

To: Dublin City Council
From: Dana L. McDaniel
Date: April 25, 2019
Initiated By: Matt Earman, Director of Parks and Recreation
Re: Avery-Muirfield Landscape Buffer

Background

The Indian Run Meadows Planned Unit Development was approved by Council in 1978 (Ordinance 79-78) and, at the time, included almost 200 acres of land. In 1986 the site was rezoned to clarify public and commercial uses within the PUD (Ordinance 33-86). The development text on file is dated July, 27 1986. This development text includes a landscape buffer requirement for the development. The buffer extends nearly a mile just south of Valley Stream Drive to the northern edge of Scottish Corners Park, on both sides of Muirfield Drive. The landscape treatment is applicable to residential, institutional and commercial properties, and also includes landscaping standards for the Muirfield Drive median.

The Landscape Edge and Median Treatments prescribe and depict graphically an explicit quantity of deciduous, evergreen and ornamental trees as follows:

Edge Treatment - Plant Material (Per 300' of Planting Segment per Side)

7 Shade Trees	2" - 2 1/2" Caliper
15 Evergreen Trees	6' - 7' Height
6 Ornamentals	1 3/4" - 2" Caliper

Median Treatment - Plant Material (Per 300' of Planting Segment)

6 Shade Trees	2" - 2 1/2" Caliper
6 Evergreens	6' - 7' Height
3 Ornamentals	1 3/4" - 2" Caliper

Neither the development text nor any of the residential plats for Indian Run include language regarding the responsible party for maintenance and upkeep of this buffer. For the first 20+ years the trees and required mounding formed a dense vegetated buffer. Two of the most popular tree species available in the 1980s were Ash trees and Austrian pines, and these trees were used predominately in this buffer. Over the past several years, Ash and Austrian pine trees have been devastated by insect and disease pests, and declined in combination with age and urban stresses.

Due to the continual decline of evergreen species staff has, over time, replaced the majority of dead pines with a more salt tolerant deciduous or ornamental tree. To date, there are only a few evergreen trees remaining in the median. It is important to note that this alteration of species within the median is inconsistent with the treatment requirements noted above.

In 2015, an inventory of the edges of the buffer was completed and staff provided correspondence to property owners in January 2016 informing each of their unique landscape requirement and noted deficiencies. More than 60 residents were contacted regarding the landscape buffer and were encouraged to contact the city to discuss their respective options. A follow-up letter sent in the spring of 2016 went to residents with major violations, i.e. dead trees or large gaps in screening. Residents were instructed to remove dead trees by September and install trees in conformance to the requirement by November 2016. While some residents complied with the buffer requirements by planting new trees or shrubs, others neglected to comply or refuted the compliance responsibility. Please note that the responsibilities for the installation and maintenance of this buffer treatment vary greatly across the residential lots as some lots include close to 200 feet of width along Avery-Muirfield Drive while others include less than 50 feet. On average, the lot width is between 65 and 75 feet.

Based on the development text, the requirements for landscaping are specific about the number of trees per 300 linear feet; however, enforcement of the requirement for each parcel is interpreted differently by each landowner as the text does not specifically state the point at which the linear footage begins and ends. It is staff's interpretation of the text that the initial 300-foot leg begins at the southern end of the development on Avery-Muirfield Drive, just south of Valley Stream Drive, heading north. The attached map indicates the current inventory of trees, tree condition, proposed replacements and additional trees to supplement the existing landscape in order to achieve the desired buffer.

An updated inventory of the buffer was again conducted in spring of 2019 which includes the number of new trees that would be needed, not only to meet the standard, but to accomplish the intended or desired screening along the corridor. Based on this inventory, a total number of trees for the east and west sides of the corridor is approximately 184 trees for a total estimated cost of approximately \$92,000 at \$500 per tree. The attached map depicts the corridor, the 300 linear feet segments, tree condition indicator and locations of proposed new plantings (Appendix – Indian Run Meadows Corridor Tree Inventory Map.)

Discussion at the 2018 City Council Retreat included a desire for staff to explore options to add additional screening along the corridor, as the back of the private properties, including porches, play equipment and other structures are clearly visible from the roadway. Additional information was requested with the understanding that full implementation would require the permission of several residents to provide easements or otherwise allow for plantings on private properties, among other challenges.

To further address the complications to resolve this issue, and as part of City Council's policy discussion at the 2019 retreat, the general topic of "Tree Replacement on Private Property" was assigned to be discussed during an upcoming Council Work Session. Council further suggested that staff consider proposing a draft policy that is similar to the "Façade Grant Program" currently being used in Historic Dublin that would allow landowners to request plantings or funding for plantings in specifically identified corridors within the City. If approved, the Avery-Muirfield buffer zone would be considered a first priority if or when the program is implemented.

The City's legal counsel has reviewed the ability to use public funds for the purpose of enhancing private property. Provided that City Council passes an ordinance authorizing expenditure of public funds for installation of landscaping on private property, and determines that the general welfare of the City would be improved by the proposed landscaping, the City is able to use public funds for this purpose. Courts are deferential to cities in determination of what is a public purpose, and although some private landowners would benefit from the project, Council has the authority to make decisions about what benefits the City based on available evidence.

Additionally, if the City were to choose to conduct or contract the landscaping work the City would be required to obtain consent from the property owners involved, including rights of entry or easements to enter the properties and plant the trees or other screening vegetation. It would also be prudent for the City to obtain either an easement allowing the City to enter the private property to maintain the landscaping, or an agreement from the property owners that they will maintain the landscaping to a standard satisfactory to the City. In the absence of such arrangements, property owners could neglect the landscaping and allow it to die, rendering the City's efforts futile.

If the City were to choose to establish a monetary "reimbursement-type policy" for landowners as an incentive to enhance the buffer along their properties, easements to plant trees or other screening vegetation would not be required. Again, in the absence of arrangements with property owners to maintain the landscaping to a standard of satisfactory to the City could also render the City's efforts futile.

Given the background information, conditions as they exist today and the legal opinions that have been provided, staff recommends consideration of the following options:

Option I

Enforce the current landscape requirements per the development text and hold each landowner accountable for violations to the existing standards. As noted above, staff has prepared an inventory of trees and plantings that are deficient to the minimum standard that could be followed up by the City's Code Enforcement. This could be challenging due to the ambiguity of the development text standards and requirements, which could be contested to some degree if enforced to the fullest extent.

It is important to note that the landscape maintenance of the median throughout this corridor is the responsibility of the City. Currently, the inventory of trees and plantings (particularly evergreen trees) is deficient to the degree that by adding the required number would necessitate the removal of established deciduous and ornamental trees to achieve the standard. In addition, changes to the number of trees, size of trees, or species would be in violation of the approved development text. The City could sponsor an application to the Planning and Zoning Commission to review and approve a Minor Modification to the development text as part of an amended final development plan as noted below.

Option II

Establish a comprehensive preferred planting plan for the Indian Run Corridor's edge. Given that the buffer requirement is part of the development text for Indian Run Meadows, any deviation from the

existing development text standard would require review by the Planning and Zoning Commission to approve a Minor Modification as part of an amended final development plan. The City would need to sponsor such application.

If approved, staff could seek quotes from several landscape contractors for the entirety of the buffer zone enhancement project providing an itemized cost per parcel to implement the planting plan. Each owner would then have access to potentially discounted costs through voluminous pricing, which in turn could be executed by contract between the property owner and contractor. This would minimize any risk to the City, would require no public funds to implement and would provide the property owners with cost savings incentives to comply with the landscape standard.

Option III

Establish a landscape easement along the edge of the buffer, which would require each property owner to approve, giving the City the ability to plant and maintain the landscaping along the corridor.

More recent developments have achieved high quality buffering from roadways by requiring similar landscaped buffers on final plats with planting details approved at the final development plan stage. For example, lots in Ballantrae along Cosgray Road have a 50-foot landscape buffer with mounding and planting maintained by the HOA and Shannon Glen lots have a 45-foot Landscape Enhancement area along Avery Road also maintained by the HOA.

Through the establishment of a landscape easement along the buffer, a higher quality buffering could be established and maintained by the City similar to these more recent development successes. The challenge with this option would be to obtain easements from each property owner of the parcels. If unsuccessful in acquiring these easements in their entirety, future maintenance and enforcement of responsibility could be somewhat complex and confusing.

Funding for this option would come from the City's General Fund, including the reforestation funds generated by the payments in lieu of tree replacement (balance at year-end 2018 was \$458,834). Once those funds are expended, additional general fund dollars would need to be appropriated.

Option IV

In general, establish a new "Greenway Enhancement Program" similar to the Historic Dublin Economic Development Façade Grant Program by which specific landscape corridor enhancements and funding allocations could be determined eligible on an annual basis.

With the likelihood that the scope of each project would vary from one to the next, total eligible grant award amounts and limits could be pre-determined as part of the recommendation for each project. A Landscape Enhancement Program account could be established utilizing the reforestation funds (as noted above, to the extent available) or other general fund dollars with the intent to fund enhancements made on private property within designated corridors in highly visible areas (i.e.: City gateways, scenic roads, etc.)

Grant applications would be reviewed by staff based on detailed application submissions by eligible property owners to ensure the intent of the project is consistent with desired outcome(s.) Staff's

role could be to guide applicants through a review process, and provide recommendations for approval to the Community Development Committee. The Community Development Committee could then make its recommendations to City Council for final approval prior to implementation.

Suggested criteria for the Greenway Enhancement Program include:

- Property owner and/or tenants must be current on all municipal taxes, utility bills, City Codes
- Tenants must have written approval by the property owner(s)
- Routine repairs, maintenance, new construction and projects that commence prior to approval of the grant are not eligible unless the repairs represent major and comprehensive improvements that contribute to the overall scope and prescribed outcomes of the project
- Use of a qualified architect and/or recommendations by the City's Landscape Architect Manager is encouraged
- Design fees are not to exceed 10% of the total project costs
- Amounts granted will be compared with available funds
- Owner/tenant shall comply with all provisions of the Dublin Codified Ordinances
- Applicants must obtain all required permit approvals prior to project commencement
- Projects must be completed within 180 days of grant approval, or receive permission from the City for additional time
- All projects will be inspected by the City to determine compliance
- Perpetual maintenance responsibilities and associated liabilities will be assigned to each property owner to eliminate potential risk to the City

If the proposed "Landscape Enhancement Program" is preferred, a more comprehensive list of guidelines, criteria, application and review processes would be necessary to implement the program as per Council's direction.

Specific to the Avery-Muirfield buffer zone, this option could be considered as a project within the Greenway Enhancement Program with the following parameters established to guide the desired outcomes of the project:

- Each property along the buffer zone could be included in the program
- Minimal landscape enhancements would be determined for each property to include location, species of trees and number of trees required in order to be eligible for the program
- Any additional landscape improvements above and beyond the minimally required enhancements would be considered, subject to final approval
- City grants could be awarded on a percentage basis or in entirety for approved enhancements, to be paid by the City and/or property owner.

It is important to note that some of the current property owners have complied with the landscape requirements at their sole expense. Implementing any reimbursement or price discount program option may be considered unfair to those who already paid for enhancements that are now being partially subsidized or reduced costs being sought for other property owners.

Recommendation

Staff is seeking direction from City Council as to the preferred option noted above.



300-ft Sections of Muirfield Drive

Proposed Tree Commercial Tree Condition

- Proposed Tree
- Good
- Fair
- Poor
- Dead

