



Town of Concord, Massachusetts
22 Monument Square, Concord, MA 01742

Tree Preservation Subcommittee Minutes 06-03-16

Pursuant to a notice filed with the Town Clerk, the Tree Preservation Subcommittee met a 7:00 am on Friday, June 3 in the First Floor Meeting Room, 141 Keyes Road, Concord, MA.

Members present:

Elissa Brown, Chair
 Christa Collins, Vice-Chair
 Brooke Whiting-Cash (non-voting)
 Tanya Gailus
 Rob Meltzer
 Gail Magenau Hire

Staff Present: Elizabeth Hughes

Citizen Present: Mark Gailus

The meeting commenced at 7:00 a.m. and was audio-recorded. Ms. Magenau Hire took the minutes for the June 3 meeting.

Meeting Minutes.

It was recalled that the April 25th minutes had been accepted at the May 16th meeting. Following a discussion regarding the May 2nd meeting minutes, and amendments offered and agreed-to, Ms. Brown moved to pass the minutes (as amended), and Ms. Collins and Ms. Gailus seconded with all voting in favor. Ms. Hughes kept a written record of the amendments to the minutes. The minutes of May 16th were approved on a motion by Ms. Collins and Ms. Hire seconded with all voting in favor.

Discussion of the Tree Removal Problem

Chairperson Brown explained that she intended this agenda item to be vague. To put it in context, we are planning to meet with the Planning Board on June 21st to update them. Where are we? Vice-Chairperson Collins has been putting a lot of thought into this.

Ms. Collins stated that we are struggling a bit for direction. How do we establish a baseline? Do we inventory what we've got in terms of tree canopy and draw conclusions about where to go? She thinks Mr. Funkhouser agreed with her, that to make a case at Town meeting we need to document the need for tree preservation, e.g., X % trees lost in, say, the last 5 years. Ms. Collins asked her husband about using GIS for land use changes. He said that maps with 30m pixels would be too coarse for visualizing tree loss. Options: compare maps, or have volunteers do on-the-ground mapping. We need to decide will we approach the issue systematically, for example, with canopy cover goals. What do we want to see for tree cover? Another issue to decide is are all benefits of tree preservation equal, or is one more important than another? We need more definition of our goals.

Ms. Whiting Cash explained that the Planning Board did not discuss the problem to this level of detail, but her gut feel is that, esp. seeing survey results, there is a community opinion that there is a problem. We don't need to defend that.

Regarding mapping of trees, it would be great but it is not part of the charge. Resources, effort, time to really obtain the data would be beyond what is necessary and beyond the subcommittee's capability.

Ms. Collins said that is the question: has this subcommittee decided we can't come to a conclusion, or that we don't have enough information to make a recommendation? We could recommend further analysis need, e.g., look for grants.

Mr. Meltzer questioned the notion that we have a problem in town. There is a perception there is something going on. He spent time driving around, viewing various addresses. He sees that every 50-60 years we go through a development boom. People are removing trees to comply with title V septic system rules.

He was recently on Annursnac Hill Road, after a multi-alarm fire on nearby College Road. Neighbors were not thinking "we have problem with clear cutting," rather they were thinking "we are sitting in fire pit because of the heavy tree cover." Mr. Meltzer continued that it is not clear to him there is a problem with developers clearing trees. He said we may want to set

a benchmark of tree cover, but this is different than people writing a bylaw. If we have an objective benchmark we can write a bylaw for it.

Ms. Gailus thanked Mr. Meltzer for his straightforward statement about his views with regards to whether there is a problem. She stated, however, that this Subcommittee was established by the Planning Board with a perceived problem, and that if Mr. Meltzer disagrees with it, he should address the Planning Board. She has been coming to meetings with the understanding that our task is to balance tree preservation with private property rights. This Subcommittee has made additional environmental findings about benefits of keeping trees – not just beauty. There have been talks in town about climate change and there are reasons to act before it becomes a big problem.

Mr. Meltzer asked has the Planning Board said there is a problem or is it asking us to determine whether there is a problem? Has there been “rampant clear-cutting”? Ms. Gailus had pointed out in a requested email 186 Peter Spring as an example of tree clearing among several others in her neighborhood. Mr. Meltzer saw that the developer took off low branches, he did not clear cut. He does not see that as a problem that requires a bylaw. General rule on canopy. Ms. Gailus said we can discuss whether 186 Peter Spring kept trees or not. She showed a chart she had prepared as promised with various instances of clearings in the same area with photos.

Ms. Brown quoted from the charge. “In response to citizen concern over loss of significant tree cover and large trees on development sites, the Planning Board is appointing a Tree Preservation Subcommittee to **review the scope of the problem and mitigation options.**”

Ms. Collins noted that people are conflating mansionization and cutting of trees. She met with Cherri Corey, a local botanist and naturalist, yesterday. They talked of the neighborhood next to Great Meadows (Monsen). Ms. Corey’s point may be that clear cutting has happened on one or two lots; “If it happens on every lot than you have a real problem.” As a committee we could say we want to be proactive, come up with a goal.

Ms. Magenau Hire added her views on the tree removal problem. She sees that it is individual trees, individual lots where trees are removed and people get upset about what happens on neighboring properties. For example, her view of Bedford Street/62 is no longer shielded by trees.

Ms. Whiting Cash stated that the Planning Board has seen that community discussion comes once a bylaw is proposed. Ms. Brown hears people responding to the aesthetic problem. We can talk about the environmental issues, but people are really concerned about aesthetics. Maybe a bylaw that keeps trees along edges of property (Lexington and Wellesley have bylaws with setbacks) is the right direction.

Ms. Gailus noted that it is not only aesthetics, there are long term reasons to favor tree survival. Aesthetics has to do with function. If people are concerned where are trees going it is because they sense it is good for our survival. As people depended on farms for survival, it is important to emphasize the utilitarian value of preserving trees, esp. encouraging native trees. We should not put the function of trees on the back burner.

Ms. Collins said that is not what Ms. Brown was saying; people care for these reasons. Ms. Collins has heard “I am in favor of keeping trees, but don’t tell me what to do on my property.” Focusing on aesthetics protects neighbors’ interests. How do we get this passed at Town Meeting? Even if we don’t call it aesthetics.

Ms. Whiting Cash said that tree clearing is related to new development. It tends to be lot-wide; the nature of development is that parcels are being cleared in certain neighborhoods or streets. She noted that drafting and refinement is a humungous effort, and cautions us not to get mired in analysis so there is not enough time to put in a bylaw. Public comment on a proposed bylaw will inform the drafting. Ms. Whiting Cash agrees with the setback issue; you also need a size threshold. Something that addresses the majority of not-in-my-backyard street/lot lines is a good place to start.

Getting back to survey and data collection, Ms. Whiting Cash said that 1/3 of Town land is in park service or conservation. We have huge amount of forest. Development may not affect a significant percentage of the Town’s trees.

Ms. Brown stated that the percentage of tree canopy is as follows: 50% in Bedford, 60% in Concord, 70% in Lincoln. Ms. Collins said we have that baseline, it is a good place to be.

Ms. Hughes explained the typical process for moving forward with a bylaw. You start with a bylaw from another town, then present it to the public (in the newspaper) and do another survey. Ms. Whiting-Cash noted that if a topic is on the table as coming to Town Meeting, people pay attention. Ms. Hughes said the committee might spend time drafting a bylaw, coming up with a presentation, including before and after photos.

Ms. Collins asked when do we think about administration of a bylaw? Ms. Whiting Cash said at all points, including who might enforce, who verifies tree counts. Ms. Hughes noted that the new FAR bylaw has added 16 hours of time a week to the Building Inspections staff job.

Mr. Meltzer noted there is a big difference between Lexington and here. How many large parcels do we have at risk? Some members indicated there are some. Ms. Whiting Cash noted that subdivision is different because plans have to come to the Planning Board (PRD or subdivision). There are not specific requirements on tree preservation but there is at least a review capacity for subdivisions. The Planning Board intends this committee to address one-off lots. Ms. Hughes noted that some developers look for adjacent properties to put together for larger developments.

Mr. Meltzer noted that he is only seeing clearing by the Town. For example, septic on Powder Mill. It is down to aesthetics of redevelopment for individual parcels.

Ms. Collins stated there are 15-acre lots where developers can cut down trees. Ms. Whiting Cash noted the use of Approval Not Required plans for combining lots avoids Planning Board influence. For example, on Thoreau, a smaller house was removed, the developer clear-cut the lot up to the lot line and put up a larger house. Could have done the same house and not lost all the trees.

Ms. Brown asked have we identified a path on looking at setbacks?

Ms. Whiting Cash suggested a vote.

Would people entertain looking at the Wellesley bylaw as a model for Concord to propose?

Ms. Brown will send the link to urban and forestry page. She asked the committee to review the bylaws on this link as "homework" before our next meeting.

Ms. Magenau Hire raised her concern what would be the authority for a setback bylaw. She does not want a situation like the Scenic Mountain Act, which was focused on aesthetics and did not hold up in court

Mr. Meltzer said how Concord develops is different than Wellesley or Newton (e.g., septic rules). When you are redeveloping you have to start with where utilities go, and much has to be on the edges of a parcel. People want building materials without mold and moss; therefore they need air and light. Need to look for a similar town. Concord has been this way since 1775.

Ms. Whiting Cash agreed Concord is unique with very urban neighborhoods and incredibly rural ones. This was a challenge with the FAR bylaw; how do you come up with something equitable that applies across the Town. She mentioned Lowell Road in Residential A district – they cleared a ton of trees.

Ms. Gailus reiterated that a setback bylaw should not be presented as just a matter of aesthetics. There are other reasons.

Ms. Brown restated the subcommittee's homework for next time: everybody look at links. She asked for a volunteer to lead discussion on Newton or Wellesley? Ms. Meltzer offered.

Ms. Collins would like to think about guidelines to go along with bylaw. They might cover invasives, climate change.

Ms. Whiting Cash said our charge regards not just a bylaw but all of things that go with it. Voluntary guidelines? Or prescriptive ones to go with a bylaw? What are the impacts? Ms. Collins agreed she had in mind prescriptive guidelines.

Discussion of Survey Data

Ms. Brown suggested that we move to the topic of the survey results.

Ms. Gailus noted there were a lot of very interesting comments, not all of which were clearly in one camp or the other. Some concerned about property rights, while valuing trees, others favored preservation while being concerned about property rights. There is an inclination towards preservation.

Ms. Brown observed (1) that most people are not familiar with rules and regulations regarding trees on public and private lands, (2) the public shade tree rules complicate the issue and needs clarification, and (3) there is a clear sentiment for a bylaw.

Ms. Whiting-Cash agreed that the survey results support moving ahead. Some survey results suggested that people are willing to have a tree bylaw impact their own property, however, Ms. Hughes noted that a 40/60 split on property rights (Question #4) is not a clear indication. She also noted, following up on concerns Mr. Meltzer had raised, that the Attorney General may invalidate a bylaw that preserved trees in setbacks if it does not, for example, protect solar rights.

Ms. Collins said we have to consider that when drafting. The reviewing/ approving body has to consider reasons for taking down a tree.

Mr. Meltzer said sign bylaws are going thru re-write now in part because your lawn is your free speech right. There may be a constitutional problem with saying you can't cut down trees and, for example, have lawn. Our town counsel may say something top heavy on aesthetics is unacceptable.

Ms. Collins suggested communicating to people the community values, community health.

Mr. Meltzer noted when he lived in Framingham his neighbors complained when he planted trees.

Ms. Whiting Cash said on Question #4, we can't accept the results (whether people agree/disagree that regulation of trees compromises property rights) because the questions was too confusing. Ms. Gailus and Ms. Collins agreed.

On Questions #6 – people liked guidelines for preserving as a method to preserve or manage trees. Ms. Whiting Cash noted if guidelines are optional the amount of people who adhere to them will be relatively small.

Ms. Collins was thinking prescriptive guidelines to go along with bylaw; Ms. Whiting Cash added not just something nice to do.

Ms. Whiting Cash discussed the Town's tree nursery behind the courthouse. She feels strongly that the nursery idea is unworkable. Not realistic to think people will dig up a tree and put in their lawn. She prefers tree fund.

Mr. Meltzer said we should have asked people to rank the methods. Guidelines may not be #1 preference but all liked it.

Ms. Gailus shared that with respect to offsite mitigation, there was a commenter from survey who said you don't want developers using that as an excuse.

Ms. Brown said Question #8 (Should neighbors or neighborhoods be involved before trees are cut down or removed?) seems to have hit a nerve. Mr. Meltzer noted this is a not-in-my-backyard thing. Ms. Gailus disagrees; it is not just NIMBY, some people also want to tell a neighbor to take down tree that is going to fall on a house.

Ms. Whiting Cash wondered how would you manage neighbors getting involved. Could start with Wellesley bylaw, engender more debate.

Mr. Meltzer shared that he had spoken with a developer who built one of the houses we are talking about. These trees are not living as long. More stress from road salt, sand, insects (warmer temps). The trees are going to have to come down anyway. The developer wondered, What if I had to have each tree diagnosed for viability? We forget that sometimes trees are not going to be there for 30-40 years, they are not healthy. Ms. Collins suggested replanting as a solution to unhealthy trees. Mr. Meltzer noted that Thoreau did that. Ms. Whiting Cash mentioned trees might also be there for 150 years; one did not know.

Preparation for June 21st Planning Board Meeting

There was a discussion of coming to the Planning Board. Ms. Whiting-Cash said it would be great to come to the larger board and say this is what we have done, how we plan to move forward; she wants her other board members to chime in.

Ms. Brown felt that we would be ready to attend the June 21st Planning Board meeting at 7 pm. Before that our subcommittee should meet to review other town bylaws, including Mr. Meltzer presenting a summary of Newton and Wellesley, and subcommittee members should review the Urban & Community Forestry page with links to other towns.

Ms. Collins noted that some of these bylaws dealt with town trees. Mr. Meltzer added that Wellesley & Newton deal with small houses being replaced with larger houses, however, the difference from Concord is those towns have town sewer, the utilities are different.

Ms. Hughes asked will we pull together anything for the Planning Board meeting?

Ms. Whiting-Cash wondered whether sub-subcommittees want to write summary paragraph of their work. Ms. Gailus said it was not a matter of individual sub-subcommittees at this point, they sort of disbanded. Regarding who might present to the Planning Board, Ms. Whiting-Cash suggested that comments should start from the Chair, and that other committee members could lead the public comment (including survey) segment. Ms. Brown agreed to present to the Planning Board.

A discussion of the next meeting time ensued. It was decided to send out a meeting notice for June 20th.

Ms. Brown said she would send out a link for the Urban and Community Forestry group.

Ms. Collins stated that Julie Coop, Urban & Community Forester at the MA DCR, is a resource for discussion of bylaws. Ms. Collins offered to write up notes from her meeting with Cherri Corey.

Ms. Gailus asked if that was to be a substitute for inviting Ms. Corey, as had been previously decided, and reminded the subcommittee that we had also wanted others, e.g., developers, to come and talk with us.

Ms. Hughes suggested that this committee ask the Planning Board if they want us to talk to other parties.

The discussion turned to one member of the public who attended the meeting: Mark Gailus of 62 Prescott Road. He submitted written comments. He made two additional points. First, aesthetics is a slanted term for things that shade into, for example, privacy, protecting homes against noise and dust from a road. Aesthetics can also be mixed with mansionization. Second, following the committee's discussion of 1st amendment rights, a law is subject to how it is interpreted or applied. For example it may be a property owner's right to cover his or her property in a historic district with signs, however, he thinks it would not be tolerated.

Ms. Brown moved to adjourn the meeting, Mr. Meltzer seconded, and other members voted unanimously to adjourn the meeting at 8:10 am.