

Open Space Waiver Fee Policy in Baltimore County: A Failure of Archer, Arrows & Aims

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NeighborSpace
of Baltimore County, Inc
Protecting Land to Improve Communities

Open Space Waiver Fees

ANNOUNCEMENTS

BACKGROUND

Under current County law, developers are required to provide 1,000 square feet of open space per dwelling unit or pay a "fee in lieu" thereof. County law provides that the Administration is charged with setting the fees, which must be reviewed by the Council every two years. In 2013, following approval of a reduced schedule of fees, the County Council issued a resolution requiring the Administration to review the County's open space needs and recommend changes to the policies surrounding the fees, the fees themselves, and the Local Open Space Manual, which governs the provision of open space on development sites. The Department of Planning issued its report to the Planning Board in March and the Planning Board, following a public hearing, forwarded the report to the County Council without accepting it on April 2, 2015.

MATERIALS

- Relevant Laws/Regulations/Policy Documents
 - [Section 32-6-108 of the County Code, mandating the provision of open space.](#)
 - [The Local Open Space Manual](#)
 - [Resolution 44-13 requiring the Planning Board to review open space needs, fee policies and fees](#)
 - [Planning Board Report Issued in Response to Resolution 44-13](#)
 - [Resolution 43-13 Establishing Fees](#)
- Pending Legislation
 - [Resolution 89-15 Requiring Planning Board to Review Open Space Needs \(October 2015\)](#)
 - [Resolution 90-15 Establishing New Fees for BMCT, ML and RAE \(October 2015\)](#)
- Testimony & Fact Sheets
 - [Principles & Recommendations on Revisions to Open Space Waiver Fee System \(June 2015\)](#)
 - Planning Board Hearing March 19, 2015
 - [Testimony of NeighborSpace of Baltimore County](#)
 - [Testimony of the Md Building Industry Association](#)
 - [Testimony of the Greater Towson Council of Community Associations \(GTCAA\)](#)
- Newspaper Articles
 - [2015-10-13 Baltimore County Council again Considers Open Space Fee Changes for Towson](#)
 - [2015-9-21 Open Space Debate Continues in Baltimore County](#)
 - [2015-6-1 Baltimore County Residents Urge Greater Open Space Fees for Developers](#)
 - [2015-5-29 Baltimore County Council to Consider New Developer Fees for Open Space](#)
 - [2015-4-3 Planning Board Passes Fee Matter on to Council](#)
 - [2015-3-24 As Towson Grows, Residents Push for More Open Space](#)
 - [2015-3-19 Towson Residents Plead for More Open Space Money](#)
- Other Materials
 - [Reinventing the Suburbs: Towson, MD \(Community Architect, 2/20/2015\)](#)
 - [Reshaping Growth Centers with Open Space \(Community Architect, 4/3/2015\)](#)
 - [Seattle Park Value Report: Open space raises everyone's bottom line. According to the detailed analysis by the Center for City Park Excellence, Seattle's parks deliver annual municipal revenue of \\$19.2 million, municipal savings of \\$12.4 million, resident savings of \\$511.6 million and a collective increase of resident wealth of \\$110.8 million.](#)

Resource Page:

[www.neighborspacebaltimorecounty.org/
projects/los-law-and-policy/](http://www.neighborspacebaltimorecounty.org/projects/los-law-and-policy/)

THE ARCHER

Baltimore County Government, specifically the Departments of Recreation & Parks and Permits, Approvals & Inspections and the County Administrator.



THE ARROWS



An “adequate public facilities” ordinance that requires developers to set aside 1000 SF of open space per dwelling unit or pay a fee & the *Local Open Space Manual*, which acts like a regulation to implement the ordinance.



THE AIMS

Create recreational open space when new residential developments are built.

ARTICLE 32. PLANNING, ZONING, AND SUBDIVISION CONTROL

- + [icon] TITLE 1. IN GENERAL
- + [icon] TITLE 2. PLANNING
- + [icon] TITLE 3. ZONING
- + [icon] TITLE 4. DEVELOPMENT
- + [icon] TITLE 5. COMMERCIAL DISTRICT MANAGEMENT AUTHORITIES
- [icon] **TITLE 6. ADEQUATE PUBLIC FACILITIES** 
- [icon] § 32-6-101. DEFINITIONS.
- [icon] § 32-6-102. LEGISLATIVE INTENT AND PURPOSE.
- [icon] § 32-6-103. OVERCROWDED SCHOOL DISTRICTS.
- [icon] § 32-6-104. TRANSPORTATION.
- [icon] § 32-6-105. WATER.
- [icon] § 32-6-106. SEWER.
- [icon] § 32-6-107. STORMWATER MANAGEMENT.
- [icon] § 32-6-108. RECREATIONAL SPACE. 
- [icon] § 32-6-109. CONDITIONAL DEVELOPMENT APPROVAL.
- [icon] § 32-6-110. FEES NOT APPEALABLE.
- + [icon] TITLE 7. HISTORICAL AND ARCHITECTURAL PRESERVATION
- + [icon] TITLE 8. FLOODPLAIN MANAGEMENT
- + [icon] TITLE 9. GROWTH ALLOCATION

- [Adequate Public Facilities Laws: A Primer](#)
 - Laws that control growth by requiring completion of infrastructure necessary to offset increased demands when new developments are built.
 - Also known as “exactions,” an exercise of government’s police power intended to protect public health & welfare by ensuring that new developments share in the cost of addressing enhanced needs that they cause.
 - For an exaction to be constitutional, the need to which it is applied must be reasonably connected to the development project against which it is assessed.

- **Scope & Open Space Requirement:**

- Applies only to residential development
- Requires 1000 sq ft of open space per dwelling unit
 - 650 sq ft dedicated for active open space in no less than 20,000 sq ft parcels.
 - 350 sq ft can be active, passive or both

Active open space: areas with less than 4% grade that are open, dry, unencumbered and suitable for interactive play or for gatherings of 10 or more individuals; includes pools, tennis courts, on-site community playgrounds.

Passive open space: gently sloped open or sparsely wooded areas with less 10% grade variance suitable for non-interactive recreational uses including walking, picnicking, or sitting

- **Waiver:**

- Requirements above may waived by Dir. Of Rec. & Parks if there is no suitable land or for any appropriate environmental consideration
- If requirements are waived, a fee must be assessed and used in the Councilmanic district where the project is located
- Equipment or materials suitable for recreational use on county property can be accepted in lieu of cash
- 20% of any cash fee collected comes to NeighborSpace

- **Fee:**

- Established by County Admin based on “zoning classification of land and uses of land and their public purposes.”
- Designed to offset increased cost to county for acquiring “recreational land.”
- Must be adopted by County Council by resolution.

(Baltimore County Code Section 32-6-108, first adopted 1988).

BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL



As Adopted by the Baltimore County Council
February 22, 2000

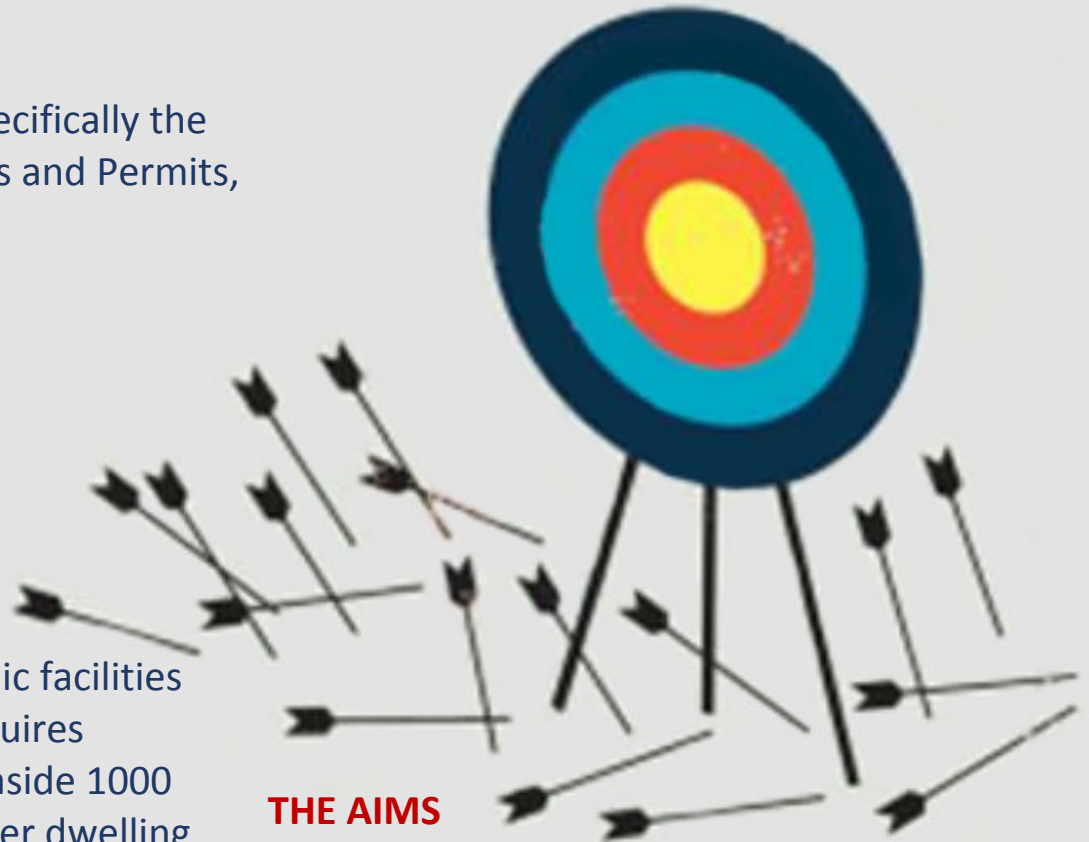
THE ARCHER

Baltimore County Government, specifically the Departments of Recreation & Parks and Permits, Approvals & Inspections



THE ARROWS

An “adequate public facilities ordinance that requires developers to set aside 1000 SF of open space per dwelling unit or pay a fee



THE AIMS

Create recreational open space when new residential developments are built

ISSUES:

- (1) Needs for open space go beyond the merely recreational to include economic and environmental exigencies;
- (2) All development projects impact open space, not just residential development; and
- (3) The inner suburbs were built out long before this law was created; their open space needs could never be met by this provision alone.

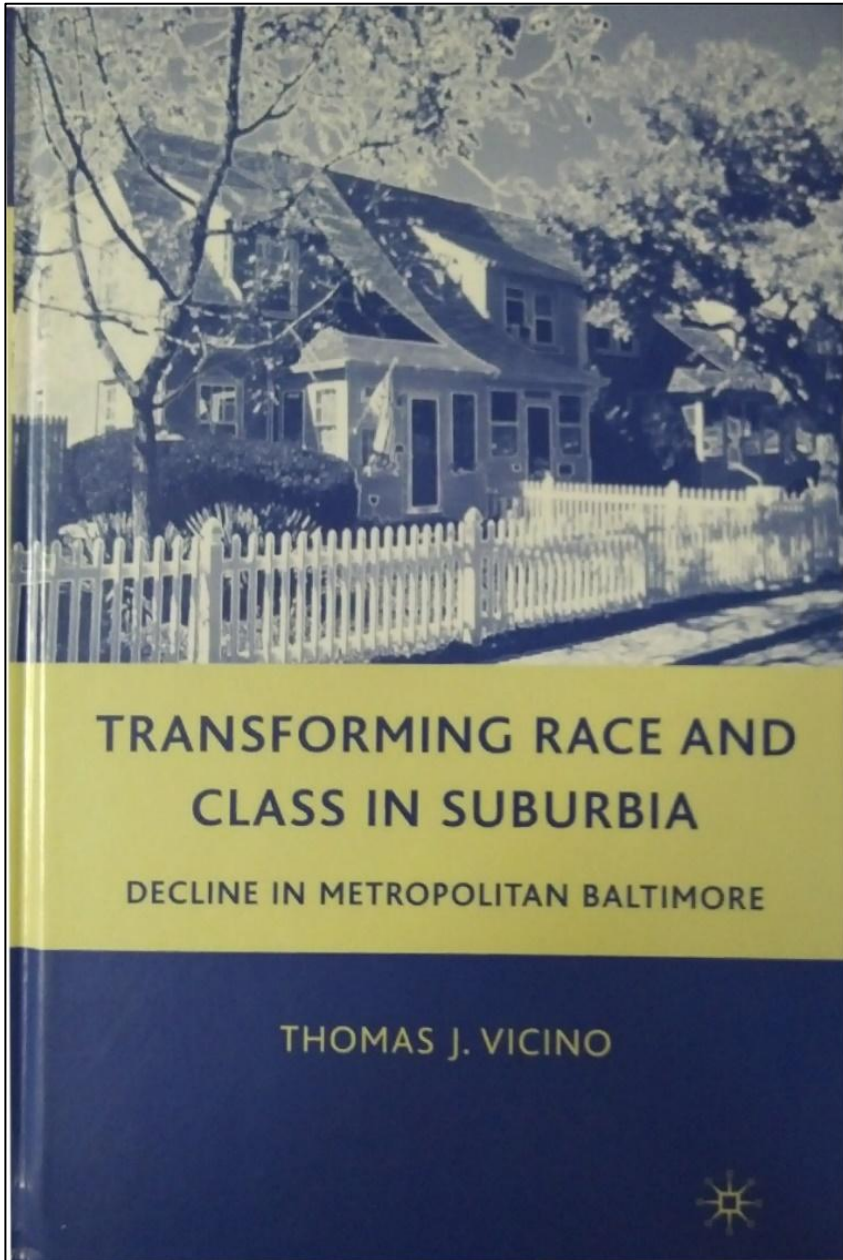
BACKGROUND

AIMS

ARROWS

ARCHER

ANSWERS



Baltimore County is a county at the crossroads It is an aging county, both in population and physical infrastructure. More than 70 percent of the county's housing stock is aged 30 years or older and much of it lacking in modern amenities or suffering from some type of obsolescence.

p. 170 (Quoting Baltimore County Master Plan 2010, p. 15)

BACKGROUND

AIMS

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ANSWERS



Numerous studies have consistently shown that parks and open space have a positive impact on nearby residential property values. The evidence reveals that most people are willing to pay more for a home close to a nice park. Economists call this phenomenon “hedonic value.” *The Economic Benefits of Seattle’s Park & Recreation System* (Trust for Public Land, Center for City Park Excellence (2011)).

BACKGROUND

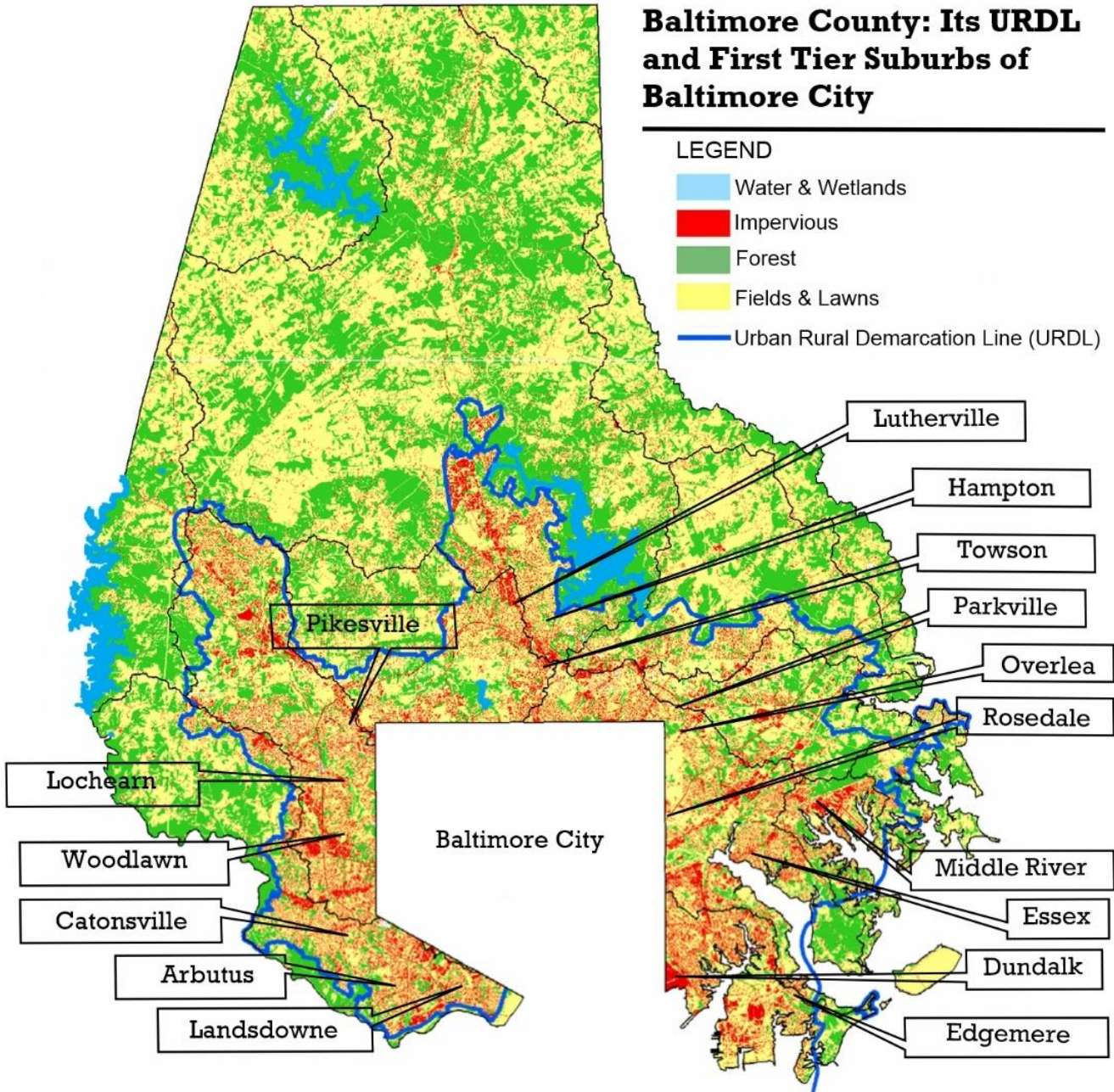
AIMS

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Baltimore County: Its URDL and First Tier Suburbs of Baltimore City



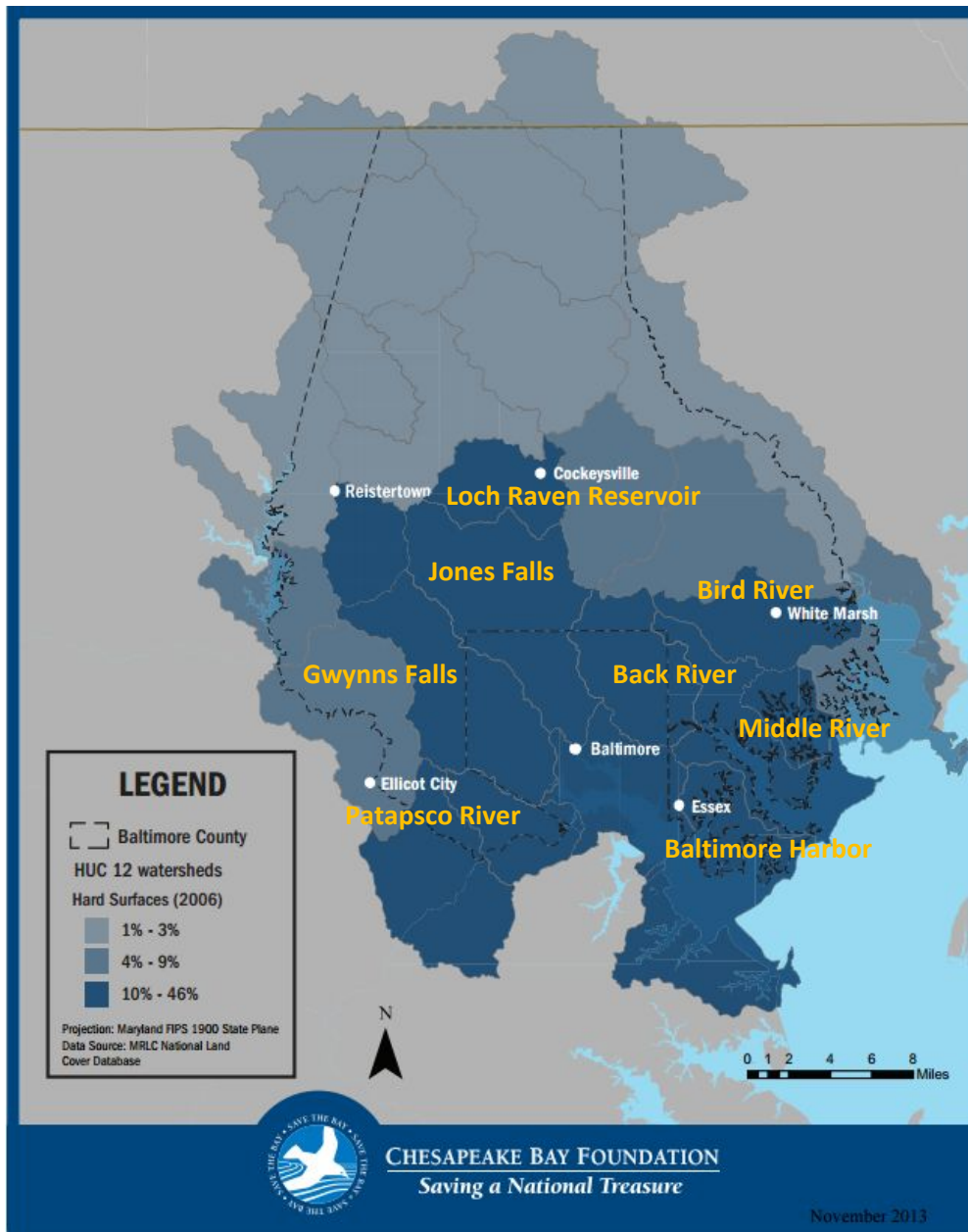


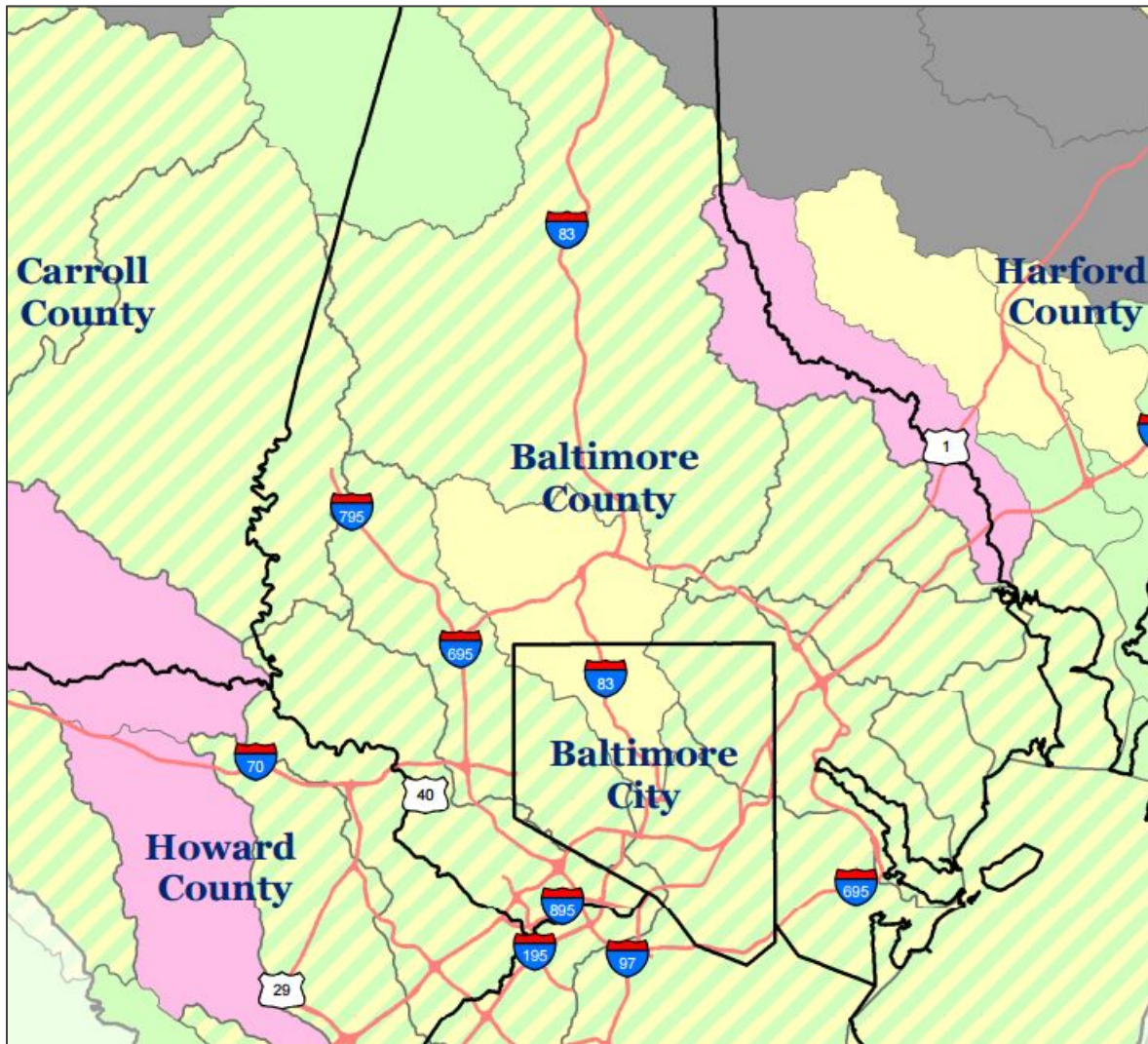
Security Square Mall

County Watersheds with Greatest Impervious Surface Impacts

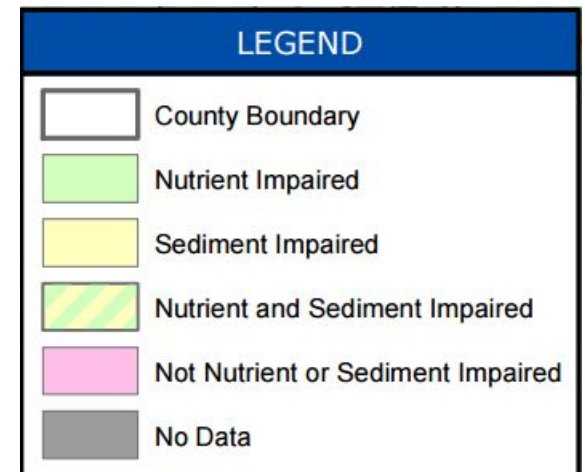
Water running off of roofs, driveways, lawns and parking lots picks up trash, motor oil, grease, excess lawn fertilizers, pesticides, dog waste and other pollutants and washes them into the streams and rivers flowing through our communities. This pollution causes a multitude of problems, including toxic algae blooms, harmful bacteria, extensive dead zones, reduced dissolved oxygen, and unsightly trash clusters. (Chesapeake Bay Foundation, <http://www.cbf.org/document.doc?id=1866>)

“Stormwater runoff is the primary cause of pollution of the County’s urban water resources including the Chesapeake Bay. (Baltimore County FY2014 Adopted Operating Budget Supporting Detail, page 582).





Impaired Watersheds



Source: Baltimore Metropolitan Council (2014)

(<http://www.baltometro.org/phocadownload/Maps/Environmental/ImpairedWatershedsMax2040.pdf>)

63% of residences inside the URDL have insufficient access to open space. 6.7% have no access at all.

This is based on applying the 1,000 square feet of open space per dwelling unit standard to all existing residential area within Baltimore County's Urban Rural Demarcation Line.

This map is for informational purposes only.

Data Sources:

Maryland Department of Planning:

Maryland Property View: parcel points

Baltimore County Department of Information Technology:

URDL, Parcels, Road Centerlines

US Census: TIGER Water Area

Prepared: 09/16/2015

Analysis & Cartography by:

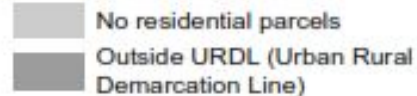
Thayer Young, Gray to Green Intern

Neighborspace of Baltimore County, Inc.

Lack of open space is a **HUGE** problem, particularly in the 1st tier suburbs

Access To Open Space Within a 1/4 mile Radius of Each Dwelling Unit

Thousands of Square Feet Open Space per Dwelling Unit



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of Baltimore County, Inc.
Protecting Level to Improve Communities

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THE ARROWS

An “adequate public facilities ordinance” that requires developers to set aside 1000 SF of open space per dwelling unit or pay a fee

ISSUES:

- (1) The law incentivizes fragmentation & the proliferation of private open spaces over connected spaces that serve more people;
- (2) The fee is based on zoning irrespective of where the project is located or the cost of acquiring land in that locale;
- (3) Participation is not required by developers in Towson’s CT District.



THE AIMS

Create recreational open space when new residential developments are built

ISSUES:

- (1) Needs for open space go beyond the merely recreational to include economic and environmental exigencies;
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- (3) The inner suburbs were built out long before this law was created; their open space needs could never be met by this provision alone.

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- **Scope & Open Space Requirement**

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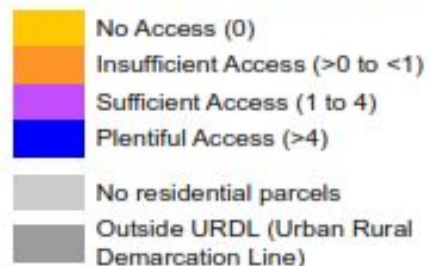
Thayer Young, Gray to Green Intern

Neighborspace of Baltimore County, Inc.

You can't solve the **HUGE** problem by incentivizing the creation of new open space on private lands.

Access To Open Space Within a 1/4 mile Radius of Each Dwelling Unit

Thousands of Square Feet Open Space per Dwelling Unit



2.5 1.25 0 2.5 Miles



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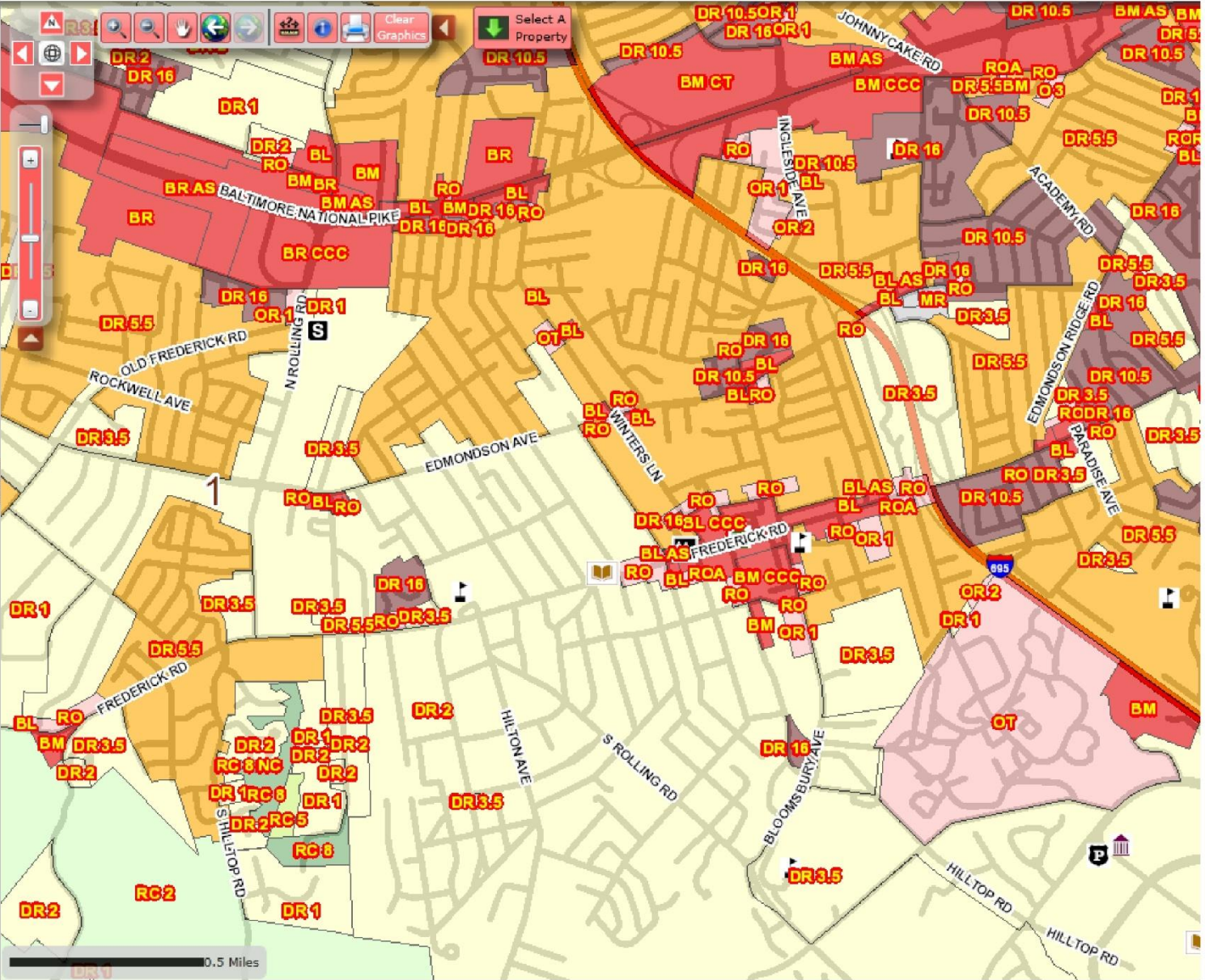
AIMS

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ANSWERS

Application of Baltimore County Zoning Code in Catonsville & Resulting Segregation of Uses



Zoning Classifications

Residential	
DR 1, 2, 3.5, 5.5, 10.5 & 16	Density Residential - permit low, medium and high density urban residential development. Numerical in each classification indicated maximum number of units per acre. No standard unit lot size is required except for small tracts.
Office	
ROA	Residential Office - (Class A) permits house conversions to office buildings as of right.
RO	Residential Office - permits house conversions to office buildings as of right; small conventional office buildings permitted by special exception.
OR-1	Office/Residential - permits development or limited enlargement of a single medium-size office building or residential development potential to DR 5.5.
OR-2	Office/Residential - permits development of office buildings with supportive accessory commercial uses or residential development potential to DR 10.5.
O-3	Office Park Zone - a zone to be used exclusively for office development.
OT	Office and Technology - permits employment intensive office development in combination with certain high technology and residential development.
Business	
CB	Community Business - provides for daily shopping and service needs of nearby residents through small businesses which do not generate large amounts of traffic; stresses compatibility with residential uses.
BLR	Business Local Restricted - permits a large range of retail and service uses; performance standards are required to protect adjacent residential communities.
BL	Business Local - small scale commercial.
BM	Business Major - large scale commercial.

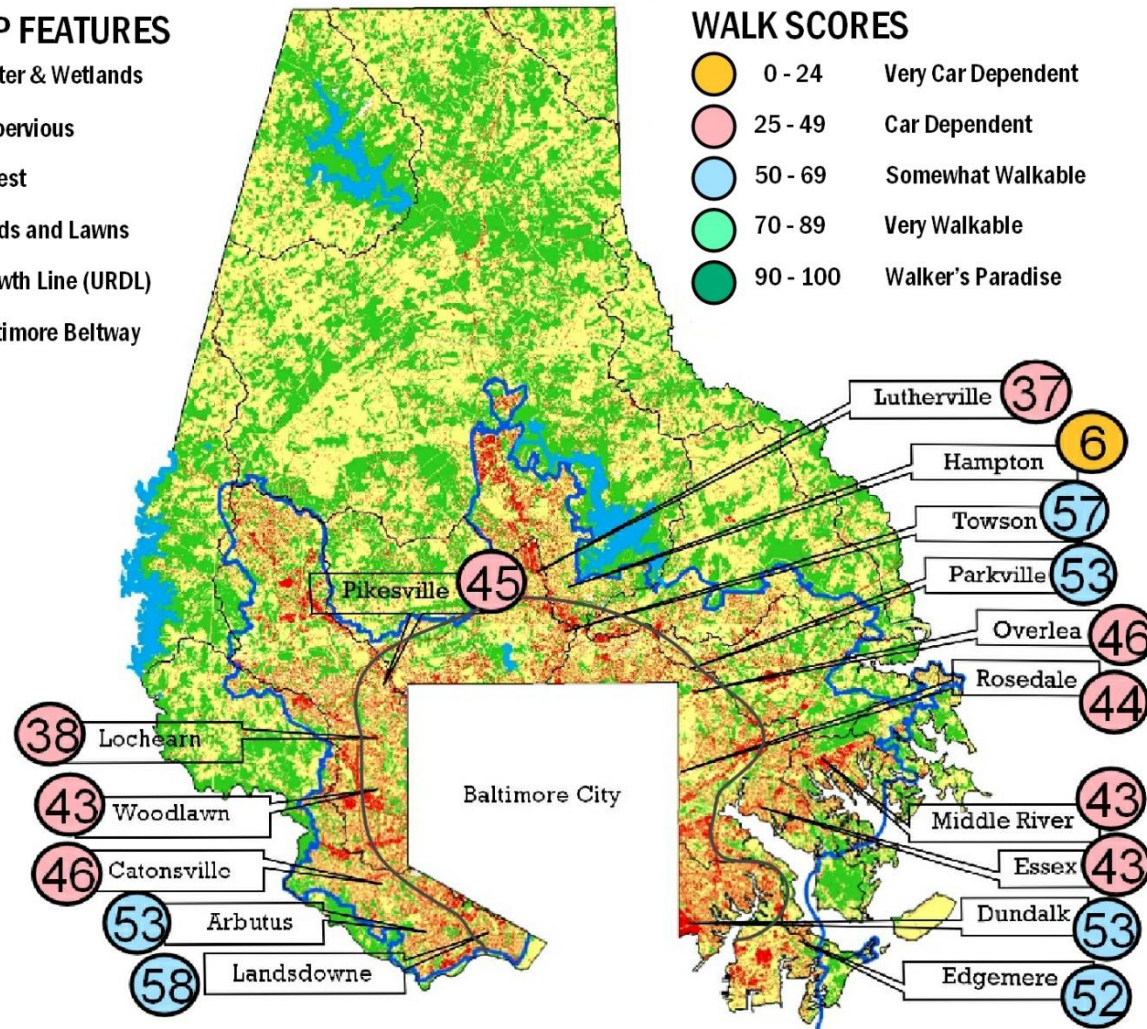
BALTIMORE COUNTY'S URBAN RURAL DEMARCATION LINE (URDL): A NOT SO FINE LINE

BASE MAP FEATURES

- Water & Wetlands
- Impervious
- Forest
- Fields and Lawns
- Growth Line (URDL)
- Baltimore Beltway

WALK SCORES

- 0 - 24 Very Car Dependent
- 25 - 49 Car Dependent
- 50 - 69 Somewhat Walkable
- 70 - 89 Very Walkable
- 90 - 100 Walker's Paradise



Walk Scores of Baltimore County's Inner Suburbs

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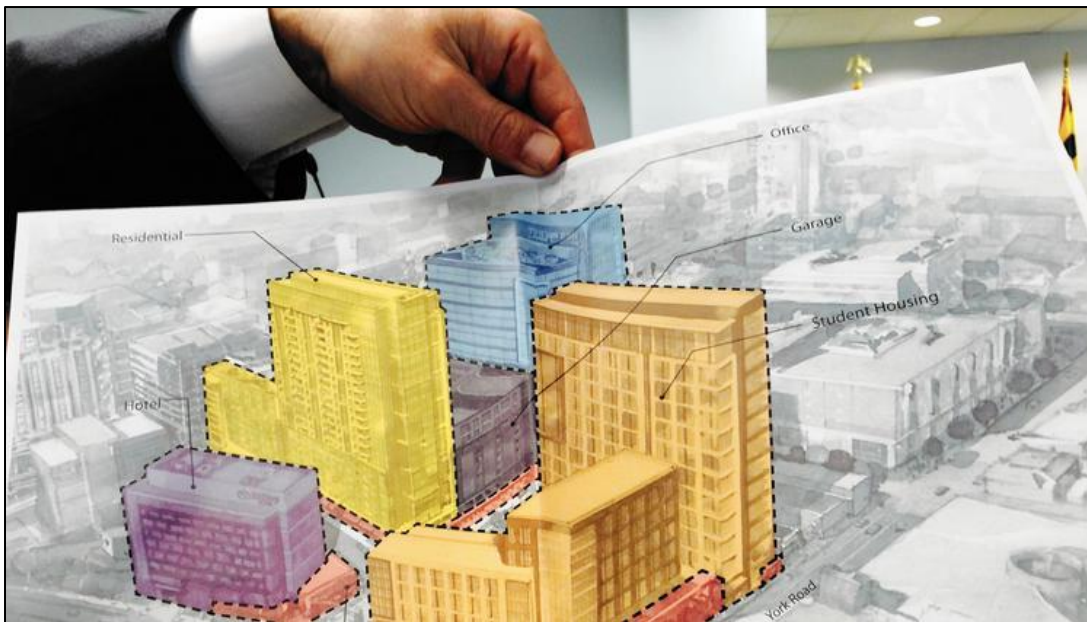
New park might bloom on Radebaugh Florist property



“Open space is a coveted rarity in Towson, which is why Baltimore County officials are touting plans by the government to acquire 2.5 acres of Radebaugh Florist property off Aigburth Avenue to preserve it from potential development. ... The county is buying the land at its appraised price of \$1.1 million, using Program Open Space money, the news release states.” *Baltimore Sun*, June 12, 2015

The fee-in-lieu “exemptions” passed by County Council resolution 15 years ago, and which the Planning Department’s March 2015 Report recommends renewing are:

- In the Towson CT, fees for the first 100 units constructed are \$0.
- The fee is \$5,000 for each 25 units thereafter; and dormitories with more than 50 students are completely exempt.



Example: Towson Row

- \$350 million, 1.1 million SF, mixed use project underway in the heart of Towson.
- Under current rules, the project would pay \$55,000 in open space waiver fees.

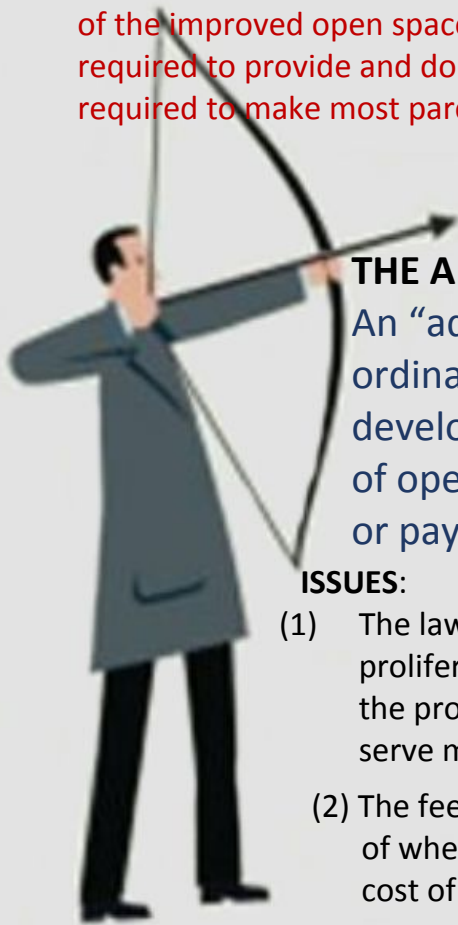
Rendering of Caves Valley Partners’ Towson Row Development Project

THE ARCHER

Baltimore County Government, specifically the Departments of Recreation & Parks and Permits, Approvals & Inspections

ISSUES:

- (1) The law is silent on transparency with respect to fees assessed, collected and spent and transparency is lacking.
- (2) Raw land values, used in setting the fees, are less than the cost of the improved open space that a developer is otherwise required to provide and don't account for the remediation required to make most parcels useable.



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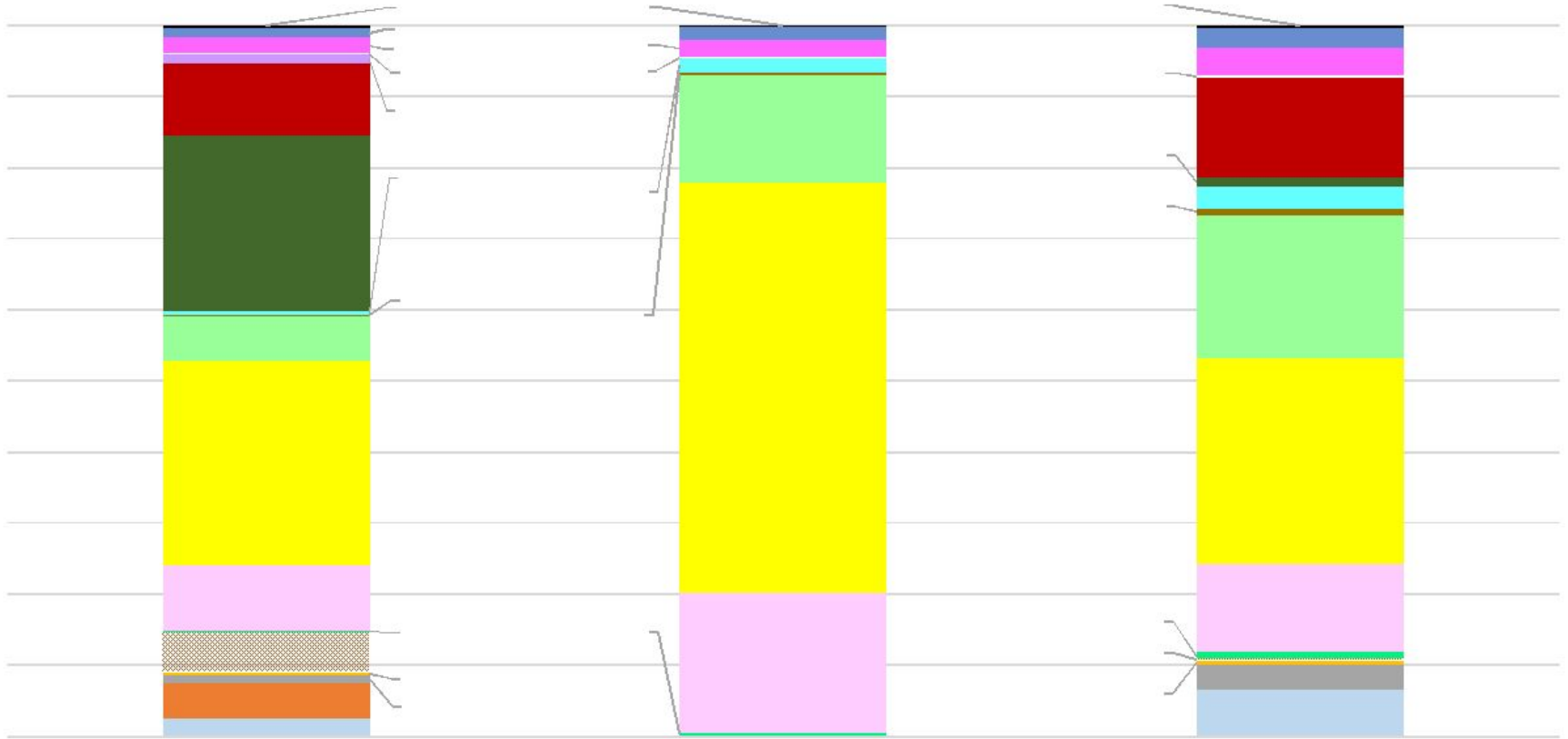
BACKGROUND

AIMS

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Robin Hill Park (1.5 acre NeighborSpace Parcel in Lochearn)



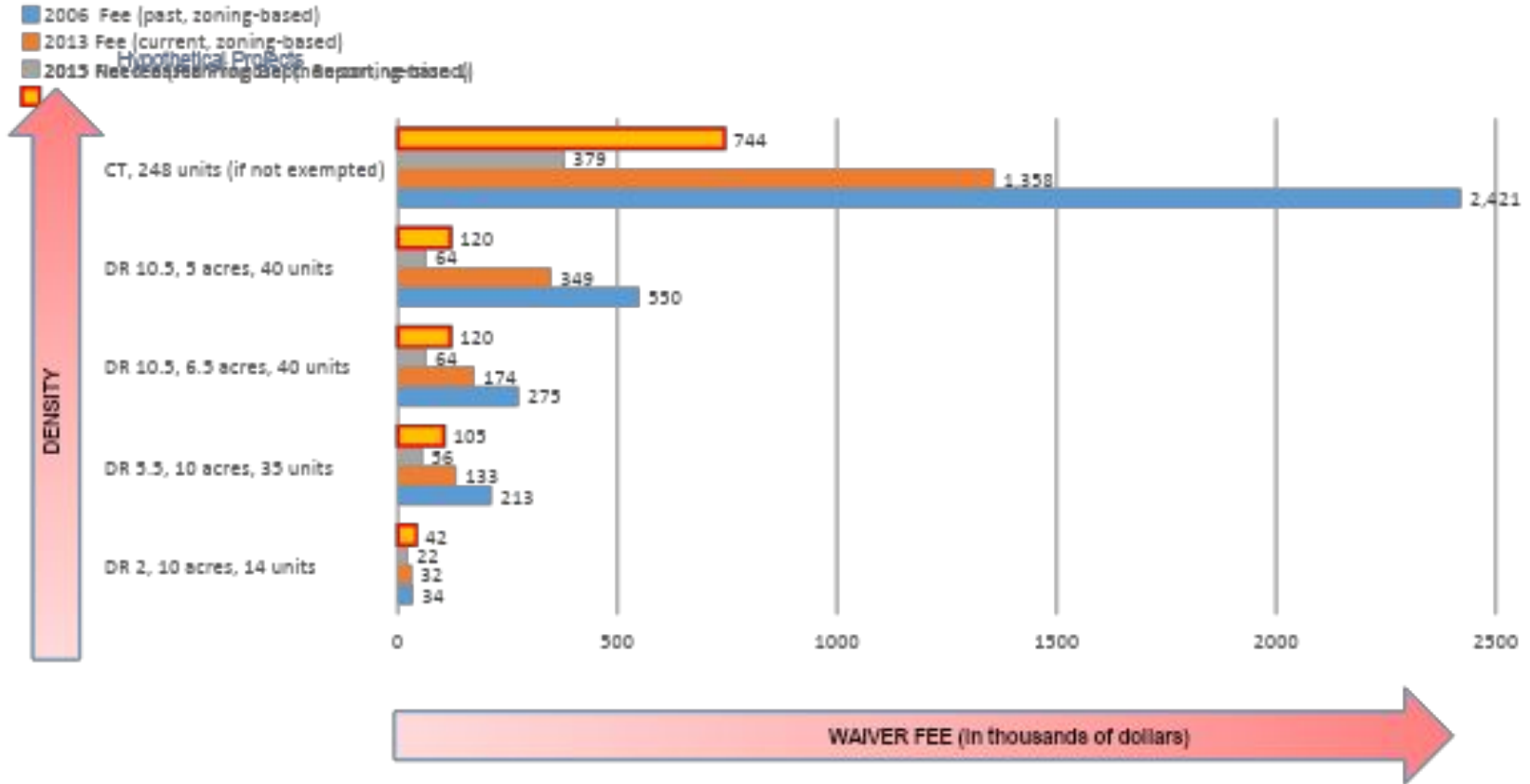
Robin Hill Park (2010)

NeighborSpace Principles for an Overhaul of the Waiver Fee Law & LOS Manual

1. Replace an overly complex, zoning-based fee schedule with a simpler schedule related to the relative need for open space and the cost of providing it
2. Ensure that all types of residential development projects bear a responsibility for providing open space or paying a fee in lieu thereof;
3. Establish a process for assessing, collecting and expending open space waiver fees that is transparent and predictable;
4. Incentivize the payment of waiver fees over providing open space on site so as to encourage a network of open spaces with public benefits versus isolated and fragmented private green spaces; and
5. Ensure a complete overhaul of the Local Open Space Manual to meet contemporary needs for open space in diverse, but increasingly dense, neighborhoods.

NeighborSpace Principles for an Overhaul of the Waiver Fee Law & LOS Manual

Various Fee Structures Under Conditions of Increasing Density



THE ABOVE ANALYSIS FOR 2015 NEED-BASED PROPOSAL IS BASED ON THE FOLLOWING FEE STRUCTURE:

Tier 1: Projects outside the URDL: \$2,000

Tier 2: Single family / townhouse projects inside the URDL: \$3,000

Tier 3: Commercial, Town Center (CT) Projects, Residential Apartment, Elevator (RAE) Projects and Transit-oriented Development (TOD) Projects inside the URDL: \$3,000

Tier 4: Multi-family Projects inside the URDL: \$2,500

Exceptions: Student dormitories and affordable housing, including affordable housing for the elderly, \$1000

For More Information:

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443-377-3760

Web Page on Open Space Waiver Fees (and a copy of this presentation)

<http://www.neighborspacebaltimorecounty.org/openspacewaiverfees.html>