

Montgomery County Responds to the Septic Restrictions Imposed by State

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On May 2, 2012, Maryland Governor O'Malley signed into law Senate Bill 236, "The Sustainable Growth and Agricultural Preservation Act of 2012", a bill that could potentially impact a property owner's ability to develop its property using on-site sewage disposal systems (septic systems). Maryland Counties were given a deadline of December 31, 2012 to decide whether to adopt an "optional" Growth Tier system explained in the new law that designates areas where land may or may not be developed on septic and whether these areas are restricted only to minor subdivisions. Counties were also given a December 31st deadline to decide whether to accept the State's definition of a "minor" subdivision or to adopt a different definition (capped at 7 lots). Failure on the part of the County to adopt a Growth Tier system restricts the County's authority to approve anything but a "minor" subdivision.

The Montgomery County Council has responded by introducing legislation that would establish Growth Tiers for the County (SRA-12-01). By establishing Growth Tiers, the County will be able to approve both minor and major subdivisions on septic. The proposed legislation also allows the County to define for itself the size of "major" and "minor" subdivisions; it proposes 5 or fewer lots be defined as a "minor" subdivision and 6 or more lots as a "major" subdivision. Major subdivisions are not allowed in a Tier IV area (predominantly agricultural area) *with one important exception*: If the "actual overall yield" in cumulative Tier IV areas is 1 unit per 20 acres or less, as verified by the Maryland Department of Planning ("MDP"), a "major" subdivision may be approved. Based upon a preliminary review by the MDP, it appears that Montgomery County's proposed Tier IV area is at a lesser density, meaning that the County could approve a "major" subdivision in a Tier IV area where it deems it appropriate.

The County Council conducted a public hearing on July 31st and a worksession is tentatively scheduled for September 10, 2012. Once the Council's Planning, Housing and Economic Development ("PHED") Committee has completed its review, Subdivision Regulation Amendment 12-01 will go before the full Council for its consideration and enactment.