

Minutes of the Tree Preservation Subcommittee of July 7, 2016

Present: Elissa Brown, Chair
Christa Collins, Vice Chair
Gail Magenau Hire
Pete Funkhouser
Tanya B. Gailus

Planning Board Chair: Brooke Whiting Cash
Town Planner: Elizabeth Hughes

Citizens present: Marcie Berkley, 41 Monument Street; Mark Gailus, 62 Prescott Road

The meeting started shortly after 8 am and was audio recorded by the Planning Division and by Ms. Gailus, who took minutes.

Introductions were made.

Minutes of the meeting of June 20 were approved with amendments.

Approval of the June 21 minutes draft was postponed to the Subcommittee's next meeting.

Ms. Brown started the discussion of the June 21 meeting with the Planning Board.

Mr. Funkhouser asked what had taken place since he was not present at that meeting.

Ms. Collins explained that Ms. Brown had offered a thorough summary of the Tree PS' work so far, including the survey results, which the Planning Board found interesting. Ms. Collins continued that the Planning Board had been very clear that they did perceive a problem, even though some of it might be anecdotal, and that they did want the Tree PS to proceed with their work; that they were also concerned about private property rights, and that they were not looking for a bylaw that applied to all homeowners, but rather focusing on new development sites.

Ms. Whiting Cash disagreed that the Planning Board gave a direction at that meeting to focus only on new development sites, though she acknowledged that problems with new development sites had been a focus now and then in Planning Board discussions. She agreed that some Planning Board members were concerned about private property rights, but that the direction given to the TPS at that meeting was not that a bylaw should only apply to major development sites - even though the idea had been tossed around and is part of the Wellesley Bylaw.

Ms. Brown stated that she did not hear that so much, but that private property rights came across as important, also as a neighborhood matter.

Mr. Funkhouser said that is an important issue because people can cut down trees to put in a croquet pitch or a vegetable garden, and that is a different situation than a developer coming in and putting in a new house. He said it is important to distinguish if we are looking at both of those situation or just new developments, because if we are looking at both of those it has to be a different kind of law, and it would have to be enforced a different way.

Ms. Whiting Cash said that the problems that the Planning Board has seen or have been reported to the PB are about new developments, not so much that people have needed to put in solar panels (for example) and needed to cut down some trees. That's not what has caused public

concern in town. At the same time, that doesn't mean the PB was directing the TPS to ignore tree removals that *may* happen on established lots. She said she thinks the focus should be on new development, but that the TPS should also continue to keep a broader scope of "Is it just new development?", and that may be in a discussion of what the enforcement method is; it may only be practical at this first point to have it related to major development.

Mr. Funkhouser said that would be a good idea because with new constructions, there is an automatic application and permitting process, and a bylaw can be tied to that process; whereas if someone wants to cut some trees in their backyard for a rose garden, there is no process that one has to go through with the town; it would be more difficult for a bylaw to find out when that's happening. Our job is easier if we restrict it to new development.

Ms. Whiting Cash said that the planning board did not direct that, however, that may be what's decided among TPS members.

Ms. Collins said she was glad to hear that because she did think the PB had narrowed it down to new development and it was a disappointment. She understands it might be more challenging to try to capture those other circumstances, too, but it is worth thinking about.

Ms. Hire mentioned that somebody during the PB presentation had favored the buffer zone concept - along streetlines or sidewalks. People were agreeable to that concept, though she did not know how it would be regulated. She also said that she had mentioned Mr. Funkhouser's earlier suggestion of counting trees on a property before a new development, and that people on the board had liked it, so it may be something else to look into as a concept.

Ms. Whiting Cash said that people thought that was received favorably as a concept in the sense that it would be great information to have, but that there was concern about the administrative practicality.

Ms. Gailus said that she was glad that the task of the subcommittee was not being narrowed down quite yet because she felt it was still the subcommittee's responsibility not to go for a quick solution yet, but to explore the broader natural components of why trees are important to preserve. She added, however, that she also heard towards the end of the meeting with the Planning Board that there was some interest in focusing on new developments at least as a first step.

Ms. Whiting Cash stated that what's important for this subcommittee to remember is that the PB wanted the TPS to give *them* a recommendation. The recommendation doesn't necessarily have to be just the bylaw. It can also state the scope of the problem, list the issues that need to be addressed, but offer a bylaw that as a preliminary step addresses (only) a certain aspect of the problem. It needn't be seen as one shot at one bylaw that encompasses all the concerns brought up at the committee. A bylaw can address only a portion of those, with an added list of problems that still may need to be worked out.

Ms. Collins noted that looking over some bylaws, such as the Wellesley bylaw, she realized that we may be needing to add things here and there.

Another issue that has been frustrating to her is that her earlier suggestions about data gathering about the scope of the problem have been misunderstood and mis-phrased as questioning whether there is a problem. She suggested data gathering so that findings could be presented at Town Meeting (instead of anecdotal examples) to make a more convincing presentation. (She realizes that the PB confirmed that they thought there was a problem.)

Ms. Gailus supported Ms. Collins' idea as also a way to avoid writing a bylaw based only on aesthetics. Ms. Brown said that issue had been covered before and nobody was questioning the value of trees. Ms. Gailus reiterated, and added that on the other hand, as also mentioned at the PB meeting, it was up to Town Meeting to pass a bylaw or not, even if it were based only on aesthetics.

Ms. Hughes informed Ms. Collins that the Building Department maintains a record of building permits, and even separates them out into new homes vs demolitions. Google street view pictures are available from 2010, 2014, and now 2016 through cam gis. Ms. Whiting Cash continued that one can do an image to image comparison. It doesn't have to be percent cover or anything, it can be a broad brush impression.

Ms. Collins agreed, and said that she has noticed that in various neighborhoods people have been surprised by how much tree removal has gone on that did not happen before. Ms. Whiting Cash said that one could compare with in the last three years, the sites of new construction or major (50%) enlargements, and note whether it is 50% of the cases, or just 4 or 5 glaring instances, or more like 80% of the picture where mass tree removals have happened. That is not hard data, but in terms of numbers of instances, it would be helpful to the Planning Board.

There was general agreement that gathering aerial photos to look at at some point was a good idea. Ms. Hughes said she could look into getting photos from eight different sections of town from 2010 and 2016. Ms. Hire questioned whether the season during which photos are taken made a difference (for example landscapes look different in winter). Ms. Whiting Cash mentioned that in dealing with aerial photos, one needs to make some subjective judgments such as shadows of tree trunks, in determining exactly where a tree line is. Ms. Hughes mentioned the 2016 flyover was done April 20-22.

Ms. Brown asked if that covered the review of the meeting with the Planning Board.

Mr. Funkhouser said he would like to ask the Planning Board if the Town has the resources right now to enforce one bylaw or another. Ms. Hughes said that currently there were no resources. Ms. Whiting Cash said it wasn't addressed. Mr. Funkhouser stated that so there would be an additional cost for a bylaw enforcement situation. That's all the more reason to have an idea of the severity of the problem.

We would also need to know how the enforcement will take effect. Ms. Hughes added that there are also administrative costs. Mr. Funkhouser clarified that he meant operating/administrative costs in general. If we go to Town Meeting, the FinCom will ask how much it will cost and what is the benefit, so we need to be prepared.

Ms. Hire suggested an idea from environmental law of taking a disclosure based approach, where if someone is intending to take down trees, they can announce it, and citizens who are concerned can give feedback. It would be self-enforcing, people would know what's going on, and the town would not need to get involved. It could be posted in the paper, or a meeting arranged. Ms. Brown questioned whether it would work that way, because during her service on the Natural Resources Commission, people would come to express various opinions, but the NRC would decide in the end. Ms. Collins mentioned that postings on trees worked well with public trees, but usually if the tree is in a place easily noticed by many people, and not otherwise. Ms. Hughes pointed out that citizen diligence is required in these matters, where legal notices are posted in

the paper, and in the town website (including building permit requests to the Planning Division), and it's up to citizens to be vigilant, since the town cannot inform everyone separately.

Ms. Collins commended Concord about the notices but noted that it did not solve the TPS' problem.

Ms. Brown mentioned that this idea was covered earlier under a suggestion for neighborhood discussions. Ms. Gailus noted that yes, this was an extension of that idea, and that there had been questions about whether it might be enforceable or not.

Ms. Whiting Cash expressed a concern based on her Planning Board experience, that people usually come in two camps about these issues, and that chances are if a neighbor wanted to cut down a tree or trees, and the rest of the neighborhood did not want that to happen, a discussion would end up in a more disharmonious contentious situation, not less.

Ms. Brown reiterated that she thought the concept was good, but she did not think it would be self-enforcing.

Another idea Ms. Hire had from environmental law was similar to how some vernal pools are protected - after investigation people can file papers to support that a natural resource is worth protecting. She suggested that the same approach could be applied to special trees in a neighborhood. Ms. Brown noted that the difference from the vernal pool situation is that we are not allowed to go into someone else's property.

Mr. Funkhouser asked, as another alternative to bylaws, whether towns provide guidelines of good practice for tree protection, not tied to a law and not requiring permits.

Ms. Whiting Cash said that was touched on briefly at the PB meeting. Ms. Brown noted that in the TPS survey many people supported bylaws. Ms. Whiting Cash continued that she thought the PB would support that there was concern whether a merely voluntary measure would address the most egregious cases. Mr. Funkhouser said his thought was that a guideline could incorporate all the desirable aspects of trees and be educational for people. It could be given to everyone in town. It could be given to everyone who came in for a building permit. The question is would it be effective in any way.

Ms. Gailus mentioned that with regards to the building permit situation, it was noted during the Planning Board meeting that people would often promise to keep the trees, but they would then clear them anyway. Mr. Funkhouser confirmed that they will do that and a guideline won't prevent it.

Ms. Whiting Cash stated that there would be great value in guidelines. It may not address the most egregious cases, but in terms of raising awareness, or even in addressing the numbers of trees in the public right of way that get cut because people don't know they legally can't. That is a lot of trees that get lost. It would be good to educate people about the right of way trees being public.

Ms. Hughes informed the subcommittee that in parallel with the TPS' work, the Public Works Commission has received two proposals to document town trees and for a management plan. Phase I will be that certified arborists will document every public tree in town (7 miles from center?), including the three cemeteries, and they will assess the trees, entering the findings in the database for i-tree (value calculator established by the forestry service), that will be

completed in GIS(?) . Ms. Whiting Cash thought that was great that such public information would be available for the road right of ways as a first step.

Ms. Collins asked if this was grant funded. It was not. Ms. Collins added that if the TPS wanted to do similar analyses there might be forestry grants.

Ms. Collins had a question for Ms. Hughes: If the PB came up with a standalone bylaw, would that be part of a zoning bylaw? Ms. Hughes said no it would not, it would be a general bylaw.

At this point, Ms. Brown raised the idea that had come up after the PB meeting on June 21 about the "quick fix" of including tree regulation measures within zoning bylaws.

Ms. Whiting Cash stated that a zoning bylaw is much more difficult to pass. It requires a 2/3 vote at Town Meeting as opposed to a simple majority for a general bylaw. The regulation then also becomes a part of the zoning bylaw, and there can be ripples from that. It can become complicated: which section, how many sections, how does it relate to other sections. It is complex to insert something in the zoning bylaw. She did not think the Planning Board had it in mind that this would be part of a zoning bylaw.

There may be recommendations that subdivision rules and regulations ought to have additional components related to trees. That's different because it pertains only to subdivisions. It doesn't go to town meeting. It is rules and regulations. It does require a noticed public hearing by the Planning Board.

Ms. Hire said that she got the impression from the PB that they were more concerned about sites that they had no control over, whereas there are regulations already in subdivision rules. Ms. Whiting Cash said that tree protection in those rules and regulations could certainly be improved. Ms. Hughes said that's a completely different issue and the PB will be working towards that.

Ms. Collins confirmed that right now the subdivisions rules and regulations state that the PB consider natural features and make every effort to preserve these, but that there is no stipulation about how many trees should be there in the end, which Ms. Hughes and Ms. Whiting Cash confirmed. Ms. Collins asked if preliminary plans require to show trees. Ms. Hughes said that preliminary plans are not required to. State laws are specific about that. Definitive plans do.

Ms. Brown next introduced Ms. Hire's idea of regulating tree preservation with a mechanism similar to Title V. Ms. Hire explained that Title V is the state law about septic systems administered by the Board of Health. In summary: It concerns disclosures and agreements made at the time that a property changes hands or changes use (for example a retail store becomes a restaurant.) There are exceptions with regards to disclosure for selling property to close family members.

Ms. Whiting Cash asked how this might apply to trees. Ms. Hire said that she was envisioning a scenario where at the time of property transfer, there would be a report on how many trees there are, formal agreements that they would not all be cut (or an x amount would be preserved), not sure how to enforce it, but somehow tie the preservation of trees to property transfer agreements, particularly since often a newcomer to a neighborhood might remove a large number of trees where those trees are valued by the residents.

Ms. Brown said she did not see how it would work either, but that it made sense, the same way when one gets a demolition permit, one has to make sure the gas is turned off, as an example.

Ms. Hughes stated that she thought that approach would be almost impossible, because one would need a state law to back that, when the sale of a property is involved. She does not think the town can enact a bylaw that restricts the state law in the transfer of property in that method. One can get around other bylaws that are formed by town actions, such as building permits, because the town has the ability to alter whatever bylaws it formed. The town can not restrict the sale of property as regulated by the state. Ms. Hire noted that even Title V does not restrict the sale, but Ms. Hughes specified that it does say you have to have your Title V inspection. A certificate gets issued (though it doesn't get recorded.)

Another concept Ms. Hire offered was similar to demolition bylaws in historic districts. Ms. Hughes explained that that, too, was building permit triggered and went only so far. It is also not just any type of demolition. The building permit has a sign off sheet with three signatures: tax collector, natural resources commission, and the historic districts commission. The catch point is the permit. So from the mechanism point, the issue is the building permit. (?)

Ms. Collins started a question about if the TPS then started with baby steps and focused on a bylaw that was only about new development or major renovation, similar to the Wellesley bylaw, plus buffer zones, when Ms. Hughes interjected that that is in fact consistent with how bylaws are done, ie beginning with a starting point. For example, when the PB regulated building height, they first started with area C, then the next year, B, and then A and AA. Ms. Whiting Cash added that that way one observes: Is it working? Is it practical? Is it helping address the problem?

Ms. Collins continued: So if we do that as a first step, would it be its own standing bylaw or is there another mechanism to enable that?

Ms. Hughes clarified that it would still be its own standing bylaw and it would just reference construction. New construction of single family dwelling, demolition and construction of a new single family dwelling, or significant addition. Ms. Whiting Cash said that it may be broader than just single family dwelling. We may not want to exclude commercial constructions. Ms. Hughes reminded that commercial developments go through site plan review. Ms. Hire asked if all commercial development does. Ms. Hughes specified that's for a new building or large additions, adding "commercial is a different animal."

Ms. Brown summarized that while Ms. Hire might think about "this other possibility" which does not look like will work, it looks as though the best way forward is to start with the Wellesley bylaw and try to adapt it for Concord. Ms. Whiting Cash emphasized that it is a lot of time consuming work to draft a bylaw, bylaw language takes a lot of revisions, so if the TPS is even thinking of a bylaw as a possibility, she would advise that they start working on re-hashing the Wellesley bylaw. Maybe keep a running list of everything that is not covered that the TPS thinks is of concern, and see if any of these can be worked in, or in the future as an expansion of that bylaw in the future. So maybe then make a recommendation to the PB that here's a list of things that we didn't get to, but concurrently, explore how to measure the problem in a way that can be presented to Town Meeting convincingly. Some of these things have to happen concurrently, or the TPS will not be where it needs to be by September or October.

Ms. Brown asked how to get there. Might two people try and give it a shot? Ms. Whiting Cash said two people would be great. Ms. Collins mentioned the idea of a matrix about what works and doesn't. Ms. Whiting Cash thought that given the time constraint, it might be better to move ahead with Ms. Brown's suggestion. Ms. Hire mentioned that Mr. Meltzer had volunteered to

take a shot at looking at a bylaw. Ms. Brown offered to collaborate with Mr. Meltzer to start working on a bylaw.

Mr. Funkhouser asked if anyone had read the draft of the Brookline bylaw because it was very succinct, and that would be desirable. It is a draft that has not been passed yet. Well written and half the length of the other bylaws. To save time. Ms. Hughes said she would forward it again. Ms. Whiting Cash observed that, taking the Newton bylaw, for example, Newton's density and urbanity makes it different than Concord, and a Brookline bylaw may have the same issues vis a vis Concord. Ms. Collins added, about more urban bylaws, that they include public trees, too.

Ms. Brown summarized that Ms. Hire would go down her path, and Ms. Brown would collaborate with Mr. Meltzer on starting a bylaw. Ms. Hughes said she'd work on the pictures (?), Ms. Collins said it would be good to make a list of things not covered. Ms. Whiting Cash suggested that would be good to put on a matrix - as groups or categories. Ms. Gailus asked if Julie Coop was a resource for bylaws, and it was clarified that she was a public relations person for Urban Forestry but not an expert on writing bylaws.

Ms. Hughes said that if she gets a list of aerial photos from the building department, maybe someone could volunteer to compile them. Mr. Funkhouser volunteered. Three years back for the photos would be great.

Ms. Brown moved on to citizen comments:

Ms. Marcie Berkley of 41 Monument Street commended the Tree PS' work, thanked them, and said she had heard concerns about the subcommittee's progress, but was convinced that the subcommittee was doing a good job. She had submitted a letter with concerns about tree clearings. She mentioned that many citizens are concerned about tree preservation, but don't want to get involved. She discussed how it would be useful for people to write letters to the paper and create more publicity. She asked if there would be measures to prevent damage to trees on construction sites through pouring concrete on roots, and was reassured that bylaws would provide measures to protect roots (critical root zone.) She asked where one can find various bylaws, and was directed to the Urban Forestry website and the TPS website.

Mr. Mark Gailus of 62 Prescott Road suggested that when permits are issued with the promise of retaining trees, which are later cut anyway, there might at least be a record of what town trees are there, so that these are preserved. Ms. Hughes reiterated they were working on that and the data should be available by November. Mr. Gailus also suggested that in addition to drafting a bylaw, the TPS consider looking at various bylaws, distilling what is good or not as good (applicable) in each of them. He mentioned the tree yard in Wellesley, and the forestry page of Newton.

Ms. Hughes added that if the TPS does find something they like in another community's bylaw, it is a good time to call the community and ask if that aspect is working. She mentioned that some of the time regulations in Newton would not be applicable in Concord.

Mr. Funkhouser moved to adjourn, Ms. Gailus seconded. Meeting was adjourned shortly after 9 am.

Respectfully submitted,

Tanya B. Gailus