

HERMAN L. TAYLOR, JR.
14th Legislative District
Montgomery County

Economic Matters Committee
Joint Technology Oversight Committee
Bi-County Committee

Business Regulation Subcommittee
Banking, Economic Development,
Science & Technology Subcommittee



The Maryland House of Delegates
ANNAPOLIS, MARYLAND 21401-1991

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May 10, 2007

The Honorable Douglas F. Gansler
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dear Mr. Attorney General:

I am writing to request that your office investigate land development processes impacting my district.

I, along with several Montgomery County Councilmember's have tried unsuccessfully over the past 16 months to halt a series of problems emanating from the Maryland National Capital Park and Planning Commission ("MNCPPC"). These problems have been uncovered by one of my constituents, Mr. Steven Kanstoroom, as they relate to his forested Ashton property; however they appear to potentially affect a large number of county residents.

Mr. Kanstoroom found that MNCPPC had refused to halt development of two projects, adjacent to or encroaching upon his forest, that were predicated upon false and misleading documents. As a result, incorrect boundary, ownership and other data were provided to MNCPPC such that a large illegal forest clearing occurred. It has not been remedied after more than two years, and now additional destruction appears imminent. Contemporaneous affidavits indicate a County and MNCPPC inspector facilitated the illegal forest clearing. Other documents indicate that senior officials have failed to act when they learned that the false and misleading plans were providing a benefit to some individuals at the expense of Mr. Kanstoroom and his family.

Mr. Kanstoroom also found recently submitted engineering documents that conflict with public records whereby sensitive environmental features were dropped from the plans and proposed development was drawn at a density five times greater than was permitted in the past. In addition, he also found that a layperson, without any professional training or license has been masquerading as an engineer in Montgomery County for 30 years. The Department of Labor, Licensing and Regulation has no record of this person ever being licensed, yet his resume shows that he has worked as an engineer on major projects which hundreds of thousands of people in Montgomery County use and rely upon, such as Leisure World, the White Flint Metro Station and the Adventist Hospital. His signature also appears on documents on file at MNCPPC as the engineer and/or surveyor.

I understand that Mr. Kanstoroom has been working closely with the Montgomery County Inspector General, Mr. Thomas Dagley, on these issues. Remarkably, during one meeting that Mr. Kanstoroom, Mr. Dagley and Councilmember Marc Elrich attended, MNCPPC officials took the position that they are not required to act when they learn of wrongdoing such as outlined herein. I have attempted to arrange a meeting with MNCPPC's Council, but they refuse to participate.

I feel that something is terribly wrong here. As a member of the Bi-County Committee with legislative oversight of MNCPPC, I believe it is imperative that an outside investigation of these issues be conducted to protect the public interest. I have included some documents for you to review that relate to this matter. If you have any other questions please feel free to contact me.

Sincerely,



Herman L. Taylor

Attachments:

March 20, 2007 Letter from Marc Elrich to Adrian Gardner

March 1, 2007 Email from Herman Taylor, Jr. to Adrian Gardner with attachments



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

March 20, 2007

Mr. Adrian Gardner, General Council
The Maryland National Capital Park and Planning Commission
Bi-County Office
6611 Kenilworth Avenue
Riverdale, Maryland 20737

Dear Mr. Gardner:

As you know, my constituent, Mr. Steven Kanstoroom, requested public record documents from MNCPPC-MC on June 19, 2006 by way of a Public Information Act ("PIA") request, as your office required. I understand that Acting Director, Ms. Faroll Hamer, agreed to comply with the request at a June 13, 2006 meeting attended by Ms. Claire Iseli from Councilmember Praisner's office, and others. I also understand that MNCPPC-MC did not follow through as promised, and then again Ms. Hamer and Mr. Royce Hanson agreed to comply with the request at an October 31 meeting attended by a number of individuals, including representatives of the Montgomery County Civic Federation and the Sierra Club, however MNCPPC-MC did not follow through as promised.

On January 12, I requested the same materials at a meeting attended by MNCPPC-MC Planning Division Chief, Ms. Rose Krasnow, MNCPPC-MC attorney Ms. Deborah Daniel, the Montgomery County Inspector General, Mr. Thomas Dagley, and others. Ms. Krasnow agreed to provide electronic versions of all emails and other documents related to the Palmeiro property and other issues brought to their attention by Steve Kanstoroom, including forest cutting within the adjacent non-development areas, illegal dumping on the PEPCO property, issues related to the P250 subdivision and the most recent planting plan submitted with regard to 1020 Ashton Road. Ms. Krasnow also agreed to provide all communications that were sent to or received from MNCPPC-MC with regard to these matters, including but not limited to, documents authored by MNCPPC-MC and DPS employees. A follow-up meeting was scheduled for January 31 to discuss these materials and other related issues. Ms. Daniel called Mr. Kanstoroom to say that she and Ms. Krasnow would be unable to attend the meeting, notwithstanding they had been notified of the meeting weeks prior. The materials were never delivered to me as promised on January 12.

On February 12, 2007 my Legislative Assistant, Ms. Adrienne Gude and Mr. Kanstoroom went to the office of your associate, Mr. Tariq El-Baba, to attempt to photocopy the records related to the Palmeiro forest clearing and the P250 subdivision. Ms. Gude was

told by Mr. El-Baba that the records could not be released to her. I spoke with Ms. Debora Daniel who indicated that this was merely a miscommunication, and sent Ms. Gude back to the your office on February 20, 2007. At that time Ms. Krasnow told Ms. Gude that MNCPPC-MC was having a meeting to discuss the records and they could not be released due to “pending litigation” however there is no pending litigation, to which Ms. Krasnow responded. “oh well ...”.

Recently State Delegate Herman Taylor, a member of the Bi-County Committee that has an MNCPPC oversight role, made a similar request for the documents, however I understand to date MNCPPC-MC has not complied with his request

On March 2, 2007, my office received by interoffice mail the MNCPPC-MC documents purporting to respond to my request; however the response appears to be deficient. For example:

- 1) There are **no** documents that respond to Mr. Kanstoroom’s June 19, 2006 PIA request for copies of files related to illegal forest clearings.
- 2) The majority of the documents were authored by Mr. Kanstoroom.
- 3) Nearly all of the emails produced by MNCPPC-MC that included attachments were delivered **without** the attachments.
- 4) There appears to be no documentation regarding the measurements of the forest clearing that were taken by MNCPPC-MC’s survey crew, GIS technicians or inspection staff.
- 5) Are there are no documents that relate to meetings including but not limited to January 5, 2006 with former Chairman Derick Berlage and others, January 6, 2006 site visit with Ms. Krasnow and others, February 14, 2006 meeting with Ms. Krasnow and others, June 13, 2006 meeting with Ms. Hammer and others, August 1, 2006 meeting with environmental staff and Ms. Gwen Wright, October 31, 2006 meeting with Chairman Royce Hanson, Ms. Hamer, Ms Krasnow and Ms. Gwen Wright?
- 6) A large number of emails that MNCPPC-MC has previously sent on this matter that my office had previously received were not included, and others that Ms. Gude and Mr. Kanstoroom had obtained from MNCPPC-MC staff that demonstrated problems with the handling of matters he brought to MNCPPC-MC’s attention were not included. For example:
 - a) email chain dated March 23, 2006 between MNCPPC-MC GIS technical staff and inspection staff whereby technical staff refers to Mr. Palmeiro stating, “... but I’m curious to know why you are insistent that it is under 5,000 square feet? If they violated the law, they violated the law.” Followed by a heated exchange from the inspectors that have been accused of wrongdoing whereby one inspector makes a reference to the clearing being less than one sixth of its actual size, and his boss makes a

point to the technical staff should not be making “useless slapshots aimed at our own staff”,

b) internal correspondence that was written between August and October 2006 whereby MNCPPC-MC staff is searching for a way to rationalize not finding that Mr. Palmeiro acted intentionally in the face of the contemporaneous affidavits that show a County inspector had counseled him as to how to obfuscate the illegal clearing, “how can we say that he did not act intentionally in the face of the affidavits”, and;

c) internal correspondence that indicates MNCPPC-MC environmental staff did not have access to the Palmeiro file when the administrative order was written.

7) Letters that MNCPPC-MC had received from Councilmembers and legislators, each calling for action with regard to these matters were not included.

The Maryland Public Information Act requires that requests are responded to within 30 days. Moreover, as a Councilmember with an oversight role with regard to MNCPPC-MC, I, like other citizens, am entitled to receive copies of public documents. MNCPPC-MC’s refusal to provide the documents in a timely manner troubles me. Since there is no legal case, what reason is there to not give my office full access? And what is MNCPPC-MC’s rationale for not fully complying with a PIA?

When problems are found they need to be corrected. I expect to get the full set of requested documents along with compliance, at long last, with the PIA request. Absent that, I’d like a legal justification for why that is not possible.

Sincerely,

Original signed by

Marc Elrich

Attachment: Examples of Documents Previously Obtained, But Not Provided in Response to My Request

cc: Mr. Bruce Crawford, Acting Executive Director
MNCPPC-MC Planning Board
Mr. Thomas Dagley, Montgomery County Inspector General
Mr. Steven J. Kanstoroom

From: Delegate Herman Taylor [mailto:Herman.Taylor@house.state.md.us]
Sent: Thursday, March 01, 2007 7:30 PM
To: sjk@femainfo.us
Subject: letter

I'm having a problem with the fax...but here is a copy of it cut and pasted. Sorry it took so long

-craig

The Maryland National Capital Park and Planning Commission
Mr. Adrian Gardner, General Counsel
6611 Kenilworth Avenue
Riverdale, Maryland 20737

Re: Request for Documents and Independent Investigation

Dear Mr. Gardner:

I wrote to Derick Berlage 13 months ago about an illegal forest clearing in Ashton and wrongful conduct discovered within the Forest Conservation Exemption process. I understand that despite the efforts of many county officials, the problems have not been resolved.

I find the attached letter from Councilman Marc Elrich to Scott Reilly very troubling. According to Councilman Elrich, MNCPPC contends that it is not required to take any action with regard to individuals or entities that submit false or misleading documents. I heard the same thing from my constituent, Mr. Steven Kanstoroom, who I understand attended the meeting along with the Montgomery County Inspector General and many others. I understand that clear evidence was provided that an unlicensed layperson has submitted information to your agency for years under the guise that he was a state licensed professional, yet MNCPPC has failed to take any action against him. I also understand that documents have been wrongfully submitted to your agency by state licensed professionals with regard to land development that is impacting Mr. Kanstoroom and other constituents of mine. I believe MNCPPC needs to take strong action to deter similar events from occurring in the future.

I would like to hear your comments on this matter as soon as possible.

I am also very concerned that MNCPPC has failed to respond to Mr. Kanstoroom's Public Information Act request for more than 8 months, and that MNCPPC has refused to turn over requested documents to Councilman Elrich.

I am renewing my request that your agency call for an independent investigation of the matters that Mr. Kanstoroom has brought to MNCPPC's attention. I am also requesting the MNCPPC halt all work on the projects impacting Mr. Kanstoroom until the results of the independent investigation are learned. Please let me know if MNCPPC will grant my

request. Please also provide me with the documents that Councilmember Elrich requested in the attached letter dated January 12, 2007. My office will follow up with you in the coming days.

Sincerely,

Delegate Herman L. Taylor, Jr.

Attachments: 1/18/07 Marc Elrich to Scott Reilly re: MNCPPC Documents and Wrongdoing

1/21/07 Adrienne Lewis email re: MNCPPC's Refusal to Provide Councilman Elrich with Documents

cc: Councilmember Marc Elrich
Mr. Steven J. Kanstoroom

MEMORANDUM

To: Mr. Scott Reilly, Assistant Chief Administrative Officer
From: Marc Elrich, Councilmember At Large
Date: January 18, 2007
Re: Follow up to 1/12/07 meeting at DPS

Thank you for helping to facilitate last week's meeting at DPS. Reggie Jetter provided a great service by bringing together representatives from legislative offices, executive departments, and MNCPPC. We look forward to receiving the information promised by DEP, DPS and MNCPPC and implementing action steps as follows:

Department of Environmental Protection

- 1) Stan Edwards agreed to provide electronic versions of the emails and other documents regarding the illegal dumping on the PEPCO property. All communications that were sent to or received from DEP with regard to this matter were requested and include, but are not limited to, documents authored by County and PEPCO employees.
- 2) DEP's findings with regard to the June 14, 2006 email from Pete Dilima to Steve Martin. This email allegedly contains information regarding PEPCO's involvement in the decision making regarding what penalty if any should be assessed for illegal dumping.
- 3) Stan Edwards agreed to verify the statute of limitations, prior to January 18, as it pertains to taking additional action and/or issuing fines regarding the illegal dump and transfer station.

Department of Permitting Services

- 1) Reggie Jetter agreed to provide electronic versions of the emails and other documents related to the Palmeiro property and the illegal dumping. All communications that were sent to or received from DPS with regard to these matters were requested and include, but are not be limited to, documents authored by County, PEPCO and MNCPPC employees.
- 2) Rick Brush agreed to bring the apparent conflict between the FEMA benchmark data and the Hillmead Floodplain Elevation Certification to the attention of the engineers

responsible for the same for the purpose of learning more about the conflict in the data and resolving it.

3) Rick Brush agreed to take additional action pending the receipt of additional information from the Hillmead engineers.

MNCPPC

1) Rose Krasnow agreed to provide electronic versions of all emails and other documents related to the Palmeiro property and other issues brought to their attention by Steve Kanstoroom, including forest cutting within the adjacent non-development areas, illegal dumping on the PEPCO property, issues related to the P250 subdivision and the most recent planting plan submitted with regard to 1020 Ashton Road.

All communications that were sent to or received from MNCPPC with regard to these matters were requested and include, but are not limited to, documents authored by MNCPPC and DPS employees.

2) Rose Krasnow agreed to provide responses to the attached letters from Councilmembers dated April 21, 2006 and October 19, 2006.

3) Debra Daniels agreed to provide copies of Administrative Orders and their supporting documents over the past three years that relate to violations of the Forest Conservation Law.

4) Rose Krasnow explained that MNCPPC does not recognize private easements that are recorded in the county land records and consequently MNCPPC approves subdivision plans without regard to easements. In some cases problems occur, such as house sites being approved that block driveway access to other properties as is the case with the P250 subdivision. Rose explained that aggrieved parties can file suit after the subdivisions are approved, however this does not protect the aggrieved party from irreparable harm as is the case if the subdivision will include forest clearing that would not have been permitted had the easements been recognized. My opinion is that the process of not acknowledging private easements that are known by or brought to the attention of MNCPPC should be reviewed. See the second attached Memorandum to Royce Hanson dated October 19, 2006.

Rose also contended that MNCPPC is not required to take any action with regard to individuals or entities that submit false or misleading documents.

DHCA/DPS

It seemed that DHCA learned for the first time that no permits are active for the Palmeiro property. Accordingly, please let me know if under the circumstances DPS and DHCA could work together to direct the property owner to fill in the open trenches, remove the construction fence and bring the partially demolished garage into conformance with the building code or remove it. The argument that nothing can be done pending compliance with the MNCPPC Administrative Order by the property owner due to the pending DPS

stop work order is unacceptable. To follow that logic the property owner would also be prohibited from initiating work necessary to comply with MNCPPC's Administrative Order when he ultimately decided to comply with it.

One solution would be for DPS to issue an order stating that its stop work order does not prohibit the property owner from taking other action necessary to comply with remediation directives issued by DPS or DHCA.

Document Copies

Please send electronic copies of all documents to me and Steve Kanstoroom. Councilmember Berliner has requested that my office forward all documents related to the Hillmead matter to him.

Next Meeting Date – another date needs to be set to facilitate bringing closure to these issues. I am available to meet on Wednesday, January 31 at 12:30 pm. Please let me know if you are available and my office can take care of coordinating with the all participants.

I look forward to continue working with you, County Executive Ike Leggett, Chief Administrative Officer Tim Firestine, and the executive branch departments to identify administrative concerns and legislative measures that can be taken to resolve them. Together we can build a more responsive government for the citizens of Montgomery County.

Attachments: 4/21/06 Memorandum to Derick Berlage
10/19/06 Memorandum to R. Hanson from M. Praisner and H. Denis
10/19/06 Memorandum to R. Hanson from M. Praisner

cc: Marilyn Praisner
Royce Hanson
Timothy Firestine
Reginald Jetter
Stan Wong
Rick Brush
Susan Scala-Demby
Stan Edwards
Rebecca Lord
Rose Krasnow
Debra Daniels
Tom Dagley
Steve Kanstoroom
Susan Mize
Wayne Goldstein

Steve Kanstoroom

From: Lewis, Adrienne [Adrienne.Lewis@montgomerycountymd.gov]
Sent: Wednesday, February 21, 2007 8:55 PM
To: herman_taylor@house.state.md.us
Cc: Steve Kanstoroom
Subject: Request for information from MNCPPC-MC

Dear Delegate Taylor,

On January 12 Councilmember Elrich, representatives from his office and Councilmember Berliner's office, representatives from Montgomery County DEP, DPS, County Executive Ike Leggett's office, and MNCPPC met to discuss illegal forest clearing and irregularities in land development issues. At this meeting Councilmember Elrich was told that he would receive the following list of items by Rose Krasnow, MNCPPC-MC Chief of Development Review, and Debra Daniel, MNCPPC-MC Attorney:

- 1) Rose Krasnow agreed to provide electronic versions of all emails and other documents related to the Palmeiro property and other issues brought to their attention by Steve Kanstoroom, including forest cutting within the adjacent non-development areas, illegal dumping on the PEPCO property, issues related to the P250 subdivision and the most recent planting plan submitted with regard to 1020 Ashton Road.
- 2) All communications that were sent to or received from MNCPPC with regard to these matters were requested and include, but are not limited to, documents authored by MNCPPC and DPS employees.
- 3) Rose Krasnow agreed to provide responses to the attached letters from Councilmembers dated April 21, 2006 and October 19, 2006.
- 4) Debra Daniels agreed to provide copies of Administrative Orders and their supporting documents over the past three years that relate to violations of the Forest Conservation Law.

Since the January 12, 2007 meeting, Councilmember Elrich has spoken to Faroll Hamer, MNCPPC-MC Acting Director, and within the past week called Debra Daniel and Rose Krasnow requesting that the information be delivered to him. Councilmember Elrich sent me to MNCPPC-MC offices on Monday, February 12 and Tuesday, February 20, 2007 to retrieve the documents, etc. On Monday, February 12, after being told by one staff person that the file was in a box in the legal department (he had just seen it), I was told by a lawyer in the legal office that the whereabouts of the file were unknown. On February 20, I was told by Rose Krasnow that I would not be given the documents because the case may be in some sort of litigation, and that the file was going to be taken into a meeting at 4:00 pm for a decision to be made regarding the release of it's contents. Rose Krasnow said that she would contact Councilmember Elrich directly after the meeting. No communication was received from Rose Krasnow. Today, Wednesday February 21, 2007, Councilmember Elrich placed another call into Debra Daniel and has had no response from her.

I hope that this information clarifies any questions you may have had regarding the lack of availability of information from MNCPPC-MC per the Kanstoroom/Ashton properties.

If you have any questions, please contact me or Councilmember Elrich.

Sincerely,

Adrienne Gude Lewis

Adrienne Gude Lewis, Legislative Aide
Office of Councilmember Marc Elrich

2/21/2007

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