

Item 8 - Correspondence

From: [rg.steinman](#)
To: [MCP-Chair](#)
Subject: Item 8, ZTA 22-12, Overlay Zones - Clarksburg East & West Environmental Overlay - Exemptions
Date: Tuesday, January 10, 2023 10:10:18 AM
Attachments: [ZTA 22-12^LJ FOTMC Planning Board Testimony \(FINAL\)^LJ Jan 12^LJ 2023-on letterhead .docx](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Planning Board Commissioners,
Attached please find public hearing testimony on Item 8, ZTA 22-12, submitted by Friends of Ten Mile Creek and Little Seneca Reservoir.
Thank you,
~ rg Steinman
Friends of Ten Mile Creek & Little Seneca Reservoir
Board Member



Board of Directors

Anne Cinque
President

John Parrish
Vice President

Jay Cinque
Treasurer, Past President

Anne James, *Secretary,*
Past President

Ginny Barnes

Diane Cameron

Tom Leedy

Norman Mease

Miriam Schoenbaum

RG Steinman

Cathy Wiss

Advisory Committee

Jim Choukas-Bradley

Mike Gravitz

Royce Hanson

Caroline Taylor

Tenley Wurglitz, *Past*
President

Date: January 12, 2023

To: The Montgomery County Planning Board

From: The Friends of Ten Mile Creek and Little Seneca Reservoir

**Re: Item 8, ZTA 22-12, Overlay Zones - Clarksburg East & West
Environmental Overlay - Exemptions**

Dear Commissioners,

We concur with the staff recommendation that “no action be taken on ZTA 22-12 at this time” but disagree with several elements of the staff report. To be clear, **we support bikeways so long as they are not exempted from impervious limits.**

1. ZTA 22-12 is clearly promoting a policy change that would weaken the impervious exemptions to include all master-planned bikeways regardless of the funding mechanism.

- A. Staff asserts: “the intent of the exemption language remains unclear”¹ and merely requires “clarification” This is simply not true.

The EOZ states,

“Impervious surface for any publicly funded road or bikeway identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this overlay zone’s impervious surface restriction.”

The language in the current law is clear: *the impervious surface exemption applies to the **identified roads and bikeways that are publicly funded.***

ZTA 22-12 would change the EOZ to state,

“Impervious surface for any publicly-funded road or any master-planned bikeway is exempt from this Overlay zone’s impervious surface restriction.”

ZTA 22-12 proposes a **significant policy change**. Despite the clear language, that only the *publicly funded bikeways* identified in the amended Clarksburg Master Plan and Hyattstown Special Study Area were exempted from impervious constraints, the Planning Board’s proposed ZTA has improperly substituted “master-planned bikeway.” **This would allow any bikeway identified in the Ten Mile Creek Amendment, regardless of funding mechanism to be**

¹ https://montgomeryplanningboard.org/wp-content/uploads/2022/12/ZTA-22-12-Clarksburg-Overlays_1-12-23.pdf, p.10.

exempt. And, in the staffs' own words, it would **“extend the master-planned bikeway exemption to any bikeway from any master plan and not just those identified in the Ten Mile Creek Amendment.”**² This clear policy change undermines the environmental provisions that were put in place to constrain all forms of imperviousness to protect Ten Mile Creek.

B. The Ashford Woods staff report clearly illustrates that the Planning Board implicitly recognized that ‘publicly funded’ applies to bikeways.

In response to community concerns regarding exemptions from the impervious surface calculations for bikeway facilities, the January 2021 Ashford Woods staff report offered the following justification:

“A contribution will be made by the Applicant for the proposed bike improvements directly to MCDOT as part of a road participation agreement. These funds will be provided to fully support the extension of the currently under construction Frederick Road Bike Path along the length of the Subject Property. **The Application’s contribution is exempt from impervious surface calculations as any bike facility to be constructed on the Subject Property through this application will be constructed by others as part of a publicly-funded project.**”³ [Bold added]

2. By contrast, in approving the Mikes Coppola project a year later, in July of 2022, the Planning Board operated as if the passage of the ZTA was a done deal and that all master-planned bikeways were exempt from impervious caps. In so doing, the Planning Board violated the Clarksburg East Environmental Overlay requirements.

On July 21, 2022 the Planning Board approved the Miles Coppola Preliminary Plan.⁴ The Staff Report included a series of attachments, including Attachment 11, the Impervious Surface Plan.⁵

The Impervious Surface Plan contains a chart of exempt bikeways and roadways, highlighted in yellow, each with the following footnote:

"1) Per Sec. 4.9.5.B4 of the Zoning Ordinance impervious surface for master planned bikeways and existing roadways are exempt from this Overlay zone's impervious surface restriction.

This approach the staff and the Planning Board pursued in the approval of Attachment 11 as part of the overall approval of the Preliminary Plan was in violation of the Clarksburg East Environmental Overlay requirements. The Council never enacted a ZTA to exempt master-planned bikeways, as set out in the 2018 Bicycle Master Plan. Yet the staff and Board persisted

² Staff acknowledge that this is a policy change recommendation. See https://montgomeryplanningboard.org/wp-content/uploads/2022/12/ZTA-22-12-Clarksburg-Overlays_1-12-23.pdf, p.6.

³ See p. 59 of Ashford Woods staff report, https://montgomeryplanningboard.org/wp-content/uploads/2021/01/item5_StaffReport_AshfordWoods_120200110_FINAL_01112021.pdf

⁴ https://montgomeryplanningboard.org/wp-content/uploads/2022/07/120220010-Miles-Coppola-Staff-Report-Preliminary-Plan_FINAL.pdf

⁵ <https://montgomeryplanningboard.org/wp-content/uploads/2022/07/Attachment-11-Impervious-Surface-Plan.pdf>

in acting as if all master-planned bikeways were exempted and ignored the publicly funded component as well.

The Planning Board needs to rectify all past actions that exempted bikeways from impervious calculations regardless of their funding mechanism and their master plan status. Until then, the Miles-Coppola preliminary plan approval should be nullified.

3. The science of watershed protection does not support exemptions from impervious surface limitations.

To the detriment of water quality, ZTA 22-12 would allow additional imperviousness to be exempt from the current impervious surface limits for the Ten Mile Creek watershed, and it would also open the door to further imperviousness exemptions in the future. Neither the existing exemptions from impervious surface limitations, nor the expansion of exemptions proposed by ZTA 22-12, are science-based. They ignore the essential fact that streams are harmed by the negative effects of imperviousness.

The EOZ was designed to implement the impervious surface restrictions and exemptions, including bikeways, as described in the 2014 Clarksburg Amendment. Yet, according to the Planning Board staff report, “The Bicycle Master Plan has already added 0.25 acres of additional impervious bikeways to the overlay zone areas beyond what was included in the Ten Mile Creek Amendment.”⁶ At minimum, the Planning Board must follow the law. But even more, the Planning Board must uphold the science-based limits on impervious surface to protect Ten Mile Creek. Additional impervious surface will damage Ten Mile Creek's sensitive watershed, regardless of whether it's publicly or privately funded, master planned or not master planned, roadway.

We request that the 2014 Ten Mile Creek Limited Amendment be amended to eliminate all exemptions for roads and bikeways. Furthermore, a subsequent amendment to the overlay will be required to implement these provisions.

4. Staff asserts that the original ZTA was tabled in 2020 due to Covid.

However, it is more likely the ZTA was tabled for political reasons due to vigorous opposition by the Friends of Ten Mile Creek, the general public and by the County Executive in the lead up to the 2020 Council elections.

ZTA 22-12 is a damaging policy change that must be rejected as a violation of the Ten Mile Creek Limited Master Plan Amendment and its main enforcement regulation – the limits to imperviousness established in the Clarksburg Environmental Overlay Zones.

Therefore, Friends of Ten Mile Creek and Little Seneca Reservoir calls on the Planning Board to **reject** the proposed zoning change, ZTA 22-12. Furthermore, to minimize harm to Ten Mile Creek, we strongly recommend the elimination of all road and bikeway impervious surface exemptions, regardless of whether they are publicly funded.

Sincerely,

⁶ See https://montgomeryplanningboard.org/wp-content/uploads/2022/12/ZTA-22-12-Clarksburg-Overlays_1-12-23.pdf, p.8.

Anne Cinque, President

Cc

Marc Elrich, County Executive

Claire Iseli, Special Assistant to County Executive