MCPB
Item No. 12
Date: 05-30-13

Zoning Text Amendment No. 13-03 & Bill No. 13-13

Mark Symborski, Planner Coordinator, mark.symborski@montgomeryplanning.org, 301-495-4636
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Completed: 05/23/2013

Description

Currently, impervious area or surface is defined in the Montgomery County Code, Chapter 19, Erosion, Sediment Control, and Storm Water Management, Sec. 19-21. This definition does not prevent permeable pavements from receiving full credit under the County's Stormwater Management Regulations, but prevents permeable pavements from being credited towards imperviousness limited areas in the County. The stated intent of the legislation is to provide an additional incentive for using permeable pavement, but the unintended consequence will be additional impacts in sensitive watersheds.

Bill 13-13, Impervious Area – Calculation **(Attachment 1**), proposes to 1) define permeable pavement; 2) allow the substitution of permeable pavement for standard pavement to minimize impervious surface; 3) include a percentage of permeable pavement in the calculation of impervious area; and 4) generally amend the laws governing erosion, sediment control, and stormwater management, by amending the Montgomery County Code, Chapter 19, Erosion, Sediment Control, and Storm Water Management; Article II, Stormwater Management, Sections 19-21, and 19-22A; Article V, Water Quality Review in Special Protection Areas, Section 19-61; and adding Section 19-62A.

ZTA 13-03, Impervious Area – Calculation **(Attachment 2)** proposes to amend the Montgomery County Zoning Ordinance to 1) define impervious area and permeable pavement; and 2) regulate the calculation used to implement impervious surface area restrictions; by amending Chapter 59 of the Montgomery County Code: Division 59-A-2 Definitions and Interpretation; Section 59-A-2.1 Definitions; and by adding Division 59-C-18 Overlay Zones; and Section 59-C-18.5 Impervious Surface Area Limits.

Summary

Staff recommends denial of Bill 13-13 and ZTA 13-03 as introduced. The Bill and ZTA, as introduced, propose amendments to the County Code that would result in increased environmental impacts in the few limited areas of the County that have been recognized as needing the additional protection for high-quality, sensitive waters that is provided by imperviousness limits. A number of important factors support the staff recommendation including:

- The benefits of permeable pavement are currently recognized by the Stormwater Manual and County regulations, and receive appropriate credit.

- An appropriate incentive for permeable pavement already exists under ESD. The proposed legislation would provide an additional incentive at the cost of increasing environmental impacts to sensitive areas.
- Minimizing impervious cover under Environmental Site Design (ESD) is not the same as achieving the imperviousness limits set in master plans or overlay zones. As part of ESD, minimizing imperviousness does not limit the imperviousness that can result from development that is consistent with current zoning or allowed by special exception.
- Because MDE does not deal with zoning and land use, it does not address imperviousness limits. But MDE recognizes imperviousness limits as an important tool that local jurisdictions should combine with ESD to provide additional needed protection for sensitive waters.
- Imperviousness limits provide benefits beyond those provided by ESD; hence they achieve different goals.
- Permeable pavement credit towards imperviousness limits would work against the intended benefits of imperviousness limits, by eliminating more environmental functions than it would provide.
- Permeable pavement credit towards imperviousness limits is inconsistent with the purpose of ESD, which is to provide improved stormwater management, not to allow more development because of those improvements.
- State policy under the Critical Areas legislation limits imperviousness to provide additional environmental protection for sensitive waters, and does not credit permeable pavements toward those limits in order to increase environmental protection.
- If permeable pavements are to be credited toward imperviousness limits, grassed and landscaped areas should be debited in those calculations because they infiltrate less than woods, resulting in higher effective imperviousness totals.
- The current definition of impervious surface meets multiple agency needs, and needs no changes.
- MDE, DNR, and MDP staff agree with and support the County's policy to limit imperviousness to better protect sensitive waters, and not crediting permeable pavement towards meeting those limits.

In short, even with ESD, development will still cause environmental impacts. By limiting development footprint in designated sensitive watersheds, imperviousness limits serve to reduce more environmental impacts than ESD alone. As a result, crediting ESD Best Management Practices (BMPs) such as permeable pavements towards meeting imperviousness limits would increase net environmental impacts in the very areas of the County that have been designated for extra environmental protection.

ANALYSIS

The basic question related to the proposed Bill and ZTA is: *Should ESD BMPs such as permeable pavements be granted credit towards meeting impervious limits?*

The short answer to this question is that they should not. The following explains the reasons for this conclusion.

The benefits of permeable pavement are currently recognized and receive appropriate credit.

As a non-land use based strategy, there are no specific standards for how much impervious cover is to be "minimized" as part of ESD. The degree to which it is minimized by any MDE-approved method, including permeable pavement, is recognized and credited towards meeting ESD standards and criteria. In the case of permeable pavement, the benefits it provides are credited in three ways:

- for providing infiltration of stormwater towards the "woods in good condition" hydrologic standard,
- meeting the ESD stormwater volume reduction requirement, and
- for providing some water quality treatment.

The hydrologic and treatment benefits of permeable pavement are currently recognized in the current code, and are already given appropriate credit towards meeting ESD requirements. Because of this, the core reasons stated for Bill 13-13 (Attachment 1): to "allow the substitution of permeable pavement for standard pavement to minimize impervious surface", and to "include a percentage of permeable pavement in the calculation of impervious area", are not needed for ESD implementation because they are already allowed by the Stormwater Manual and County regulations. But for the reasons indicated in this memo, permeable pavement credits are inappropriate for calculations of imperviousness limit compliance.

An appropriate incentive for permeable pavement already exists, and the proposed legislation would provide an additional incentive at the cost of increasing environmental impacts to sensitive areas.

Because of the existing ESD credit for permeable pavement, there already is an incentive for using such pavements that is appropriate and commensurate with their purpose and benefits. Providing an additional incentive by establishing credit towards imperviousness limits would do so at the cost of increasing development footprint and net impacts to the environment that will result, and increase impacts to the very areas in the County that were identified as needing additional environmental protection in the first place. In addition, the total area in the County with specific imperviousness limits is small, so extra incentives of this sort would be very limited in application. Moreover, current SPA law requires water quality plans when site imperviousness is greater than 8 percent, so credit for permeable pavements towards imperviousness limits will allow more projects to be approved without water quality plans in capped areas, with further implications for environmental protection and SPA effectiveness.

The Planning Board has previously reviewed and upheld current imperviousness limits-related policy and methods.

On 11/20/08, Planning Department Staff briefed the Planning Board on County practices in evaluating impervious and pervious surfaces, the role of stormwater management on development sites, and imperviousness limits as a land use-based tool, in protecting high quality and sensitive watersheds. Planning staff advocated for continuing the existing policies and methods, and were supported in this recommendation by Department of Permitting Services staff, and Dr. Stuart Schwartz of the University of Maryland Center for Urban Environmental Research and Education. Planning staff asked the Board for their opinion and guidance on the issues, and the Planning Board upheld the current definition of impervious area, the County's policy regarding implementing imperviousness limits, and the policy of not granting credits for stormwater BMPs such as permeable pavements towards meeting

imperviousness limits. Subsequent to this discussion, Planning Staff has kept the Board updated on these issues at additional briefings on 3/25/10 and 9/15/11.

Inconsistency with the findings of science

The scientific literature shows that as many natural functions as possible are needed for optimal stream biological health. The data show that developed land cannot provide all of these natural functions. ESD BMPs such as permeable pavement do a better job by mimicking natural hydrology, but will still not compensate for many other lost natural functions. The data further show that high-quality streams are especially sensitive to the impacts of development, and that those impacts are particularly noticeable in watersheds with low levels of development and impervious cover. These are the types of watersheds that have been given additional protection by imperviousness limits. The scientific literature indicates that ESD will do a better job of stormwater management than older methods, but it also indicates that it is not yet known what the impacts of development with ESD will be on the health of receiving ecosystems and stream biology. So a conservative approach to environmental protection in high-quality watersheds continues to be justified.

Minimizing impervious cover under ESD is not the same as imperviousness limits.

As part of ESD, minimizing impervious surfaces refers to reducing imperviousness on a given development site as much as practicable consistent with determined zoning and land use. For example, even with ESD, 5-acre residential development will still have a low imperviousness, and commercial zones will still be comparatively high in imperviousness. ESD review simply assures that the ESD requirements are met, with reducing imperviousness as one of a number of different options forachieving those standards. If ESD standards are met, additional reductions in imperviousness may be suggested by DPS, but not required.

Because MDE does not set zoning or land use, ESD does not have numeric standards for minimizing imperviousness, nor does it address imperviousness limits (which can affect land use and density). As a result, ESD does not limit the amount of impervious area associated with development that is consistent with current zoning. Because ESD focuses on hydrology, and not the other environmental functions that are lost through development, MDE staff maintains that ESD cannot compensate for all development impacts to the environment. It is up to local jurisdictions to make sure that the type and intensity of land use in a given watershed is appropriate for the level of environmental protection needed or desired.

Imperviousness limits provide benefits beyond those provided by ESD, hence they achieve different goals.

Imperviousness limits, unlike ESD, are land use-based environmental protection tools that, by limiting impervious surfaces, also limit overall development footprint. In this way, they help to protect more of the full range of environmental functions provided by natural areas, topography, soils, and vegetation that are important for ecosystem and biological health, of which hydrology is but one. Because of this, MDE Stormwater Management Program staff maintains that where sensitive waters exist, local jurisdictions should combine ESD with other appropriate measures (e.g. limiting imperviousness and increasing natural areas) to provide extra protection.

Permeable pavement credit towards imperviousness limits would work against the intended benefits of imperviousness limits, by eliminating more environmental functions than it would provide.

Crediting permeable pavements towards imperviousness limits will allow more disturbance and elimination of vegetated areas to occur in sensitive areas. Allowing increased development footprint because of the use of permeable pavements, which eliminate most natural functions except infiltration, is scientifically unjustifiable and would cause the loss of more environmental functions than provided by the additional infiltration. To credit permeable pavement towards imperviousness limits would compromise the fundamental purpose of imperviousness limits, which is to limit development impacts in sensitive areas.

In addition, permeable pavements generally degrade unpredictably over time, which usually cannot be detected unless the failure is total. Undetected reductions in performance will further work against the environmental benefits of imperviousness limits.

Permeable pavement credit towards imperviousness limits is inconsistent with the purpose of ESD.

Crediting ESD BMPS such as permeable pavements towards imperviousness limits is also inconsistent with the fundamental purpose of ESD, which is to do a better job of protecting the environment by improving development hydrology, not to allow more development because of those improvements. Permeable pavements also frequently contribute pollutants that do not occur in natural areas. Although certain pollutants can be treated by permeable pavements, they also allow the infiltration of mobile pollutants, such a deicing salt, which can move directly to streams in groundwater, and cause biological impairments.

State policy limits imperviousness to provide additional environmental protection for sensitive waters, and does not credit permeable pavements toward those limits.

The State applies the basic principles of environmental protection through limiting development footprint and imperviousness in setting policy and special requirements to safeguard sensitive resources in the Chesapeake Bay Critical Area. These requirements include limiting impervious and other hard developed surfaces, in order to maximize as many environmental functions as possible. In the Critical Area, the State has grouped impervious surfaces and other hardscapes including permeable pavements together as “lot coverage”. The State does not grant credits for permeable pavements towards lot coverage limits in the Critical Area, in order to optimize environmental protection in these areas.

Other unintended consequences could result from crediting permeable pavements toward limits.

Even if the findings of science, the purposes of ESD and imperviousness limits, and State policy are set aside, other unintended consequences could result from establishing such credits. For example, to be consistent with the State “woods in good condition” hydrologic performance standard, if credits are granted for permeable pavements towards imperviousness limits because they infiltrate more like woods, it follows that deducting credit for grassed and landscaped areas would also be required because they infiltrate less than woods. Depending on the amount of developed area in grass or landscape, in many cases this would result in higher calculated imperviousness values than the current method.

Conclusion:

Because the benefits provided by permeable pavements are already recognized and appropriately credited under the Stormwater Manual and County regulations, Bill 13-13 and ZTA 13-03 essentially propose a solution to a problem that does not exist, and would create new problems. No changes are needed to Chapters 19 or 59 of the County Code. The current definition of impervious surface was crafted by an interagency workgroup to facilitate the different responsibilities and work programs of those agencies. The current definition does not in any way prevent or impede DPS from fully crediting permeable pavements towards meeting ESD stormwater requirements, and does not need to be changed. MDE, DNR, and MDP staff agree with and support current County policy on limiting imperviousness in sensitive watersheds, and in not granting credits for permeable pavements or other ESD BMPs towards meeting imperviousness limits.

Moreover, the proposed amendments in the introduced Bill and ZTA are inconsistent with the purpose of ESD, the purpose of imperviousness limits, and State policy, and would have the effect of increasing development-related environmental impacts in the few areas of the County that have been identified as needing extra environmental protection, beyond enhanced stormwater management, to protect sensitive, high-quality waters. Both pieces of proposed legislation should be denied. Any additional incentives for using permeable pavement should be sought elsewhere, and should not be made at the expense of environmental protection.

ATTACHMENTS

1. Bill 13-13, Impervious Area – Calculation, as introduced
2. Zoning Text Amendment 13-03, Impervious Area – Calculation, as introduced
3. Letters from Citizens regarding Bill 13-13 and ZTA 13-03

MS/GS/MD/

Agenda Item 4
May 7, 2013
Introduction

MEMORANDUM

TO: County Council

FROM: Jeffrey L. Zyontz Legislative Attorney

SUBJECT: **Introduction:** Bill 13-13, Impervious Area - Calculation

Bill 13-13, Impervious Area - Calculation sponsored by Councilmember Rice, is scheduled to be introduced on May 7, 2013. A public hearing is tentatively scheduled for June 18 at 1:30 p.m.

The definition of impervious area currently counts all pervious pavement area as an impervious surface. The stormwater management provisions of the current code require a developer to minimize the imperious surface in a development. In special protection areas, water quality plans are not required when the impervious area is 8 percent of the site area or less.

Councilmember Rice believes that the County Code should actively encourage the provision of pervious pavement. Permeable pavement when properly installed, is already an approved stormwater management facility in an environmentally sensitive design. Bill 13-13 would define permeable pavement and require the DPS Director to count only a percentage of permeable pavement area (25 percent) toward any limit on impervious surface area and to specifically allow permeable pavement as a method to limit impervious area.

This packet contains:	Circle #
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Bill No. 13-13
Concerning: Impervious Area - Calculation
Revised: April 9, 2013 Draft No. 1
Introduced: May 7, 2013
Expires: November 7, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Rice

AN ACT to:

(1) define permeable pavement;
(2) allow the substitution of permeable pavement for standard pavement to minimize impervious surface;
(3) include a percentage of permeable pavement in the calculation the impervious area; and
(4) generally amend the laws governing erosion, sediment control, and stormwater management.

By amending
Montgomery County Code
Chapter 19, Erosion, Sediment Control, and Storm Water Management
Article II, Stormwater Management
Sections 19-21, and 19-22A

Article V, Water Quality Review in Special Protection Areas
Section 19-61

And adding
Section 19-62A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-21, 19-22A and 19-61 are amended and Section 19-62A is added as follows:

Sec. 19-21. Definitions.

In this Article, the following words and phrases have the following meanings unless the context indicates otherwise:

* * *

Design Manual: The [2000] Maryland Stormwater Design Manual, as [revised from time to time which] amended, serves as the official guide for stormwater management principles, methods, and practices in Maryland.

* * *

Impervious area or impervious surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, driveway, or parking area.

* * *

Person: An individual, corporation, firm, partnership, joint venture, agency, organization, municipal corporation, County or state agency, or any combination of them.

Permeable pavement: Concrete or asphalt that allows the infiltration of water and satisfies the surface and subsurface specifications in the Maryland Stormwater Design Manual as amended.

* * *

Sec. 19-22A. Stormwater management measures.

* * *

(b) ESD planning techniques and practices.

* * *

(3) The use of ESD planning techniques and treatment practices specified in this Section must not conflict with existing State or County laws.

(4) Permeable pavement may be used to minimize a development's impervious surface area as required by this Section.

Sec. 19-61. Definitions.

In this Article, the following words and phrases have the following meanings:

* * *

Erosion and Sediment Control Concept Plan means a statement or drawing or both describing how erosion and sediment, resulting from a development, will be controlled or managed to minimize the discharge of pollutants into surface waters.

Impervious area is defined in Section 19-21.

Land Use Plan means the County's General Plan ("On Wedges and Corridors") and all amendments or additions, including master plans, sector plans, and functional plans, adopted by the District Council.

Permeable pavement is defined in Section 19-21.

* * *

Sec. 19-62A Impervious surface area calculation.

To determine if any limits on impervious surface area are satisfied, the Director must include as impervious surface area only 25% of any area that an applicant proposes to cover with permeable pavement.

Approved:

Nancy Navarro, President, County Council Date

LEGISLATIVE REQUEST REPORT

Bill 13-13
Impervious Area - Calculation

DESCRIPTION:	The Bill would amend Charter 19 to treat permeable pavement more favorably when impervious surface area is considered.
PROBLEM:	Permeable pavement has environmental benefit over impervious pavement but that benefit is not recognized in the current code. Impervious pavement is less expensive than permeable pavement and in the absence of a regulatory benefit, less permeable pavement will be used.
GOALS AND OBJECTIVES:	Is it the goal of this Bill to be consistent with ZTA 13-03 and to provide more incentive for the use permeable pavement.
COORDINATION:	DPS and Planning Department
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None

Attachment 2

Zoning Text Amendment No.: 13-03
Concerning: Impervious Area – Calculation
Draft No. & Date: 1 - 4/8/13
Introduced: May 7, 2013
Public Hearing:
Adopted:
Effective:
Ordinance No.:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY, MARYLAND

By: Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- define impervious area and permeable pavement; and
- regulate the calculation used to implement impervious surface area restrictions

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2. "DEFINITIONS AND INTERPRETATION."
Section 59-A-2.1. "Definitions."

and by adding

DIVISION 59-C-18. "Overlay zones."
Section 59-C-18.5. "Impervious Surface Area Limits."

EXPLANATION: ***Boldface*** *indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[*Single boldface brackets****]*** *indicate text that is deleted from existing law by original text amendment.*
Double underlining indicates text that is added to the text amendment by amendment.
[[*Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*
* * * *indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

Sec. 59-A-2.1. Definitions.

In this Chapter, the following words and phrases have the meanings indicated:

* * *

Impervious area or impervious surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, driveway, or parking area.

* * *

Permeable pavement: Concrete or asphalt that allows the infiltration of water and satisfies the surface and subsurface specifications in the Maryland Stormwater Design Manual as amended.

* * *

Sec. 2. Division 59-C-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONES.

* * *

Sec. 59-C-18.5. Impervious surface area limits.

To determine if any limits on impervious surface area are satisfied, the Director or the Planning Board must include as impervious surface area only 25 percent of any area that an applicant proposes to cover with permeable pavement.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council

MCP-CTRACK

From: epfister@comcast.net
Sent: Wednesday, May 08, 2013 10:15 PM
To: County council; MCP-Chair
Cc: Russ, Gregory
Subject: Bill 13-13 and Bill 13-03 pervious/impervious surface limitations

I am writing to urge that you oppose Bill 13-13 and Bill 13-03.

I understand that these bills would define permeable pavement and require the DPS Director to count only a percentage of permeable pavement area (25 percent) toward any limit on impervious surface area and to specifically allow permeable pavement as a method to limit impervious area.

While possibly well meant, these bills would not be effective in protecting the County's streams, waterways, aquifers, wetlands, meadows, and forested areas, all of which are essential to both human well being and wildlife habitat.

Pervious pavement will not compensate for the loss of tree canopy and forest meadow which are essential for a sustainable hydrology. In the long term, porous paving will fail, become clogged and convert to impervious pavement.

I am not in opposition to porous paving but it is not applicable across the board in all cases such as when it is replacing forest, meadows, farm lands or other sensitive areas. Porous paving may certainly be appropriate as partial remediation for redevelop of parking lots and urban areas.

Zoning legislation and land cover restrictions need to be science based and seek to: 1) minimze the loss of hydrologic functioning and declining water quality, and 2) prevent both additional runoff pollution and the furtherance of downstream erosion.

Thank you for consideration, please feel free to contact me to discuss further.

Sincerely,

Ed Pfister
10717 Seneca Spring Way
Montgomery Village, Md 20886

MCP-CTRACK

From: MelaneKHoffmann@aol.com
Sent: Thursday, May 09, 2013 5:12 PM
To: county.council@montgomerycountymd.gov; MCP-Chair
Cc: Russ, Gregory
Subject: Proposed bills on permeable surface

To: Montgomery County Council
cc: Montgomery County Planning Board
Re: Proposed Bills 13-03 and 13-13 about Permeable Surfaces

People have always joked about developers writing legislation for the County, but the two bills recently introduced that are designed to allow the use of permeable surface to reduce the cap on impervious surface should be nominated for a grand prize.

It's great that new technologies are emerging to help us protect environmentally sensitive areas, but can we seriously consider jumping so far, so fast, that we would trust these new materials to protect our fragile waterways countywide? Robust commercial and residential growth in the County continues. Climate change marches on. Our fragile water sources are continually threatened, despite some efforts to protect them. How could we consider granting a blanket reduction in protecting our water sources?

Why should we take such a high-stakes risk? We should ask ourselves who would gain from this legislation. Not the residents of the County, not the environment.

Montgomery County deserves responsible stewardship of our precious natural resources. I urge you to reject this legislation.

Sincerely,

Melane Kinney Hoffmann
Hidden Ridge Farm
23801 Peach Tree Road
Clarksburg, MD 20871
301-972-6126 (home)
301-928-5857 (cell)
melanekhoffmann@aol.com

MCP-CTRACK

From: Mdrcapitol@aol.com
Sent: Thursday, May 09, 2013 6:12 PM
To: county.council@montgomerycountymd.gov; MCP-Chair; MCP-Chair; Russ, Gregory
Subject: Permeable surfaces proposed bills

To all parties addressed above, I am in receipt of a letter to you from Melane K Hoffman of Clarksburg, Maryland dated 9 May 2013. I strongly echo the points she has made. As a person who has lived in our County for 50 years and who has broad based business interests here (which include real estate, farms, restaurants and other business miscellany) I am still surprised by how bad ideas get legs.

These bills do deserve, as Mrs. Hoffman has stated, the grand prize in developer friendly efforts that put at risk our environment. I am compelled to let you know that I am still active in the development business here in the County including several projects in the Bethesda CBD. Hence, I am not sitting atop a grassy hill enjoying the scenery while wrapped in my own insularity. I deal in a practical way with the day to day, often vexing, issues of development. Still, I am inclined to always consider the environment before I grasp for a bottom line. I urge those of you involved in these two bills to consider the points outlined by Mrs. Hoffman and reject the legislation.
Sincerely,

Mike Rubin
Breezy Hollow Farm
19701 Bucklodge Rd.
Boyds, MD 20841
President and CEO
Capitol Investment Associates Corp
5454 Wisconsin Ave.
Chevy Chase, MD 20815
301 951 8811 ex 11

MCP-CTRACK

From: Leedyt@aol.com
Sent: Tuesday, May 14, 2013 10:16 AM
To: county.council@montgomerycountymd.gov; MCP-Chair; MCP-Chair
Subject: Please Vote "No" to 13-03 and 13-13 - Pervious Surfaces

May 12, 2013

Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Via email: **county.council@montgomerycountymd.gov**, **mcp-chairman@mncppc-mc.org**, **mcp-chair@mncppc-mc.org**

Please Vote "No" to 13-03 and 13-13 - Pervious Surfaces

Dear Members of the Council:

I am concerned about the consequences of using permeable paving materials in place of traditional asphalt paving combined with modern runoff management practices. Although at first glance, permeable surfaces seem to be attractive for water management, if the engineering of the permeable surfaces is inadequate, then the permeable paving can be the worse possible option. Here's why --

The use of permeable surfaces to replace impervious areas: Often the motivation for use permeable surfaces is to permit the enlargement of parking facilities. This appears to be, in part, the goal of the bills before you. This encourages more vehicles to use the surface with a higher probability of oil, fuel, antifreeze, and tire debris entering the surface water. We would suggest that structured parking is a better alternative. Structured parking, combined with modern water management methods, offers better capture and retention of these pollutants.

Permeable surfaces will not remain permeable over time: Some permeable pavements require frequent maintenance because grit or gravel can block the open pores. This is commonly done by industrial vacuums that suck up all the sediment. If maintenance is not carried out on a regular basis, the porous pavements can begin to function more like impervious surfaces. With more advanced paving systems the levels of maintenance needed can be greatly decreased, elastomerically bound glass pavements requires less maintenance than regular concrete paving as the glass bound pavement has 50% more void space. A clogged permeable surface is far worse than traditional asphalt since there will be no water treatment at the runoff areas. Further, road salt containing chlorides will migrate through the porous pavement into groundwater. And sand cannot be used for snow and ice control on perveous asphalt or concrete because it will plug the pores and reduce permeability. Infiltrating runoff may freeze below the pavement, causing frost heave, though design modifications can reduce this risk.

Cost: Some estimates put the cost of permeable paving at two to three times that of conventional asphalt paving. Using permeable paving, however, can reduce the cost of providing larger or more storm water Best Management Practices (BMP) on-site. It is not clear who would bear the costs of the maintenance of large areas of permeable paving. However in my opinion, the County and State has not had a great track record of engineering BMP into parking-lot projects and traditionally take the lowest-cost and least effective alternatives. I direct the Council's attention to the parking lot at the new Bennigan's restaurant (23315 Frederick Road, Clarksburg) where the effluent of the parking lot is simply ejected into local ravine and thence into the local surface water system.

As with so many items that come before you, the Devil is in the details concerning pervious surfaces. I would suggest that the Council rethink these bills to protect the water in the fragile Ten-Mile Creek headwaters. The Ten Mile Creek Special Protection Area is the last source of high-quality water in the County. One bad decision concerning the use of pervious surfaces will take away this fragile resource.

Sincerely,

/s/

Thomas Leedy
15720 Comus Road
Clarksburg, MD 20871