

TREE PRESERVATION ORDINANCE – PRIVATE PROPERTY

SUMMARY HISTORICAL DATA

Response to Work Task 1: “Review the existing TPO along with the alternatives considered prior to adoption so as to better understand the balance sought by the 1998 Village Board to weigh the community benefit of tree preservation versus the individual property owners’ rights to proceed with development work on their own property.”

The Environmental Commission has reviewed documentation, provided by staff, regarding tree preservation in the Village of Glen Ellyn and offers a summary that highlights the development of our current tree preservation ordinance. The documentation reviewed dates back to October 26, 1995 and consisted of letters, meeting minutes, memos and changing stages of a proposed tree preservation ordinance. The Commission noted that the majority of the documentation provided discussed the legal ramifications of various proposed requirements of the ordinance.

Documentation revealed that during 1993, the Village Forrester observed the demise of many trees during an increase in construction. The first ordinance was subsequently developed and drafted in 1995. Review of this draft ordinance by staff, Village Counsel, and a hired consultant resulted in many revisions. During a Village Workshop on March 6, 1998 the draft ordinance was presented to the Village Board. Additional Village Workshops covered the review of this draft ordinance. The Ordinance was redrafted and submitted to the Village Board on October 26, 1998. Many of the requirements of the original private property ordinance by this time were removed. The Ordinance for private property was adopted on March 26, 2001.

Noted are meetings that offered opportunity for public input, the first of which took place on March 5, 1998. Attendees included staff, four contractors and one architect. It appears that the main concern expressed during this meeting was the burden that would be placed on the developer. A public meeting/Village Workshop was held on August 24, 1998. Of the twelve residents who spoke at this meeting, five were supportive of a Tree Preservation Ordinance, six spoke against its adoption and one didn’t specify allegiance. A second public meeting took place on October 26, 1998 after revisions to the previously submitted ordinance were made. At the second meeting, two developers and five residences spoke. Of the five residents, one spoke in favor of the less restrictive Tree Preservation Ordinance and four spoke against its adoption.

Observations offered by the Environmental Commission regarding the history and development of our current Tree Preservation Ordinance for Private Property follow:

1. During the process the Village Forester commented on the potential problems that would occur by removing certain provisions of the ordinance.
2. The issue of tree preservation may be more of a critical issue today than in 1995 because houses constructed today take over the entire buildable area on a lot. Houses built ten years ago were smaller than today.
3. It appeared that the needs of developers were given priority.
4. Stormwater issues related to the removal of trees were not discussed.
5. Village Board at the time of the Ordinance review was tentative about imposing more regulations on the residents evidenced in the split vote to adopt the current ordinance. Individual rights appeared to be a concern.
6. It did not appear that an education effort was planned for the community and developers.
7. Pollution issues were not discussed.

SUMMARY
CURRENT TREE PRESERVATION PRACTICES

Response to Work Task 2: “Review data collected by the staff regarding the removal of trees since the adoption of the TPO in 1998. Include in the review an evaluation of the success of the effort to balance all interests of the various stakeholders affected by the TPO.”

Village staff provided documentation to the Environmental Commission for the purpose of evaluating success of the effort to balance all interests of the various stakeholders affected by the TPO.

Tree Preservation Data (document dated October 14, 2005) was collected by staff and submitted to the Commission for review. The table was developed to inventory the number of Tree Preservation Plans that were reviewed for each year from 1999 to 2004. An average of 290 plans were reviewed each year for a total number of 1,454 plans recorded. The total number of trees identified on the Tree Preservation Plans (both protected and unprotected) is 16,797, of which 9,038 of the identified trees were voluntarily preserved (protected). Of the over 7,500 unprotected trees identified on the Tree Preservation Plans, 3,701 trees were scheduled to be removed. (Note: As of this date, over 20 trees listed at one property on St. Charles Road have not been removed) Unfortunately, this documentation does not indicate how many, of the 3,701 unprotected trees removed, were healthy. Staff provided data indicating how many trees were planted after trees were removed; the number of trees planted is recorded at 343.

During the summer of 2004 a review of the existing condition of the trees, that were voluntarily protected, was recorded. 142 protected trees on private property were identified as declining due to construction. This review does not offer data for trees that had been completely removed since construction.

The Commission’s understanding of the original intent of the 1998 ordinance was to educate instead of regulate. Comments from developers, residents and staff indicate that education is not taking place and all parties would welcome opportunity to learn about tree preservation.

The Commission’s review of the existing TPO data and its success is as follows:

1. There is not enough specific information to determine whether or not the 3,701 trees removed should have been considered a ‘protected tree’.
2. There is not enough information to determine if property owners voluntarily planted trees to replace the trees removed and whether or not these planted trees are surviving.
3. The survival rate of ‘protected’ trees on private property during construction is found to be inconclusive since no data currently exists that accounts for trees, identified as protected, that were completely removed.
4. The educational component of the TPO is lacking. The “Gems of Glen Ellyn”, published in 2005, is a starting point.

Response to Work Task 3: “Review TPO and the results related to their enforcement in other communities to determine if a measurable difference in the number of trees saved during development occurs. If a measurable difference exists, try to clarify what steps are taken in other communities that lead to the increase in the number of trees saved. This review should include an effort to understand any differences that exist between studied communities and the Village of Glen Ellyn.”

The Environmental Commission reviewed Tree Preservation Ordinances from across the country (a listing of materials reviewed is attached). The municipalities vary in population and geographic location, however, many details of tree preservation ordinances were consistent. The Commission found that follow-up tree preservation data typically is not collected. Some communities, such as Lake Forest, Illinois and Scottsdale, Arizona inspect the health of the trees up to one year after construction completion. Glencoe, Illinois randomly inspects properties up to three years. But these inspections do not respond to research that indicates that many trees will die 2 to 3 years after root or limb damage. This lack of information prevents the Commission from ascertaining the success of various tree preservation ordinances. The Commission, therefore, proceeded by reviewing various details of the tree preservation ordinances, implemented in other communities, and considered their compatibility with our community. The review revealed the following:

1. Notification of Tree Preservation Ordinance
 - a. Most municipalities inform property owners when a construction permit is applied for.
 - b. A qualified tree removal company is required to be hired for any land disturbance activity.
 - c. The property owner is informed when the property is purchased.
 - d. Newsletter sent to homeowner three times per year.
2. Trees to be preserved
 - a. Sizes varied from ‘6 inches diameter (DBH) & up’ to ‘25 inches diameter (DBH) & up’.
 - b. Specific species of any size to specific species with sizes above 8 inches diameter.
 - c. The Forester determines what trees are to be preserved based upon a set of criteria such as overall canopy, size of trees, species and health.
 - d. Removal of any portion of the tree canopy requires planting of trees that will provide equal canopy. The formula $\frac{ET}{S} = \text{Canopy \%}$ is used. (ET= Total canopy of existing trees in square feet & S = Total square footage of site.)
3. Permits for removal required
 - a. The majority of municipalities require a permit to remove a tree that met their criteria for trees to be preserved.
 - b. Some of the municipalities waive the requirement for a permit for certain situations such as diseased or hazardous trees or if fewer than two trees are to be cut down.
 - c. Some of the municipalities require authorization to remove the trees noted in 3.b.
4. Trees approved for removal
 - a. Municipalities report that 68% to 98% of tree removal occurs because of additions (building, deck, pool, etc.) to existing buildings
 - b. Municipalities that have a high percentage of tree removal occurrences due to teardowns appear to be in areas of rapid population growth.
5. Approved tree removal for trees that are considered preserved or protected
 - a. For every tree removed a tree must be replanted or a set dollar amount paid into a tree fund.

- b. A transplanted tree will not be considered a removed tree.
 - c. 25% of trees may be removed without replacement.
6. Maximum fines for removing trees without permit:
- a. \$102,000 per occurrence
 - b. \$1,000 per tree removed
 - c. \$750 per inch of tree removed
 - d. Fee three times that of original permit fee AND replace tree inch for inch.
7. Other miscellaneous provisions
- a. Four educational seminars per year are offered to public
 - b. Levels of priority (high, mid-level & low or 1, 2, &3) are required to be incorporated in the preservation plan.
 - c. Tree Registry is offered to residents for trees of rare species or extraordinary value. Staff approval required for pruning or removal.
 - d. Contractors must take a test about tree preservation and pass with 75% or above.
 - e. Removal of Grand Tree is prohibited.
 - f. A booklet with graphics that describe how a tree works and important details of tree care is available to contractors and homeowners. (Fayetteville, Arizona is an example).
 - g. Over a set size of construction project (square foot) activates tree preservation ordinance.
8. Number of Staff
- a. Private & Public property ordinances- Two to six full-time staff, including horticulturist, arborist, landscape architect, Forester
 - b. Public property ordinance only – consultants only to two full-time Foresters
9. Terminology encountered
- a. Tree Impact Activity (Glencoe, IL)
 - b. Removable Tree (Glencoe, IL)
 - c. Replacement Tree (Glencoe, IL)
 - d. Landmark Tree (Fayetteville, AR)
 - e. Prairie Tree
 - f. Significant Tree
 - g. Land Disturbance Activity
 - h. Grand Tree

In the Journal of Arboriculture, November 2001, details of active tree ordinance provisions in Illinois are outlined noting how many of the municipalities contain each provision. The majority of these municipalities contain provisions as follows:

- 1. Guidelines regulating penalty fines for ordinance noncompliance (63%)
- 2. Requirements for abatement of diseased trees (62%)
- 3. Guidelines regulating permits required for tree planting, maintenance, or removal (58%)
- 4. Authorization for public workers to enter private property for tree inspections, maintenance, or removal (57%)
- 5. Guidelines for enactment of municipal tree board (56%)

Response to Work Task 5-Part 1, Review of Current Ordinance: “Stakeholder input should be obtained by holding appropriate public meetings at which all interested parties in the TPO are offered the opportunity to present comments and critiques on the existing TPO and any proposed changes.”

Comments from Village Staff

1. Since the current ordinance is voluntary, it makes it difficult to enforce a Tree Preservation Ordinance throughout construction. The reluctance to designate trees as ‘preserved’ is increasing. Once a change occurs during construction, clear direction is not provided for either staff or the property owner as to steps to take to rectify the change. “...the Village is essentially requiring the preservation of trees while the tree preservation ordinance is a voluntary ordinance” Memorandum, dated December 9, 2004 for December 13, 2004 Village Board Workshop.
2. Trees are cut down prior to a development being approved or before a tree preservation plan is submitted.
3. Better qualifiers are needed to determine the trees that really should be preserved.
4. Trees designated to be preserved are not adequately protected during construction.
5. There is not enough time to educate each property owner as needed. There is confusion as to what is regulated.
6. A simplified tree care/preservation booklet would be helpful in educating property owners.
7. A ‘protected zone’ in lieu of a ‘protected tree’ should be considered.
8. Language is absent that gives staff power to control contractor such as requiring contractors to protect trees that *should* be preserved and protecting neighbors’ trees around perimeter of lot.
9. Different levels of tree preservation, which will have different levels of restrictions, could be a possible solution to different situations.

Comments from Developers

1. Education is not available to contractors. Developers who work and live in the community welcome more direction and education.
2. “Protected Tree” signs lacking at the construction site
3. Willing to work with staff and Commission to determine workability of ordinance
4. Different levels of tree protection may be a workable solution for Glen Ellyn
5. Contractors recommend a mediator, such as the Environmental Commission, if there is a difference of opinion between Village Forester and Developer on what trees to be preserved.
6. A more streamlined process between village departments would provide better communication.

Comments from Residents

1. Volunteer groups offer to work with the Village and provide manpower
2. Neighbors observe activities by contractors and neighbors that diminish the health of Glen Ellyn trees.
3. Some trees have historical value to Glen Ellyn and should be designated as such.
4. Trees are an asset to their property
5. Assurance is desired that their neighbors will also be encouraged to value their trees.
6. A monetary value (energy savings, better air quality/personal health, etc.) should be placed on trees for a better understanding.

Comments from Commissioners regarding input from stakeholders and current data provided by staff :

1. Based upon the review of information provided, it appeared that the original expectations were that every effort would be made to preserve trees during the planning and construction processes.
2. Data does not take into account the effects of a drought, which may be misinterpreted as damage due to construction activities and visa versa.
3. The potential problems related to the 'loopholes' as discussed in the historical documentation have since become problems, such as clear-cutting lots prior to application for a building permit.
4. Damage to tree roots during construction is becoming more evident. Photos of trees show that fences are being relocated for truck traffic and storage materials are placed around the base of the trees.

RESPONSE TO PROPOSED TREE PRESERVATION ORDINANCE MODIFICATIONS

Response to Work Task 4, Staff Comments: “Share possible alternatives for TPO modifications with staff requesting analysis of the impact the modifications would have on the development, inspection and permitting process.”

Village Directors and Officials reviewed the Commission’s TPO proposal in June and submitted a memo, dated June 20, 2006, to the Commission responding to the impact that modifications to the current ordinance would present. The highlights of this memo are as follows:

1. Staff was supportive of additional education on tree preservation. The Village Forester should offer seminars each year.
2. Staff saw merit in the voluntary landmarking of heritage trees and was supportive of this recommendation.
3. Staff agreed that more staff time would be required for enforcement activities and to process variance requests.
4. The Tree Preservation Permit Application could be more user-friendly
Three-year preservation deposits are acceptable, but re-inspections must identify problems after one or two years and at that time remedial action taken.

Response to Work Task 5-Part 2, Review of Proposed Ordinance: “Stakeholder input should be obtained by holding appropriate public meetings at which all interested parties in the TPO are offered the opportunity to present comments and critiques on the existing TPO and any proposed changes.”

On July 24, 2006, an Open House was offered to Glen Ellyn residents and other interested stakeholders to share the information that was gathered and reviewed by the Commission and to offer and view the recommendations that the Commission was preparing for the Village Board. Winfield representatives attended to collect our data and information to use in their TPO process. Commissioners were available at the Open House to answer questions, explain the proposal and receive comments and suggestions from attendees. Notice of the Open House was placed in the local newspapers, Village website and through communication with Glen Ellyn community groups.

The Open House was well attended and a number of helpful comments were made, both in favor and in opposition of the draft proposal. Not every attendee submitted a written comment, based upon the tally of 22 written comments received by August 4, 2006.

Some of the thirteen written comments in opposition to any TPO for private property were helpful in determining what information was not clear or detailed in our proposal. These (paraphrased) comments included:

1. A tree I planted years ago is now too close to my house and is affecting the structure. I should not need to be restricted from removing this tree. I shouldn’t be told that I can’t remove this tree.
2. I removed trees in my yard to redesign the landscaping with more appropriate sized trees for my yard. I want freedom to make these changes.
3. I removed diseased trees on my property. I shouldn’t have to bother with a permit to take care of these trees.
4. Why should I have to keep a nuisance tree on my property?
5. Our freedom is taken away from removing any trees on our property.

In addition to the above, many comments in favor of the Commission's draft proposal were received, both at the Open House and in writing. Some residents felt our proposal was not tough enough.

The Commission appreciates these comments, and as a result has added more detail into the TPO recommendation so that residents will have a better understanding of what is being asked of them.

GOALS AND RECOMMENDATIONS

Response to Work Task 6: “A written recommendation to the Village Board including suggested modifications or alternatives that may be considered in an effort to improve the effectiveness of the TPO (Tree Preservation Ordinance)”.

The Environmental Commission recommends to the Village Board the following revisions and additions to our current Tree Preservation Ordinance, adopted in 1998. The Commission has researched communities around the country and listened to comments from those who live and work in Glen Ellyn. We have learned from our research regarding the importance of individual rights as well as preserving our environment and the history of our community and have done our best to balance both.

Before the information collected was evaluated, the Commission determined that a goal must be set so that our purpose remained on track.

GLEN ELLYN’S TREE PRESERVATION ORDINANCE **GOAL**

To preserve the overall character of the Village through tree protection, preservation, and reforestation.

What our Tree Preservation Ordinance should do

- 1. Encourage action that will contribute to the beauty that Glen Ellyn’s trees offer.**
- 2. Preserve the Village forest by protecting an ecosystem that provides wildlife habitat and natural stormwater management.**
- 3. Allow citizens the opportunity to enjoy the environmental benefits of cooling and air pollution abatement from our tree canopy.**
- 4. Balance the interests of the community by protecting private property rights, considering economic, social, and aesthetic impacts to property owners, developers, and residents living adjacent to property developments.**
- 5. Provide continuing education about the value of trees for the benefit of all of the Village's citizens and developers.**

ADMINISTRATIVE PROCEDURES:

The Environmental Commission recommends to the Village Board, in addition to an amendment to our current Tree Preservation Ordinance, the following programs and materials to be included into administrative procedures:

1. **Educational Classes**, at least two times per year, that offers Tree Care information to Property Owners, Residents, Developers, Realtors, Business Owners and friends of Glen Ellyn. Classes will review procedures for tree care and maintenance during construction, general health care of trees such as pruning, watering, latest on diseases to be aware of, etc. Residents interested in participating in this program are encouraged to volunteer.
2. Update **Tree Preservation Manual**, making information regarding tree preservation more user friendly, including posting on the Village website. Residents interested in participating in this program are encouraged to volunteer.
3. Increase professional **Staff Availability** to a minimum of 40 hours per week to oversee our tree preservation program, both public and private.
4. More defined **Inspection Procedures** during construction, such as providing a checklist related to trees protection procedures on inspector's regular checklist. Items could include Tree Preservation Plan located close to property entrance; fence is up & in proper location around trees, and/or trees in set-back not damaged. Warnings and then fines and Stop Work Orders should be included.

TREE PRESERVATION ORDINANCE RECOMMENDATIONS

The proposed amendment to our existing Tree Preservation Ordinance for Private Property would insert two levels of tree protection, 'Level 1' and 'Level 2', and label the existing preservation standards for private property as 'Level 3'. The possible insertion into existing ordinance may be outlined similar to the following:

'LEVEL 1' – most protected category. 'Heritage Tree'.

Commission Comments:

1. Different groups interested in tree preservation will have an opportunity to participate in a very significant way. Groups could work with the Environmental Commission to prepare registration document, contact property owners and collect data.
2. Addresses the issue of special trees in Glen Ellyn that affect our history.
3. May promote the idea of caring for trees that may someday meet the special 'Heritage' status.

This is a voluntary program similar to GE's house preservation program. Residents who have a tree of significance to Glen Ellyn by meeting specific requirements can register their tree with the Village of Glen Ellyn. As long as the tree remains healthy, 'heritage trees' cannot be cut down. Pruning must be done by a professional tree care expert. Tree preservation lasts for the life of the tree unless a variance is applied for and approved by the Board.

Outline of Level 1:

1. Initial stage – The Citizen's for Glen Ellyn Preservation group could participate by encouraging residents who may have significant trees to apply and help fill out form.
2. Initial stage – The Eagle Scouts could participate by coordinating the information collected from No. 1 and other submissions, work with an arborist to weed out trees that will not meet criteria.
3. A signature from a registered arborist certifying that trees meet age and/or special historical significance would be submitted to Environmental Commission for review and then to forwarded to GE staff and Village Board.
4. Tree is added to Village registry and posted on Village Website.
5. The owner should record a document with the DuPage County Recorder of Deeds.
6. If Tree is damaged by acts of man, heavy penalty is applied, such as the full value of tree at time of damage.
7. Tree requirements may include:
 - a. Special history: Must be documented somewhere or certified by historian.
 - b. Age: at least 75 years old
 - c. Species: Native Species to Illinois.

'LEVEL 2' – mid-level category. This is the second most restricted category: Certain species of larger, healthy trees located in property set-backs are protected. However, owners are not prohibited from removing any tree for any reason provided the guidelines in the ordinance are followed. For example, if an owner chooses not to relocate or plant an appropriate replacement tree, the tree may be removed upon payment to the Village of a sum to be deposited in a fund for tree preservation and planting.

Commission Comments:

1. 'Community property' is addressed by protecting more trees. Neighbors are most affected by what is immediately next to their property or visible from the street.
2. 'Private Property Rights' are addressed. Owners can remove any trees that are not in set-back areas. In set-backs, only larger, healthy trees are protected more, but owners still have several options to remove such trees.
3. Since current data on our Village forest is not accurate, Level 2 will help to inventory our trees.
4. Set-backs provide a more clear line for identification.
5. Only larger trees are protected.
6. Trees located in the footprint of the building(s) are not affected by this level of protection and are placed in Level 3, unless the property Owner is requesting a variance to build in the set-back.
7. Throughout Glen Ellyn, it appears that the majority of the trees on private property in town are located in the set-backs of the property.
8. When residents, who oppose any TPO for private property, were asked why they would remove a tree on their property, the responses were usually for reasons that are outlined below as exemptions. Most Glen Ellyn residents indicated that they would only remove a tree for a just cause such as disease or safety issues. This ordinance is sensitive to these issues.

Outline of Level 2:

1. All healthy trees, with a DBH (Diameter at Breast Height, 54" above grade) of 8 inches or greater, located within the front yard, rear yard and side yard set-backs are protected from removal and must be protected during construction. "All trees" defined as any percentage of the tree trunk located within the set-back. The property owner may remove a Level 2 tree only upon meeting one of the following requirements and must receive written approval* by Village staff:
 - a. The tree removed is relocated on the same property.
 - b. The tree removed is replaced by a tree from an approved list (The same as approved list for parkway trees) with a minimum DBH of 4 inches at a location that meets acceptable arboricultural planting standards (to be described in updated Tree Preservation Manual).
 - c. If Village Staff determines one of the following: (i) that the tree is not healthy, the tree poses a threat to human life or may cause damage to existing structures, (ii) the species of tree is invasive (a list will be developed to identify invasive trees), or (iii) the tree is detrimental to one or more adjacent non-invasive trees.
 - d. If a., b., or c. above cannot be accomplished or met, \$1,000 per tree removed, with a cap range beginning at \$10,000 per application or project, shall be paid into a Tree Fund to be used for arboricultural improvements throughout the Village.
2. All trees, with a DBH of 8 inches or greater, removed from a set-back, without prior written approval of staff, should be considered protected, regardless of whether or not staff would have approved removal.
3. If a disagreement takes place between Village staff and the Property Owner on what trees must be protected, the property owner can meet with the Environmental Commission to review the case. Options for next step:
 - a. Commission agrees with staff and Owner declines further action.
 - b. Commission agrees with staff and Owner requests a variance that will be presented to the Board, with Commission's recommendation.

- c. Commission disagrees with staff and Owner is allowed to remove tree in question.

*Written approval – filling out an online form on the Village website or a hard copy of the form available from the building department. Village to sign form if approved and return copy to property owner.

‘**Level 3**’ – third-level category. Existing TPO.

Outline of level 3:

1. Trees located on a lot, excluding set-backs, are protected, unless the owner decides to identify trees as unprotected.

TPO DEPOSITS AND PENALTIES

The proposed amendment to our existing Tree Preservation Ordinance for Private Property would also cover Deposits and Fines.

Tree Preservation Deposits required for construction projects. Deposits to be held for three years after substantial completion of a construction project to verify that trees to be protected have not been removed or suffered due to construction damage. If a tree to be protected is destroyed or damaged during this three year period, then the owner must either (a) replace the tree from an approved list with a minimum DBH of 4 inches at a location which is acceptable in accordance with arboricultural practices or (b) \$1,000 per tree removed, with a cap of \$10,000 per application or project, shall be paid into a Tree Fund to be used for arboricultural improvements throughout the Village.

Penalties: Violations of the ordinance such as removal of a tree without written approval or removal of a protected tree result in a fine of \$1,000 per tree removed. In addition, the owner must either (a) replace the tree from an approved list with a minimum DBH of 4 inches at a location which is in accordance with arboricultural practices or (b) \$1,000 per tree removed, with a cap range beginning at \$10,000 per application or project, shall be paid into a Tree Fund to be used for arboricultural improvements throughout the Village. Village staff will have the authority to waive any penalty if a tree is removed without a permit due to emergency circumstances.

Other items to Consider:

Voluntary tree preservation and care education classes:

1. Input on when to schedule
2. How to advertise
3. What is the agenda

Tree Preservation Manual:

1. Work with community volunteers
2. What to include
3. Permission to use pieces of Fayetteville’s
4. Assign a volunteer produce drawings.