

**MAYOR'S BLUE RIBBON COMMITTEE
TREES AND PUBLIC GREENERY**

MINUTES

**7:30 AM – Wednesday, February 8, 2011
City Hall, 4th Floor, City Manager's Conference Room**

Members Present: Peter Loughlin, Chairman; Richard Adams, Vice Chairman; A. J. Dupere, Community Forester; Everett Kern, Public Works General Foreman; Steve Parkinson, Public Works Director; June Rogers; Leslie Stevens;

Members Excused: John Bohenko

The Chair called the meeting to order at 7:30 a.m.

1. **Acceptance of Minutes of January 1, 2012 Meeting.** The minutes were unanimously approved.
2. **Tree Removal Requests – None.**
3. **Sanitary Sewer/Storm Drain Contract 3B, Cass Street and Lincoln Avenue (Miller to Spring Street) Presentation by City Engineer Peter Rice**

Present were Peter Rice, City Engineer; Phil McDonald, Project Manager, Underwood Engineers; Daniel Rochette, Project Engineer, Underwood Engineers; and Rick Dolce, Project Engineer, City of Portsmouth. Mr. Rice indicated this was called Project 3B and was a continuation of the sewer separation program on Cass Street and will have significant impact to trees along the streets. They are trying to get started early and have done some site walks with some of the Committee members and have identified some trees which are listed in their packet. They had a public meeting with the residents and there were some comments regarding a couple of trees on Miller and Highland and they also wanted to add some trees on Aldrich Road.

It was explained that the trees have been indexed and are separated into three color-coded categories:

- Red are trees in poor health which will be removed
- Orange are trees to remain, health is marginal and may not survive pruning and root cutting impacts
- Blue are trees to remain, health is good but will be impacted by pruning and/or root cutting.

There are additional comments on the right side of page with construction impacts on each tree. There are additional comments that may be available from the November 7th meeting when they walked the site with members of the Tree Committee.

Pictures of each tree were included in the back of their packet.

Mr. Rice suggested going through their list of trees, starting with Cass Street.

Mr. MacDonald added that the 3B Project is a \$5 million project with 8,000 feet of roadway and 22 trees were tagged for removal. Mr. Adams asked if the \$5 million includes the replacement of trees.

Mr. Rice stated they have a \$5,000 allowance for the replacement trees for both projects. Mr. Adams felt that amount would not allow for full replacement.

Mr. Parkinson asked if they have done an evaluation of what the total cost would be to replace all of the trees that are being removed. Mr. MacDonald estimated that 30 trees at \$500 per tree would be \$15,000 for a good 3"-4" caliper.

Mr. Adams asked if they had a lot of push back from the public. Mr. Dolce indicated there was one area on Miller and Highland where there are 2-3 ash trees right on the edge. Otherwise, people wanted to add 2-3 more trees to be remove. Mr. MacDonald felt that the general consensus is for people to ask to take more trees down.

Mr. Rice understood that this was a lot of information to digest and they don't anticipate action today. They would look for direction from the Committee. They may want to walk the site with this in hand. They are currently gearing up for bidding. Work would not start until April but this is a critical path discussion that they need to have.

Photos #20, #21, #22 and #23 are the ones they had push back on.

Mr. Adams asked if the contract includes any stipulations regarding existing trees. The Underwood representative responded that Mr. Dupere has some language they will incorporate. Mr. Rice confirmed they will draft the language and forward it for their review. There are limitations on how much you can dictate on tree protection without overly burdening a contractor's balance between awareness and their site representative making sure their actions are being followed through and that, if necessary, there are some teeth to it. They will have something at their next meeting.

Chairman Loughlin asked if they prescribe wrapping the trees or setting up fences. Mr. Dupere stated some people put up the orange construction fence. If the orange fence is damaged, that is when the contractor starts paying fines. However, with public bidding, it is going to end up costing the City to protect those trees as the contractor will be charging you for not being able to use the space. Some trees are just going to get hit because the contractors need the space. It would be good to take good accurate pictures of the trees and have a serious talk with the Contractor to let him know that the City is not going to tolerate any damage to the trees and any damage will be assessed with penalties. They have to find a balance

Chairman Loughlin wondered how much difference that would make to a \$5 million contract. Mr. Dupere stated that all of the trees are right on top of the street and it doesn't leave any side room to work.

Mr. Rice stated that it depends on who the contractor is. Some are just coming in to work and don't care about what they hit and destroy. They do a pre-qualification process to weed out the real egregious folks but they can sometimes just end up with a careless operator and to move that big piece of equipment it is easy to misjudge distances no matter how careful they are and a tree will get nicked.

Ms. Stevens felt it was a trade off. She asked why they aren't back loading the replacement of trees. Mr. Rice stated they can consider that but it comes down to budgets. In the past projects they haven't been in the real dense residential areas. The number they carry is based on historical experience however based on their last project it is worth reconsidering.

Mr. Dupere stated that when they started walking the area, he took an aggressive stance about what trees to take down. There are some trees that are in the clearance of the road and if they don't take the tree out, the operator will hit the tree. Removing the trees will definitely impact the neighborhood so having the budget to replace the trees is important.

Chairman Loughlin indicated he would like to see a significant penalty. If the boss knows there will be a penalty if they damage a tree then they will be more careful. He always thinks about when the New England Center was built in the middle of the woods in Durham and most contracts would have called for clear cutting 2 acres but they didn't allow that. When they built the Margeson Apartments there were trees clear cut a great distance away from the building, but that was the way it was done in the 1960's and 1970's. The change in the attitude of DPW since the 1970's is very different now and they use a lot more sensitivity.

Mr. Parkinson agreed and indicated that protecting trees as part of a project is a priority for them now. There are a number of ways to include language in the contract that there will be penalties associated with tree damage. They will put something together and bring it back to the Committee. They will look at the budget as \$5,000 is not enough for replacement trees. It will take some time but they will be beautiful streets when they are done.

Mr. Adams added that they will be putting in trees of a more appropriate species so they will be better off in the future.

Mr. MacDonald felt that the Tree Committee should have more of a role in placing and selecting the trees. Mr. Rice assured him that they already are involved in that process.

Chairman Loughlin asked if they could transfer the exhibits electronically to the committee members.

Mr. Adams and Ms. Stevens stated that their hand-outs were very well done.

Chairman Loughlin asked if they could tag these trees for next month's meeting. Mr. Rice felt that would be good. And they will make it clear that the contractor could not remove a tree until they had gone through this process. Mr. Parkinson agreed they should post these for next month and try to get ahead of the project. Mr. Rice indicated that the posting helps to get the residents thinking about the trees.

Mr. Parkinson made a motion to post the trees for their next meeting. Ms. Stevens seconded the motion. The motion passed unanimously.

4. Lincoln Avenue Area Replanting (copy of letter sent to 88 landowners and list of those landowners attached)

Chairman Loughlin confirmed that he sent out a letter to the 88 people listed on his exhibits. He has only heard from one person. Mr. Kern has heard from quite a few. Chairman Loughlin asked Mr. Kern to provide his list to the other members.

Ms. Stevens asked if the replanting of Lincoln Avenue was part of the construction project and if that is where the money comes from. Mr. Parkinson responded that they have some money but he will have to look at how much they have.

Mr. Stevens asked how many trees they typically plant in the spring. Mr. Parkinson suggested that they compile a list of how many trees they need, where they are and then evaluate the budget.

Mr. Adams noted that some sites have an existing tree trunk and he asked how they plant around them. Mr. Dupere felt that the simplest thing was for them to go back and rate the sites for replanting. If a stump can't come out without infrastructure problems, it should probably stay. Mr. Parkinson felt that it could be almost impossible to remove some of the big stumps as they are massive. A lot of the stump is underground with a huge root system. At one time Richards Avenue was all elm trees and he can't imagine how they all fit in.

Mr. Adams asked how far from the center of the stump would they have to go to grind the stump. Mr. Dupere felt it would normally be double the size of the diameter but that may offset another planting because they would still have the root mass in the ground

Ms. Stevens heard that DPW has a list of trees to choose from. Mr. Kern indicated that they have a list that Mr. Dupere made up. Ms. Stevens made up a list from a book on native species. Chairman Loughlin stated that over the years DPW has found what trees work well and what trees do not.

Mr. Parkinson felt they should get the list from Mr. Kern and give it another couple of months. In April they should start thinking about the areas that are available now to be replant in. They are talking about restarting up in April. There is some more work on Miller and Broad. There are sections of the project that haven't been started yet. New granite curbing and sidewalks should be done except for a top coat of pavement and you have to be careful with that because it is done with construction workers. Mr. Parkinson would like to see them totally out of an area before they go in and do replanting. Some of the committee members were concerned about missing the ideal planting season of May and June. Mr. Parkinson will report back next month on the schedule.

Chairman Loughlin wanted to develop a list of the top 50 trees to replace ASAP. Mr. Dupere suggested they do a site walk. Chairman Loughlin mentioned it has been helpful because they haven't had any snow and you can see the rootballs.

A field visit was scheduled for Monday, February 13th at 7:30 a.m. They will meet at City Hall.

5. Discussion of Tree Ordinance

8.307 Authority of the Tree Warden:

Mr. Adams provided some comments in writing for review. Mr. Dupere suggested that Item D may go against State law. If the City determines that a tree is a hazard to the public then the landowner is not responsible for the tree. It would be the City's responsibility to cover the cost of the removal of the tree. The City has a duty to keep their public right of ways free of hazard and open to the public. Mr. Dupere stated that the City has the right to remove a tree on private property under the road agent law if it poses a public threat. Mr. Adams indicated that his suggestions are not without precedent as he found other towns that have these in their ordinances. Chairman Loughlin stated that unless the authority is specifically granted to the municipality, it can't do it.

8:308 Prohibited Acts:

Item B. Mr. Dupere thought this sounded good.

Item C. Mr. Parkinson felt there may need to be clarification but he believes the City only has control over what is in the right of way. Chairman Loughlin felt the property owner owns to the middle of the street. If there are trees along the travel portion of the road and the City cut a tree down, the wood belonged to the abutting landowner and not the City. Mr. Parkinson stated that in Dover, when they cut down a tree they have to pay the property owner. Mr. Dupere also stated that in Dover, a homeowner wanted to save a tree in a construction project and the Court ordered the tree be saved and clarified the homeowners ownership.

There was a discussion about ownership of a tree between the sidewalk and the street.

Mr. Adams suggested that if someone wanted to plant a large weeping willow at an intersection it would be inappropriate. He isn't saying they can't do it but rather he is saying it would not be unreasonably withheld. Chairman Loughlin thought they might add "Before planting a tree ..." to encourage them rather than telling them they have to do it. Mr. Adams didn't think they wanted to encourage that in the first place. What they want is to be able to have some clout if a person wants to do an inappropriate planting. Chairman Loughlin asked how many times they have had a problem with this. Mr. Adams did not disagree but felt that just because it hasn't been a problem doesn't mean it won't be a problem.

Chairman Loughlin stated they will change it to more benign language.

Chairman Loughlin indicated that the Conservation Commission liked the idea of the ordinance but would like them to think more about it. They were talking about more specificity about the Tree Warden and the background that person would have to have. The tree warden is currently the DPW Director or his designee and the person will have an interest in trees. The City Attorney's position was that the arborist needs to be part of the City administration and not appointed by the City Manager.

Chairman Loughlin stated he would work on these changes.

6. Old Business

None.

7. New Business

Chairman Loughlin advised the Committee that the Japanese government is giving Portsmouth some Japanese Cherry trees from the trees in Washington DC. Some are going to the Shipyard, Strawberry Banke, Wentworth by the Sea and they wanted to know if the City wanted some. The trees are only 3' tall and Attorney Loughlin communicated that the City was not willing to commit to raising them. Mr. Loughlin said he would take them and raise them if they wanted but he was quite certain that Mr. Dupere and everyone at DPW would agree that it is just not cost effective for a governmental agency to raise these trees.

8. Next Meeting – Wednesday, March 14, 2012.

A motion to adjourn at 8:40 a.m. was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse
Administrative Assistant
Planning Department