

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PARKS AND RECREATION

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September 24, 2009

Start: XX:XXam/pm

Recess: XX:XXam/pm

HELD AT: Council Chambers
City Hall

B E F O R E:

HELEN D. FOSTER
Chairperson

COUNCIL MEMBERS:

Helen Sears
Letitia James
Elizabeth Crowley

A P P E A R A N C E S (CONTINUED)

Fiona Watt
Assistant Commissioner
Forestry and Horticulture
NYC Department of Parks & Recreation

Michael Schnall
Director of Government Relations
NYC Department of Parks & Recreation

Robert Altman
Legislative Consultant
Queens and Bronx Building Association
Building Industry Association of New York

Michael Schafer
Island Engineering
Building Industry Association of New York

CHAIRPERSON FOSTER: Apologize--

SERGEANT-AT-ARMS: Quiet, please.

CHAIRPERSON FOSTER: --for being late, I decided to leave early to avoid the UN traffic and went the west side and so did everyone else, and then they're doing construction on 12th Avenue so two lanes are closed. So needless to say, it was a hot, funky mess. So I apologize.

I'm Council Member Helen Diane Foster, Chair of the Parks and Recreation Committee. We are having a hearing today on Intro 1047 dealing with trees and the replacement of trees.

Our first panel is Fiona Watt, Assistant Commissioner of Forestry and Horticulture and Michael Schnall, Director of Government Relations.

Thank you for waiting and you can get into your testimony. Good to see you both.

FIONA WATT: Good to see you, too. Good afternoon, Chair Foster and Members of the Committee. I am Fiona Watt, Assistant Commissioner--

CHAIRPERSON FOSTER: Oh, I'm sorry.

MS. WATT: --of forestry--

CHAIRPERSON FOSTER: You said Members of the committee, that would help. We've been joined by Council Member Helen Sears from Queens, Council Member Letitia James came and checked in, and we have the members to the committee, Patrick, Lyle, and Walter, and now start again. Thank you.

MS. WATT: Joining me is Michael Schnall, Director of Government Relations for Parks. On behalf of Mayor Bloomberg, First Deputy Mayor Harris and Parks Commissioner Adrian Benepe, thank you for allowing me to speak to you today on Intro number 1047.

I'd like to thank you and members of this committee for continually taking the lead to raise awareness of the need to protect New York City's tree canopy. New Yorkers love trees and as the stewards of over 600,000 street trees and 2 million park trees, we love them, too.

As you all know by now, Parks is going into its third year MillionTreesNYC where we're planting a million new trees on public and private property throughout the city over a 10-

year period. Along with our partners, our goal is to increase tree canopy across New York City and help New Yorkers understand the benefits of this large-scale tree planting effort. With the help of public private partnerships, stewardship by private citizens, and the support of our local elected leaders in identifying places to plant and educating constituents on the benefits of trees, we can green the city together. To-date we have planted 248,906 trees towards our one million tree goal. October begins tree planting season, as well as the second anniversary of the campaign. We look forward to further expanding both our tree planting and outreach efforts and adding to our base of committed volunteers.

In fact, this October 24th, in conjunction with It's My Park Day, we will hold our third large-scale volunteer tree planting effort by planting 20,000 trees in one day in parks across the city. And next month our seasonal street tree planting begins with 10,600 trees targeted for neighborhoods this fall all across the city.

With the support of the Mayor's

1
2 fund to Advance NYC, we have also launched a
3 Stewardship Corps to enlist key strategic
4 partners, as well as the Botanic Gardens in the
5 care and maintenance of our newly planted trees.
6 The Stewardship Corps will build participation and
7 young tree care and continue to educate all New
8 Yorkers about the importance of trees. We look
9 forward to your participation.

10 We always talk about the benefits
11 of trees and hearings about trees, so we've kept
12 it short, but we have to say a little bit about
13 what trees do for us. As stewards of nearly half
14 of the 5 million trees on public and private
15 property in New York City, we appreciate their
16 value and work hard to protect them. The air that
17 we breathe is improved by the presence of trees
18 when they absorb harmful chemicals such as carbon
19 dioxide and in turn give off oxygen. Trees also
20 trap airborne pollutant particulate matter by
21 filtering and trapping pollutants such as smoke,
22 dust, and ash, cleaning our air. They also reduce
23 storm water runoff by capturing water on their
24 leaves and trunk and absorbing water in their
25 roots. During the summer, trees block the sun and

cool our homes and streets; during the winter, they shield us from wind. By cooling the air, trees help to reduce energy use as well, thereby reducing the formation of ozone, which can exacerbate health problems in children and others with respiratory ailments.

Trees also define the character of a community, providing beauty, connecting people to nature, and adding tangible value to property. In 2007, the U.S. Forest Service analyzed New York City's street tree population and calculated that each year our street trees provide almost \$122 million in environmental benefits and additional property value. In air quality alone, street trees remove 272 tons of particulate matter from the air that we breathe.

Intro 1047 seeks to amend Section 18-107 of the Administrative Code. This section currently gives the Parks Department jurisdiction to regulate and permit tree removals by individuals, firms, and corporations. The amended bill adds city agencies to this section. While Parks certainly lauds the intent of this bill to protect trees, we have five concerns with the bill

as written.

First, our jurisdiction to regulate street trees is established in the New York City charter and the Admin Code. Second, city agencies regularly seek tree removal permits from Parks during construction projects on lands under our jurisdiction. Third, the bill actually appears to propose a confusing standard for tree removal. Fourth, this bill adds a bonding requirement that duplicates bonding provisions already included in city construction contracts. And, lastly, there are issues of timing with the bill. So I'd like to discuss these five points with the committee.

Half of the city's tree canopy is growing on streets and highways or on parkland. Most of these trees fall under the jurisdiction of our agency, which controls all trees growing in the public right-of-way and on land under the jurisdiction of Parks. The other half of the tree canopy in New York City is growing on privately owned land, which are not subject to any regulatory or administrative controls. First, Parks has jurisdiction over trees generally as outlined in the City Charter in Chapter 21,

1 Section 533. In Subsection A4, Parks has the
2 power to, and I quote, "plant and maintain trees"
3 Along with Subsection A11 where Parks has the
4 power to plan, plant, and maintain trees and other
5 plantings. Additionally, the Charter is explicit
6 in saying in Subsection A9, romanette II, and I
7 won't read you the whole quote, this is our famous
8 arborcide law and you guys have heard it before
9 and you can read it in the testimony. It allows
10 us to punish people who wantonly destroy trees
11 under our jurisdiction, both civil punishment and
12 criminal penalties.
13

14 Now also under the rules of the
15 City of New York, Title 56, Chapter 1, Section 1-
16 04, we establish a jurisdiction as well, and I
17 quote, "destruction or abuse of trees, plants,
18 flowers, shrubs, and grass, no person shall
19 deface, write upon, injure, sever, mutilate, kill,
20 or remove from the ground any tree under the
21 jurisdiction of the Department without the
22 permission of the Commissioner. No person shall
23 deface, write upon, sever, mutilate, kill, or
24 remove from the ground any plants, flowers, shrubs
25 or other vegetation under the jurisdiction of the

Department without the permission of the Commissioner." I admire the drafter for finding so many creative words to describe destroy. In the Administrative Code, the agency's ability to protect street trees is restated in section 18 104 where it provides that the plant and care, and cultivation of all trees and other forms of vegetation in streets shall be under the exclusive jurisdiction of the Commissioner, except as defined in certain cases under Section 18 105. Clearly, Parks has jurisdiction over trees and parks and on the streets, and the penalty for the unlawful cutting, removal, or destruction of a tree can be both criminal and civil.

With such authority already conferred under the Charter, the Admin Code, and our Rules, we believe the proposed amendments Intro 1047 are unnecessary.

In all circumstances where a city agency is planning a construction project on property under the jurisdiction of Parks, that agency will seek tree removal permits from Parks. Parks will evaluate the request and, using our tree of appraisal methodology, which I will

discuss shortly, Parks will grant that permit along with a mandated cost and replacement figure for remediation. City agencies do not remove our trees without permits. They just don't.

We believe that the amendments proposed in Intro 1047 could actually weaken the currently implemented tree replacement requirements used by Parks. Parks is keenly aware of the benefits of trees and applies a professionally recognized replacement standard when evaluating tree removal requests from city agencies, individuals, firms, or corporations. Tree replacement requirements are based on the appraisal, which is the monetized value of a tree. Neither the existing code nor the proposed language alters our ability to enforce a strong tree replacement policy guided by professionally recognized standards. In fact, the proposed language seems conflicted and could lead to confusion as to what was intended--a caliper standard, a stem standard, or a combination of both.

Now Intro 1047 also needlessly attempts to levy a bonding requirements on city

agencies when they seek to remove trees on property under our jurisdiction. As stated earlier, when a city agency contracts to do construction work, their contractor will post a bond for that project. Included in that bond will be the value of the tree replacement as established by Parks when granting the tree removal permit. And already established under Section 18 107 of the Admin Code is the requirement that bonds be required of individuals, firms, and corporations who apply to Parks for a tree removal permit. So the double bonding of a project is not necessary since the protection of a bond is already secured through the construction process.

Lastly, there are some technical issues raised by Intro 1047 that should be addressed, states that instead of tree replacement occurring 30 days after completion of construction, replacement shall occur 30 days after removal. This requirement could be construed to mandate replacement before construction is complete or even during a non-planting season. In either instance, the

viability of replacement trees would be seriously impaired and the purpose of the legislation would certainly be undermined. Further, an effective date 90 days after enactment would not be feasible in light of the fact that the legislation contemplates new rulemaking by Parks.

In conclusion, the Parks Department is committed to preserving and increasing our urban forest, both by protecting and growing the trees under our direct jurisdiction, as well as by working with partners through a MillionTreesNYC to increase canopy on private lands throughout the city. We agree with the Council that protecting trees under our jurisdiction is essential to keeping our city clean, green, and sustainable and look forward to working with the Council to continue our work.

I would be happy to address any questions the Committee may have at this time.

CHAIRPERSON FOSTER: Thank you. Let me work backwards, tell me situations where trees are removed, other than construction. Or are there situations where trees are removed, other than construction?

MS. WATT: By permit or in general?

CHAIRPERSON FOSTER: Let's do both.

MS. WATT: Okay, in general, we
remove trees that are dead--

CHAIRPERSON FOSTER: Right, okay.

MS. WATT: --that are dying, that
may be structurally unsound, that are determined
to be a hazard on the streets, and we have a
removal program where we remove trees within 30
days of notification, if they are dead or warrant
removal--they could be infested with a disease or
a pest as well.

CHAIRPERSON FOSTER: And by permit?

MS. WATT: We always work to avoid
the removal of a tree. Construction projects,
often we have opportunities in the design phase to
think about placing infrastructure, driveways,
front door entrances, buildings in slightly
different configurations so as to allow for a
tree to remain and that is our goal. But there
are some instances where you just can not--the
tree and the construction project may just be
mutually exclusive and so it's those cases where
there's no other alternative and we've worked hard

to seek another alternative where we may issue a tree removal permit.

CHAIRPERSON FOSTER: Are there are times where that situation presents itself and it's determined that the value of the tree and it being in that location weighs more heavily than the construction?

MS. WATT: Well we apply the same valuation process no matter where a tree is. So does that answer your question?

CHAIRPERSON FOSTER: I don't know, I don't think so. What I'm asking, is there a time, if we find a location, and I'll give an example I always use, let's say Yankee Stadium and we have those trees that have been there for years. What is the criteria for weighing the value of quality of life with the community and these trees being there and the need for a new stadium by a private entity?

MS. WATT: So you're saying, would we choose the trees over some other--

CHAIRPERSON FOSTER: [Interposing]
Right, are there situations where the--

MS. WATT: --social good.

CHAIRPERSON FOSTER: --tree gets to live and the construction has to move?

MS. WATT: There are many cases where the construction is redesigned because--

CHAIRPERSON FOSTER: [Interposing]
To accommodate the tree.

MS. WATT: Absolutely, for trees within our jurisdiction, but the whole field of tree appraisal exists because there are socially recognized goods and benefits that compete with each other and so the field of plant appraisal exists so that if you do have to lose a tree or a plant, you can put back an appropriate and similar benefit somewhere else, so that you can still weigh the costs and the benefits of two social goods.

CHAIRPERSON FOSTER: And what's the standard currently used by the Parks Department in measuring the tree replacement? Is it appraisal of the tree, is it the caliper, is it the location itself, notwithstanding the appraisal or the caliper?

MS. WATT: It's a method that is outlined by a professional industry group called

the International Society of Arboriculture, which publishes like the book of all books for tree appraisal, I have one right here, Plant Appraisal. It's very expensive, it costs over \$100 for this little book, but in this guide, and it really is a guide, this industry group has outlined about 15 different methods that are commonly used both in this country and abroad and that are accepted methods that reasonable professionals might apply in cases of tree and plant appraisal. So we use pretty much the most universally applied standard, which is based on the trunk formula method and it is a series of objective, kind of professional criteria that you go through, that you evaluate the tree based on condition, based on the species, based on site criteria, where it's growing, and what type of a location it is growing in . So it's a nuanced formula that you have to really be a professional forester to calculate, but it's a very widely recognized methodology for tree appraisal.

CHAIRPERSON FOSTER: So in situations of construction and a tree has to be removed, is it you and your department who then

tells the contractor, the city agency, this is the amount of trees or this is the price of the tree, or is it your department that determines the replacement?

MS. WATT: Absolutely.

CHAIRPERSON FOSTER: And is it a methodology, I know you laid it out that it's widely recognized, but is it a methodology that is consistent from site to site and location to location, so that if the methodology that was used to determine how many trees needed to be replaced at Yankee Stadium, is that the same methodology that would be used for the trees that need to be replaced in, say, the construction of Boricua Village and College on 161st Street where trees had to be removed?

MS. WATT: Yes.

CHAIRPERSON FOSTER: So it's consistent across the board. How does the Parks Department work with the city agencies to make sure that they are, in fact, complying with the tree removal? So, while it may be private property development, it still would have to get permits from the Buildings Department and other

things that are city agencies, so are the regular conversations with the Parks Department that this construction is happening and the property itself may be private, but to get the concrete truck in you got to move this tree or cut down this tree or how does that work? Or are there situations like that?

MS. WATT: You may be referring to the permitting process through the Department of Buildings when the construction people who are seeking building permits have to seek that at Department of Buildings and we've been working very closely with the Department of Buildings to make sure that people who have where trees are going to be planted or where there are existing trees that they bring in Parks early enough in the process so we can have a really full of evaluation of what their construction plans are.

You're familiar, I think, with the new zoning regulations that came into place where people have to plant trees--

CHAIRPERSON FOSTER: Right.

MS. WATT: --as a result of new construction and so, through that process, and I

1 think this is a very beneficial outcome of that,
2 we have by necessity developed a much more close
3 working relationship with the Department of
4 Buildings. And, to be honest, it's facilitating
5 people who are seeking permits of the city to have
6 the two agencies working more closely together.
7

8 CHAIRPERSON FOSTER: And how is
9 that coming with the two agencies working more
10 closely together?

11 MS. WATT: We are very close to--
12 it's very helpful to us because Buildings needs to
13 spell this all out to people who are seeking
14 permits and they're very interested in
15 facilitating the transparency of that process. So
16 they've been working very, very closely with us to
17 make sure that what we'd like, which is for us to
18 get inserted earlier in the process, gets into
19 their documentation and they're very pleased with
20 that because they want to facilitate the process
21 on their end as well. So my answer is it's going
22 along very well.

23 CHAIRPERSON FOSTER: What are some
24 of the examples where a city agency would need to
25 remove a tree? Other than construction? Like,

are there situations where--I don't know, I can't think of one.

MS. WATT: I don't think so, I mean, we don't manage trees on other city properties, right? So there may be many circumstances where other agencies that are landowners--

CHAIRPERSON FOSTER: Right.

MS. WATT: --have various management decisions to make with trees growing on their property, but that doesn't fall within our activities.

CHAIRPERSON FOSTER: Within your jurisdiction of maintaining the tree.

MS. WATT: No, we are maintaining street trees--

CHAIRPERSON FOSTER: Right.

MS. WATT: --and trees on park land.

CHAIRPERSON FOSTER: Right.

MS. WATT: So other agencies don't seek permits from us, unless there are trees that impact our jurisdiction.

CHAIRPERSON FOSTER: Right, what is

the process, if you find that it's--okay let me withdraw that. How effective has the Parks Department been, or is the Parks Department, in catching people or catching whomever that cut down trees? Like is that a real issue?

MS. WATT: You may have been reading the papers recently about some very surprising arborcides of small trees in Queens.

CHAIRPERSON FOSTER: Yeah.

MS. WATT: And we're exceedingly disturbed by that, we don't know yet who the perpetrator is and we don't know if they're linked. We all can understand that not everybody in the world views trees as beneficial as we do and so there certainly have been some growing pains, both in our million tree campaign and really occasionally, just on a site by site basis through planting trees in front of people's homes. But clearly there's a dastardly kind of campaign out there to target innocent trees growing in public space and on our park land to cut those trees down at the base is really a horrible thing

CHAIRPERSON FOSTER: And we just don't know where that's coming from, like--

MS. WATT: Not yet, not yet.

CHAIRPERSON FOSTER: Were there situations prior, and I don't know if these are new trees, or we know with any part refurbishment or redevelopment, there's always scope and design and we meet with communities--well never mind. So how effective or is there, other than the latest issues in Queens where we're finding homeowners or people just cutting down trees arbitrarily because they don't want a tree there?

MS. WATT: It's a rare, but it happens and we have people call--we have the eyes and ears of the residents of New York calling 311 about this kind of thing all the time and we have a lawyer, an attorney at the Parks Department, who does nothing but go after insurance companies of people who damage trees. It's more common for trucks to hit trees--

CHAIRPERSON FOSTER: Right.

MS. WATT: --really than people to actually go and destroy a tree on purpose. It's much more common for--

CHAIRPERSON FOSTER: Accidental.

MS. WATT: --other people who are

doing their business to take trees for granted and inadvertently back into them or hit them.

CHAIRPERSON FOSTER: Right, and does the Parks Department apply its own standards to itself in terms of replacement and the standard that is universally recognized, and specifically I'm talking about the tree replacement with Yankee Stadium, separate and apart from our Million Trees and all that, but for all the trees that were cut down to build that stadium with the replacement in terms of where we are for park land and our turfs and stuff, are we tree for tree? Or will we be tree for tree?

MS. WATT: I think that Yankee Stadium calculation is actually a higher standard than what we've settled into in the last half decade, which is we used to just use the basal area replacement method, which is where you start for the trunk formula method that I was describing, but the ISA describes an approach where you then take deductions--if a tree is not in very good condition or if it's growing in a place that maybe it was never planted in or if it's negatively impacting a piece of

1
2 infrastructure like growing out of a bridge--so
3 you take deductions so you get to a lower place.
4 I'd have to check and I will check, but I think
5 Yankee had the basal proper. Now we've planted
6 3,665 trees as replacement for the 351 trees that
7 were removed so far for Yankee and we have
8 another--

9 CHAIRPERSON FOSTER: [Interposing]
10 And this is separate from the Million Tree.

11 MS. WATT: It's separate from
12 Million Trees, yes, we have another 2,000 trees--
13 well 1,918 going in this fall. We need to plans
14 8,356 trees, so we'll be more than 50% by the end
15 of this fall planting season on that project. But
16 of course, elsewhere we're planting, just this
17 fall, 10,000 street trees across the city, 20,000
18 a year and through our other programs, we've
19 planted thousands of trees in the Bronx and
20 actually over 1,500 trees in Morrisania and near
21 Yankee, so it's probably a higher density of tree
22 planting in that particular neighborhood over the
23 last four years and kind of projected into the
24 future as well.

25 CHAIRPERSON FOSTER: Do you have a

tree vendor, so that if we're looking to replace trees and, I would assume you get a deal, one tree might be \$10, but if you're getting 100,000 trees or a hundred trees, it's two dollars, so do you have tree vendors?

MS. WATT: Right, we do get a volume discount for our trees and we have a wonderful development in the tree planting program, again, thanks to Million Trees, when we looked at the volume of trees that we were going to need, we were able to develop a tree procurement contract that buys trees directly from nurseries, from the growers, and that's not how trees usually get acquired in construction projects, and in the past tree planting was no different. We'd hire the guy with a backhoe, the landscape installer who would then go buy the tree from the nursery, but now we directly contract for a tree procurement which allows us to have a long-term plan and actually to grow trees that five years from now we'll be planting in the street. So we have a steady supply, we have a higher quality of plants and we get to specify the species that we want to plant so that we can have

the diversity that we're looking for. So we don't have kind of the free market supply, which is growers guessing what people might want to plant five years from now and then we're stuck with whatever they have, we have a much more targeted acquisition program now for trees.

CHAIRPERSON FOSTER: Great, if I have to replace a tree and you quote me, this is the tree we need and its \$1,900, if I get you that same tree and I can get it for \$1,200 and it's my responsibility to pay for the replacement tree, can I get the \$1,200 tree?

MS. WATT: So you're referring to the requirement that people plant trees for construction.

CHAIRPERSON FOSTER: Right.

MS. WATT: And we have several options for people who need to satisfy that zoning requirement. One, they can get a permit from us and do it themselves, but you can only plant trees in the planting season, spring and fall. So what if your construction job is really finishing up in August and you want to get your Certificate of Occupancy from Buildings? You need to show either

that you have paid into the tree fund, the citywide price is \$1,900, that's an average of the cost, and then we'll plant the trees for you, or we have a new option now, which is that you can make that deposit into the tree fund and it's a temporary deposit. So we'll give you documentation that you can take to Buildings so that you are free and clear, but then you can choose to plant that tree yourself in the next tree planting season, so that would be the fall, and then you get your money back.

So, yes, if you think you can do it for less, as long as you follow our standards, because anyone can plant a tree for less, but it doesn't mean they plant it right and they plant it well.

CHAIRPERSON FOSTER: Got you.
Thank you. Council Member Sears.

COUNCIL MEMBER SEARS: Thank you, Madame Chair. My question--oh, there we go. I'm not sure quite how to phrase this question, but just bear with me. One, I think that we never have enough trees 'cause we're in Queens are big tree supporters. But in the 248,906 trees that

you've planted in your goal of a million, I don't know what the stump removal backlog is, but I think in our last meeting here with you before, it was about three years I think for stump removal, it used to be five, so I think it was coming down. So my question is that since there is a delay in removing the stumps and we are losing trees, certainly in my part of Queens we have and we have several stumps that are throughout the district actually. So How many of those trees, and I don't mean to put you on the spot, are replacements where that stump has been removed after four or five years and what are the new trees that are being planted? Because what I'm finding that the are being removed because of their own natural causes or they've gotten infections and stuff and the Parks Department comes and removes them and the branches are falling and then the stumps are there for about three years or four years, they used to be five. So I don't know in that number if the stump removal has occurred and you're replacing that tree that we've been waiting five years to have replaced, or is that number all new trees and are we not reaching those trees that

1
2 have been removed and should be replaced, in my
3 opinion, prior to the new trees?

4 MS. WATT: So the 248,000 trees is
5 a combination of street trees and saplings in our
6 forested areas through our reforestation program
7 in Parks. I'm going to reply for street trees,
8 I'm going to speak about street trees now, because
9 that's the population you're talking about. We've
10 been planting 20,000 or a little bit over street
11 trees a year and at least half or almost half of
12 those are in Queens, because Queens is such a
13 large borough. We are targeting those plantings
14 in the early year to neighborhoods that have the
15 fewest trees and the highest health asthma rates
16 among children. Nevertheless, we continue to
17 respond to individual requests and we plant
18 thousands of trees annually because people have
19 asked for them--one home here, one home there,
20 scattered across the borough. It always is a huge
21 shock when you lose a big tree and even putting
22 back a small tree doesn't come close to satisfying
23 that dimensional loss, that multidimensional loss.

24 When we replace trees, especially
25 in Queens that has so many trees lawns, we

wouldn't necessarily let the stump stop us from planting the tree because we might put the tree somewhere to the side in a different place in the tree lawn. Sometimes there's actual reasons for it, the tree was planted over a utility line and we actually can't plant a tree right there, but we do remove stumps if we plan to plant a tree right there.

And, as you mentioned, we have a stump removal program that is each year our ability to remove stumps changes according to funding levels, right now we have active stump contracts in every borough. So my answer is that we both remove stumps through our planting program, and I can get you those numbers if you want. We also have stump removal contracts and, if you have particular sites in mind, you and your constituents absolutely send them to us.

COUNCIL MEMBER SEARS: I will do that because I can certainly point out one avenue, Broadway in Queens, and I'm not really relating to such where there's hardly a tree on a massive stretch of roadway.

MS. WATT: Great, and you--

COUNCIL MEMBER SEARS: So I don't know how that has basically happened, but it needs attention.

MS. WATT: Well we'd like to investigate and I really thank the Council for helping us find wonderful locations for tree planting in their districts. So keep those suggestions coming.

COUNCIL MEMBER SEARS: Okay, and just a final note that in Queens there are 14 Community Boards and I think if you were to check with every one of them, the delay in stump removal--so I'm not so sure, and I understand what you're saying, but if your replacing trees that we have lost, I don't consider that a new tree, I don't consider that part of the one million goal, because communities have been waiting for that for four or five years. So I think it helps if the Community Boards, not necessarily having to go through our offices, but since they do that of what has been replacement and what is new, because I think then the picture might be a little different and maybe the Council might look at how they do their funding in terms of parks, because

there's a difference between the replacement of trees and the actual vision to plant new trees. Is that possible?

MS. WATT: Absolutely.

COUNCIL MEMBER SEARS: Oh, well that's good, you will be able to do that?

MS. WATT: Work with the--

COUNCIL MEMBER SEARS: Yes.

MS. WATT: --Community Boards--

COUNCIL MEMBER SEARS: Yes.

MS. WATT: Yes, and we do we share lists back and forth.

COUNCIL MEMBER SEARS: But do you keep a record of what's a replacement where the stump removal has had to happen?

MS. WATT: Oh, we know every site where we've done--

[Crosstalk]

COUNCIL MEMBER SEARS:

[Interposing] So then is it possible for you to clarify that information as to how it relates to the actual new trees, the saplings, and what has been replaced? Because I do think that there's a difference.

MS. WATT: You'd like to know how many trees were planted where stumps were.

COUNCIL MEMBER SEARS: Yes.

MS. WATT: We can get you that information.

COUNCIL MEMBER SEARS: I mean, I could give you the Community Boards for that, too. All right. Thank you very much.

MS. WATT: You're welcome.

COUNCIL MEMBER SEARS: Thank you, Madame Chair.

CHAIRPERSON FOSTER: Of course. Now just a couple of more questions. We know there is this industry standard for tree replacement and the method by which we decide what should be replaced. Is there somewhere in the Parks Department outside of the Charter that I can say, like I can look to the tree rule in terms of tree removal, tree replacement, so that there is consistency across the board?

That's number one, and number two, notwithstanding this universal approach, is there any jurisdiction out there that we know of that might be doing it better or every time we talk

1
2 about parks and things working well, we point to
3 Chicago, I don't know what Chicago does in terms
4 of tree replacement but, because something is the
5 universal standard doesn't necessarily mean it's
6 the best approach. Is this the case where, not
7 only is it universal, but it is also the best?

8 MS. WATT: Well I want to point out
9 it's not an industry-standard it's an industry
10 guideline and there are a number of different
11 guidelines, there isn't a hard and fast rule
12 anywhere except I think legislatively and in many
13 city codes that you say you put back a tree if you
14 take down a tree. And that's an area where New
15 York City far exceeds most other municipalities
16 large and small, because even for decades we've
17 recognized that that sort of an approach isn't
18 appropriate.

19 I think we would want to be careful
20 about legislating exact rules about what approach
21 to take because there is such an evolution in our
22 profession, like in any other profession, the
23 medical profession, you don't want to get yourself
24 locked into an approach that 5 or 10 years from
25 now might be viewed as very out of touch or out of

1
2 date and we have a stable, you know, that we are
3 professionals, forestry professionals, we have 30
4 or more foresters who think about these things and
5 we are charged with understanding our profession,
6 adapting to state-of-the-art approaches.

7 And I would say to any
8 municipality, be careful because you might lock
9 yourself into something that is hopelessly out of
10 date and inappropriate. One example I would give
11 is that in the last five years, scientists have
12 been focusing more on the value of trees and
13 quantifying the value of trees. There's forest
14 scientists both working for the U.S. Forest
15 Service and other academic institutions who are
16 really helping us understand what it is trees do
17 as biological organisms and how important they are
18 in the city, and now we can incorporate that
19 knowledge into the way that we appraise the value
20 of trees, and if we were locked in to a certain
21 standard we might not have been able to do that.

22 So I think there's always a balance
23 between kind of professional growth and
24 flexibility and what you would want to legislate.

25 CHAIRPERSON FOSTER: I hear, I

agree, I think that this is an ongoing discussion that we need to have in reference to Intro 1047 I think because as in anything there are rules and regulations and we do know that what is in fact implemented today may not be pertinent five years from now, but in order to make sure that the standard is set clear and that everybody is playing by the same rules, including city agencies, there may be some need to regulate it in a more structured manner. But we can have those conversations going forward as we tweak 1047.

So thank you both for testifying today and I look forward to continuing to work to see how we can come to a resolution with this Intro.

MS. WATT: Thank you very much.

CHAIRPERSON FOSTER: Of course, thank you. Our next panel is Robert Altman and Michael Schafer from the Building Industry Association of New York. [Pause] Thank you. You can get started when you're ready.

MALE VOICE: Thank you.

[Pause]

ROBERT ALTMAN: [Off mic] I am

Robert Altman--

CHAIRPERSON FOSTER: [Interposing]

If the light is off, the mic is the on.

MR. ALTMAN: There we go, thank you. Good afternoon, my name is Robert Altman, I am the legislative consultant to the Queens and Bronx Building Association and the Building Industry Association of New York City, two local chapters of the New York State Builders Association. I am joined today by Michael Schafer from Island Engineering, who is a member of the Building Industry Association and he will also be here to answer some questions for you.

We're here today to oppose Intro 1047. Our opposition is based on the fact that the Parks Department has not shown itself to be reasonable stewards of the course of tree replacement. Unfortunately, the current bill would give even more discretion to the Department discretion that is, we feel, undeserved.

As many of you know, there are times when builders must cut down a tree, a very common reason is because of the zoning regulations passed over the last few years there are

1 additional off street parking requirements
2 necessitating more curb cuts and driveways to
3 accommodate the off street parking. To preserve a
4 tree within such area, the builder would either
5 need a waiver from the off street parking
6 requirement, a waiver the Department of Buildings
7 is reluctant to give. Alternatively, the Parks
8 Department could waive the requirement of trees
9 replacement, something it never gives, thus, this
10 tree inevitably must be replaced with multiple
11 newer trees.
12

13 Under the law in this situation,
14 one lost tree is not replaced by a single tree.
15 Instead, current law calls for a minimum
16 replacement of the tree by a set of trees that are
17 approximately 3 inches in diameter. The minimum
18 amount of such trees is set by how many of these
19 three-inch trees fit within the diameter of the
20 cut tree, the caliper method. Parks used to
21 charge \$700 for each tree, which is about twice
22 what we pay and we could still handle this cost.
23 Alternatively, we could plant replacement trees,
24 but planting trees is only allowed during a narrow
25 planting season. If you want, or in the case of

1
2 Staten Island, need a permanent Certificate of
3 Occupancy and it is not the planting season and if
4 you want the C of O, you need to pay the fee.

5 Until a few years ago, the caliper
6 method with each tree costing \$700 was the
7 standard, but then the Parks Department began to
8 squeeze more money from the builders. Now the
9 Parks Department contends that it costs 1,900 to
10 replace a tree. This is shocking to us because
11 our cost is still \$3-\$500. We had thought \$700
12 per tree was exorbitant and mismanagement, so how
13 would you then define 1,900 per tree? Extortion?

14 Moreover, over the last few years,
15 the Department has begun to use the basal method.
16 This method states that the number of trees that
17 must replace the old tree is equal to the amount
18 of three-inch trees that can fit within the area
19 of the downed tree. Suddenly a tree that could be
20 replaced for \$6,000 was costing \$50,000 and more
21 to replace. Moreover, in discussions with the
22 Parks Department, the Commissioner indicated that
23 he thinks a tree might be worth even more, using
24 the figure of 120,000 in our last meeting with
25 him. Meanwhile estimates from the International

Society of Arborists suggests figures that are more within the \$5,000-\$15,000 range, which is a huge difference from the 120.

What I'm going to do is I brought it, I didn't expect to hand it out, but I do have a copy for the committee of a discussion written by some people from the University of Tennessee, I believe, on what planting trees are worth and it sort of discusses how this is done, which it might be useful to the Committee. In a sense, it's the way you measure the area of the tree. There are certain things where you give discounts. For example, if a tree is on a city street, you look at what its value was, you're only taking 60%--all of this was sort of discussed in Parks testimony, but, in essence, this paper gives you the methodology that exists for how you actually would determine how much a tree is worth. So it does A, B, C, D, E, F and that's how you determine the factors.

The current situation suffers from three problems. First, the Parks Department charges an unreasonable per tree price for the installation of a tree. When we can put in a tree

for \$300 and it costs Parks \$1,900, you know that something is not right and needs to be reviewed.

Second one, wood to build a single-family home is approximately \$16,000 and the Parks Department wants to charge \$120,000 for a single tree, you know the Department has lost all perspective on what a tree is worth.

Third, because the Parks Department has lost all perspective, there is no certainty in the process of valuation of a tree.

As builders, we are businessmen and we value reasonableness and certainty. The current process and the process reflected in this bill demonstrate neither reasonableness nor certainty. Moreover, builders are quite willing to replace trees on our own and those trees would come with a two planting season guarantee. To do so within 30 days is not reasonable. First, if that period is not in within the planting season, the Department will simply collect on the bond within 30 days and we know the Department does not value a tree correctly.

Second, even if it is within the planting season, the Parks Department most often

1
2 does not have a list where the trees can be
3 planted within the 30 day. There are reasonable
4 solutions to these matters, but as drafted, the
5 current legislation only offers the promise of
6 more abuse and mismanagement by the Parks
7 Department. The section needs to be amended so it
8 provides reasonableness and certainty, otherwise,
9 the Council is only giving carte blanche to an
10 agency that has not shown the ability to use it.

11 I also want to comment on a few
12 things that were stated. With respect to doing
13 legislation and locking anything in. Legislation,
14 as you know, is not something which is fixed in
15 stone. If there are things that change over time
16 where a methodology within a legislation is
17 perceived as being incorrect, the process can be
18 easily changed so that [off mic] amended and you
19 have a different methodology. So complaining
20 about any methodology, a reasonable methodology as
21 we see it now being locked in, I don't see that as
22 a problem because that's something where, again,
23 they can come back to the City Council, say this
24 is not the case, say that we have better methods
25 of valuation, and get the law amended if they're

being reasonable.

Second, we're not talking--here there was discussion about a program where we have to we're able to put in \$1,900 for a tree and we applaud that program by the Parks Department, that is not what we're discussing in this bill. There are two reasons why we have to plant trees. One is the new zoning regulation where we have to put trees on the site where we're doing construction. In that area, the Parks [off mic] Department has come up because we may have to plant 1, 2, 3, 4 trees maybe on a lot, and if it's not the planting season, they'll let us pay in \$1,900 per tree. We then go back, plant the tree on the site, and then get our money back. And any responsible builder should be able to put up that minimal amount of money to do it because it's not accumulating a large amount of trees here, you're talking about \$7,600, and if a builder can't afford that or is having problems doing that, probably should not be in the business of building.

But we're talking about here is there are street trees, trees that are under the jurisdiction of the Department when we start the

1 construction, we have to go for what is called a
2 builder's paver plan, so we have to show how this
3 property is going to be lined up. So it may be a
4 situation where there has to be a hydrant and
5 there has to be a tree on, let's say, a strip, a
6 grassy strip and then you had a driveway and
7 there's a tree in the driveway and we have to have
8 that driveway, we have to cut down that tree.
9 That's when we get to the unreasonable valuations
10 of trees. It's just gotten so that we almost feel
11 like the backs of the financing of the Million
12 Tree plan is being written on our ability to pay
13 for these cut down trees.

14 And sometimes we don't fight it.
15 If we're building an apartment building and a tree
16 is costing 50,000, we're building 50 units, we'll
17 take a \$1,000 per unit and throw that into the
18 cost of our construction and say that's the way it
19 is. But if I'm building a one or two floor--

20 CHAIRPERSON FOSTER: [Interposing]
21 Well let me ask you--

22 MR. ALTMAN: Yeah.

23 CHAIRPERSON FOSTER: --when you say
24 and a tree costs 50,000, is this back to the one
25

tree--

MR. ALTMAN: One tree.

CHAIRPERSON FOSTER: Okay.

MR. ALTMAN: If I have that one treat costing me \$50,000 that I have to replace so many trees, we'll amortize it over the cost of the 50 units. However, this is happening on one-family houses, two-family houses, and in a lot of respects, the Department's now going with these extremely high valuations and we bought the land awhile back and, frankly, all that's going to happen is we have to sit there, look at this and say, it's not us who's picking up the cost, we're not going to be picking up that cost, we're not sitting there and eating the \$50,000, we have to be able to pass that along to the homeowner. So what it's also done is just taking the cost of that home and skyrocketed it.

And also the other thing that what's happening in today's economy is we have much, much, much thinner margins than we used to have. So even if we are looking at a piece of property to build, and right now nothing is getting built in the city and we want to have

these construction jobs, we're looking at not building because if we see that there's a tree that's in the way, we're factoring in an exorbitant cost for that tree and we're saying the numbers don't work. Because \$50,000 on a single-family house basically wipes out our ability to do anything with it, unless we can get 50,000 more in the price and we're not getting that right now.

CHAIRPERSON FOSTER: Let me ask a few questions. Do you have independent--and I don't even know if this exists, but like an independent consultant that can tell you what the value of the tree should be?

[Off mic]

CHAIRPERSON FOSTER: Mr. Schafer, right?

MICHAEL SCHAFER: Yes. Madame Chairwoman, the Parks Department doesn't allow us to go outside and evaluate the tree. It's just a waste of time and effort on our part to have it evaluated by--

CHAIRPERSON FOSTER: [Interposing]
So whatever they tell you the tree is worth is what you have to go by.

MR. SHAFER: That's basically the end of the line, yes.

CHAIRPERSON FOSTER: And so if I tell you that I have \$120,000 tree, there's no way for you to independently say it really is worth 10,000.

MR. SHAFER: We could, but it holds no--

CHAIRPERSON FOSTER: [Interposing] Value or weight.

MR. SHAFER: --with the Parks Department. They've come up with their own evaluation and that's what they feel the tree is worth.

CHAIRPERSON FOSTER: The intent of the legislation, this is my legislation clearly is not to--I had no idea one tree could be worth \$120,000, so you know, if so, I'd find some way to keep the tree. What the intent is to make sure that we are doing replacements. Now let's just move the \$120,000, \$50,000, whatever, tree off the table for a minute. Is there a way in your business, in your industry to come in, evaluate, say, this tree is worth whatever, and know that if

I say we need the replacement tree of three trees or for trees and they have to be this type of tree and I give to you how it needs to be planted and the time within planting season to do it, is that something reasonable that can be done by the builders?

MR. SCHAFFER: I think it's something, yeah, that sounds along a standardized practice of doing business, now it's just kind of up in the air, however the forester feels on that particular day is how the tree is going to be evaluated and that's the cost of doing business.

CHAIRPERSON FOSTER: Is there a standard in other jurisdictions that you know of that currently works with the industry in replacing trees or adding new trees after building and after construction that is more in line with how you'd like to see things done?

MR. SCHAFFER: While the ISA standard, and Ms. Watt had touched on it, is an acceptable practice on our end, it's just what we've encountered thus far has not really been following the ISA standard, their numbers have been expanded and exorbitant and it's just an

unreasonable amount of money to begin with.

CHAIRPERSON FOSTER: We've been joined by Council Member Crowley from Queens.

So let me make sure I understand, the ISA standard as set out could work, but what you're encountering is not that standard being applied by the Parks Department.

MR. SCHAFFER: It's either a misuse or a misinterpretation.

MR. ALTMAN: I think if you also look at what we gave you today, I mean looking at this and looking at the tree here, it's evaluation of an 18-inch diameter tree of being--well, let's use 24, because that's a much larger tree. They value it at 21,750, but that's not the end of the valuation, they start with that, then you look at where the location of the tree is, and technically if it's within the 50 foot on a side street, 50 foot street measurement, which a street may not be 50 feet, it's usually only about 38 but in the first 6 feet of beyond the curb is actually part of the city street. In that situation, if you're on the city street, you're looking at 60% of that, which brings it down to 12, and then there

1 additional standards with the issues which come
2 back here with species, tree condition ratings,
3 which is discussed on page five which you get to
4 see how they percentagize that and then they get
5 to a certain valuation. So there are things here,
6 it seems not to be applied.
7

8 I'll be honest with you, with
9 respect to Queens, they do have every once in a
10 while some negotiation over what the tree is,
11 there is some argument that happens there,
12 basically because sometimes, ultimately, if you
13 wanted to fight this, if you wanted to fight this,
14 you'd have to first get your plans rejected, you'd
15 have to get the permit disapproved, you'd have to
16 have it appealed within the Department, you'd have
17 to get a final decision within the Department, and
18 then you have to go for an Article 78 proceeding.
19 So you'd have to go through all those proceedings
20 and then you'd have to go to a court proceeding.
21 It's a little bit of a threat if you want to sit
22 there and say I'm going to fight you all the way--

23 CHAIRPERSON FOSTER: Right.

24 MR. ALTMAN: --into court. It's a
25 minimal threat so sometimes the person who's

1
2 evaluating this will sit there and say okay, I'll
3 knock off X amount of thousands of dollars. It
4 happens once in awhile, really we're mostly stuck
5 with what is.

6 On Staten Island it's, mind you,
7 it's more of an issue. In Queens and the other
8 four boroughs, you can get a temporary Certificate
9 of Occupancy. Staten Island has a program where
10 you can only get a permanent Certificate of
11 Occupancy, that's all you can do in Staten Island.
12 So in a sense they're even more hard up because
13 they can't close on that house until this is done,
14 whereas Queens can go get, Bronx can go get and
15 Manhattan and such, Brooklyn can go get the TCO
16 and work on it that way, but here they have to get
17 it done, they have no choice out on Staten Island.

18 And this was not necessarily that
19 much of an issue even six years ago, but as the
20 zoning resolution changes, these off street
21 parking and you actually have that situation in
22 certain parts of the Bronx as well, where there
23 have been much more additional and stringent off
24 street parking requirements. So it's sort of like
25 we want our trees, we want our off street parking

as well, and we're also going to charge you an arm and a leg, so it does just add to this cost of construction. If you're doing an apartment building, it's not that bad; if you're doing a two-family house, it's problematic.

CHAIRPERSON FOSTER: Got you.
Thank you. Council Member, to the question?

COUNCIL MEMBER CROWLEY: No, not at this time.

CHAIRPERSON FOSTER: Thank you.
Thank you for coming to testify, it's what we need to hear in terms of, again, making the bill such, it is not the intent of myself who introduced it or any of the cosigners to have the building industry bear the brunt of trees. The issue is how we can create a standard by which you know what's expected of you beforehand and we will know values of trees and a tangible way of measuring it so that one tree isn't worth 120,000 and I don't know if that's unreasonable, I just don't have that type of tree background.

But going forward, as we work on this legislation, we will make sure that it's not a situation where type of fees are imposed where

there is no redress and it is having one industry bear the brunt of it. So thank you very much for testifying.

MR. ALTMAN: Thank you for inviting us and also we've met with Council staff--

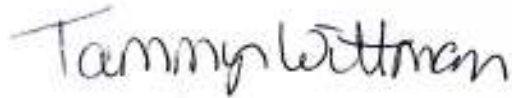
CHAIRPERSON FOSTER: Yes.

MR. ALTMAN: --and we so want to thank them as well, thank you.

CHAIRPERSON FOSTER: Thank you very much. There being no more--hold on. [Pause] There being no more testimony, this hearing is adjourned. We have received written testimony from New Yorkers for Parks for the record and did get regrets from New York Restoration Project. So thank you and we will continue tweaking 1047 until we get a bill that everybody can live with. Thank you very much.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in dark ink that reads "Tammy Wittman". The signature is written in a cursive style with a large initial 'T' and a long horizontal stroke at the end.

Signature _____

Date October 5, 2009