



**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR**

To: Members of the County Council

From: Susan L. Smith, County Auditor

Date: October 28, 2020

Subject: Legislation to be heard or eligible for vote on November 2, 2020: Bill Nos. 69-20, 77-20, 84-20, 85-20, 86-20, 87-20, and 88-20.

Bill No. 69-20: Zoning – Farm or Agricultural Heritage Site Stays and Special Events (As Amended)

This bill defines and provides zoning requirements regarding agricultural heritage site, farm or agricultural heritage site special event, and farm or agricultural heritage site stay, and expands the definition of agritourism. We commented on this bill in our letters dated September 30, 2020 and October 14, 2020.

At the October 19, 2020 meeting, this bill was amended to change the zoning to allow a farm or agricultural heritage site stay as a conditional use in the RA, RLD, and R1 residential districts. The original bill proposed changing the zoning to allow a farm or agricultural heritage site stay as a special exception use. The conditional use requirements under this amended bill require the following:

- The farm or agricultural heritage site shall be on a lot of at least 10 acres;
- The owner or manager of the farm or agricultural heritage site shall reside on the property and shall be present during the farm or agricultural heritage site stay;
- For sites less than 50 acres, there would be a limit of the lesser of three groups or 12 guests that may stay at one time. For sites 50 acres or more, there would be a limit of the lesser of five groups or 20 guests that may stay at one time. Guests may stay no more than 14 consecutive days;
- The owner shall maintain a reservation log of the arrival and departure dates of all guests for inspection by the Office of Planning and Zoning (OPZ);
- A farm or agricultural heritage site stay shall be accessory and not the principal use on the site;
- A farm or agricultural heritage site stay shall include agricultural promotion and guest education about the farm operation or the agricultural heritage site, and shall be subordinate to, and in conjunction with, agriculture or agricultural heritage and historic preservation goals;
- Any building or other improvements or additions made in connection with a farm or agricultural heritage site stay shall be located and designed to shield surrounding residential properties from the effects of noise, hazards, or other offensive conditions; and

- The minimum setback from any lot line for any building or other improvements or additions used in connection with a farm or agricultural heritage stay shall be 100 feet.

We have no further comments regarding this bill.

Bill No. 77-20: Planning and Development – Master Plan for Water Supply and Sewerage Systems (As Amended)

This bill amends the 2017 Master Plan for Water Supply and Sewerage Systems. Specifically, the bill amends Sewer Map S-4 to move the boundary of the Broadneck Sewer Service Area to include four parcels within the Cox Creek Sewer Service Area. We commented on this bill in our letter dated October 14, 2020.

At the October 19, 2020 meeting, this bill was amended to correct a parcel number and clarify the wording that the four parcels are being moved from the Broadneck Sewer Service Area and into the Cox Creek Sewer Service Area. We have no further comments regarding this bill.

Bill No. 84-20: Current Expense Budget – Board of Education – Supplementary Appropriations

This bill appropriates an additional \$29,244,200 in the Board of Education's (BOE) Current Expense Budget in its Grants Fund. The sources for the additional grant revenue are from state grants, though all of the funds are ultimately provided by the federal government through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These grants do not require any additional local funding match. The specific grants are as follows:

- \$11,855,600 from the Maryland State Department of Education (MSDE) for the Elementary and Secondary School Emergency Relief Fund (ESSER) grant that was authorized by the CARES Act through the U.S. Department of Education's Education Stabilization Fund. This grant provides local educational agencies (LEAs), including charter and contract schools, with emergency relief funds to address the impact of the coronavirus (COVID-19) on elementary and secondary schools. LEAs must provide equitable services to students and teachers in non-public schools.
- \$9,433,300 from MSDE for a Technology Grant that was funded by the State's share of the U.S. Treasury's Coronavirus Relief Fund. This grant provides funding to implement distance learning programs necessary as a result of the school closures due to the COVID-19.
- \$6,338,200 from MSDE for a Tutoring Grant that was funded by the State's share of the U.S. Treasury's Coronavirus Relief Fund. This grant provides funding to implement a tutoring program that meets certain criteria to compensate for the learning loss associated with time away from direct instruction as a result of the school closures due to the COVID-19.
- \$1,558,100 from MSDE for the Governor's Emergency Education Relief Fund (GEER) grants that were authorized by the CARES Act through the U.S. Department of Education's Education Stabilization Fund including the following:
 - \$729,400 for a formula grant. This grant provides funding to make investments in technology infrastructure and professional development that will improve capacity to provide high quality, accessible distance education or remote learning;
 - \$828,700 for competitive grants for the County's Microschools program (\$654,700), and the Monarch Academy in Annapolis (\$174,000). These grants

provide funding to develop a unique or innovative approach to engage students, teachers, and school communities that address academic accessibility as a result of the COVID-19, with priority given to programs that address at-risk students.

- \$59,000 from the Maryland Department of Housing and Community Development Broadband for Unserved Students Grant. This grant is funded by the State’s share of the U.S. Treasury’s Coronavirus Relief Fund for the purpose of addressing the deficit of broadband resources available to unserved students in the State and assist school districts in implementing solutions for the 2020-2021 academic year by providing financial assistance, in the form of grants, to facilitate purchases of hotspot technology and/or broadband services for unserved students. While there are no matching funds required, funds under this agreement will only be available to pay eligible project costs from August 14, 2020 to December 30, 2020 and the grantee’s project must be structured and funded to provide students with broadband service and related resource for the entire academic year. According to the County’s application, the total cost for 550 households is approximately \$138,500, and private donated funds and School District funds or ESSER funds will pay for service from January 1, 2020 through the end of the academic year.

The following table shows the appropriations by fund and State categories:

	Grant Fund Total
Unanticipated Revenue:	
Federal and State Grants	\$ 29,244,200
Total	\$ 29,244,200
Appropriations:	
Administration	\$ 161,700
Mid-Level Administration	\$ 700
Instructional Salaries and Wages	\$ 4,327,500
Textbooks and Classroom Supplies	\$ 21,157,000
Other Instructional Costs	\$ 697,800
Special Education	\$ 983,000
Pupil Services	\$ 100,000
Pupil Transportation	\$ 30,000
Operation of Plant	\$ 1,090,500
Fixed Charges	\$ 696,000
Total	\$ 29,244,200

Bill No. 85-20: Public Works – Utilities – Water and Wastewater System Connections and Charges

This bill eliminates the user connection charge to property owners connecting to the County’s water and wastewater system; eliminates the option to connect under a private contract administered by the Department of Public Works (DPW), requires a public works agreement (PWA) under specified conditions; and, when a PWA is not required, requires the owner to pay a new tap connection permit

fee to cover certain DPW costs related to the connection. Under this bill, the cost of the installation will be paid directly by the property owner to the licensed utility contractor, whereas previously the property owner paid the County when they chose the option to connect under a private contract administered by DPW, and the County paid the contractor for the installation. Currently, the property owner could also opt to enter into a PWA and pay the contractor directly.

This bill also adds a \$50,000 security requirement for licensed utility contractors that will be performing the connections to the County's water and wastewater system and requires that work performed under a tap connection permit be subject to a two-year warranty, with the same warranty terms set forth in Anne Arundel County Code § 13-2-208 and the same security requirements set forth in § 13-3-301 (c) through (e). The County's contract with its utility contractor required commercial general liability insurance with a \$1 million single limit coverage, required bonding for any individual construction project in excess of \$50,000, required a one-year warranty on goods and services, and a two-year warranty on permanent paving. Current PWA agreements also require performance and completion security for the estimated cost, a two-year warranty on goods and services, a maintenance security to guarantee performance under the warranty equal to 10% of the estimated cost, and an agreement to reimburse the County for costs incurred to complete, restore, or repair the public improvements.

Lastly, this bill provides grandfathering clauses to exclude any user connection charge that was deferred, financed, or assessed prior to the effective date of this bill, and those connections installed prior to the effective date of this bill.

Currently, for connections constructed under a County capital project or a petition project, the owner is charged the certified user connection charges equal to the 5-year average cost for connection, as certified by DPW. This average cost includes the cost for the review, inspection, and installation. Effective January 1, 2020, the certified average cost of a water connection ranges from \$4,932.75 to \$13,304.44 based on the size of the water meter, and the certified average cost of a wastewater connection is \$7,093.85.

Currently, for owners that selected the option to connect under a private contract administered by DPW, the owner pays the County contractor's estimated cost of connection prior to construction. If the actual cost is less than the total cost paid by the property owner, DPW will reimburse the property owner for the excess. If the actual cost is higher than the estimated cost paid, there is no provision allowing the County to recoup the excess cost from the owner. For installations in fiscal year 2020 where the actual costs exceeded the estimated costs, the excess resulted in a cost to the Utility Fund of approximately \$26,800.

Under this bill, the owner being connected to the County's water or wastewater system is required to enter into a PWA if:

- The water or wastewater service will be installed within a right-of-way owned by the State;
- The water service pipe size is greater than two inches in diameter or the wastewater service pipe size is greater than six inches in diameter;
- There are three or more service connections to be installed within 500 feet;
- The depth of the distribution main is 18 feet or greater; or
- An easement is needed for any part of the connection.

If a PWA is not required, the owner will be required to apply for a water or wastewater service tap connection permit before connecting to the County's system, and pay a tap connection permit fee of \$225 per equivalent dwelling unit (EDU) for each water or wastewater connection. This fee is based on the cost for review, inspection, and processing by DPW, and the Director of DPW may increase this fee annually on July 1st based on a specified April consumer price index. The Director of DPW must give written notice of the annual adjustment to the Office of Finance and to the County Council. The property owner would be required to select a licensed utility contractor that has posted and maintained the required security with the County. As stated above, the property owner would also be required to pay the utility contractor directly for the cost of installation, and DPW would be removed from the process of contracting with, and paying for, the utility contractor.

According to DPW, for petition projects, the installation costs would still be included in the net assessable amount of the project and per EDU cost and the property owners would still be able to defer the connection costs over 30 years (or 40 years, if they meet the requirements), but they would not be able to defer the tap connection permit fee. For connections under a private contract administered by DPW, property owners were not previously allowed to defer or finance the estimated cost for installation, review and inspection, and they would not be able to under this bill.

According to DPW, as the County's contractor connection costs have increased, the number of owners opting to use their own private contractor with a PWA instead of the County's contractor has increased, as a less expensive alternative. In 2019, there were approximately 10 private contractor connections and 90 County contractor connections. In 2020, to date, there have been approximately 25 private contractor connections and 50 County contractor connections.

Fiscal Impact: Currently, user connection charges received by the County are recorded as revenue in the County's Utility Operating Fund, and the costs for the installations when opting for the County's contractor are paid from the County's WW Service Connections (X741200) capital project that is funded by Utility PayGo (transfers from the Utility Operating Fund) or in specific capital projects. During fiscal year 2019 and 2020, the County user connection charges collected totaled approximately \$2.4 million and \$1.9 million, respectively. The fiscal year 2021 budget for the WW Service Connections capital project included FY21 appropriations of \$250,000 from Utility PayGo, and the capital program anticipates annual appropriations of Utility PayGo totaling \$1,850,000. DPW costs for reviewing and inspecting connections are currently included in the Utility Operating Fund, but the amount is not readily determined.

Based on past connections, DPW anticipates approximately \$22,500 in fiscal year 2022 revenue from tap connection permit fees. Per our review of the Utility Rate Model, this bill will result in a decrease to the Utility Operating Fund for the user connection charges that will no longer be collected from both petitions and private connections, but the Utility Debt Service Fund will not have a change since private connections will have an equal reduction in Utility PayGo revenue and expenses for connections, and petition project revenues and expenditures are not included in the model for the Utility Debt Service Fund until they are in the capital program. The actual impact to the Utility funds combined should be minimal.

Bill No. 86-20: Subdivision and Development – Site Development – Plan Review Timelines and Requirements

This bill amends plan review timelines and requirements for subdivision sketch and final plans, site development preliminary and site development plans, including clarifying when they are

void; provides exemptions from preliminary and site development plans for common, minor uses of land; and requires the reservation of land for public facilities during the site development plan process as is currently done in the subdivision process.

The legislative summary provides an overview and description of this bill by section of law. We add the following comments regarding the major changes in this bill:

- This bill eliminates detail lists of requirements for the contents and attachments required in a preliminary plan, and site development plan, and instead requires site development plans and preliminary plans contain information on the most recent checklists on file at the Office of Planning and Zoning (OPZ) and Inspections and Permits (I&P). This will allow the Administration to change requirements without requiring law changes. The current law for the preliminary plan requires compliance with the most recent checklist in addition to specifying certain items required. This bill also reduces the preliminary plan scale from no smaller than 1"=100' to no smaller than 1"=60', which matches the current requirements for the sketch plan and site development plan.
- This bill requires OPZ to send written reports of findings, comments, and recommendations to the developer's representatives, and all reviewing agencies. This is in addition to the developer, as required by current law.
- According to OPZ, the majority of extension requests are granted. This bill makes the following changes to the time requirements in an effort to reduce the number of extension requests and resubmissions that have to be reviewed by the County:
 - The developer would have 90 days to file a sketch plan, final plan, preliminary plan, or site-development plan re-submittal after OPZ's report of findings and recommendations is mailed. Under current law, the developer only has 60 days to file a sketch plan, final plan, or site development plan re-submittal to address OPZ's comments and recommendations, and no timeline is specified in law for the preliminary plan re-submittal.
 - In addition to the first 180-day extension for a re-submittal, OPZ can grant a second extension for 180 days for good cause for a sketch plan, final plan, preliminary plan, or site development plan resubmittal. Currently, OPZ can grant a second extension for 120 days and a third extension for 60 days both for good cause for a sketch plan, final plan, or site development plan, and no timeline is specified in law for the preliminary plan. By extending the second and eliminating the third extensions for good cause, OPZ will spend less time reviewing extensions, and the maximum extension for the developer will remain the same.
 - OPZ would have 60 days after a developer files a final plan re-submittal for a minor subdivision or amended plat to provide any further findings, comments, and recommendations of the County. Under current law, OPZ only has 30 days for this final sketch plan review.
 - A sketch plan, final plan, preliminary plan, or site development plan approval expires in 18 months, instead of expiring in 12 months per current law, and if there is no modification or extension the sketch plan, final plan, preliminary plan, or site development plan is void. This bill also requires OPZ to provide the date of expiration of approval of a site development plan and information on extensions with the letter of recommendation or approval provided to the developer.

- Extends the time period for action required by the developer after the approval of a final plan or site development plan from 12 months to 18 months, and then the final plan becomes void. This bill clarifies the current practice that a sketch plan, and preliminary plan become void if the application for final plan approval or site development plan become void, respectively. It also clarifies that if the approved final plan or approved site development plan becomes void, the developer is required to file a new sketch plan or preliminary plan and pay the required fees prior to further review. This bill also updates the references under adequate public facilities for final plans for 18 months, instead of 12 months, and for voiding of sketch plans and preliminary plans when final plans are void.
- Adds the following exemptions for preliminary site development plan requirements:
 - An application for minor expansion of floor area or other site improvements or use changes in developments existing as of the effective date of this bill for which the proposed cumulative limit of disturbance is less than 5,000 square feet. According to OPZ, the intent of the preliminary plan criteria is to address the State mandated stormwater management approval process, but when there is less than 5,000 square feet of site disturbance, there is no such State requirement;
 - A site with existing impervious coverage of 40% or more, for which I&P has approved a concept plan for stormwater management. According to OPZ, it is current practice to approve modification requests to be allowed to eliminate the preliminary plan or combine the preliminary plan and site development plan; and
 - A development within the Parole Town Center Growth Management Area or the Odenton Growth Management Area. Under Anne Arundel County Code §17-20-108 (e), the Planning and Zoning Officer can grant a modification to eliminate the sketch or preliminary plan if the applicant demonstrates that adequate public facilities will be available to serve the development and environmental standards and designs will meet State required stormwater management and roads in the final plan or site development plan.
- This bill provides the following exemptions from the entire site development title requirements:
 - An Assisted Living Facility or an Assisted Living Facility I, community-based with eight beds or less in a new or existing single-family dwelling. This exemption codifies an existing OPZ policy, which aligns with the State requirements for treatment of group homes;
 - A Group Home I or II in a new or existing single-family dwelling. Md. Ann. Code, Health – General Article § 10-518 requires that private group homes not be subject to any special exception, conditional use permit, or procedure that differs from a single-family dwelling or multifamily dwelling of similar density in the same zone;
 - Single-family detached dwellings on existing platted residential lots. This codifies current OPZ policy;
 - A temporary use authorized under § 18-2-203 of the Code (which require no topography changes), provided no more than 15 events lasting no longer than one day are held on the same property within a 12-month period. Since temporary uses have no permanent changes, a site development plan would not be appropriate;
 - A tenant permit in a structure previously approved by the County when parking and other site improvements are adequate to support the use and any other existing uses on the site. This exemption exists in current law without the parking and other site improvement condition;

- A seasonal or permanent outdoor restaurant seating area of ten seats or less. This change codifies current OPZ policy;
- A cumulative increase of impervious surface of no more than 5,000 square feet on property outside of the critical area or designated bog area. This is an increase of the current 1,000 square foot exemption and will eliminate time currently spent reviewing plans when the cumulative increase is between 1000 and 5000 square feet; and
- A non-residential agricultural building that does not require a permit under § 105.2.1.14 of the Anne Arundel County Construction Code, and an accessory use as a produce market consisting of up to 1,200 square feet of floor area. According to the OPZ, this is consistent with the intent of the General Development Plan policy to support the viability of the rural agricultural economy.
- This bill allows the Planning and Zoning Officer to require that land that is part of a site development plan be reserved and remain undeveloped, up to three years, for acquisition by the County or the Board of Education for use as a park, County or State multi-modal transportation infrastructure, school, County or State road, or other public facility if a department or other public entity with facility submits a written request that the land is needed and the facility is funded in a State or County capital improvement program. This bill requires a reservation agreement be filed in the land records, and provides that OPZ can allow agricultural use or temporary uses during the reserved time. This bill also states that the acquisition may be in consideration of the density transferred from the reserved land to abutting or adjacent land under same ownership, or at the unimproved value of land before site development, plus expenses for taxes and maintenance only with interest at a rate of 6%. This bill further provides that the transfer doesn't occur until a PWA is completed and approved. Currently, the reservation of land for public facilities only applies to subdivisions.
- This bill eliminates clauses regarding comment review committee meetings. Currently, the developer may request the OPZ schedule a meeting of the Development Review Team leader and OPZ reviewers, representatives of other County reviewing agencies, and the developer and its representatives within 75 days after filing a site development plan to discuss review findings, comments and recommendations; OPZ must file a report of filings within 15 days of such meeting; and the developer can request a follow-up meeting to address any findings, comments or recommendations in the OPZ report that were not discussed at the initial meeting. Under this bill, OPZ comment review committee meetings would not be required.
- This bill allows the OPZ to deny an application at any time after the filing of an application for preliminary plan approval for failure to comply with the provisions of the Code or other applicable law. Otherwise, OPZ must approve the application for the preliminary plan.

Item to Note: During our review we brought to the attention of the Administration, and an amendment will be introduced to change page 4, line 17 from 12 months to 18 months for consistency, and to correct a reference on page 4, line 18 from subsection (c) to (d).

Fiscal Impact: While OPZ anticipates this bill will result in a reduction in time spent on reviews of plans and extension requests, OPZ does not anticipate any fiscal impact as these time savings will be reallocated to process other reviews more timely. There could be a positive fiscal impact to the County for requiring owners submitting a site development plan to reserve land that the County or BOE determines is needed for capital projects so the County or BOE can purchase the land at an undeveloped land cost (plus taxes and maintenance and interest) in that it could result in the County's or BOE's ability to purchase land at a cost less than it would have paid on the open market. However, the extent of any positive fiscal impact is not readily determined. Please note that the

County has a capital project for Advanced Land Acquisitions (C106700) that is used to purchase land for future projects.

Bill No. 87-20: Public Safety and Zoning – Pet Care Businesses and Commercial Kennels

This bill amends the definitions of pet care business and commercial kennel to include training. The Office of Planning and Zoning (OPZ) considers the change in the definition for pet care business as an expansion of use, however, there may be instances where training is already being offered as a service. OPZ indicated that the change in definition for commercial kennel is a codification of the current practice.

This bill has no fiscal impact.

Bill No. 88-20: Zoning – Identification Signs on Automobile Gasoline Station Canopies

This bill increases limits for identification signs on automobile gasoline station canopies in business complexes and in commercial industrial districts. Specifically, this bill increases the allowed number of signs from one to three, and increases the allowed area of the sign from 12 feet to 25 feet. In review of variances, the Administrative Hearing Officer has stated in his findings that the existing Code language ill-serves the current convenience store/gas station industry.

A technical amendment will be introduced to correct the presentation of the change from “sign” to “signs” on page 2, lines 2 and 12.

OPZ does not expect any fiscal impact from this bill.



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