

WEST MONTGOMERY COUNTY CITIZENS ASSOCIATION

P.O. Box 59335 • Potomac, Maryland 20854

Founded 1947

July 10, 2022

TO: Montgomery County Council

SUBJECT: Public Testimony for July 12 hearing on 2022 Comprehensive Water & Sewer Plan Update for the 2022-2031 Ten-Year Comprehensive Water Supply and Sewerage Systems Plan

<https://www.montgomerycountymd.gov/water/supply/county-water-plan-2022.html>

Good afternoon, Council President Albernoz and Councilmembers. My name is Kenneth Bawer and I'm representing the West Montgomery County Citizens Association. You have my written testimony that has more information than I can cover in a few minutes.

It is hard to understand the reason for some of DEP's recommended changes, except that some of them are quite obviously in direct response to owners requesting special favors. I'm referring in particular to the special favors hidden in plain sight for 2 property owners on Boswell Lane and one on Piney Meetinghouse Road. When sewer category requests were made by these 3 owners which would have been clear violations of the current Water & Sewer Plan, requests were granted deferrals, instead of denials, so that special favors might be included in this proposed updated plan. This seems to be a slippery slope issue whereby "government by laws and regulations" is becoming "government by special favors". It may even open the County to possible lawsuits using the argument, "You did a special favor for them, why not for me?". Changes in the draft are an attempt to grant previous sewer category change requests that were rightfully recommended to be denied by both the Planning Board and the County Executive because they did not qualify under the rules. Unfortunately, the Council granted deferrals instead of the denials so that special favors could be inserted in to this draft plan. This is hardly a model for good and fair governance.

As with the last update, this new plan goes out of its way to codify rules that promote sewer sprawl, in violation of the basic principles contained in Maryland's Smart Growth statutes. Sewer sprawl is the entry level drug that enables denser development, higher impervious surfaces, and degradation of our streams and water quality.

In theory, the Water and Sewer Plan establishes policies that emphasize the use of on-site septic systems in lower-density areas – this is what keeps certain areas low density for the purpose of protecting our watersheds from high density related pollution. In practice, however, the County has allowed changes to the sewer categories of many individual properties that will allow creeping extensions of public sewer lines throughout the low-density areas. And the number of these sewer category changes grows each year. One example of this is the deeply flawed "Glen Hills Area Sanitary Sewer Study" that created a loophole to grant sewer category changes from septic to public sewer for several properties that still had fully functioning septic systems. The bogus reasoning used by DEP was that a future septic failure could/maybe/might happen in the future due to high level UDSA soil map characteristics that should never be used without confirmation using on-site soil tests.

The following is a list of changes we would like to see in the draft plan (with details provided in our written testimony):

1. Remove all special favors such as the ones for the owners of the Boswell Lane & Piney Meetinghouse Road properties; if allowed to be granted, the Water & Sewer Plan would be moving away from “government by law and regulations” to “government by special favors”.
2. Remove the section in Appendix C, section II.E: GLEN HILLS STUDY AREA as a special “Sewer Service Policy Area”. DEP incredulously continues to use a septic survey process that ignores the advice of the Glen Hills Area Sanitary Study, for which the County paid \$350,000. In that study, the authors explicitly state that you can’t rely on the high-level USDA soil maps that DEP continues to use. Rather, the study said that you must do on-site lot testing to determine the suitability of any specific lot for septic use.
3. Remove or revise, Chapter 1, section II.G.2.b.: Area-Wide Onsite Systems Concerns & II.G.2.c: Establishing Onsite Systems Survey Areas.
4. Remove the Potomac peripheral sewer service policy
5. Revise the “Abutting Mains” Policy.
6. Allow holding tanks as an alternative to sewer hookup for existing, failed septic systems that cannot be resolved by an onsite repair.
7. In areas designated as categories W-1 & S-1 as well as W-3 and S-3, allow new individual, on-site systems to be permitted, not just for interim permits.
8. Revise Chapter 1, section V.D.2.a: Administrative Delegation Policies & V.D.2.b: Administrative Delegation Advance Action Process.
9. In Chapter 2, II.E.5.a. County Water Quality Goals, remove the goal of restoring County streams using engineering projects within the stream channel itself – so-called “stream restorations” - unless such projects are projected to have less adverse ecological impacts when compared to their upland alternatives.
10. In Chapter 2, II.E.5.c. State and Federal Programs, revise clearly erroneous descriptions of the goal of the MS4 Permit Program which wrongly states that stream restorations are a requirement.
11. Revise Chapter 4, section I.B.3. Sanitary Sewer Overflows to require public notification.
12. Revise definitions in V.B. Septic System Problems since “frequent pumping” is neither defined nor is necessarily a public health problem.
13. Remove bogus language in Chapter 4, section V.B. Septic System Problems based on expectations derived from a misapplication of the Glen Hills Study.
14. Revise Chapter 4, Table 4-T18: Septic Problem Areas: Communities with Existing and Anticipated Septic System Problems, which is bogus as written.
15. Revise misleading and erroneous wording in Appendix C: Exceptional Service Policies and Recommendations.
16. In Appendix C: Exceptional Service Policies and Recommendations, create special protection areas to protect drinking water sources.

All of these are necessary, straight forward changes to policies that cannot be justified on either common sense or environmental grounds, especially with regard to protecting water quality.

Apparently, there continues to exist a belief that septic systems are bad and should be replaced by public sewer as much as possible. That is the only explanation for several items in this draft plan – some carried over from the past plan and some newly proposed.

Let’s dispense with the myth that septic systems are outdated. Public sewer systems pre-date Roman times. The septic tank was not invented until 1860.

Let's dispense with the myth that septic systems are more polluting than public sewers. How bad is our public sewer system? Here are the known facts from WSSC's web site (<https://www.wsscwater.com/ssoreports>) about sewage spills or overflows:

- In 2015, WSSC spilled 2 million gallons of raw sewage.
- In 2016, WSSC spilled 1.5 million gallons of raw sewage.
- In 2017, WSSC spilled 5.2 million gallons of raw sewage.
- In 2018, WSSC spilled 9 million gallons of raw sewage.
- In 2019, WSSC spilled 5.3 million gallons of raw sewage.
- In 2020, WSSC spilled 700 thousand gallons of raw sewage.
- In 2021, it was back up to 8.7 million gallons of raw sewage.

We don't even know how much sewage leaks out of cracked pipes, but at least these are being repaired under the consent decree.

To compare WSSC sewer line overflows with sewage spilled or overflowed from septic systems, you will have to ask DEP. But, spoiler alert: they can't tell you since they don't know. Per the draft plan, "DPS does not currently maintain a comprehensive database of septic problems," (V.B.2. Septic System Problem Areas). In fact, they don't even know the total number of septic systems in the County, although they have been working on it for several years.

Given the above, in the absence of data showing that the public sewer system does a better job than septic systems, it is hard to understand the reason for some of the existing content carried over from the previous plan as well as some of the recommended changes to the Water & Sewer Plan, except that there appears to be an illogical systemic bias against septic systems that is not supported by any factual information.

The reason low density areas are not within the planned sewer envelope is to promote Smart Growth and limit high density development and impervious surfaces and thus protect our water supplies. As with the last update, this draft plan continues policies that promote sewer sprawl such as the abutting mains policy and the Potomac peripheral sewer policy. These policies make absolutely no sense if the goal is to limit the bad effects of sewer sprawl. They only make sense if the goal is to support sewer sprawl while ignoring environmental impacts. The County must be just as concerned with the environment as it is with jobs, housing, transit, and schools.

In theory, the Water and Sewer Plan establishes policies that emphasize the use of on-site septic systems in lower-density areas – this is what keeps certain areas low density for the purpose of protecting our watersheds from high density related pollution. In practice, however, the County has allowed changes to the sewer categories of many individual properties leading to creeping extensions of public sewer throughout the low-density areas. And the number of these sewer category changes grows each year. One policy that should be removed derives from the deeply flawed "Glen Hills Area Sanitary Sewer Study" that created a giant loophole to grant sewer category changes from septic to public sewer for several properties with fully functioning septic systems.

We recommend removing those components of the Water & Sewer Plan that promote sewer sprawl. Sewer sprawl which leads to increased building density, building size, and therefore increased impervious surfaces outside both the planned sewer envelope and the proposed Thrive 2050 growth corridors. Increased impervious surfaces such as roofs, parking lots, and driveways cause increased stormwater runoff since the current stormwater control regulations are woefully inadequate. The result is that this stormwater runoff firehoses into

our streams and leads DEP and Parks to call for more misguided and often highly destructive so-called “stream restorations”. This vicious cycle of environmental destruction must be stopped. You can do your part by including our suggestions in this new Water & Sewer Plan.

We understand that additional changes will be considered after this update to allow sewer service to the Potomac Oak shopping center and the “old white house” at the intersection of Glen Road and Travilah Road. As we have stated in previous testimony, we oppose any such changes which grant special favors to these developers (or anyone else, for that matter). They have each asked for a 5,300-foot public sewer line extension along Travilah Road to their properties which are deep in low density zones and outside the planned sewer envelope.

Again, please see our detailed comments in our written statement attachment.

Thank you for your consideration.

Sincerely,

Kenneth Bawer
West Montgomery County Citizens Association, Immediate Past President

ATTACHMENT - DETAILS OF PROPOSED CHANGES:

1. Remove all special favors such as the ones for the owners of Boswell Lane & Piney Meetinghouse Road properties; if allowed to be granted, the Water & Sewer Plan would be moving away from “government by law and regulations” to “government by special favors”.
 - a. Chapter I, section II.G.3.a.: General Requirements. The recommended change to the Plan in this section is a transparent gift to the owners of properties at 10400 Boswell Lane & 10401 Boswell Lane which would result in a sewer cat change for one of the properties not previously allowed. This would add insult to injury since the existing extension on Boswell Lane was itself a special gift to a developer made by Ike Leggett in the last hour of his term on the Council. **Per DEP’s communication with the Executive’s office, these are the only 2 properties in the entire County that would be affected by this rule change.**

The new text addresses a recent situation where an owner of a qualifying property wanted an extension that would bring a sewer main directly opposite his house. This extension would have also allowed another non-qualifying property to have sewer service approved under the abutting mains policy. The text revision proposes allowing limited main extensions. This section previously prevented an intervening property that would abut a new main extension from initiating the construction of all or part of the new main.

These owners’ requests had been previously granted deferrals, instead of denials recommended by both the Planning Board and County Executive, so that special favors might be included in this updated plan. The County now seems to be in the business of writing special regulations as special favors to one or two property owners. This is a slippery slope and may even leave the County vulnerable to possible law suits. One can imagine other septic system owners pointing to the special favor granted for Boswell Lane and asking for their own special favor. We wonder whatever happened to consistent equal treatment under the law.

This transparent special favor for 2 owners is hiding in plain sight in the draft plan. The example scenario in the draft is simply a mirror image of the 2 properties on Boswell Lane that this “special favor/treatment” is meant to serve.

In the original request, the applicant (2020 q4, **Request [3] WSCCR 20-TRV-05A: Kapoor, 10401 Boswell Lane, Potomac**) cites the approval of WSCCR 00A-TRV-03 (R.A.M. Investing) from 2002 in support of its application. Recalling the history of the R.A.M. Investing property confirms that approval should not be granted. The R.A.M. approval was dead wrong illegal and occurred as a result of Isiah Leggett’s jamming it through the Council, with no prior public notice, during the last 5 minutes of his term. It was clearly done as a personal favor to the R.A.M. Investing corporation. When what he had done became public, it elicited outrage to the point that the new incoming County Council enacted rules forbidding actions on any category changes during the final lame duck months of a County Council’s term.

The R.A.M. approval, containing this understatement, certainly cannot be used as a basis for any future approvals in the Piney Branch Special Protection Area: "...this approval represents an exception to the Piney Branch Sewer Restricted Access Policy and is not a precedent for possible future exception requests."

- b. II.G.3.b.: Single Connections for Only One Property: Another special favor is enabled this section.

The text addresses a recent situation where an owner of a qualifying property wanted to transfer an allowed abutting mains connection from that qualifying property to another property. The property to receive the transfer had previously been excluded from an abutting mains connection because an allowed connection had been used for another property. The text revision proposes to allow for limited connection transfers between adjacent properties.

This is a special favor for the property at 12000 block of Piney Meetinghouse Road (Oct. 2020 packet, Request [4] WSCCR 20-TRV-09A: Sami and Siham Ainane • 12000 block of Piney Meetinghouse Rd, Potomac). This request was granted a deferral by the County Council instead of the outright denial appropriately recommended by both the Planning Board and the County Executive. We oppose special favors like these that are in clear violation of current rules and long-standing sewer policy governing this serpentine barrens area of the Potomac Subregion.

The problem is that, once the original owner for the connection "right" transfers it, and then the original owner has an irreparable septic system failure, they will be granted community sewer connection. The net result will be two sewer connections instead of the original one sewer connection currently allowed. This would result in just another example of creeping sewer sprawl.

Just as with their prior application, the most current request (Oct. 2020 packet, **Request [4] WSCCR 20-TRV-09A: Sami and Siham Ainane • 12000 block of Piney Meetinghouse Rd, Potomac**) on which this Water & Sewer Plan change is based is still clearly not consistent with the abutting mains service policy. Granting this application would be particularly egregious given that County staff, paid with our tax dollars, had crafted and presented to the applicant what they thought might be a possible solution to the abutting mains requirements through subdivision. The applicant, however, appears to have refused to take any of these necessary steps that might have resulted in an application that could be approved.

2. Remove the section in Appendix C, section II.E: GLEN HILLS STUDY AREA as a special "Sewer Service Policy Area". DEP incredulously continues to use a septic survey process that ignores the advice of the Glen Hills Area Sanitary Study, for which the County paid \$350,000. In that study, the consultant explicitly state that one cannot rely on the high-level USDA soil maps that DEP continues to use. Rather, the study said that you must do on-site lot testing to determine the suitability of any specific lot for septic use.

The Glen Hills Area Sanitary Study has been thoroughly discredited. The cursory research conducted for this study only provides high level, theoretical soil conditions. Lot-by-lot soil testing is still recommended by the study authors: "**Due to the preliminary nature of the report and available funds, the report did not include**

the lot-by-lot field soil testing that is normally required when designing, permitting, and constructing sanitary systems. Only with this type of soil testing can there be certainty regarding the long-term sustainability of septic service on individual properties.” (Phase 2 Report, p. 4)

3. Remove or revise Chapter 1, section II.G.2.b.: Area-Wide Onsite Systems Concerns & II.G.2.c: Establishing Onsite Systems Survey Areas

Currently, the establishment of a septic system survey requires that it be initiated by a property with a septic system failure. Unfortunately, DEP can then expand the survey area to include as many additional properties as they desire, whether or not these properties have septic system failures. Plus, DEP can add properties without the benefit of on-site soil tests (i.e., perc tests). This gross disregard for scientific methodology can result in numerous properties with functioning septic systems being granted sewer category changes from septic to sewer.

If the concept of a Septic Area Survey is to be retained, then it should be limited to properties having actual septic failures that could not be resolved on-site as certified by DPS, where the owner is not willing to accept use of a holding tank, and should require on-site soil analysis (i.e., perc tests) for each property that is part of the survey. The cost of this analysis should be paid by those owners whose properties are part of the survey. If survey results indicate a need for community service to mitigate existing problems for at least 2 properties, DEP can recommend establishing a special community service area for only those properties that could not be resolved on-site as certified by DPS after on-site soil tests are performed and for those properties where the owner is not willing to accept the use of a holding tank. In no cases should DEP recommend sewer category changes for properties with still-functioning septic systems.

4. Remove the Potomac Area Peripheral Sewer Service Policy: (II.M.: POTOMAC AREA RE-1 AND RE-2-ZONED PROPERTIES, Special Community Sewer Service Policy [a.k.a. Potomac Peripheral Sewer Policy])

Another example of a loophole in the Water and Sewer Plan is the so-called Potomac area peripheral sewer service policy that lets properties connect to public sewer simply because they are adjacent to the existing “recommended community sewer service envelope” – the area in which public sewer lines are allowed. This policy is a senseless loophole that needs to be removed.

Obviously, this defeats the purpose of containing sewer lines within the sewer envelope. Furthermore, while this action does not automatically expand the existing sewer envelope, it only takes a small leap to envision that the sewer envelope will be expanded in the future to include these currently allowed peripheral policy properties and then allowing even more properties to be peripheral to the new, expanded envelope. And on and on.

This policy cannot be justified on either common sense or environmental grounds, especially with regard to protecting water quality.

5. Revise the Abutting Mains Policy (Chapter 1, Section II.G.3.a.: General Requirements)

The “abutting mains” policy is another loophole that promotes the conversion of properties with functioning septic systems to community sewer service. The proximity of existing water and/or sewer mains to a particular property should not be a consideration in determining eligibility for the provision of community water and/or sewer service. This policy cannot be justified on either common sense or environmental grounds, especially with regard to protecting water quality.

Suggested wording: “A property with an existing septic system cannot qualify for community service unless DPS certifies that the onsite system failure cannot reasonably be resolved by an onsite repair or permitted replacement of that system and the owner does not accept use of a holding tank. This determination will require an onsite system inspection by DPS and a qualified contractor at the owner’s expense. Note that in the case of septic systems inside the sewer envelopes, reasonable relief methods include the use of a holding tank if agreeable to the owner. Likewise, in the case of septic systems outside the sewer envelopes, reasonable relief methods include the use of a holding tank.

6. Allow holding tanks as an alternative to sewer hookup for existing, failed septic systems that cannot be resolved by an onsite repair.

A holding tank does not provide treatment of wastewater. The wastewater is pumped out and then discharged by a hauler to a public sewerage system for treatment. The use of a holding tank would be a voluntary measure of last resort in trying to address a septic system failure if the owner does not wish to connect to the public sewer system. The use of a holding tank is similar to regularly having trash removed by a contractor. It requires the property owner to regularly pump out the tank by a septic service company. Holding tanks should not be allowed for new-build, but only as an option for non-repairable systems.

Depending on usage, a holding tank will fill and need to be pumped out anywhere from every two weeks to two months or longer. In conjunction with holding tanks, the County should allow the use of greywater systems to decrease the amount of waste water flowing into a holding tank.

DEP has provided no reasonable argument for disallowing the voluntary use of a holding tank.

7. Chapter 1, section II.D.1.: Categories W-1 and S-1 and section II.D.3.: Categories W-3 and S-3. In areas designated as categories W-1 and S-1 as well as categories W-3 and S-3, allow new individual, on-site systems to be permitted, not just for interim permits, even where an adequate community water or sewerage system is available. Given the miserable history of WSSC sewage overflows provided above, there is no reason to prohibit well and/or septic systems in these areas.
8. Revise Administrative Delegation Policies in Chapter 1, section V.D.2.a: Administrative Delegation Policies & V.D.2.b: Administrative Delegation Advance Action Process

Current wording: “DEP may act on service area changes to allow community service for properties to relieve existing or anticipated public health concerns, as specified under Section II.G.2.: Community Service to Relieve Public Health Problems.”

We suggest removing “anticipated public health concerns” since this is so loosely defined (if at all) as to allow category changes for fully functioning septic systems. This non-scientific methodology has already been ill-advisedly applied to the Glen Hills area.

9. In Chapter 2, II.E.5.a. County Water Quality Goals, remove the goal of restoring County streams using engineering projects within the stream channel itself – so-called “stream restorations” - unless such projects are projected to have less adverse ecological impacts when compared to their upland alternatives.

So-called “stream restorations” should not be done because of the following reasons:

- “Stream restorations” don’t restore streams either physically or biologically, import foreign material, & destroy riparian ecosystems – this complex web can’t be recreated by re-planting some trees.
- “Stream restorations” don’t address the root cause of stream bank erosion: stormwater fire-hosing into streams from impervious surfaces such as roofs and roads. As a result, “stream restorations” get blown out.
- The science tells us that forests counteract global warming by sequestering carbon, even if they aren’t in pristine condition.
- The way to “fix” streams is to control stormwater outside of streams by using non-destructive, upland (out-of-stream) practices such as raingardens, bioswales, permeable pavement, tree planting, etc.

10. In Chapter 2, II.E.5.c. State and Federal Programs, revise clearly erroneous descriptions of the goal of the MS4 Permit Program which wrongly states that stream restorations are a requirement.

The current wording is erroneous: “The primary goal of the program is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. The County’s Permit requires the County to the restore poor quality streams and meet water quality protection goals.”

The MS4 Permit does absolutely not require any restoration of biological integrity to streams. In fact, the MS4 Permit does not require “stream restorations” at all.

A more accurate and preferable statement would be: “The primary goal of the program is to reduce a limited set of pollutants that enter the Chesapeake Bay. The County’s Permit requires the County to reduce pollutants such as nitrogen, phosphorus, suspended sediment and trash as dictated by the MS4 permit to meet water quality protection goals. Ideally, runoff should be captured, slowed and treated by stormwater best management practices before entering streams. Therefore, projects to meet the County’s MS4 Permit should primarily be practices conducted upland of streams to keep polluted stormwater out of the streams.” Only “stream restoration” projects that are projected to have less adverse ecological impacts when compared to their upland alternatives should be allowed to proceed.”

“Stream restorations” have resulted in an estimated 2 million square feet of forest destruction (DEP will not provide this data) which is contrary to the County’s Climate Action Plan’s goal of protecting forests. Plus, there is documented evidence that stream restorations structures are destroyed after construction owing to

the lack of adequate upland stormwater control allowing stormwater to firehose into streams. Stream restorations are the only destructive in-stream practice among the dozens of other practices that are allowed by MDE's Accounting Guidance.

11. Revise Chapter 4, section I.B.3. Sanitary Sewer Overflows to require public notification.

Unfortunately, the commitment to public health as it relates to sanitary sewer overflows is woefully inadequate, aside from WSSC posting a few signs at the overflow site

We suggest adding the following:

"In the interest of public health, WSSC will notify DEP of sewage overflows within 6 hours of an incident. DEP will alert the public both electronically via "Paperless Airplane" and public safety announcements sent to radio stations, television stations, and social media. When an overflow incident occurs, DEP will alert the public and commercial users upstream of the incident and remind users of the causes of such overflows, e.g., F.O.G.s, and how to help prevent future overflows. As part of a well safety program and for the protection of public health, the County will require well water testing in a "n" mile radius of a known sewer line overflow event to be paid by the WSSC within "n" days of the overflow event."

12. Revise definitions in Chapter 4, section V.B. Septic System Problems since frequent pumping is neither defined nor is necessarily a public health problem.

Suggested wording: "A frequent need to pump out a septic system (defined by the need to pump out more than "n" times per year (defined by state of Massachusetts, e.g.) in order to keep overflows or backups from happening.

13. Remove bogus language in Chapter 4, section V.B. Septic System Problems based on expectations derived from a misapplication of the Glen Hills Study.

The current language, "In addition, the expectation that existing onsite septic systems cannot be replaced to support existing development once they fail, can present anticipated public health problems," is bogus. Apparently, DEP's expectation is based on a misapplication of the discredited Glen Hills Study where the County chooses to ignore the advice of the authors to do on-site soil analysis.

14. Revise Chapter 4, Table 4-T18: Septic Problem Areas: Communities with Existing and Anticipated Septic System Problems, which is bogus as written.

DEP has no way of determining if problems are due to soil conditions or poor maintenance, since DEP does not require periodic pumping or inspection. This section needs to reflect that fact until the County has started to require pumping and inspections and has several years of required maintenance/inspection behind it.

15. Revise misleading and erroneous wording in Appendix C: Exceptional Service Policies and Recommendations.

The current language, “The research conducted for the Glen Hills Area Sanitary Study will allow DEP to streamline the survey process for properties in these neighborhoods,” is bogus. As stated above, DEP ignores the explicit guidance of the Study’s authors that on-side soil analysis must be done on a lot-by-lot basis. Therefore, the survey process should absolutely not be streamlined in these neighborhoods. Streamlining the survey process is not in the public’s interest. Whenever processes are streamlined, it is often the public and the environment that suffer due to lax or absence of proper oversight.

16. In Appendix C: Exceptional Service Policies and Recommendations, create special protection areas to protect drinking water sources.

We suggest the creation of special protection areas to protect drinking water sources upstream from the Potomac River Water Filtration Plan on River Road (to include the watersheds of Watts Branch, Muddy Branch, and Seneca Creek) as well as the Little Seneca Reservoir watershed and possibly others.