CHARLOTTE

Charlotte City Council

Environment Committee

Meeting Summary for June 25, 2010

COMMITTEE AGENDA TOPICS

I. Subject: Proposed Revisions to the Tree Ordinance

Action: **Payment in Lieu:** Recommend payment in lieu with a cap at 90% of the average tax value of land in Charlotte including the ETJ and excluding downtown as defined as within I-277. *Motion passes 3-1 (Howard, Carter, Peacock – for; Dulin – against)*

Proximity: Be sufficient to fund tree preservation off-site, but in nearby vicinity – as a goal, not a requirement - to be defined in the guidelines. *Motion passes unanimously 4-0 (Howard, Carter, Peacock, Dulin – for)*

Motion on Recommending Entire Tree Ordinance (i.e. all other proposed revisions in addition to payment in lieu) to move forward to Council. *Motion passes unanimously 4-0 (Howard, Carter, Peacock, Dulin – for)*

II. Subject: Next Meeting

Action: Monday, August 23 at 1:45 p.m. in Room 280

COMMITTEE INFORMATION

Present: Edwin Peacock, Nancy Carter, Andy Dulin, and David Howard
Time: 12:00 noon to 1:45 p.m.

ATTACHMENTS

1. Agenda Package
2. Presentation: Proposed Tree Ordinance Revisions

DISCUSSION HIGHLIGHTS

Committee Discussion:

Committee Chair Edwin Peacock welcomed everyone to the meeting and asked those around the table to introduce themselves. He then recognized the members of the stakeholders and subgroup committees in the audience.

Stakeholders: Rick Roti, John Porter, Andy Munn and Chris Buchanan
Subgroup: Bill Daleure, John Orsborn and Debra Glennon

He then asked Vice Chair Nancy Carter if she would like to make any remarks regarding the recent news about Eastland Mall.

Ms. Carter shared that Boxer Development has plans to purchase Eastland Mall and this will be a huge project. She indicated she was anxious for a decision to be made about the Tree Ordinance as there are 80 acres to be redeveloped there and a potentially forested area in Charlotte. It is important. The Ordinance can make some life and death decisions but I'm encouraged and grateful.

Peacock: Is there some direction you'd like to give staff in advance?

Carter: To make a decision.

Peacock: Well, I think that's us.

Dulin: Can you walk us through this real life situation with what lies ahead for this group that is buying the mall?

Carter: They are just buying the Glimcher portion, which is the core, so about 33 acres of land involved.

Dulin: But, if they are looking at building on 20 or more acres and they are looking at a redevelopment scenario, what lies ahead?

Weekly: At the last meeting, you all approved the "additions to existing sites", so if this is a redevelopment and not a tear down, meaning they keep the parking lot, they will have the tree preservation requirements, which means they can maintain what is in the front setback. If there are no trees at all, they would need to add perimeter planting and in the parking lot.

[Howard arrives]

Dulin: What if it was the entire site?

Weekly: It depends on if they keep a portion or tear down the entire site. That is the issue, but they likely will have the 15% tree save with options.

Dulin: But, they aren't going to tear this down, it will be a re-do?

Carter: That's what I understand.

Dulin: That's good history, thank you.

Peacock: This Committee has tried to get as close to the line as possible with the ordinance. The stakeholders, subgroup, staff, all the professionals who have worked through this process have been helpful in getting us close. Is this a deal breaker for Eastland Mall, does the tear down make a difference?

Weekly: The tree preservation is technically already there, but they probably will have some significant planting because there is a lot of parking.

Peacock: Make sure Tom Flynn and Brad Richardson let them know.

I. Proposed Revisions to the Tree Ordinance

Julie Burch reminded the Committee they have had a series of conversations regarding the ordinance and proposed changes. The last remaining item is a non-consensus option around payment in lieu and issues that came up as a result of the last meeting on Monday. Work has been going on outside the Committee in discussing this issue that has been helpful. Ms. Burch indicated she would turn the meeting over to David Weekly and Tom Johnson to provide more detail around payment in lieu. Desired outcomes today, if the Committee is ready, would be direction on payment in lieu and then an action recommendation on all of the proposed changes in the Tree Ordinance. But, only if the Committee is ready.

Peacock: I see Dave Cable is here to present, is anyone here from Park and Rec?

Weekly: No, Jim Garges was not available.

Mr. Weekly then began the presentation [copy attached].

[Payment in Lieu – Partners in the Tree Preservation Fund – Slides]

Carter: As we are looking at these two entities would they interact with City Council or staff and would we be able to give our preferences?

Weekly: The transactions would be approved by staff, but then land transactions, except very small ones, come to Council for approval.

Carter: Would we target areas with air quality and water quality issues to benefit the neighborhoods?

Weekly: Yes.

Howard: Regarding the fund, the exact way it will be implemented is not finished, so there is another process to come back to us with a framework of what we should be looking to in the future?

Burch: The ordinance sets the policy framework and staff will then amend the guidelines and flesh out the details. The administration is important and that is part of this; the guidelines to implement the ordinance.

Carter: Are you saying this is separated into two policies, the actual payment in lieu and money is another process to flesh out?

Weekly: Council approves the language in the ordinance which includes what is presented here regarding potential partners. The formulas, definitions and daily administration of the program will be in the guidelines.

Howard: Staff needs that flexibility to have further conversation regarding the funds.

Peacock: We will get to that and Ms. Burch, Mr. Weekly and I have had separate conversations around this. There are stakeholders on both sides of the issue and we want to give staff the flexibility to utilize payment in lieu for street planting especially in areas of blight. Upton's is recognizable to most citizens but they don't understand the impact of trees being removed from that important site and money being used to fund trees someplace else. Staff needs flexibility to use money to augment existing tree planting. I like the mix option, but haven't picked the method yet.

Dave Cable, Director of Catawba Land Conservancy

Mr. Cable advised the Committee that the Catawba Land Conservancy was delighted to partner with the City. He thought it might be helpful to describe what a land trust does. 1) A land trust identifies conservation values and protects them long-term for public benefit. 2) A land trust is able to leverage dollars by using a mosaic of funding to stretch capital for public benefit. $450,000 to $500,000/year can grow to be $40 million over the life of the real estate. A land trust can rely on tax code grants and other sources for projects in Mecklenburg County, so little seed money is needed for projects. 3) The land trust model is perpetual. It is designed to be here forever. It is a permanent commitment to the community to protect forever. So, it is durable, efficient and creative.

We can make alignments around the project. We are thrilled to be part of this. The role of a conservancy is to work in partnership with a potential payment in lieu by 1)

identifying and recommending property close to the project. That is important. But, City Council also adopted the Carolina Thread Trail and that is a place that money can be spent for public benefit especially where development might be occurring close by. 2) identifying candidate properties with City staff to reinforce goals for maximum public benefit.

The role of the conservancy is to protect, to help structure the deal, get staff sign-off and execute the project in the City or County and work efficiently to place money to have the maximum impact close to the incident. This is an efficient, permanent result.

The formula for tax value with the underlying fee of 15% for setting up the payment in lieu gives you a partial interest. I know you are most concerned about property rights and stretching dollars. Public policy with the tax code actually encourages land owners to make donations.

Carter: My concern is I know there are conflicts with non-profits regarding the cost of administration. Do you perhaps have an estimate of the percentage of administrative costs? I understand that might be hard.

Cable: What we propose is no administrative costs; this helps us advance our mission. It is important to ensure that when we take land there is some money dedicated for maintenance. So, we would put money into an endowment fund for stewardship. It is important to set that money aside so there is offsetting the asset. But, there is no administrative cost.

Carter: What percentage would be set aside?

Cable: It depends on the size and degree of threat. If the area is surrounded by land use that is added risk there would be a cost liability. We look at the degree of threat, so on the low end that might be $2,000 up to $40,000.

Carter: Can we determine the percentage?

Cable: We can come up with an average.

Howard: This goes back to my comments earlier regarding a longer conversation and some dialogue with the City Manager. This is where it gets complicated. The question of conservation with big tracts of land, logistics, administration, seems to be cumbersome and should be done some other place. I have heard talk of a little half acre here and half acre there and having pieces all over, but close to the project. I don’t want to get off track by talking about the implementation. My concerns are how do we do this and maintain it all over town. Are we going to look at the tax roll and see 100 pieces of land all over?

Cable: That is a great question and we would recommend that you don't promote a policy of fragmented areas. You want it close, but fragments don't do this justice. Connectivity is important and will be an important balancing act for staff.

Howard: I think we need to keep this conversation separate.

Peacock: Is there a priority list you are now pursuing?

Cable: Yes. We have shared with staff some areas related to the Thread Trail and that we feel those add value and also using Mr. Roti's study showing corridor overlap. Those are the high priority areas. How they relate, we don't know.

Dulin: I'm just listening here, but I'd like us to work through not putting another tax on business owners to divvy up how they are spending their money.

Peacock: Let's keep going with the presentation. But, can you go back to the fourth slide on the tree preservation fund and explain what you mean in the third bullet regarding 2" caliper trees?

Johnson: The 2" caliper trees are typically planted in the right-of-way. You look at the parallel that the ecological service of a forest is greater than planting street trees, which will still hopefully grow large. But, it places a gap in the ecosystem.

Weekly: With tree preservation you have a partnership to help protect trees. Street trees are not protected. They can be removed by roadway projects, etc.

Peacock: I have heard the comments that we now have the software to actually break down the canopy and Mr. Roti's suggestion to set a goal. Development brings jobs to areas that are blighted and payment in lieu allows us to partner with the Catawba Land Conservancy or Park and Rec to help strengthen our mature canopy. We can't just go to business people and tell them to pay into this fund; they need to be part of the solution. On the other side, we want to make sure developers are not penalized through money being put in a hole that is tied to something. We spent $150,000 on the tree study and one of our Focus Area Plan measures is to get to a preservation goal, which is a debate in itself. What percentage are we shooting for? I know that wasn't the charge of the stakeholders, but at the end of the day if we lose 100 trees in District 6, they want those trees back to rebuild the canopy.

Burch: We will be able to track using payment in lieu and everyone will benefit from those paying by seeing trees. How many, where, will be to everyone's benefit. We will be tracking and reporting to Council and the

Committee and yes, the Focus Area Plan references adding a tree canopy goal this fall.

Peacock: Mr. Roti, Mr. Porter would you like to speak to street trees and payment in lieu?

Rick Roti

I agree with the staff's position of a preference for contiguous trees. The first objective of preservation is to keep trees onsite. There is benefit to the watershed, air quality, water quality, drought resistant, which is the goal of a canopy. And, yes, you can take advantage of the data that has been provided to do some complex analysis. Where prime parcels factor in with greenways, parks and extending the canopy is a focus. If you set a goal, does that mean you roll up the zoning types to achieve that goal? 50% can get you a lot in single-family residential, but you will be challenged in commercial and multi-family if you look at what you've got. See if it rolls up and then factor the cost. A payment in lieu that is adequately funded takes time. If you adopt the strategy now, you can fine tune the payment in lieu. Preservation vs. planting is tough, because tree planting can be a good supplement.

John Porter

I think I am in the same place as Mr. Roti. I was encouraged to hear the organization will take care of the land in perpetuity because it does take a long time. In defense of the issue as more goes away I know why you don't want little bits of trees behind a commercial development, I think the blend is a good goal.

Carter: I think the flexibility will be beneficial and plays into the feeling of perpetuity, so you have a life span you can plat with an ongoing legacy. We are leaving something behind and that's our goal.

Dulin: With the proposed fund are those spendable to the County and City or just the City?

Weekly: The City limits or ETJ, basically the entire County minus the townships.

Dulin: Can we make it anything in the City limits?

Weekly: It is now; the ETJ extends into Mecklenburg County. It's in your jurisdiction now.

Dulin: But, lands are separate from the County and the County is putting away land. They have been land banking for years, so this is a different effort?

Weekly: We have two different partners and tools.

Dulin: So, they have no use for City purchased lands?

Weekly: It is another partner for us – Park and Rec. Some land could be contiguous to park land and there would be deed restrictions.

Dulin: So, we're buying park land?

Johnson: Not existing land.

Dulin: Vacant land near it?

Howard: Does it need to be that specific?

Burch: No. You are not specifying parcels.

Howard: The money is used to replace trees; that's the general language. We aren't trying to make it specific now.

Burch: The definition of payment in lieu will be in the ordinance and that identifies the partners.

Carter: But, it will indicate proximity to the project?

Burch: That is part of the discussion today, the specific mix of tree preservation versus tree planting and the proximity to development.

Weekly: Whether it's a requirement or goal.

Howard: How that works should be a goal. It will be hard to do.

Carter: The area is flexible, so if it is a goal within the area being developed there is a benefit to those impacted, and that is my intent.

Howard: Goal?

Carter: Requirement.

Presentation Continues

[Payment in Lieu Examples – Slides]

Dulin: To be fair to Eastland, this only kicks in if they don't want to kick in the 12 acres.

Weekly: Well, only if it is a complete tear down and start over.

Dulin: If they go with what ULI suggested, they wanted an urban village.

[Payment in Lieu - $200,000 Example – Slide]

Dulin: We need to think real world. In SouthPark, we tore down 32 affordable housing units and built a nice 195-unit complex with half market and half affordable. If we tore that down now in a scenario would they have PCCO?

Johnson: Yes.

Dulin: But, it could be more than $100,000? 13 acres could be $150,000.

Weekly: 13 acres with a $70,000 cap would be $10,500 x 10 = $30,000.

Dulin: And, that goes into the fund?

Howard: Well, SouthPark was MUD so that was a more intensive zoning.

Johnson: They also had tree save on the site.

Blackwell: They met the requirements, so they didn't have to pay.

Howard: It was a more intensive zoning. Mr. Porter, these slides are not reflecting what I was thinking. I was thinking a flat value, per acre at $40,000.

Porter: The number is per acre, not a number per development.

Howard: So, it is not really a flat fee? It would still be $40,000 or $50,000, not $7,500.

Porter: The calculation is correct. It goes against the 15%. So, 40 x 15%, not more than 15% but 15% of the number.

Weekly: We were concerned you thought it was a $90,000 or $70,000 cap flat fee per acre.

Howard: So, in the situation you showed us $50,000 per acre is $7,500.

Weekly: 15% of the total acreage.

Howard: With a cap?

Weekly: That's $40,000 or $50,000 without a cap, just using the formula.

Howard: But, it would never be cheaper, it is still $7,500?

Carter: There is a conflict with the total mitigation if some or part of the tree save and they excise those areas then it is just the remaining.

Weekly: Right, it might not be the entire 15%.

Carter: And, we haven't even discussed green roofs.

Johnson: Vegetated green roofs.

Dulin: Will that be spelled out?

Johnson: Vegetated green roofs? Yes.

Howard: So, on the summary basically the first three options are with a cap and the last one is a flat fee?

Weekly: Right.

Howard: Regarding the top three, $90,000 could be less if the value is less? You're not saying $13,500 period, it could be below the $90,000 rate. That seems fair. The $75,000 per acre seems more of a fee, but it could be less as well.

Weekly: It is not to exceed …

Howard: Is everyone clear that this is as high as it could go, it will likely be less.

Dulin: What about the tree save on your Statesville Road project?

Howard: 15%, but I don't know the tax value; it would probably be cheaper.

Dulin: Times now.

Howard: But, that's if you don't preserve all of it. If you keep four and not keep one, just pay for the one. It doesn't go against all the acreage. If you don't keep three, you don't pay.

Dulin: That helps.

[Payment in Lieu – Examples – Slides]

Howard: The first site is an expensive piece of property. Would that be on the high end, maybe around SouthPark?

Porter: In that circumstance it gets multiplied one and a half times.

Weekly: The transit stations and corridors are what are covered in table 21.94. It is the half mile area around the station, like Scaleybark.

Dulin: So all transit-oriented development?

Weekly: Is exempt.

Dulin: But, it is 50% higher.

Johnson: One and half times higher.

Weekly: The example is showing the entire 15%, it could be a combination.

Dulin: Does this apply to residential?

Johnson: No.

Dulin: Only commercial?

Johnson: Yes.

Dulin: What happens to single-family?

Johnson: It is 10% in single-family subdivisions.

Howard: Staff did walk through a $90,000 cap and $70,000 cap and looking at a slide scale using the tax value to a certain point makes sense. For a small business owner this helps them without penalizing them.

Weekly: We have struggled to determine the cap. Staff has talked with the industry and we think $90,000 would work and $70,000 would work.

Howard: We need to look at a formula on a cap that is fair to the industry, but it needs to be a deterrent. We don't want it to be the first option. Staff needs to be able to adjust as need be and not come back in three years to change the number. Can you help me understand the hybrid, it is confusing?

Weekly: The $90,000 is calculated data from County GIS, which is the average ETJ excluding the Center City.

Howard: Where do you get that? How do you make that prediction?

Weekly: We check with the GIS analysis.

Howard: What is the criteria? All land outside the Center City, how is that determined?

Johnson: Center City is basically defined as the area inside I-277.

Howard: The manipulation of data would make me mad if that wasn't defined.

Blackwell: Regarding the fee, there is a model permit fee that is included each year in the fee model presented to Council. It is a complicated process, but Council sees it every year.

Carter: I concur that transit oriented development should be exempt.

Johnson: Within I-277.

Carter: Would that be brought back to Council or the Environment Committee?

Burch: I'm not sure the question.

Carter: The fees, reviewing the workings every six months, does that come back to this Committee or the entire Council?

Burch: The full Council. It could be an information report that gets referred back to Committee, but the annual fee model is part of the budget process.

Peacock: Ms. Burch, I expressed in a voice mail to you some of the stakeholders concerns that have been expressed about where did payment in lieu come from? We saw how few people use it. Why again are we looking at payment in lieu?

Weekly: The purpose was in revising the ordinance to provide flexibility and options. It won't be a good solution for everyone, but for some it could be their best option.

Porter: It is a tool that is used with PCCO now. It is consistent in that it is already adopted. For a few it is a good option, but it will not be used a lot.

Roti: It is something that is used nationwide. We wanted to have the best guidelines and there is a good mix with payment in lieu and offsite mitigation to preserve trees.

Howard: Mr. Blackwell was helping me by discussing the part about the fees but even those need to be based on something predictable. How can we make it predictable, by leaving all the inner loop?

Blackwell: By geography.

Howard: And, then average land cost?

Weekly: There is an excel spreadsheet with all the formulas, the GIS averages, acreage, tax value, it does the math.

Howard: How?

Weekly: If you look at the top box in the last row, it shows the average tax value, so if the tax value is $21 billion divided by the total acreage of 240,000 that comes to roughly $89,000/acre. It's the total tax value divided by the total acreage of land outside Center City but including the ETJ.

Blackwell: If you removed the buildings, it is land only improved and unimproved and plug that into the per acre cost.

Howard: The definition of downtown is within I-277. What is the $70,000 calculation?

Weekly: Basically, we were saying if the cost to acquire is $90,000/acre, the cost to plant trees would be $15,000/acre, which is 36 trees at $400/tree = approximately $15,000. Then, looking at tree preservation at 75% and planting at 25% you would have $90,000 x 75% + $15,000 x 25% = $71,250.

Dulin: Did you consider $50,000?

Howard: This is just a number grabbed in time. They are trying to find a way to get a number in there so they don't have to come back to us. If you are developing something on West Boulevard, it could be valued less than $50,000, so the most they would pay would be $7,500. It should be the tax value up to a cap.

Dulin: Obviously some of the stakeholders here are developers, but there are some small time developers who will be hearing about this the first time when we stick them with the tree ordinance.

Peacock: But, remember this is just one of the tools, not an edict. We aren't forcing them to do payment in lieu.

Dulin: Look at the strip center on Parkwood and the mom and pops around Belmont and Siegle Avenue; I just want us to be cognizant of them.

Carter: The staff recommendation is then $90,000 cap per acre payment in lieu?

Weekly: We said $70,000 to $90,000.

Carter: I would make a motion for that to include the average land cost with the definition about Center City being within I-277.

Howard: Second.

Dulin: I'd like to make a substitute motion that we talk about $50,000.

Howard: $70,000 makes me uncomfortable. I understand trying to get at a happy medium. But, we are talking about planting trees today with a number that can go up or down. I like the average land cost because that is predictable. That is important. It is what you don't know that bugs you. There is a third option that I hope is not grabbed. First, this needs to be significant and fair. We want to keep trees. It is better than $50,000 because for smaller developments $50,000 could deter them from developing in places where this equates to $7 or $8/sq. ft. That is hard on small developments. $50,000 as the number of the floor is unfair. I like the predicable average of land cost.

Dulin: Could we compromise on $70,000?

Howard: The average land cost could go down.

Peacock: Could we compromise on a $70,000 cap?

Carter: I agree with Council member Howard.

Peacock: I think these are all predicable.

Howard: No, because I am reading this as the average land cost today.

Burch: By average land cost, you mean tax value?

Howard: Yes, that's what I mean, minus uptown.

Carter: The tax value as calculated annually?

Dulin: I like the $70,000 cap that keeps costs down and keeps options open.

Carter: But, these are real trees.

Dulin: And, real borrowed money.

Carter: Could we vote on this separately? Can we recommend passing the tree ordinance minus the payment in lieu and explain the debate?

Burch: I think it would be helpful to have some indication of preference. It's kind of like passing a hot potato.

Peacock: Can we pass a 2-2 vote?

Burch: If that's how you come out on the payment in lieu piece and move on the other.

Carter: I think we agree on everything that has been presented except payment in lieu and have had a logical debate.

Howard: Heaven forbid the economy gets worse and land falls below $70,000. In that case, the number doesn't change. If you tie it to a formula versus a number, it's the average land cost minus downtown and dipped in a hard cap of $70,000. It should be tied to a formula and not a number. We are just grabbing a number in time.

Dulin: That's the same for all.

Howard: Not if you use the average land cost.

Dulin: I appreciate your comments, but I am not comfortable and can't support $90,000. It's another tax and option, and I'm not comfortable.

Porter: If you use the formula and then attach a percentage that is valuable. 75% to 80% of that number is $70,000 today. That's a way to do it.

Peacock: So, the tax value at 75%?

Howard: Staff showed the bottom number at $70,000, if you have 75% average land that is still predictable.

Blackwell: We looked at $70,000 and $90,000 with a six month report out. If you are looking at $3,000/acre 13 versus 10 is not going to make or break a development. Our two goals are to hit 15% and not have people buying out. In six months we can report out and see whichever number we have if that's achieving those goals.

Howard: 85% of the average tax value is $75,650 today.

I would make a motion for payment in lieu with a cap at 90% of the average tax value of land in Charlotte including the ETJ and excluding downtown as defined as within I-277.

That will equate to $75,000 to $80,000 per acre today.

Carter: Second.

Motion passes 3-1 (Howard, Carter, Peacock – for; Dulin – against)

Peacock: Please let the minutes reflect there was enormous debate on this one aspect of the grid. I would like to thank the stakeholders again. I would also like to remind folks that in the June 21 write-up, it was indicated that our tree canopy is above the range; we are not yet in the danger zone.

Burch: We also need to talk about the mixed piece and proximity piece.

Howard: It leaves flexibility.

Burch: It will be defined in the guidelines.

Howard: I will move that it be sufficient to fund tree preservation off-site, but in nearby vicinity to be defined in the guidelines.

Carter: Second.

Motion passes unanimously (Howard, Carter, Peacock and Dulin – for)

Burch: And, on the mixed piece?

Howard: Do you need a motion on the whole tree ordinance?

Burch: Yes.

Carter: On the mixed piece, did we say 75% and 25%?

Howard: I'd like to leave the flexibility.

Peacock: I think those were just examples, not recommendations.

Weekly: It is not a strict requirement.

Burch: So, if I've understood, you would like us to report and monitor use of the payment in lieu every six months and let you know if we see any trends and then perhaps tweak the percentage targets.

Peacock: I would like to get to a time when we have too many trees.

Howard: I will motion to move this forward.

Carter: Second.

Motion passes unanimously (Howard, Carter, Peacock, Dulin – for)

Burch: This will now be scheduled for a dinner briefing on July 26 at 5:00 p.m. and that same evening you will be asked to set a public hearing. The public hearing would then be August 23.

Next Meeting

Monday, August 23 at 1:45 p.m. in Room 280

Meeting Adjourned

Environment Committee

Friday, June 25 at 12:00 noon
Charlotte-Mecklenburg Government Center
Room 280

Committee Members:	Edwin Peacock, Chair Nancy Carter, Vice Chair Andy Dulin David Howard
Staff Resources:	Julie Burch

AGENDA

I. <u>Proposed Revisions to the Tree Ordinance</u>

Staff Resources: David Weekly and Tom Johnson, Engineering and Property Management

Staff will present additional information and clarification about the options related to the stakeholder non-consensus item of "payment-in-lieu." The Committee is asked to make a recommendation about the proposed ordinance revisions for Council review and approval.

Additional information will be sent by email tomorrow afternoon.

II. <u>Next Meeting</u>

Monday, August 23, 2010 at 1:45 p.m. in Room 280 *(City Attorney's evaluation is at 3:00 p.m.)*

Distribution:	Mayor/City Council Mac McCarley	Curt Walton, City Manager Stephanie Kelly	Leadership Team Environmental Cabinet

CHARLOTTE
ENGINEERING & PROPERTY MANAGEMENT

Environment Committee

Proposed Tree Ordinance Revisions

June 25, 2010

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Payment In Lieu - Purpose

To offer flexibility to the owner/developer by providing an additional option for complying with the 15% tree save requirement.

It is staff's strong preference that tree save occur on-site when it is feasible to do so; therefore, the intent is that the payment in lieu option be used only in cases in which sites are challenged to meet some or all of the tree save requirement.

Therefore, payment in lieu to be used as an exception and not a rule.

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Payment In Lieu - Definition

- Definition as agreed upon by Stakeholder Committee in 2007:

Payment in lieu – requirement of the developer to contribute to a city administered *tree preservation fund* a dollar amount equal to a percentage of the tax value of the land being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii)(3) or (iii)(2).

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Payment In Lieu – Tree Preservation Fund

Tree Preservation Fund is primarily for tree preservation (i.e. acquiring land and protecting existing tree canopy in perpetuity).

However, there may be certain cases where the payment in lieu funds could be used to plant trees off-site, but in close proximity to the site being developed.

Consideration for majority of the funds to be used for tree preservation because the ecosystem value is much greater than 2" caliper trees planted in rows.

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Payment in Lieu - Partners in the Tree Preservation Fund

Land Conservancies:

- Entities that oversee easements that remove development rights in perpetuity.
- Catawba Lands Conservancy, an existing local land conservancy, has identified areas that it would like to protect.
- Easements can be written to tailor to a given property owner's desired use.

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Payment in Lieu - Partners in the Tree Preservation Fund

Mecklenburg County Parks and Recreation

- Park and Rec would agree to take land donated to them if it met their needs.
- The Greenway network extends throughout the County and is incomplete.
- There is a large number of desired parcels that currently are unfunded.

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Payment in Lieu Tools

A conservation easement is a written legal agreement between a nonprofit organization or a governmental agency and a land owner, in which the land owner agrees to restrict future uses of a parcel of land such as removal of trees.

A deed restriction is a legal obligation imposed in a deed by the seller upon the buyer of land to do or not to do something. Such restrictions frequently "run with the land" and are enforceable on subsequent buyers of the property

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A Model Program

Conservation easements are common in rural areas, but not in urban areas.

Establishing these partnerships and conserving urban land is a new concept and an opportunity to establish an innovative program that could be a national model.

Dave Cable, Director of Catawba Land Conservancy, is here today to speak on this topic.

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Payment In Lieu - Definition

- Definition as agreed upon by Stakeholder Committee in 2007:

Payment in lieu – requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the *tax value* of the land being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii)(3) or (iii)(2).

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Payment In Lieu – Tax Value

In 2010 some members of the Stakeholder Committee questioned using tax value as the formula for basis of payment.

Other options were discussed…

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Payment In Lieu Options

Stakeholder options:

Option A

The requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the tax value of property being developed at the time of plan approval. (4 votes)

Option B

The requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the property being developed at the time of plan approval based on $40,000 - $50,000 per acre. (4 votes)

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Payment In Lieu Options

The Environment Committee requested consideration of Option A with a cap:

Option C (Option A with a cap):

The requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the tax value of property being developed, not to exceed the average tax value of land in Charlotte (including ETJ, excluding uptown).

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Payment In Lieu Options

There is one more option that has been mentioned in the talks between staff and the Environment Committee:

Option D:
Eliminate the payment in lieu as one of the options.

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Payment In Lieu Options

Summary of Options:

Option A: tax value

Option B: $40,000 - $50,000 per acre

Option C: tax value with a cap (avg. tax value of land - $90,000 or some other number agreed upon)

Option D: eliminate as an option

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Options for Payment In Lieu

- No cap – recommended by 4 members of the Stakeholder Committee and by City staff
- $90,000 - $100,000 range *(calculation to be provided at meeting)*
  -Based on County GIS calculation of average tax value of all land in the City plus ETJ minus uptown
- $70,000 *(calculation to be provided at meeting)*
  -Based on the understanding that payment in lieu would be used mainly for acquiring land and preserving trees, in some cases it could be used to plant trees.
- $40,000 - $50,000 range
  -Recommended by some members of Stakeholder Committee

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Payment in lieu Examples

For a one acre site with a tax value of $80,000; payment in lieu fee based on various formulas:

Tax Value	$80,000 x 15% = $12,000
Tax Value with a $90,0000/acre cap	Cap does not apply = $12,000
Tax Value with a $70,000/ acre cap	$70,000 x 15% = $10,500
$50,000/ acre	$50,000 x 15% = $7,500

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Payment in lieu Examples

For a one acre site with a tax value of $200,000; payment in lieu fee based on various formulas:

Tax Value	$200,000 x 15% = $30,000
Tax Value with a $90,0000/acre cap	$90,000 x 15% = $13,500
Tax Value with a $70,000/ acre cap	$70,000 x 15% = $10,500
$50,000/ acre	$50,000 x 15% = $7,500

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Payment in lieu Examples

For a one acre site with a tax value of $1,000,000; payment in lieu fee based on various formulas:

Tax Value	$1,000,000 x 15% = $150,000
Tax Value with a $90,0000/acre cap	$90,000 x 15% = $13,500
Tax Value with a $70,000/ acre cap	$70,000 x 15% = $10,500
$50,000/ acre	$50,000 x 15% = $7,500

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Payment in Lieu

Payment in Lieu Options	Cost per acre
$100K cap / acre	$15,000 / acre
$90K cap / acre	$13,500 / acre
$70K cap / acre	$10,500 / acre
$50K / acre	$7,500 / acre

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Payment in Lieu
Unintended Consequences

A payment in lieu formula set too low will:

- Incent the owner/developer to choose payment in lieu rather than preserve trees on site.
- Provide funds insufficient for adequate off-site tree preservation.
- Negatively impact Charlotte's tree canopy and efforts to maintain an established tree canopy goal.

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Payment In Lieu – Staff's Recommendation

Staff's recommendation is a payment in lieu based on tax value; however, staff can support a cap:

- If the cap is set at an appropriate level to avoid the unintended consequences. Staff believes that to be in the $70,000 - $90,000 range.
- With the understanding that staff will monitor the use of payment in lieu, provide 6 month reports, and request changes if there are negative consequences.

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Payment In Lieu – Revised Tree Ordinance

The payment in lieu option approved will be captured in the revised ordinance including:

- Definition
- Tree preservation fund methods including:
  - Acquiring land for tree preservation through partnerships; and
  - Tree planting opportunities
- The payment in lieu formula

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Payment In Lieu – Tree Ordinance Guidelines

The Tree Ordinance Guidelines are an existing document used to assist with the administration of the Charlotte Tree Ordinance.

Details of the administration of the approved payment in lieu option will be captured in the Tree Ordinance Guidelines.

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Payment In Lieu – Environment Committee Decision

Staff is requesting the Environment Committee to recommend a payment in lieu formula that will:

- Be sufficient to fund tree preservation off-site, but in the nearby vicinity;
- Be a significant enough number to not *incent* off-site preservation, but be used only for difficult and challenging sites; and
- Be considered a reasonable compromise for all parties.

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Proposed Tree Ordinance Environment Committee Decision

Staff is requesting Committee recommendation of all proposed changes to the Tree Ordinance for further consideration by the Council.

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Payment in lieu Examples

Site: #1
Size: 4.55 acres , 0.68 acres of required tree save
Tax Value: $ 1,984,900

Calculate the payment in lieu based on the various formulas:

Tax value per acre = $1,984,900 / 4.55 acres = $436,241 / acre > the caps below

1)	Tax Value	$1,984,900 x 15% =	$297,735
2)	Tax Value with a $90,0000/acre cap	$13,500/acre x 4.55 acres =	$ 61,455
3)	Tax Value with a $70,000/ acre cap	$10,500/acre x 4.55 acres =	$ 47,775
4)	$50,000/ acre	$7,500/acre x 4.55 acres =	$ 34,125

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Payment in lieu Examples

Site #2
Size: .601 acres / .09 acres of required tree save
Tax Value: $859,900

Calculate the payment in lieu based on the various formulas:

Tax value per acre = $859,900 / .601 acres = $1,429,284 / acre > the caps below

1)	Tax Value	$859,900 x 15% =	$128,985
2)	Tax Value with a $90,0000/acre cap	$13,500/acre x .601 acres =	$ 8,113
3)	Tax Value with a $70,000/ acre cap	$10,500/acre x .601 acres =	$ 6,310
4)	$50,000/ acre	$7,500/acre x .601 acres =	$ 4,507

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