

Septic Ban Legislation and the Aftermath

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On Tuesday, August 16, the Maryland Farm Bureau and Maryland Association of Counties hosted a *Symposium on Septic Systems and Future Growth in Maryland* at Chesapeake College. The agenda was to provide information, differing viewpoints, and dialog on the Governor's proposal in the last legislative session to ban individual septic systems for all new development greater than five residences. The mixed audience of farmers, rural residents, state and county employees, developers, environmental advocates, and septic system manufacturers probably went away without much new information and probably more questions than they came with. That doesn't mean there was nothing learned. The key issues are:

- Is this the right step at this time?
- Do we have adequate agricultural land value liquidity to survive a septic ban? And do we know if Transfer of Development Rights provides that?
- Do we have growth opportunities in growth areas that can keep homebuilding a viable industry?

The agenda included opening remarks from MD Secretary of Planning Richard Hall. This was interesting in itself, because it linked the discussion immediately to efforts to limit growth in undeveloped areas, a big push in the secretary's PlanMaryland project. If the underlying reason for the ban is Bay pollution reduction, you might think Departments of the Environment, or Natural Resources would be at the podium. Secretary Hall's key data driving his interest in the septic issue was that development supported by septic systems roughly triples the nitrogen load going to the Bay compared to development on sewage systems.

Household Growth	Nitrogen Growth	
Septic	26%	76%
Sewage Sys.	74%	24%

Septic nitrogen impact from Maryland on Chesapeake Bay pollution is a small percentage of the pie (9%) but this slice will inevitably increase as other sources of pollution reduce their impact, unless we also address the septic contribution.

In the last legislative session, the Sustainable Growth and Agriculture Preservation Act of 2011 (HB 1107 / SB 846) was introduced but did not pass. It is now the subject of a summer study chaired by Del. McIntosh. Secretary Hall mentioned that his department favored some of the amendments offered and noted the importance of limiting development sprawl to assure contiguous farm land and related services needed to keep farming viable. Some of the issues that came up in questions included:

- “One size fits all” approach does not work when some counties have very different soil characteristics and much greater distances to the Bay.
- Concerns with the bad long term track record of community sewerage systems, because of lack of expertise and maintenance funding.
- The potential for development expansion in rural areas if failing septic fields are replaced with a community facility.
- And a dominant issue, Will there be a process to maintain land values if development is not an option? TDR’s came up in this first question session and were discussed further in the agenda.

Delegate Maggie McIntosh of Baltimore, chair of the MD House Environmental Matters Committee and the Chair of the Septic Task Force followed with an inclusive approach that featured the importance of homebuilding, agriculture, and seafood industries to the Maryland economy. The outcome of the Task Force is expected to be a recommendations by December from four work groups focused on:

1. What Available Technologies we can use for septic systems without threatening agricultural security.
2. Funding Mechanisms
3. Where and How We Grow in Maryland
4. Agricultural Lands Value

Del. McIntosh asked the farmers present what steps would make them or keep them profitable. The main response in the meeting was maintaining land values and changing the estate tax hit that hinders passing farms on. There was a hint of not wanting developments near farms because of conflicts with neighbors. And the concern with package community systems came up again because of history of failures and the concern that this results in zoning by sewer. Questioners commented on the excellent management McIntosh has brought to the Task Force.

1000 Friends of Maryland Jennifer Bevan-Dangel and Kelly Corneal spoke next on the Case for Limiting Growth. They emphasized the importance of changing the way we look at a productive farm field. If cropland were seen as fully developed because of its productive use, not as waiting to have a house on it, we would have no need to convert farms to houses to extract the value of the land. Farming must be both profitable and a desired, viable career for that to work. Discussion also encouraged the array of ancillary agri-tourism options to help profitability.

State Senator E.J. Pipkin raised the temperature in the room by painting an “us and them” scenario pitting urban/suburban Maryland against rural interests. Decrying the septic ban as part of a full assault on rural Maryland, he emphasized that no compromise should be considered. No suggestions on what solutions might be appropriate were made.

George Frigon of New Fields (a consulting business) discussed data on nitrogen and soil conditions and sent the audience to lunch with perplexity about the facts in the nitrogen issue. He used statistical gymnastics to propose that septics aren’t the problem in a way that left

seasoned statisticians scratching their heads. It would be worth understanding data source, when and how collected, the level of aggregation and other factors to assure validity and a common data base for plans

The afternoon session included two panels:

Economic impacts included a Frederick County Ag Marketing specialist, Colby Ferguson; Mid Atlantic Farm Credit manager, Kenny Bounds, and MD Builders Association past president, Tom Farasy¹. The main thrust was that things are tough now and this septic ban will not help. The main concern in questions was again land values and since a Worcester County model was used for the septic bill many queries were about the impact on land values there. No data were provided. The other important question was why not wait until the TMDL's and Wastewater Implementation Plans are established to see what steps are most needed.

County Government Impacts were discussed by Cecil County Commissioner Tari Moore, Gail Owings, Director, Kent County Department of Planning & Zoning, and Greg Bowen, former Director of Calvert County Department of Planning & Zoning. While Commissioner Moore saw negative unintended consequences particularly sprawl driven by shared systems, her main theme was that this bill constrained local planning authority and the bill should follow the establishment of WIP Phase 2 plans.

Gail Owings spoke of farm diversification in Kent County and stressed the need for local solutions for local conditions. She noted also that the use of community systems could open up sensitive lands to development that are now stopped by failure to perc. Seeing what the WIP plans look like might suggest appropriate local solutions.

Greg Bowen spoke of the successful Transfer of Development Rights that slowed rampant development and degradation of water table in Calvert county. He noted the importance of being able to defend a regulation to the community. When it is developed locally, that knowledge exists. If state regulations are developed, local involvement is crucial to success. Mr. Bowen also stressed that nutrient reduction needs to be dealt with across the board. The current bill is too early and too focused on one nutrient source.

On a slightly lighter note, one attendee commented that there are "too many consumers on the land and not enough consumers in the water", referring to the great job that the oysters and other filter feeders do in cleaning the water in the Bay, when they are present in sufficient quantities!

For CLUA, this symposium presented some potential education opportunities for our membership and particularly some comparison of planning and zoning practices in different counties. Getting our own take on how the legislative route fits with the current Total Maximum Daily Load and the development of WIP plans would be useful.

ⁱ Per Mr. Farasy's own presentation, New Construction accounts for 0.148% of the acres , contributes 0.3% of the nitrogen, 1.44% of the phosphorus and 4.72% of the sediment! They also add incrementally to the Urban / Suburban sector, which is currently 14.3% of the land use, and currently contributes 108% N, 17.8% P and 21% Sediment!