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Opposition to CB-15 2017

David M Banwarth <dmbanwarth@verizon.net>

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○ Wed 3/1, 1:24 PM
Fox, Greg; Ball, Calvin B; **CouncilMail**

CB-15 2017 Opposition....
573 KB

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Howard County Council Chair and Members,

Please accept my testimony for the record (attached) in **opposition to CB-15 2017**.

Thank you,

David Banwarth

4892 Green Bridge Rd

Dayton, MD 21036

03/01/2017

To: Howard County Council

Fr: David M Banwarth, 4892 Green Bridge Road, Dayton, MD 21036

Opposition to CB 15 - 2017

Please enter my testimony into the record as opposing the proposed amendment to Title 12, Section 12.111, CB 15-2017.

This Bill is obviously meant to intimidate anyone with the threat of (unreasonable and retaliatory) expenses if seeking rightful legal redress against any operation within the vast realm of farming and/or agriculture. This proposal is counter to the basic right to a fair hearing by all of rightful grievances within a competent court of jurisdiction.

It is impossible to argue that the proposed removal of the word "reasonable" (as it pertains to costs) is not prima facie evidence of the intent to sanction or encourage the award of unreasonable punitive costs and fees against anyone who has to resort to court action in good faith, and loses. In plain words, under this proposed legislation, no one can afford to gamble on the outcome of a court ruling that can include hundreds of thousands of dollars of unreasonable legal expenses purportedly incurred by a farm related defendant.

The HoCo Zoning Ordinance already specifically protects farmers against frivolous lawsuits by providing for the compensation of "reasonable" expenses, as follows.

*".. if a court finds that the conduct of a plaintiff in maintaining a nuisance case against the owner of an agricultural operation was in **bad faith or without substantial justification, the court may require the plaintiff to pay to the owner of the agricultural operation the costs of the proceeding and the reasonable expenses, including reasonable (underlining added) attorney's fees, incurred by the owner of the agricultural operation in defending against the legal action***

Yes, there is already an un-level playing field (against homeowners) established by the existing Howard County Zoning regulation. But, it is one that most reasonable people can live with in that it requires that a suit be found "... in bad faith or without substantial justification prior to award of the cost of defendant's legal fees. This proposed legislation strips that common-sense test and imposes new fears of reprisal, as I can only conclude to be the intent this bad proposed legislation – hence, a new right to intimidate being created for a special protected class, farmers.

I also note that the use of the word "should" in the Bill has no legally compelling context, only a moral one. It is permissive language bearing no legal sufficiency of enforcement. Obviously, the Council legislative branch has no authority to compel the judicial branch to do anything,

including instructing the Court to award damages. Therefore, this Bill has no reason to even be filed. It is a useless regulation at its best. And at its worst, it strips non-farmers of their rights to legal redress. It attempts to establish a special protected class – farmers at the expense of all others. In my opinion, this would not pass Constitutional review and is bad legislation.

Please vote “NO” on CB-15-2017.

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Re: CB15-2017

SK Sigaty, Mary Kay
Fri 3/3, 11:51 AM

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Rossman, Maura; CouncilMail; Nixon, Bert F; Vickery, Antigone; Pailen

Thank you, Maura.....MK

--

Mary Kay Sigaty
Howard County Council Member
District 4
3430 Court House Drive
Ellicott City, MD 21043
410-313-2001

From: Maura Rossman <mrossman@howardcountymd.gov>
Date: Friday, March 3, 2017 at 10:39 AM
To: CouncilMail <CouncilMail@howardcountymd.gov>
Cc: Bert Nixon <bnixon@howardcountymd.gov>, "Vickery, Antigone" <avickery@howardcountymd.gov>, "Pailen, Felicia" <FPailen@howardcountymd.gov>
Subject: CB15-2017

HCHD has reviewed this amendment and finds the new language acceptable.

Maura J. Rossman, MD
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