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Testimony on CB15-2017

JN  Jim Nickel <james.nickel55@gmail.com>
Sun 2/26, 11:09 AM
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Testimony in opposition...
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Greetings,

This morning I went to the web page of CB15-2017 to read the testimony on the proposed bill.

See: <https://apps.howardcountymd.gov/olis/LegislationDetail.aspx?LegislationID=2760>

I was surprised to see that the testimony that I sent in to councilmail@howardcountymd.gov before the Public Hearing of 2/21/2017 was not included.

I've attached a copy testimony that I sent in on the 2/21/2017 @10:48 am.

Is there a reason why my testimony wasn't included in the Related Documents tab.

James Nickel
Dayton, MD
443-326-1275

Testimony in opposition of CB15 – 2017
By James Nickel of Dayton, Maryland on February 21, 2017

Thank you for this opportunity to provide testimony. I oppose the proposed amendment to Title 12, Section 12.111.

At best, the proposed amendment is irrelevant to the Courts and at worst, the proposed amendment is an attempt to deny access by parties who believe they are aggrieved by directing the court to pay certain legal expenses that are beyond customary. It is an attempt to be punitive to those that seek redress.

In the Administrative Justification dated February 9, 2017 written by James Zoller, Agricultural Coordinator of the Office of Community Sustainability he states:

“The second amendment states that if any lawsuit is brought up against a farm in bad faith or without substantial justification, the court should require the plaintiff to pay the cost of the legal fees associated with the lawsuit to the farmer. This amendment would discourage frivolous lawsuits against our farms and give them the confidence to conduct their business without fear of litigation.”

The Courts already provide a means for the defendant to obtain reimbursement for reasonable legal fees in the case of frivolous lawsuits without this proposed amendment. Additionally, in the proposed amendment the word “reasonable” has been deleted. This is wholly inappropriate.

I believe the second part of the last sentence clearly states the objective of this amendment. “... to conduct their business without fear of litigation”. Which has nothing to do with frivolous suits, the intent is to deter all suits by potentially punishing the litigant with excessive charges. Further, the words “without substantial justification” do NOT equate to frivolous. That language carries over to the proposed amendment.

This amendment attempts to create a privileged or protected class with regard to civil suits. In my limited understanding of the law this flies in the face of the phrase we should all be familiar with, i.e., *equal justice for all*. Farmers don't warrant any more privileges than do gas station owners or owners of businesses providing Zumba classes.

Typically, a protected class is defined by law when a particular group has suffered broad based discrimination. I don't believe the low property tax rates, farm subsidies and/or payments from the State or County to enter the property into agricultural preservation to be examples of undue discrimination.

There doesn't appear any justification from the Office of Community Sustainability that there has even been any substantial number of cases of frivolous law suits. If there have been evidence, it should be provided. Keeping in mind that it is not the defendant that determines where a suit is frivolous, as all defendants in all civil suits claim the suit against them is frivolous and baseless. A “frivolous lawsuit” is determined by the court and only the court.

Re CB-15



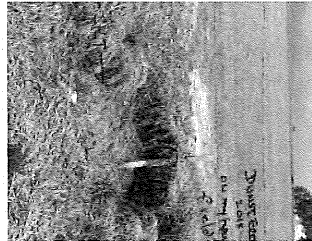
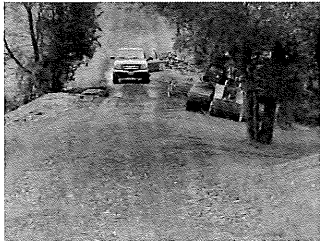
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Action Items

Attention:

I was unable to testify at the 21 Feb hearing for CB-15 as I had planned. Please accept the following as my testimony.

I am Victoria Stewart-Moore, a resident at 3400 Jennings Chapel Rd. Woodbine where I have farmed for the last 47 years. My concerns, if the proposed CB-15 "Right to Farm Bill" becomes law, are the following: it would allow farmers to flagrantly treat their land recklessly, not according to best farming practices, and leave neighbors and those most affected with no recourse to stop the practice and, if these "farmers" hire a clever lawyer and win in court, stuck with paying their legal fees in addition to the cost of cleaning up their mess.

Case One: Erosion caused by a neighbor. cost me \$3,000 to install a professional silt fence.

For the last 3 years, my neighbor has tilled his hillside which drains into my hayfield causing thousands of tons of silt to pile up on my field and then drain into the streams which run into the Patuxent river.

In 2014, I asked the Dunsts to leave a grassy swath in the drainage area of their field so as to contain the silt which was pouring into my field, ruining my crop and leaving ditches. I also consulted with the Howard County Soil Conservation Service which met with Herman Dunst whose boys were attempting to farm and discussed best practices including implementing a grassed waterway in the affected area. Soil Conservation advised the Dunsts not to till the hillside, nor to plant soybeans in the area because beans do not have a strong enough root system to retain soil, and instead, to plant grass. I lined my fence with straw bales, which were staked into the ground to stop the run off since it was apparent Dunst would do nothing.

In 2015, the Dunsts repeated their bad farming practices and my field was again inundated with thousands of tons of clay silt and weeds from their field.(See photos) Once again, Soil Conservation met with the

family and they promised to comply with good farming practices. I installed a professional silt fence, paying the installers \$3,000 to bury the fencing 2 feet under the ground. Still ignoring Soil Conservation advise, Dunst used a bandaid approach, preferring to only stake several feet of plastic sheeting into his hillside.

In July 2016, we experienced the rain which flooded Ellicott City. Dunsts' bandaid approach did not slow the silt and my silt fence was topped by run-off from his soy field, again carving deep ditches into my field and depositing toxic silt all the way to the stream below.

In September 2016, Joy Levy requested I file an ALPP complaint (a new process for Farm Preservation) and I assume Dunst was given a citation. Dunst did not plant winter wheat, leaving the soil exposed over winter. It is now 2017 and I see no effort at remedying the problem. If the county cannot or will not stop the Dunsts from bad farming practices and they recognize they can continue to get away with eroding my field (and theirs) and not be liable for their legal fees, I am left without recourse.

Case Two: Destruction of my driveway by reckless farming practices by my neighbor cost me \$20,000 to repair

In fall of 2015, my neighbor Lem Cissel, departed from normal practices in his sod field and cut the grasses growing along the runoff area from his hillside which flowed through my culvert with a sicklebar, leaving a trail of tall stemmy grasses. After a big rain, the grasses clogged up my culvert and the rain overflowed my road eroding the banks of the bridge. The bridge, which had been in place for 45 years and other than an occasional reinforcement, had never been so totally affected by overflow. The bridge was considerably narrowed, having lost 3 feet of bank on the north side and 1 foot on the south side. When I asked Lem why he mowed with a sickle bar causing the grasses to clog my culvert, he said it was a mistake and he wouldn't do it again.

In 2016, Lem once again mowed the hillside waterway with a sicklebar. This time, after the heavy rains, my bridge was totally destroyed to the extent that delivery and feed trucks refused to come up my lane as it was dangerous. I again asked Lem why he repeated the same offense of the previous year. His excuse was the same, "it was a mistake." Since the 1 mile-long driveway into my farm is the only entrance, I had to do something or be faced every year with the possibility of not being able to access my farm.

I hired a professional construction crew who, after installing gabian baskets to support the bank, added an additional culvert pipe which, should Cissel continue with his mowing practice, be able to handle the additional debris caused by his lack of consideration for me and reckless farming practices.

The cases cited above illustrate my concerns re CB-15 as it gives reckless farmers the green light to continue their aversive practice without consideration of who it affects. Farmers already have the right to farm. Neither of these cases would be thrown out as frivolous. If this bill becomes law, not only are we, the victims, paying the price of fixing the problems caused, we are without equal rights.

Thank you for your consideration,

Victoria Stewart-Moore