

**Date: November 6, 2014**

**To: Town Council**

**From: Climate and Environment Committee**

**Re: Tree Subcommittee report and issues that the report is intended to address.**

Dear Council Members,

The Climate and Environment Committee received on October 30 a copy of the report from the Tree Subcommittee empaneled earlier this year by our Town's Mayor to address the issues raised (a) by a petition of Town residents, and (b) by earlier proposals to improve the Tree Ordinance.

As the Tree Subcommittee sends its report to the Town Council, the Climate and Environment Committee offers in this letter some observations about the concerns and issues that the report is intended to address.

These observations are intended to provide perspective that we hope will be useful as the Town Council considers the report and next steps. Our observations flow from the Committee's mission to "inspire and facilitate energy conservation and environmental stewardship by the Town and its residents through education, government policies, and incentives."

We commend the Subcommittee for its hard work and wish to thank both the members of the Subcommittee and the many Town residents who in various ways have sought to voice their views, concerns, and suggestions about trees in our Town.

Our first and major overall observation is that we strongly feel that any recommendation that our Committee provides, and any action that the Council may take, is best guided if it is illuminated by facts and data.

Our second overall observation is that the Tree Ordinance ("Urban Forest" chapter of the Town Code) is based on a number of findings that remain relevant and helpful. These findings, articulated in Section 29.1 of the Tree Ordinance, are listed in appendix A to this letter, and continue to guide any new changes to the ordinance itself, its implementation, and related programs and incentives. Indeed, some of these findings, such as the role of canopy trees in stabilizing soils, reducing soil erosion and stormwater runoff, and supporting the integrity of our watershed, are becoming even more relevant today as we experience increasingly severe weather events.

## Data and analysis

(a) What do existing data tell us?

The PowerPoint in Appendix A of the Tree Subcommittee report provides welcome data and information about both process and tree canopy-related data in our Town.

Of particular relevance, given the issues that the Tree Subcommittee report was empaneled to address, is the number of permit requests approved or denied for private trees (Slides 12 and 13). In summary, the two slides indicate that the vast majority of private tree removal requests have been approved, based on Town records:

July 2012 to "present" (i.e. 27 months) Net numbers:

--**359** private trees approved for removal (343 approved by Town + 16 approved by Tree Ordinance Board)

--**3** private trees denied (18 denied for removal by Town but 19 trees appealed with 3 trees denied by Board).

July 2009 to July 2012 (i.e. 36 months) Net numbers:

--**395** private trees approved for removal (381 approved by Town + 14 approved by Board)

--**11** private trees denied (25 denied for removal by Town but 16 appealed with 1 tree denied by Board and 1 appeal withdrawn).

(b) Additional data and information that would be helpful:

--Baseline data. Data on our Town's urban forest, its composition, and the number of canopy trees, including public and private trees, in our Town could be compiled using estimates from the Town arborist who is familiar with our Town and has already developed some elements of such a baseline in the past; contracting with an outside consultant or institute; and using GIS-based tools (such those incorporated in i-Tree, the free online tool developed by the Forest Service to assist communities in assessing and managing community forests, including urban forests).

--Data relevant to the health of Town trees. The Tree Subcommittee report, in its areas of agreement, recommends (page 3, # 11) that Town staff record relevant data about trees that are removed regarding size, species, evidence of decay once cut, etc.

--Level of ecosystem services provided by trees and the tree canopy. Several types of ecosystem services, and in particular management of stormwater runoff and absorption of carbon and pollutants, can be evaluated using tools such as i-Tree, as mentioned in the Tree Subcommittee report. Data for the canopy as a whole would supplement IV. A. of the Report, on "Replacing ecological value of removed trees."

(c) Additional analysis and planning that would be helpful:

Urban forest plan: Once the Town has compiled the baseline data, it could consider developing a plan for the management of the Town's urban forest. The data and plan would help the Town assess trends (for example, are we losing or gaining mature canopy under current trends? At what rate are the various canopy trees growing and how long do they live? Are any parts of the Town more affected than others?), make it possible to measure progress towards overall goals that the Town may want to set for the management of our urban forest (is the goal to maintain a level of ecosystem services?), and make it possible to assess the potential impact of various scenarios resulting from changes in the ordinance.

Early and joint application of the Town's tree, water, and FAR/setback ordinances: How to ensure that the Town's three main ordinances controlling major building expansion on lots (the FAR/setback, water, and tree ordinances) "be applied together, early in the planning process for a particular building project," as recommended by the Tree Subcommittee report in Section II. 2) and 3)? The Committee recommends improving the planning process in the early stages, including for developers, so that the water and tree ordinances are considered upfront in the initial design with the building plan, and so that sufficient attention is paid to protecting the tree canopy in the first stages of planning and design, and not as an afterthought. Early and joint application of the three ordinances would help avoid a plea of hardship later in the process. Providing residents with the right to challenge a plan if they have reason to believe the Town's tree protection plan or Ordinance is violated is one of the first areas of agreement listed in the Tree Subcommittee report (Section II 2) and 3)).

The Town could commission an analysis, perhaps by a consultant, of the practical interactions of the three ordinances and possible options for their joint application early in the process, including how to account upfront for the stormwater management services of canopy trees.

### **Gap between data and perceptions.**

There appears to be a disconnect, or a gap, between data and perceptions, which the Committee believes calls for an education, communications and outreach effort on the part of the Town.

Such a gap occurs in particular, but not exclusively, between the number of tree removal permits that are granted (90% to 99% of removal requests) and the concern expressed by the Petitioners that the Ordinance is overly restrictive. Indeed, some of the Petitioners may not have sought a tree removal permit largely because they felt that their concerns and reasons would not be heard and their request would be denied, according to one of the leading Petitioners. That residents in our Town have felt the need to resort to a petition is a sign that existing

communications and responsiveness are not sufficient with respect to the process that is available to Town residents under the Tree Ordinance.

Residents have also expressed to the Town, members of the Committee, and otherwise, concerns about the removal of apparently healthy canopy trees, public and private, with little notice or explanation.

The Committee therefore believes that the Town Council should request that the Town improve communications, responsiveness and education to help close this gap.

Indeed, given the apparent inadequate level of communications, any new amendments to the ordinance introduced without a prior effort in responsiveness and communications might further exacerbate existing misunderstandings.

### **Communications and education**

The communications and education campaign could include:

- Improved timeliness in response to requests;
- Development of a friendly "Town Canopy Care and Tree Removal" packet or video for all residents that includes but also goes well beyond the "Tree Permit Application" that residents receive today when they wish to remove a tree.<sup>1</sup>
- An annual feature in the *Town Crier* and on the Town website, on our Tree Canopy care program and ordinance, special features of our Town tree canopy, and updates.

Several of the areas of agreement listed in the Tree Subcommittee report would also help address aspects of this gap and improve Town responsiveness and communications, including:

- "Town Arborist should provide more detailed written explanations pertaining to his recommendations on tree removal applications, and these explanations should be posted on the Town website and by other appropriate notice (page 3 #8); "

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<sup>1</sup> The Town Canopy Care and Tree Removal" packet could include:

- \*information and examples about the Tree Ordinance process regarding requests for Tree removals,
- \*criteria for tree removal permits, as well as process for appeals and
- \*information about the services provided by the trees in our Town, and
- \*other relevant information about trees and the canopy in our Town, including about preventive care and maintenance (configuration of tree roots and how to protect them; pruning and cabling to mitigate risk; removal of invasive vines should they climb so high that they overtake the tree's canopy, etc.);
- \*an opportunity for feedback and suggestions on the process.

--Regarding public trees, "Plans to remove or significantly reduce (i.e. prune) trees in public spaces and the Town right of way should be better publicized to residents a reasonable time in advance [...]" (page 3 # 12 and also #14).

The areas of disagreement pertaining to amending the ordinance to give residents the right to comment on an application for a tree removal on *private* property or to appeal the Town Manager's decision to allow a removal (III. B and C), could also be viewed in this light, with the opportunity to comment seen as a way to channel communications about differing views among residents and ensure that those various views are heard (see Appendix C of the Tree Subcommittee report, which includes several principles designed to address this concern) and Section III, B, C of the Tree Subcommittee report. Currently, residents have the right to appeal a decision by the Town manager to deny the requested removal of a tree, but there is no process for other residents such as neighbors to comment on, and perhaps appeal, such a decision.

### **Outreach and active promotion of tree planting**

The Committee recommends that the Town take on the challenge of developing a systematic *proactive* planting promotion program for private trees. Trees can require the span of a human lifetime to mature, so early planning and planting -- well before a diseased and aging tree needs to be removed -- should be the goal of such a program.

### **Nuisance (Undesirable) Trees**

The Tree Subcommittee report (page 5, IV, B) suggests there should be regular reviews of the list of nuisance trees (also referred to as "undesirable tree species" in the town ordinance) or that this designation be made to depend on the circumstances and location of a given tree. Currently these trees receive automatic approval for removal.

The Committee welcomes the suggestion, and, in addition, suggests that the criteria for establishing and reviewing the undesirable tree list be explained and made public (this relates, again, to the need for improved communications). The Committee also suggests that rather than remove nuisance trees now, they be replaced with other species as they age; and that information be provided on both the lists of desirable and undesirable trees regarding the various functions they perform, and which are generally recognized as allergenic.

### **Concluding observations regarding areas of agreement, disagreement, and additional ideas listed in the report**

The Tree Subcommittee report lists areas of agreement, disagreement, and additional ideas. In light of its observations above, the Committee:

(1) Endorses the Tree Subcommittee report's Section II, bullets 1), 2), 3), and bullets 8) thru 14), and the changes in the ordinance that would be required.

(2) Supports the additional related ideas for the Council to consider listed in IV, A) on Replacing ecological value of removed trees, B) on Nuisance/Undesirable trees, and C (replacement specifications). Indeed, our observations above include suggestions that build on the ideas.

(3) Notes that the Tree Subcommittee, while it agreed "in theory" on Section II/ 4) and its related sections 5) thru 7) regarding the removing once every five years of a tree that "while seemingly healthy, is of a size and location that it could cause significant damage to a dwelling if it were to fall", has not reached agreement on the related process or conditions (Areas of disagreement, Section III A).

The Committee also notes that this is an area where a gap has emerged between data and perception, as observed earlier in this letter. Finding that: the data on tree removals in the Town indicate that 90% to 99% of removal requests are granted; the reasons given by the Town manager for the permits include hazard to person or property; there is a process for appeal and, upon appeal, the first of several factors that the Tree Board is required to consider is "the reasons cited by the applicant for wanting to remove the canopy tree," the sense of the Committee is, accordingly, that the problem lies more with a lack of communications on the part of the Town than a failing of the Ordinance. The Committee therefore recommends that the Town undertake the data, analysis and communications steps suggested in this letter and review the results before considering changes to the Ordinance with regard to removal "by size and location" as described in Section II/ 4).

(4) Notes that the Tree Subcommittee did not reach agreement on whether improved posting notices, the right to comment on an application for tree removal, and the right to appeal a removal decision by the Town Manager, which the Subcommittee recommends for *public* trees, should extend to *private* trees. (Section III. B. and C.)

The Committee recognizes that extending such recommendations to private trees may serve as a channel for communications about differing views about trees among residents and with the Town, as we noted in our broader observations earlier in this letter. The Committee recommends that residents be given reasonable notice regarding an application for a tree removal on private property, and that residents have the right to comment and have the response to that comment on record. Some members of the Committee supported the right to appeal the granting of a permit to remove a tree on private property, while others did not. The Committee recommends that all comments and any appeals be managed in an expeditious fashion.

## **Appendix A:**

### Town Code - Chapter 29 on Urban Forest

#### Findings and purpose:

"The town council finds that it is in the interest of the residents of the Town of Chevy Chase to preserve, protect, and maintain the town's tree canopy. Because trees require the span of a human lifetime to mature and can be subject to disturbance at many points in their lives, the town places a high value on the mature trees that have survived to form an intrinsic part of the fabric of our community and a defining feature of its character.

The town benefits from the mature tree canopy because it:

- Contributes significant aesthetic value
- Measurably increases property worth
- Fosters a cherished quality of life
- Recycles the air we breathe by absorbing carbon dioxide and producing oxygen
- Absorbs air pollutants
- Moderates climate extremes and reduces wind speed, thus conserving energy otherwise used for increased air conditioning and heating
- Provides food and shelter for innumerable plant and animal species
- Forms an interrelated part of the regional forest ecosystem, connecting with adjoining forest communities
- Muffles noise
- Stabilizes soils, reducing soil erosion and stormwater runoff

Each mature tree in the town's urban forest plays a critical role in controlling stormwater runoff and supporting the biological and hydrological integrity of the Lower Rockville and Little Falls Branch watersheds, part of the larger Chesapeake Bay watershed. Thus, the regulation of actions affecting the town's tree canopy provides benefits to all town residents and property owners and contributes to the greater good of the Suburban Maryland and Washington region."