoint, it would be consistent. She asked the group to consider whether a developer gets to shape the look of a development and then we require mitigation or does the county help shape the look of the development (to save trees) and require mitigation.

Bob said the Wilsonville ordinance reflects Urban Green's intent.

Eileen summarized the group's agreement to focus on the Wilsonville ordinance, with the addition of introductory language.

Bill said the group should add solar, health and view as part of the development standards. He said we're not just looking at development applications, but at permits, and not just applying it to developers.

Jennifer said Bill's point was important. The implication of the sample approval criteria is that the tree removal is for some development/property improvement purpose, not just because someone wants to remove a tree. We'll need to add language if we want to allow tree removal for reasons unrelated to development.

Bill said the Wilsonville language seems to apply only to people planning a development or improvement. He suggested the section start with a preamble, like the one from Urban Green, and then split into two sections, one for someone doing a development and one for someone not doing a development.

Eric said there might be some tree removal permitted, with mitigation, for reasons not foreseen.

Jim said he could see that happening, e.g., someone worried about a tree falling on their house even though there wasn't much likelihood of the tree actually falling on the house.

Public Comment

Carol Mastronarde – She said she is pleased with the progress made by the task force.

Tom Herman – It is nice to see progress. I had heard we had a loophole that needed to be plugged, but now we're strengthening restrictions and may do that again. Consider fairness to homeowners and people here now who may have something taken away from them. This is not a residential problem; most people plant trees. It's a commercial problem. I've planted 300 trees on my property and removed 50. I've left up dead and dying trees for wildlife habitat. Removing two trees is not devastating. It's a matter of civil rights. No one is addressing the rights of homeowners. Consider how many trees were cut down to build your home.

Next Steps

Next meeting: 8-11 a.m., Thursday, July 9.

Eileen said we would tentatively add another meeting from 8-11 a.m., Thursday, July 23; and the August meeting is set for 8-11 a.m. on Thursday, August 13.

Jennifer reviewed staff homework for the next meeting:

- Update the parking lot issues list
- Adapt the Wilsonville standards to Clackamas County
- Draft mitigation language
- Draft administration language

The meeting was adjourned at 10:55 a.m.