

Zawitoski, John

From: Compton, Keith
Sent: Thursday, February 28, 2013 7:19 AM
To: Criss, Jeremy
Cc: Hanley, Kyle K.
Subject: Re: Council Bill 41-12 Streets and Roads-Roadside Trees-Protections.

Jeremy

There are many prescriptive rights if ways in Montgomery County, many of which are located in the up-county area.

I have not researched each and every one, but our GIS database and land record research provides info we in Highway need with respect to maintenance.

I hope this helps. If not, contact my Engineer, Kyle Hanley. Kyle may be able to provide further clarification.

And you're always welcome to contact me direct at 240-777-7607

Keith

Sent from my iPhone

On Feb 27, 2013, at 4:57 PM, "Criss, Jeremy" <Jeremy.Criss@montgomerycountymd.gov> wrote:

Hello Keith,

I have been working with the County Council on Bill 41-12 and I have a question I was hoping you could answer or forward to someone who could help me.

Outlined below you will see the complete link to the County Council Staff packet for the Bill.

http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130225/20130225_TE1.pdf

I have outlined the Council staff recommendations from page 4 of the cover memorandum surrounding the agricultural activities.

Please see the wording that is underlined that addresses the concerns expressed by the agricultural community.

3) Should agricultural activities be exempt from the County law? The Council heard testimony and received correspondence from the Soil Conservation District and the Farm Bureau urging the Council to exempt routine maintenance on public rights-of-ways and agriculturally assessed properties from the permit requirement (see ©56-57 and 58-61). At its first worksession, the Committee directed staff to review whether the County's agricultural areas could be excluded from Bill 41-12. It is not clear that the County law can directly exclude all rights-of-way in agricultural areas without running afoul of the state's stringency requirement. After further review, Council staff believes that the County could exclude rights-of-way in "prescriptive easements" from the bill. These easements are addressed in current County Code §49-6:

49-6. Roads used for 20 years may be declared public highways.

(a) Whenever any road has been used by the public for 20 or more years, though the road may never have been condemned or granted as a public highway, the County Executive may by Executive order published in the County Register declare the road to be a public highway.

(b) The public right-of-way of a road declared as a public highway under subsection (a) must

include permanent maintenance easements which extend 10 feet beyond each pavement edge.

Can you help me to understand whether there exists an approved Executive Order to classify roads with prescriptive rights-of-ways for Roads used for 20 years declared public highways.

The answer to this question is most important regarding the Council Staff recommendation to exclude rights-of-ways prescriptive easements from the bill.

Please let me know if you have any questions.

Thanks J

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