

To: City of Annapolis Planning Commission

From: Gerald Winegrad, Concerned Citizens for Proper Land Use/Stop Crystal Spring

Date: June 2, 2016

MARYLAND ATTORNEY GENERAL HAS RULED THAT CITY MAY ADOPT MORE STRINGENT MEASURES FOR FOREST CONSERVATION INCLUDING A NO NET LOSS PROVISION AND REFORESTATION REQUIREMENTS BEYOND THE STATE FCA

At the Annapolis Environmental Commission meeting on June 1, the City Forest Conservation Ordinance was discussed. DNEP's position was that the reason the Ordinance's language is so watered down is because DNR resisted many of the changes you as a Commission adopted last year. DNR is wrongfully insisting that the state Forest Conservation Act limits local governments as to exceeding certain threshold requirements for reforestation or afforestation and thus trying to block the City's efforts to adopt a more stringent Forest Conservation Ordinance. Your recommendations adopted by the sponsors of O-32-14 last year included a no net loss provision and more stringent reforestation and afforestation requirements.

DNR also has questioned requirements for retaining forest on 100' stream buffers (state Model ordinance has a 50' requirement) and reducing to 24" the size of trees of significance (state has a 30" suggested size).

The state FCA is crystal clear in allowing local jurisdictions broad leeway to craft and adopt more stringent measures than the minimum standards the state FCA requires. The state Forest Conservation Act at Natural Resources Article, § 5-1603 explicitly states: (a)(2) By April 30, 1992 **all units of government with planning and zoning authority shall submit a proposed forest conservation program, which meets or is more stringent than the requirements and standards of this subtitle**, to the Department for its review and approval.

Further, provisions from the Code of Maryland Regulations (COMAR) which provide details on the administration and implementation of the state Forest Conservation Act: are found at: *COMAR 8.19.02.02, .02 Criteria for Evaluating Local Programs*. A. A local authority shall submit a proposed forest conservation program to the Department, for the Department's review and approval, which meets or **is more stringent than the requirements of Natural Resources Article, §§5-1601—5-1613**, Annotated Code of Maryland.

P. The local program may contain provisions more stringent than the requirements of Natural Resources Article, §§5-1601—5-1613, Annotated Code of Maryland, or this subtitle

Even though I helped write these provisions in 1991, this is just not my opinion but that of the state's top attorney, Attorney General Brian Frosh. The attached October 21, 2015 AG's Opinion specifically allows the City of Annapolis to adopt a no net loss policy in its FCA ordinance along with higher reforestation and afforestation requirements as well as other more stringent measures it may choose to protect its dwindling forests. The AG's Opinion concludes specifically at page 2 that local jurisdictions may enact forest conservation programs with requirements and standards that are more stringent than those in the FCA and that they "**may require development projects to meet a "no net loss" requirement and to require reforestation and afforestation requirements that are more protective than the FCA and the thresholds.**"

When Alderman Littmann, an attorney, read the AG's Opinion last October he wrote us that "I just read the opinion, and WOW, it could not make this any more clear."

On another point of contention, the Attorney General's Opinion clearly states that if a local government chooses to do so, it is not required to justify the greater level of protection as DNR was requiring with the draft Annapolis Ordinance. The Attorney General completely rebuts DNR's unfounded reading of the statute and mentions the legislative history as allowing local governments such broad leeway to establish a no net loss policy and exceed threshold requirements augmented by the General Assembly officially declared State policy to achieve no net loss of forest under the Forest Preservation Act of 2013.

Of course, the Opinion does allow DNR to inquire of a local government as to whether provisions of a local government's forest conservation program meet the minimum requirements of the FCA, but not as to elements that are clearly more stringent than required under the FCA as DNR has been doing in the City of Annapolis case. These requests for a justification from Annapolis included for more stringent measures for stream buffers, erodible soils, and steep slopes, among others.

In an extraordinary politically driven decision, DNR is choosing to ignore the AG's Opinion and clearly acting illegally and wrongfully in interpreting the state FCA and trying to restrict the City from adopting a more conservation oriented ordinance that is more stringent than state law.

We all hope you will act to recommend more stringent measures as you did last year and again require a no net loss provision for all development sites, the higher reforestation and afforestation requirements, and the other more stringent measures you adopted along with the other improvements we suggested including that pending the conclusion of all appeals under the FCA and a final adjudication, no trees may be cleared.

After 23 years under a woefully inadequate and "make it up as we go along" City FCA process, it would be far better to enact a strong measure to protect the dwindling acreage of forests in the City than to enact a weak ordinance that leaves us not much better off than we are now.

I suggest the ordinance have this language inserted up front to deal with the DNR problem and any challenge to the ordinance:

The Annapolis City Council finds that enactment of a forest conservation ordinance is necessary for the conservation of trees and forests in the City and is essential to preserve the public health, safety and welfare of the City and its residents because such conservation of trees and forest will assist in: the restoration of the City's streams, creeks, rivers, and the Chesapeake Bay; help meet the obligatory requirements of the EPA's TMDL; cutting down on soil erosion; better protecting groundwater; curbing stormwater runoff, the largest source of water pollutants in the City; storing carbon and reducing greenhouse gasses; protecting air quality; providing wildlife habitat; meeting the City's 50% tree canopy goal by 2036; and providing recreational opportunities and natural and aesthetic beauty for its citizens. This ordinance is intended to comply with and exceed the provisions of the state Forest Conservation Act Natural Resources Article, Section 5-1601-1613 et seq. as we find that the more stringent provisions are appropriate to protect Annapolis' remaining forest in accomplishing the purposes mentioned above, including a no net loss of forest from individual developments through forest conservation and replanting and through more stringent reforestation and afforestation requirements.

Respectfully Submitted,

Gerald W. Winegrad