

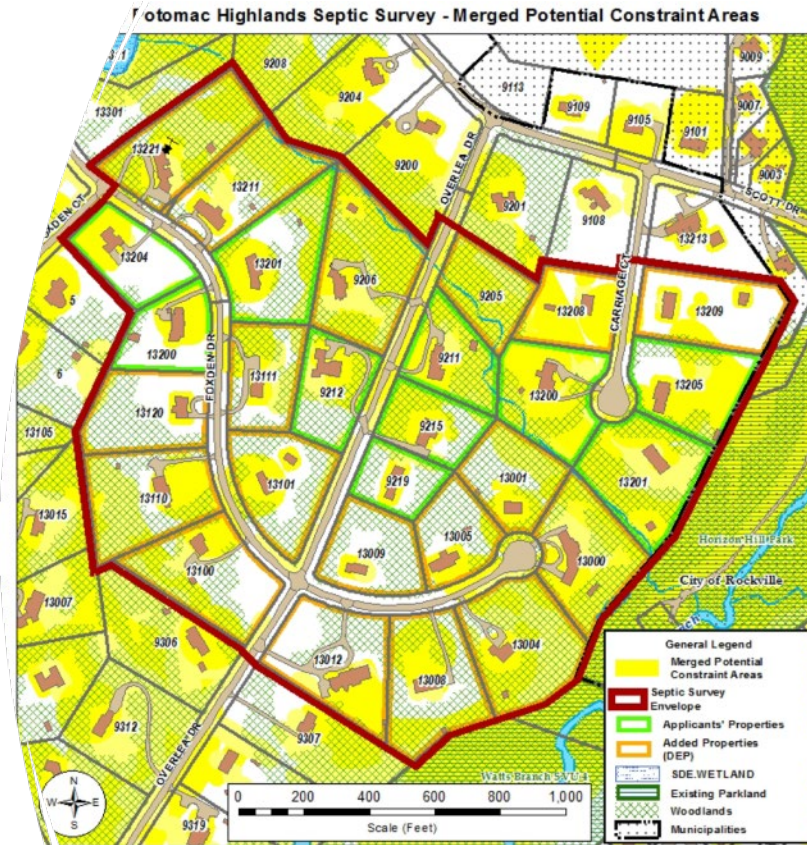
# Presentation by Overlea Sewer Consortium

Mary Yakaitis, President

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# DEP Study Finding: Applicant Homes Need Sewer Service

- Results of DEP's North Overlea Study show virtually entire area where these homes are located is not suitable for continued septic system use.
- How can applications be denied by the Planning Board and Council when they conflict directly with serious concerns raised by the DEP's own study?



# Applicant Properties in “Constrained Area”

- WSCCR-22TRV-15A-2 Foxden Dr
- WSCCR-22TRV-05A-13205 Carriage Ct.
- WSCCR-22TRV-06A-13201 Carriage Ct.
- WSCCR-22TRV-09A-13209 Carriage Ct.

# WHY RESTRICT RIGHTS OF APPLICANTS?

- **Annexation of applicant Carriage Ct properties into Rockville could be delayed for decades; septic system failure concerns are immediate.**
- **Restrictions on sewer service in remainder of Glen Hills are unacceptable**
  - **No undeveloped areas exist in community**
  - **Some homes already have sewer service**
  - **Zoning rules out subdivision of lots**

# Restrictions Contradict Key National, State, & County Priorities

- **Environmental initiatives**—Our old septic systems are dangerous; don't meet current standards
- **Public health policy and regulations**—Threats to wells and lawns; open ponds also used for waste disposal
- **Maryland State priority initiatives for Chesapeake Bay Cleanup**—Effluent discharged into directly into Watts Branch Creek and the Potomac
- **Findings of 3 DEP county sanitary sewer-related studies**—Much of area “not suitable” for on site waste disposal

# Restrictions Also Violate Constitutional Law\*

- The US Constitution's *Takings Clause* stipulates that the State may not “*take*” private property without just compensation.
- Per the Supreme Court,
  - Government authorized harm to a landowner = viable claim of “taking” (e.g. policy preventing us from protecting our health, environment & property value)
  - Government actions that reduce a property's economic value is “categorically considered a “taking.”

\*See Cedar Point Nursery V. Hassaid, 141 S.Ct.2063 (2021)

# Key Legal Determinants of “Taking” \*

## **“Character of the governmental action”**

- Policy violates key MD and US environmental policy

## **“Magnitude of the deprivation” (i.e., financial impact)**

- Salability and value of property seriously decreased by denial of sewer service

## **• “Interference in an owner’s reasonable, investment-backed expectations”**

- Some homes acquired before 2002 Restrictions enacted
- Owners aware of neighboring properties with sewer and have reasonable expectation they will not be denied.

- \*Peperdine Law Review, Vol.50:579,2022

# What is the Rationale for Opposition?

- Interests of developers to keep property values low for future acquisitions?
  - Concerns that zoning isn't used appropriately to control growth?
  - Political pressure from vocal no-growth opponents?
  - Misinformation and lack of knowledge about the health threat?
  - Lack of concern for interests of people you represent?
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- HUNDREDS OF VOTERS IN GLEN HILLS DESERVE AN ANSWER THAT MAKES SENSE



# Necessary Remedial Actions

Approve these requests for sewer category changes in an area identified by DEP as unsuitable for septic system use.

# Other Requests for Planning Board Consideration

- Urge DEP to take action on the North Overlea Study that was COMPLETED prior to enactment of restrictions.
- Support our request for a limited Text Amendment to the 2002 Potomac Subregion Plan that removes restrictions for any properties identified in DEP studies as located in “areas of concern (i.e., septic system use deemed unsustainable).

# Thank You

- We appreciate being able to share our community's urgent need for relief.

Mary Yakaitis

President, Overlea Sewer Consortium