

**Ad Hoc Tree Committee
Meeting Notes
March 16, 2016**

Committee Members in Attendance: Sarah Blossom, Kol Medina, Ron Peltier, Jon Quitslund, Mack Pearl

COBI Staff: Jennifer Sutton, Lisa Marshall

Public: Jonathan Davis, Charles Schmid

The meeting began at 3:35 and ended at 5 p. m. Notes from the March 2nd meeting were approved as distributed.

City attorney Lisa Marshall participated actively throughout the meeting. She wanted to know what the committee had in mind in revision of the subdivision regulations. Referring to the 2012 memorandum from Clarion Associates, she described the legal background of a Washington Supreme Court decision (Isla Verde /Camas, 2002) and a Court of Appeals decision (Citizens' Alliance v. Sims, 2009). These cases require open space set-aside requirements or land clearing limitations, respectively, to make individualized determinations of that there is a nexus between the regulation and the problem it's designed to solve, and that the regulation is roughly proportional to the impact caused by the proposed development.

Kol cited the RCW language that was crucial in both of the court decisions. We discussed what we want to achieve through more effective protection of "Valued Open Space Features" as described in the BIMC (see 17.12.030.A.1.a-h, and Table 17.12.030-2). Mack pointed out that the benefits are not only in trees.

The Clarion memorandum deals primarily with BIMC 18.15.010, but refers in several places to matters beyond the scope of what was known in 2012 as the Interim Tree Protection Ordinance (ITPO). In the litigation and thus in the Clarion memorandum, the amount of open space that ought to be preserved is related, by tests of *nexus* and *rough proportionality*, to *specific impacts* of the development. Jon noted that the Court of Appeals found that King County had met the nexus test but had not demonstrated proportionality in the amount of open space being required.

Jon asked Lisa if open space could be required on account of its *benefits* (such as ecological services, of value to property owners and the general public), rather than as compensation for the alleged *impacts* of development. (As we move to prescribing low impact development, the rationale for preserving open space ought to change, and to be directly related to the achieving of low impact objectives.) Lisa responded that both impacts and benefits should be considered.

Jon mentioned that the Seattle-based non-profit *Futurewise* recently released a comprehensive study, *The Lay of the Land*, in support of efforts to implement L I D regulations – available for download from the Futurewise website. (Appendix 2, which runs to 37 pages, compiles current tree regulations in municipal codes for all

King County jurisdictions, and see pp. 49-52 of the study for a discussion of ecological services of trees, specifically in stormwater management.)

We discussed the *Analysis of Open Space* dated April 30, 2004, commissioned by the City after the Isla Verde/Camas decision to provide a statistical basis for revising open space dedication requirements. Lisa Marshall and members of the committee had nothing good to say about this analysis. At best, it is badly out of date. Its methodology may be sound (or perhaps, like the curate's addled egg, 'good in parts'), but we did not see how it justified the 25% requirement. Further, Lisa said that the flat 25%, as the most that could be required in the absence of critical area conditions, did not seem reasonable. If the amount is unrelated both to specific characteristics of the property and impacts of the plans for development, it is not consistent with the pertinent court cases.

Lisa said that she has a list of topics related to land use and development regulations that she is eager to discuss with Gary Christensen, the new Director of Planning & Community Development. One of these is the use of substantive SEPA authority (see BIMC 16.04.160) in reviews of proposed developments. She also observed that Washington state law is somewhat 'peculiar' in that property rights are valued highly, while at the same time regulatory regimes involve elaborate environmental protections.

Toward the end of the meeting, Jon suggested that before we spend a lot of time redesigning the standards for long subdivisions, we should consider how many such developments remain possible, and in what zones they occur, with what open space features. Also, Lisa affirmed that it is proper to have zone-specific standards.

The next meeting will be on March 30 at 2:30.

Notes Approved: March 30, 2016