

July 16, 2007

TO: All Members of Greenville County Council

From: Upstate Forever

Re: Draft Greenville County Tree Conservation Ordinance

We are pleased to submit our comments on the draft Tree Conservation Ordinance dated May 11, 2007.

At the outset, we want to express our deep appreciation to the Tree Advisory Committee for its hard work for almost two years, for listening and considering the views of many different people and organizations, and for submitting an outstanding report and set of recommendations to County Council. ***Notably, the Committee unanimously supports the enactment of a comprehensive tree conservation ordinance for Greenville County.***

We also want to thank you for establishing the Tree Advisory Committee and for your interest in this important subject. Of course, the most significant step remains to be taken—the enactment of an actual ordinance.

1. Application of Ordinance.

Section 4 obviously is a critical provision since it determines the scope of the ordinance. In the current draft, the requirement for a grading permit is the determinative factor, but it is unclear how this would work in practice. We suggest changing the provision to refer to issuance of the grading permit as the key event:

For purposes of this ordinance, “new development” is defined as any development for which a grading permit is required but not issued prior to the effective date of the ordinance.

The same change should be made in the definition of “new development.”

Basing jurisdiction on the grading permit means, of course, that the ordinance will not apply to timber management operations. We do not oppose exempting these operations from the ordinance, but at the same time we are concerned about the potential for abuse. There will be a powerful temptation to clear all trees from the site and claim that this is “timber management,” where the ultimate goal is to develop the site. To address this risk, the County Arborist should be given the authority to apply the ordinance to cases where there is clear and convincing evidence that the “timber management” operation is part of a plan to develop the site.

2. Tree Protection Plans.

The tree protection plan provision (Section 5) is confusing. First, several important terms relating to the plan need to be clarified. We suggest that “tree survey” be defined as the act of identifying and surveying trees on the site; that “survey plat” be defined as the map that contains the information from the tree survey and also shows all wetlands, water resources, and buffers (see our comment in paragraph 3(b) below); and that “tree protection plan” be defined as the document that incorporates the “tree survey,” identifies those trees on the site that will be preserved, and describes the methods that will be used to protect such trees during construction.

The second paragraph of Section 5 treats “specimen trees” and “heritage trees” differently. Specimen trees must be protected where feasible, but heritage trees are protected only through “more specimen tree site adjustments,” whatever that means. We recommend that both types of trees be treated equally, that is, “specimen trees” and “heritage trees” must be protected where feasible. This certainly appears to be the intent of the ordinance since the third paragraph of Section 5 states that the County Arborist has the responsibility to protect both types of trees.

The draft states that “feasibility” may include “having a landscape plan that replaces ‘specimen trees’ that must be removed to allow construction.” It is not clear what this means.

The draft states that “[t]rees saved by site modifications will receive additional credit during the development of final landscape plan.” This provision should be deleted. Otherwise, developers who present inadequate plans can be given credit for merely making the plan acceptable.

3. Buffer Requirements.

We applaud and strongly support the requirement to establish buffers around streams and wetlands in Greenville County. The draft, however, needs to be strengthened and clarified in several areas.

(a) Manmade Water Resources Should Not Be Exempt. The definition of “blue line stream” provides that “manmade watercourses” are not subject to the ordinance. This exemption should be removed. Greenville County has a substantial number of important lakes and ponds to which the buffer requirement should apply.

(b) The Ordinance Should Require Buffers Around “Wetlands,” Not “Jurisdictional Wetlands.” The draft has two definitions of “wetlands.” One refers to “Jurisdictional Wetlands,” as defined by the Clean Water Act. The other refers simply to “Wetlands.” We believe the ordinance should apply to the latter since it has a broader scope and is not subject to the current uncertainty and confusion associated with the definition of “jurisdictional wetlands” under the Clean Water Act.

(c) Wetlands, Water Resources and Buffer Areas Should Be Surveyed. The ordinance should require a survey to clearly identify all wetlands, water resources and buffers areas to be protected. Use of the USGS maps will not be sufficient since the ordinance applies to wetlands and water resources that are not necessarily shown on these maps. (The draft defines “blue line stream” with reference to the maps but applies not only to such streams but also to any “intermittent” and “perennial” stream and to wetlands). A survey should eliminate any confusion about exactly what areas at the site are to be protected and thus allow the County to properly enforce the ordinance.

(d) Credit Should Not Be Given For Trees In Protected Buffer Areas. Section 6(d) provides that “existing trees in ungraded buffers shall count in all project types toward the density requirements...” This provision should be deleted.

Buffers are areas of immense importance and should be protected, regardless of whether the County has a tree conservation ordinance. Trees in these buffers should not count toward meeting the ordinance’s density unit requirements. Otherwise, you could end up with a situation where there are no trees within the development itself except perhaps for a specimen or heritage tree or the two/four trees per residential lot. Such a result would contravene the ordinance’s intent to protect the County’s entire tree canopy, in addition to trees along watercourses.

(e) The Exemption for USACE and DHEC Permits Should Be Limited.

The draft currently states that “(b)uffers do not apply to steams for which developers secure impact permits from SCDHEC and/or the USACE.” The same exemption is provided for wetlands. This provision could be read to exempt an entire project from the buffer requirement, even though only a small portion is actually subject to the USACE and/or DHEC permits. For example, assume that the project has a half mile of frontage along the Reedy River but a permit is required for only a bridge across the river. It should be made clear that the exemption from the buffer requirement applies only to the specific area subject to the permitting jurisdiction of DHEC and/or USACE. We suggest the following language:

The buffer requirement shall not apply to the specific and limited portion of the development that is subject to the permit(s) issued by USACE and/or DHEC. Such portion shall be shown on the survey.

(f) Other.

- Section 6(b)(i) should allow the removal of invasive species.
- Section 6(f) should read: “Prior to any grading or clearing activities and the issuance of the grading permit, the applicant...”
- Section 6(g) should not require the County Arborist to “identify opportunities and incentives to save said trees.” This should be the responsibility of the developer.
- Section 6(h) should require the tree species to be shown on the plan.

4. Requirements Relating to Planted Trees.

We are concerned about the ordinance’s lack of specific requirements pertaining to new trees that are planted on a site. Appendix B lists many different species of trees, yet the Appendix is never mentioned in the text of the ordinance. Section 6(a) states that “[o]n-site tree planting is hereby encouraged,” but of course that means nothing from a regulatory standpoint. The only specific requirements are for trees planted in the buffers along the property lines and streets. At the very least the County Arborist should be given the authority to review and approve the tree planting plan for the entire site to ensure that high quality and diverse species are planted.

5. Tree Bank.

(a) Eligibility for Use of Bank. Section 7 should be revised to make it clear that as Section 6(j) states, the Tree Bank is truly a last resort. We suggest the following revision:

The Tree Bank can be used by the developer for meeting some or all of the density requirements of this Ordinance if the following conditions are met:

1. The developer shows that it is impossible or impracticable to meet all of the density requirements on site. The burden is on the developer to make such a showing; and
2. A variance allowing use of the Tree Bank is granted in writing by the Greenville County Planning Commission.

(b) Management of Tree Bank.

1. In Section 8(a), “could be” should be changed to “shall be” so that the Bank will in fact be an authorized 501(c)(3) tax exempt organization.
2. Section 8(a) states that the Tree Bank shall be a “non-profit to which contributions are tax deductible.” Under the Internal Revenue Code, where a developer is required by the ordinance to make a payment to the Tree Bank, that payment is clearly not a deductible “charitable contribution.” Thus, we recommend that the provision be changed to make it clear that only “charitable contributions” within the meaning of federal and state law are deductible.
3. The maximum number of Board members should be specified.
4. Insert “the County Arborist in accordance with the directives of” after “administered by” in Section 8(b).
5. Revise Section 8(c) as follows: “Tree Bank funds shall be distributed by the County Arborist based upon clearly defined criteria and methods established by the Board of Directors.”

6. In Section 8(d), strike “purchase trees to be planted” and insert “purchase, plant and maintain trees” in the first sentence. Also strike “for a minimum of 25 years”.

7. In Section 8(e), insert “and this would not be its natural condition” after “if such land is unforested” in the third sentence. Add the following after the third sentence: “The easement shall be held by the Greenville County Recreation Commission or by a qualified land trust organization in accordance with the Standards and Practices of the Land Trust Alliance.

6. Commercial, Retail and Institutional Projects.

(a) In Section 9(b), it should be made clear that the trees required under the parking lot landscaping standards ordinance do not count toward meeting the density requirements of the tree ordinance.

(b) Strike Section 9(i) since eligibility for the Tree Bank is already addressed in Section 7.

7. Residential Projects.

Strike Section 10(f) since eligibility for the Tree Bank is already addressed in Section 7.

8. Public Recreation Projects.

(a) The minimum density units per acre should be increased to 15 (the requirement for commercial/retail/institutional).

(b) Strike Section 11(j) since eligibility for the Tree Bank is already addressed in Section 7.

9. Industrial Projects.

(a) The minimum density units per acre should be increased to 15 (the requirement for commercial/retail/institutional).

(b) Strike Section 12(g) since eligibility for the Tree Bank is already addressed in Section 7.

10. County Arborist.

(a) The County Arborist should be a certified arborist. He or she can have other qualifications and experience, but certification as an arborist should be a minimum requirement.

This probably does not need to be included in the ordinance, but obviously the County Arborist will need a substantial support staff to properly administer and enforce the ordinance.

(b) Add “and enforce” after “administer” in the first sentence of Section 14.

(c) Change Section 14(6) to state: “Enforcing the ordinance”.

(d) Strike “any” in Section 14(8).

11. Enforcement.

Section 15 should explicitly authorize the County itself to issue “stop work” orders that require the developer, owner or other responsible party to immediately cease all work at a site or project if violations of the ordinance are found.

12. Appeals.

The third sentence relating to claims that can be raised on appeal is confusing and unnecessary and should be stricken. Also, the final sentence, which allows the Planning Commission to issue a variance waiving the requirements of the ordinance, is far too broad and should be deleted. Alternatively, the grounds for allowing a variance should be limited and carefully explained.

13. Other Comments.

(a) It is difficult to understand the specific planting, location and buffer requirements in Sections 9, 10, 11 and 12 of the ordinance. It would be helpful to include diagrams and drawings illustrating exactly how these requirements work.

(b) Sections 9 and 11 contain irrigation requirements, but strangely, no such requirements appear in Sections 10 and 12. In any event, we recommend that a basic *maintenance* requirement be included in all four sections. Maintenance includes, but is not limited to, irrigation. Irrigation is important but should be controlled. Often irrigation is not installed properly (e.g., sprays onto roads) and is not used wisely (e.g.,

waters in the wrong part of the day or when it is raining). After they are established, trees should not require heavy irrigation. In addition, tree planting areas should be designed to collect and retain stormwater runoff which will reduce irrigation needs.

(c) Several terms defined in Section 3 of the draft are not actually used in the text of the ordinance. These include Deciduous, Flood Plain, Historical Significance, Land Development Project, Non-Conforming Use, Public Utilities, and Ridgeline.

Thank you for your consideration of our comments. We are continuing to review the draft and may have additional comments, and we look forward to reviewing and commenting on revised drafts of the ordinance. We especially look forward to your enactment of a strong and effective tree conservation ordinance for Greenville County.

cc: All Members of the Tree Advisory Committee