

Maryland National-Capital Building Industry Association

Overall Issues Concerning the DEP Forest Conservation Amendment

August 15, 2011

1. The proposal begins with what may be a fundamentally inaccurate assumption. The assumption is that the county is losing tree canopy due to development and that this is "serious." Tree canopy is likely increasing as we develop and replant retired farm land. This bill includes the notion that a tree canopy is determined by the canopy of a 20 year old tree if planted new. If we count trees using that metric, we are likely adding canopy in the county more than we are clearing canopy. What constitutes serious? How is that measured?
2. As to the notion of using canopy and forest cover as the measure of tree conservation and a fee schedule as mitigation, this is fundamentally unfair and unsound. There is no distinction concerning quality of the trees or forests, age of the trees or forest, location of the trees or forests and value of the trees or forests. By its very nature, the fee schedule results in excessive fees for heavily wooded sites without regard to "smart growth," zoning, the master plan, proximity to infrastructure or public benefit of the proposed use. While the bill establishes a fee for trees and forests based on the amount of trees or forests and the amount of disturbance and mitigates through replanting, the bill devalues any credit for replanting through landscaping and street trees on-site and only partially credits tree or forest planting on-site or off-site by the owner. Under this bill there are no credits for landscaping or street trees and no credit for any tree planting that does not constitute or is not part of a forest. Pay the fee, clear the site, walk away! More than likely, the replanting will occur in another part of the county. This adds nothing to the home site, the neighborhood or the community where the disturbance occurs.
3. The third fundamental problem concerns the confluence of conflicting public benefits that result in tree loss. New development must accommodate the public desire for infrastructure improvements, storm water management, sediment control, active parks, rights-of-way, sidewalks, trails, setbacks etc. We clear trees to meet government standards and then are to be penalized for meeting these very standards. This bill does not accommodate the requirements that builders and developers are required to meet for new community development and building.
4. The fourth fundamental problem is the assumption that new development can accommodate the additional costs imposed by this bill. Only the market can say for certain how much more it will spend for the same or similar opportunities in Montgomery County versus our competitive neighbors especially to the south. By raising the cost of developing properties with forests and trees, instead this bill will likely REDUCE the value of wooded properties until they reach a market value. This reduced value will be reflected in lower property taxes. This especially hurts the property owner who maintained forest or tree cover on their property. This will certainly encourage property owners to clear their property if they have any notion of selling their property in the near or distant future.
5. A fifth fundamental problem with the bill is that it severely and unfairly penalizes existing investments in land development and homebuilding. The bill takes affect after a builder or developer has already purchased a site and begun the approval process. Even if they have met or surpassed existing FCL, they are subject to this bill. This can and will hurt existing building and development at a time when our industry is already absorbing additional restraints, costs

and fees. It will especially hurt existing loans and investments and the viability of existing investments.

6. The sixth flaw with the bill is the assumption that this can be administered at low cost. Given the number of judgment points that are subject to appeal, it is likely that this bill will result in substantial administration, appeal and litigation. Judgments about where the line is drawn between forests and canopy, judgments about what is reasonable and what is possible, and especially, the impact of violations can seriously raise the stakes. Disagreements about any element of the bill will involve professional engineers, tree specialist and attorneys at minimum. In addition, administering a fund that may find and buy land will require expensive skill sets. If the County already had available land for replanting, the costs may be minimal, but it does not. To meet your requirements you will likely need to buy private land.
7. There is the presumption that builders and developers prefer to clear trees than save trees when in fact the opposite is true. A tree can represent a value to a home, office park, neighborhood or community and is saved when possible. In addition, it is very expensive to clear trees, especially mature trees in infill sites where the use of cranes and expensive equipment may be necessary. Builders can save money and add value by avoiding tree clearing. Even without laws requiring saving and planting, builders do have every incentive to save and plant trees and have been doing so.
8. Finally there is the presumption that the County can find appropriate sites for mitigation planting. Please provide a list of these sites and a plan for either acquiring the sites or planting the site. If sites are available, the industry would be buying the sites for development or for mitigation banks.
9. We may be changing the nature of some canopy cover in our urban areas when we clear mature trees and replace them with younger trees. However, that also fits well with the natural tree cycle. Trees live, grow old, and die. They are replaced by younger trees. That is the natural cycle. We probably reduce the threat of old trees falling during severe storms that weaken their root stability, blow them over or weigh them down. Dying trees can take a long time to die and be a danger to the community.
10. Most communities that today are considered mature wooded neighborhoods likely began as your basic cleared subdivision. Much of this County was likely converted farm land more than converted forest land. Even so, today, most mature communities have mature tree canopies due to planting by builders, developers and homeowners. Or through natural afforestation.
11. Under this bill, a builder or developer is subject both to the FCL and this bill. It is unclear which takes precedence and when? Does preparing a forest conservation plan exempt the canopy disturbance? Does an owner have a choice, FCP or canopy? Do we have to go through P&P for the forest conservation plan and DPS for tree canopy disturbance on the same property? If I buy a lot or multiple lots in a subdivision with an approved forest conservation plan, am I subject to the canopy disturbance requirements? What happens if the County or State wants to use property covered by a conservation easement?