

## MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director  
Lance Norris, Public Works Director  
Curtis Brooks, Urban Forester  
Mary Jane Nirdlinger, Special Projects Manager

SUBJECT: Public Hearing: Proposed Changes to Tree Protection Ordinance

DATE: February 22, 2010

### PURPOSE

Tonight, we are asking the Council for guidance on a key issue related to the draft Tree Protection Ordinance: How to balance the Town's goals of improving the development review process and enforcing new regulations.

The draft ordinance is the second step in a two-part approach to develop new tree protection regulations. Initial changes to tree regulations, the first step, were enacted on June 11, 2007. <http://townhall.townofchapelhill.org/agendas/2007/06/11/11/>

The attached draft ordinance attempts to balance protection of Chapel Hill's tree canopy with other goals of the Town. Our preliminary recommendation is that the Council open the Public Hearing and receive comment in support of and in opposition to the Tree Protection Ordinance and that the Council provide direction on the three key issues identified in this memorandum.

### INTRODUCTION

Chapel Hill contains a diversity and abundance of trees. Such elements are of economic value to the Town and make it a desirable place for both residents and visitors. Trees and other landscape elements help to naturally control flooding and erosion, moderate noise pollution, dust, and other airborne pollutants, moderate the Town's climate and shelter and feed its wildlife.

Growth and development within the Town of Chapel Hill often necessitates the removal of trees, thereby contributing to the depletion of canopy cover. Protection and management of these valuable assets and their habitat promotes and provides for the health, safety, and welfare of citizens in Chapel Hill and its extraterritorial jurisdiction.

The proposed ordinance reflects the suggestions and concerns heard at two public meetings and in public [emails and comments](#), as summarized in this memorandum. The language seeks to prevent the largest negative impacts to the Town's tree canopy coverage without unreasonable regulation of smaller lots and homeowners.

## **BACKGROUND**

On February 12, 2007, in response to a petition from the Planning Board, the Council authorized a Request for Proposals to hire a consultant to draft substantive changes to the Tree Protection Ordinance. In November of 2007 the Council authorized the Town Manager to enter into a contract with Davey Resource Group to rewrite the Ordinance. Davey Resource Group is a division of The Davey Tree Expert Company. Work began in January 2008.

In September, 2009, the Council endorsed a schedule for broad community input and feedback on potential revisions to the Town's Tree Protection Ordinance. The Town held two public information meetings in October 2009 and January 2010 and received comments at those meetings and through email. The staff worked with the consultant to revise the draft ordinance and respond to comments. The materials from these meetings, including summaries of public comment, and emails received on this topic are available on the website: [www.townofchapelhill.org/trees](http://www.townofchapelhill.org/trees). The Planning Board has reviewed the proposed ordinance and recommended that the Council open the public hearing. The Planning Board's discussion is summarized in this memo and in the attached summary of action.

The attached draft ordinance attempts to balance protection of Chapel Hill's tree canopy with other goals of the Town. The Council adopted a goal for 2009-2010 to "complete current planning processes under way." This proposed ordinance is one of those processes. The Council also has a goal of continuing to improve the development review process. This proposed ordinance contains additional regulations for property owners and requirements for staff review.

## **CURRENT LAND USE MANAGEMENT ORDINANCE**

Section 5.7 in the Land Use Management Ordinance (LUMO) contains the current Tree Ordinance. The current Ordinance regulates tree removal on non-residential properties and on single-family and two-family lots where more than 5,000 square feet of clearing is involved. The Ordinance does not currently set standards for the amount of tree canopy that must be retained or reestablished. The proposed changes replace the 5,000 square foot clearing regulation with canopy protection requirements. Tree canopy cover is a quantifiable variable that relates to ecological health. Maintaining a robust tree cover positively impacts air and water resources.

## **SUMMARY OF COMMUNITY INPUT**

The Town held two public information meetings that were advertised through direct emails to stakeholder groups, eNews, press releases, notification to advisory boards and neighborhood groups. The meetings were recorded and posted on the [Town's website](#) with the meeting materials.

After each meeting the comments, emails and other communications were reviewed by Town staff and recommendations or options were provided to the Planning Board and, now, the Council for their consideration. The following concerns were heard throughout the meetings and via email:

- Difference in standards and penalties for residential versus nonresidential lots may be unfair (cost of replacement trees, level of detail required on applications)
- General opposition to additional regulation (homeowners and developers)
- Balancing tree protection with other environmental/community development goals may require some relief from stricter standards
- Use of mitigation funds needs to be clear
- Implementation/administration of proposed ordinance needs to be considered for applicants and staff
- Methodology for measuring canopy cover needs to be clear

The current draft Ordinance contains changes that were made in response to comments and concerns heard at the public meetings. Copies of earlier versions of the draft ordinance are available at [www.townofchapelhill.org/trees](http://www.townofchapelhill.org/trees) for reference. We believe the proposed Tree Protection Ordinance balances the best outcomes with the most reasonable costs to property owners and the Town. This summary highlights the main points in the current draft, some of which are direct responses to the concerns above.

## **ORDINANCE HIGHLIGHTS**

### *Small single-family and two-family lots*

Only trees 36” and larger would be regulated on single-family and two-family lots smaller than 20,000 SF (about ½ acre). (5.7.2 and 5.7.3)

About 58% of the single family and two-family residential lots in Chapel Hill would be exempt from the proposed tree canopy coverage standards because of their lot size, except for the removal of trees 36” or greater.

- There are about 13,700 single-family and two-family zoned lots in Chapel Hill.
  - 3,900 lots are smaller than 9,999 SF (28%)
  - 4,100 lots are between 10,000 and 19,999 SF (30%)
  - 3,500 lots are between 20,000 and 39,999 SF (25%)
  - 1,500 lots are between 40,000 and 79,999 SF (11%)
  - 800 lots are larger than 80,000 SF (6%)
- About 58% of residentially zoned lots are smaller than 20,000 SF in size.

A Zoning Compliance Permit (ZCP) would still be required, as it is today, for land disturbing activities for all properties, including single-family and two-family uses. (5.7.3.b)

### *Larger single-family and two-family lots and all other uses*

The proposed language bases canopy coverage requirements on lot size, not on existing canopy. The October draft of the ordinance had proposed that existing canopy be the basis

for minimum canopy coverage. We believe using standards as the basis for a tree canopy goal, instead of existing conditions, is a more equitable approach for property owners.

Lot size	Minimum canopy coverage for single-family or two-family uses		Minimum canopy coverage for all other uses	
< 10,000 SF	20%	<i>Recommended</i>	20%	Required
10,000 - 19,999 SF	30%	<i>Recommended</i>	30%	Required
20,000 – 39,999 SF	40%	Required	40%	Required
40,000 – 79,999 SF	50%	Required	50%	Required
> 80,000 SF	60%	Required	50%	Required

The property owner would have the ability to request relief from these standards from the Town Manager, the Planning Board or the Council, depending on which type of permit the project requires. Relief may be requested in writing as part of the development application when underlying zoning, stormwater management or other goals of the Town’s LUMO or Comprehensive Plan support more dense development of a property. (5.7.2.b)

#### Canopy Coverage Calculation

The draft ordinance assumes that only trees on property controlled by the property owner count toward canopy coverage calculations. However, street trees in the right-of-way which are planted as part of an approved project and maintained by the Town could count toward canopy coverage. Required active recreation areas and easements are not included in canopy coverage calculations. Required open space is included in canopy coverage calculations and may provide areas for tree replacement plantings in larger projects.

#### Mitigation Fees

The draft ordinance includes a calculation per-tree for mitigation fees with no maximum for tree replacement costs. (5.7.3 and 5.7.4)

The draft ordinance proposes that payments to the Tree Mitigation Fund would be used for implementing the ordinance, Town sponsored tree planting and management and for maintenance of public trees. Tree mitigation payments would not be used in lieu of general fund support for the existing urban forest management program. (5.7.2)

#### Rare and Specimen Trees

The ordinance proposes that rare and specimen trees, which are described in the draft language by their uncommon species, size or quality, should be identified and preserved.

Voluntary protection of rare trees on a site would be considered in lieu of all or a portion of the tree canopy mitigation requirements that might have otherwise been required. (5.7.7.2)

#### Complementary Design Manual Clarifications

In support of the draft ordinance, staff will include complementary clarifications in the Design Manual. They would include the following definitions and standards.

Canopy trees are defined as trees that, at maturity, reach twenty (20) feet above ground. For example, if an applicant proposes crepe myrtles that only reach 15' at maturity, they will not be counted toward canopy replacement.

The minimum spacing for canopy trees would be 20 ft. on center to allow for sufficient growth area.

Single-family and two-family homeowners would have the options of using existing aerial photography for calculating canopy coverage. Aerial photography is readily available online.

Larger developments applying for Zoning Compliance Permits could use the already required tree survey data and Critical Root Zone (CRZ) information to determine tree canopy coverage.

### **FISCAL IMPACTS**

There will be financial consequences to property owners and additional staff time requirements for review and enforcement, depending on what level of regulation is ultimately adopted. The draft ordinance is written to encourage single-family and two-family property owners to get a permit before work begins and to plant trees when possible.

There are proposed application fee and tree replacement fees for property owners which would increase for after-the-fact permit applications and when owners have sufficient room to replant trees but choose not to. For larger developments, there would be some increase to the current cost of developing landscape protection plans.

For Town staff, there would be new review requirements for single-family and two-family properties and an increase in the existing review process for all other development applications. A comprehensive enforcement program for this ordinance would require investment in new staff resources, similar to those required for the 2003 changes to the Town's stormwater management regulations.

The summaries below identify where fiscal impacts can be expected. Detailed fiscal impacts of the Tree Protection Ordinance will be developed for these conditions and for any changes made as a result of the public hearing process (see Next Steps).

#### Property Owners

Non single-family and two-family uses:

- Most routine tree maintenance is exempt from the proposed language and would not require permit fees or other costs. (no change from current regulations).

- Zoning Compliance Permit application fees will continue to be required. (no change from current regulations).
- Owners can replant without fees when required by the ordinance. Tree replacement fees will only be incurred when there is insufficient room to replant on the lot.
- Tree replacement fees increase when the owner has room to replant but chooses not to.
- There is no cap on the calculation for replacement fees.
- Landscape and tree protection plans are already required. Requiring additional data collection and calculations to determine canopy coverage will increase the cost of producing these plans.
- Tree replacement standards require plants typically purchased at wholesale nurseries, but not readily available at a garden-supply store.
- Additional plantings needed to meet more rigorous standards will increase landscape installation costs.
- Revisions proposed by applicants, including possible project size reductions, to address canopy coverage requirements may result in indirect project costs.

#### Single-family and two-family uses requiring a Zoning Compliance Permit:

- Most routine tree maintenance is exempt from the proposed ordinance and would not require permit fees or other costs.
- Zoning Compliance Permit application fees will continue to be required. (no change from current regulations)
- Owners can replant without fees when required by the ordinance. Tree replacement fees are only required when there is insufficient room to replant on the lot.
- Tree replacement fees are increased when the owner has room to replant but chooses not to.
- Single-family or two-family properties will typically be able to use available information (e.g. Orange County GIS and staff support) to determine canopy coverage.
- Tree replacement standards can be met with plants commonly available at garden-supply stores.

#### Single-family and two-family uses requiring a Tree Work Permit:

- Most routine tree maintenance is exempt from the proposed language and would not require Tree Work Permit fees or other costs.
- Tree work permits obtained before work commences have no application fee.
- Only trees 36" or greater are proposed to be regulated on single-family or two-family lots smaller than 20,000 square feet.
- Application fees for single family or two-family uses are only required for after-the-fact work requiring a permit.
- Owners can replant without fees when required by the ordinance. Tree replacement fees are only required when there is insufficient room to replant on the lot.
- Tree replacement fees are increased when the owner has room but chooses not to replant.
- Single-family or two-family properties will typically be able to use available information (e.g. Orange County GIS and staff support) to determine canopy coverage.

- Tree replacement standards can be met with plants commonly available at garden-supply stores.

Town of Chapel Hill Staff

Non single-family and two-family uses:

- Landscape and tree protection plans are already required. Additional information to determine canopy coverage will require staff review.
- Additional replanting requirements will increase staff resources needed to assure ongoing zoning compliance.

Single-family and two-family uses requiring a Zoning Compliance Permit:

- Tree protection plans are required today when over 5,000 SF of disturbance is proposed. Additional information to determine canopy coverage will require staff review.
- For smaller projects, determining on a site by site basis when canopy coverage information will be required for review is a new regulatory process which will require staff resources.
- Landscape plans are not currently required. When needed to meet tree canopy coverage requirements, staff resources will be needed for review.
- Additional replanting requirements will increase staff resources needed to assure ongoing zoning compliance.

Single-family and two-family uses requiring a Tree Work Permit:

- Landscape and tree protection plans are not currently required.
- Determining on a site by site basis when canopy coverage information will be required for review is a new regulatory process which will require staff resources.
- Reviewing plans for work that is not currently subject to Town review and approval will require increased staff resources.
- Additional replanting requirements will increase staff resources needed to assure ongoing zoning compliance.
- Increased staff resources needed when after-the-fact questions arise about removal of trees that may have been great than 36" in size.

In summary, the proposed draft ordinance would increase development costs and the need for staff resources. For all regulated projects, applicant costs will increase as a result of additional permit submittal requirements and installation of more extensive landscape plans. Town regulatory review of projects that are already required to produce Landscape Protection Plans (Single-family and two-family projects with land disturbance over 5,000 SF and all non-residential uses) would probably require a modest increase in staff resources. Expanding regulations beyond those projects would necessarily increase costs and the demand for Ordinance administration and enforcement resources. If the proposed standards were converted to recommendations for projects that do not currently require Landscape Protection Plans, the demand for additional staff resources would be more limited. We will provide additional

information about possible fiscal impacts of the Tree Protection Ordinance following the public hearing.

## KEY ISSUES

The staff has identified an overall key issue, how to balance the Town's goals of improving the development review process and enforcing new regulations. We think this key issue can be broken down into four related issues, identified below for the Council's consideration. After discussion and public comment, the Council may identify additional options or issues. We are seeking input from the Council on their preferred approach for moving forward on each of these points.

1. The Town's goal for completing the Tree Protection Ordinance process was adopted by the Council for 2009-2010. The Council also adopted a goal for improving the Development Review Process.
  - The proposed Ordinance would apply to all types of development, single-family and two-family uses, which would increase the number and types of applications that would require Town review and approval,
  - Alternatively, the ordinance could be drafted to limit the regulations to only those applications currently requiring a Zoning Compliance Permit or Special Use Permit. The new proposed standards for single-family and two-family uses could be included as recommendations.
2. The proposed regulations acknowledge that there may be competing interests affecting development applications.
  - The proposed Ordinance encourages the applicant to identify competing interests in a written statement. The approving body (Council, Planning Board, Town Manager) then determines when relief should be granted.
  - Alternatively, the Ordinance could be drafted to include more specific guidelines for making those determinations. We could provide the Council with additional information and analysis about this approach, including some possible implications of more prescriptive guidelines.
3. The proposed regulations will extend or create review processes for certain types of applications.
  - The proposed Ordinance will require new reviews of single-family and two-family applications. The review process for development projects will include new information and require additional time.
  - Alternatively, the Ordinance could be drafted to limit the requirements for new reviews and to focus on projects with the greatest impact, specifically those currently requiring Zoning Compliance Permits and Special Use Permits.

4. The proposed regulations do not identify a regulatory role for the Town staff after initial inspections. This would imply that staff would become aware of issues only when a complaint is made or a subsequent permit process begins.
  - The proposed Ordinance relies on initial inspections after which enforcement is limited to situations which are brought to staff's attention.
  - Alternatively, a full enforcement program could be developed which would require sufficient staff resources for ongoing inspections and follow-up.

### **NEXT STEPS**

After the Council has an opportunity to consider the draft ordinance and public input at this evening's public hearing, the draft ordinance can be referred to the Town Manager for follow up. Proposed next steps:

1. Solicit additional technical input as determined necessary
2. Incorporate changes into the draft Ordinance
3. Develop supporting materials for the Design Manual
4. Develop detailed fiscal impacts and implementation strategy
5. Return to the Planning Board for a recommendation on a revised Ordinance
6. Return to the Council with a summary of changes and revised Ordinance for further consideration by May, 2010.

### **RECOMMENDATIONS**

Planning Board Recommendation: On February 2, 2010, the Planning Board recommended additional consideration of the following points during the public hearing:

Clarifications:

1. Clarify the definition of a Tree Work Permit  
*Staff Comment:* This change is included in the proposed ordinance.
2. Edit section 5.7.3 for clarity (identifying responsibilities for determining when activities are exempt)  
*Staff Comment:* This change is included in the proposed ordinance.
3. Table 1, Section 5.7.2 change "less than" to "greater than" in survey condition box.  
*Staff Comment:* This correction is included in the proposed ordinance.
4. Provide clear direction to applicants about who can grant relief from the regulations (e.g. Council, Planning Board, Town Manager)

*Staff Comment:* This change is included in the proposed ordinance.

5. Questions: Does the proposed language in section 5.7.2.b provide adequate flexibility for applicants who would seek relief from the ordinance?

*Staff Comment:* The draft Ordinance language details a number of specific exemptions, including tree removal for solar access and/or horticultural purposes, that are intended to provide appropriate flexibility for single and two-family property owners. For other uses that require approval of a Zoning Compliance Permit, Section 5.7.2(b) of the draft Ordinance allows property owners to request relief from the canopy coverage standards from the approving body (Council, Planning Board or Town Manager) as part of the development review process. Noted examples of conditions when these requests may be expected include conflicts with underlying zoning, required stormwater management improvements, and other goals of the Comprehensive Plan. We believe the language as written provides flexibility and permits all development proposals to be evaluated in light of specific site constraints and other Town goals on a case by case basis. If desired by the Council, it would be possible to expand the list of examples where relief may be requested to provide property owners with a clearer understanding of the basis for review of these requests.

6. Should there be a formula relative to project cost or size of lot for maximum replacement fee calculations?

*Staff Comment:* In preparation for the Public Hearing, the staff has undertaken a study of the impact of the draft Ordinance on several existing developments in Town and we believe that the proposed fee structure provides a strong incentive for retaining and/or replanting trees on new and redevelopment project sites whenever feasible. Coupled with appropriate use of the flexibility in the Ordinance language described above, we believe reasonable outcomes can be achieved without establishing specific maximum replacement fees. We note, as an example, that the University Mall property does not meet the proposed canopy coverage standards and that future applications for improvements on that property could request relief from complete compliance based on existing site constraints.

The Planning Board recommended that the Council open the public hearing and receive comment regarding the proposed Tree Protection Ordinance text amendment. A copy of the Planning Board Summary of Action is attached.

Staff Preliminary Recommendation: Our preliminary recommendation is that the Council open the Public Hearing and receive comment in support of and in opposition to the draft Tree Protection Ordinance and the key issues identified above. We will return to the Council with a recommendation for action after the Council has received public comment this evening and reconvened the hearing.

## ATTACHMENTS

1. Draft Tree Protection Ordinance (p. 11).
2. Planning Board Staff Memorandum from February 2, 2010 (p. 27).
3. Summary of Planning Board Action (p. 29).