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**TO PRINT, USE PRINT VERSION**

## of note

### **Next MCCF Meeting**

Monday, April 9, 2018, 7:45 p.m. at the Executive Office Building in Rockville.  
Topic: "Montgomery County's Fiscal Year 2019 Operating Budget"

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### **Annual Awards Banquet**

Join us on Friday, May 18 **P. 15**  
Get Your Tickets Now **P. 17**

### **Meeting Minutes**

March 12 Meeting #893 **P. 27**  
March Executive Cmte. **P. 28**

### **Membership Application**

Join or Renew Now **SEE FORM**

## **Federation Meeting 894**

*Monday, April 9, 2018*

7:45 p.m.

Lobby Level Auditorium

### **Executive Office Building**

101 Monroe Street

Rockville, Maryland

#### **AGENDA**

- 7:00 Social Time for Members
- 7:45 Call to Order/Introductions
- 7:50 Approval of Agenda
- 7:51 Announcements
- 7:57 Approval of Minutes,  
March 12 Meeting **P.27**
- 7:58 Treasurer's Report
- 8:00 Program: MC's FY2019  
Operating Budget **P.3**
- 9:25 Committee Reports
- 9:35 Old and New Business
- 9:45 Adjournment

## **About MCCF Meetings**

*All monthly MCCF meetings are open to the public.* They are held on the second Monday of each month, September through June, at 7:45 p.m.

The April meeting will be held in the **Lobby Level Auditorium of the Executive Office Building at 101 Monroe Street, Rockville, Maryland.**

Walkers can enter by buzzing security at the door. You can park for free either in the lot at E. Jefferson and Monroe Streets or in the lowest level of the EOB. Drive onto the ramp in the front of the building (ignore "permit parking only" sign), turn left at the second, lower level; use the intercom at the gate to the parking garage and at the door to the elevators to inform security you're attending the MCCF Meeting. ■



The **Montgomery County Civic Federation, Inc.**, is a county-wide nonprofit educational and advocacy organization founded in 1925 to serve the public interest. Monthly MCCF meetings are open to the public (agenda and details at left).

The *Civic Federation News* is published monthly except July and August. It is emailed to delegates, associate members, news media, and local, state, and federal officials. **Recipients are encouraged to forward the *Civic Federation News* to all association members, friends, and neighbors.** Permission is granted to reproduce any article, provided that proper credit is given to the "*Civic Federation News* of the Montgomery County (Md.) Civic Federation."

### **Civic Federation News**

civicednews AT montgomerycivic.org

**TO SUBMIT AN ARTICLE, SEE PAGE 28**

## **April Program Investigates Montgomery County’s Fiscal Year 2019 Operating Budget**

*By Jerry Garson, Treasurer*

Our program for April 9, 2018 Meeting will be on the Montgomery County Fiscal Year 2019 operating budget.

Our guest speakers will be Alexandre A. Espinosa, Director of the Department of Finance; Council Member Nancy Floreen of the Montgomery County Council; and a representative from the Office of Management and Budget.

The Montgomery County Executive released his Recommended FY19 Operating Budget. The request is \$5.56 billion in total funds, with a 2.0% increase in tax-supported dollars. He recommended the amounts for each County agency as shown in the box at right.

The County Executive said, “We continue to face significant challeng-

Mont. Co. Government	\$1,939,752,559
Mont. Co. Public Schools	2,592,240,711
Montgomery College	312,997,974
M-NCPPC	151,934,854
Retiree Health Insurance	135,906,867
Debt Service	429,074,110
<b>TOTAL</b>	<b>\$5,561,907,075</b>

es to our revenues that have necessitated continued expenditure reductions. This recommended budget assumes a property tax rate within the Charter Limit (\$0.98, which is a decrease of approximately two cents). I continue to assume a \$692 credit for homeowners. The property tax bill for a homeowner with a house at the County median price of \$400,000 will see a monthly property tax bill increase of \$2.25.

“Transportation infrastructure is

critical to facilitate economic development, a high quality of life, and commercial and personal mobility. During my tenure as County Executive, we have developed and funded transit solutions in a number of corridors by focusing on transit-oriented development; expanding or adding bus routes; implementing transit improvements including bus rapid transit (BRT); development of transit centers in Silver Spring, Montgomery Mall, Takoma/Langley Park, and White Oak; nonvehicular transportation elements such as sidewalks, shared-use paths, bike lanes, and a bikeshare system which has expanded to 73 stations with more on the way; and significantly increased funding levels for highway maintenance and road resurfacing

## April Program, cont.

programs.

“Development continues on the US 29 and MD 355 BRT (FLASH) corridors. The FLASH will provide a new high-quality transit option in the County, making efficient use of existing roadways to provide a more robust and reliable system that will increase transit ridership. Final design on the US 29 FLASH line will be completed in Fall 2018 with construction commencing shortly thereafter. Service is scheduled to begin in mid 2020. In the meantime, Ride On will operate a new overlay service to alleviate traffic congestion beginning in May 2018. The MD 355 project will complete the Recommended Alternative Phase in 2018.

“I have also implemented eight new Ride On routes in the past 12

years as part of my effort to provide our residents and businesses with viable non-auto transportation options.

“For FY19, Ride On will operate a new pilot neighborhood service from Olney into Rockville with smaller circulator buses that are more reasonable and flexible to operate along small neighborhood roads. The new circulator routes will run every 10 minutes during rush hour and will take all current forms of fare media like other larger Ride On buses. Transferability to other buses and Metrorail will be easier. The opportunity to get closer into the neighborhoods and utilize a new “app” to arrange for pickup should attract new riders and revitalize transit use in these areas.

“This budget strikes a prudent balance of spending restraint and

directing resources to our highest priorities. It provides funding of our major fiscal policies: reserves, retiree health insurance prefunding, and CIP Pay As You Go; however, budget pressures and revenue uncertainty are likely to remain challenges.

“When we last updated the County Council in December, income tax revenues had significantly missed expectations. It appears that taxpayers likely altered their behavior in anticipation of federal tax reform after the November 2016 Presidential election. As a result, the November 2017 income tax distribution was 18% below the original estimate. It is likely that income tax revenues will remain volatile as the effects of federal tax reform unfold over the next one to two years. With that in mind, my

## April Program, cont.

recommended budget includes no adjustments to anticipate the effects of H.R. 1, the Tax Cuts and Jobs Act of 2017 (TCJA). I believe it is too early to make any judgments about the impact the TCJA might have on County revenues. For one, the State is considering legislation to roll back the effect of certain provisions in the law that would increase State and local income tax revenues. And, secondly, until individuals and corporate entities begin to adjust to the new tax regime, the extent to which the reduction in the corporate tax rate and other changes to business taxes will affect our income tax revenues is uncertain. One thing is certain, however: there will be an incentive for certain individuals with business income to restructure to reduce taxes, which will have

a negative impact on our income tax revenues. Given this context, I believe it is critical we adhere to our fiscal policies, and my recommended budget maintains that commitment.

“The revenue forecast assumes a two-year delay in the Wynne repayment schedule. Since legislation has passed each chamber of the General Assembly (SB742 and HB686), I am comfortable assuming the two-year delay becomes law, which increases FY19 income tax revenues by \$14.3 million.

“As you know, we had to take difficult action to address the revenue shortfall experienced in FY18. The approved FY18 savings plan identified more than \$60 million in reductions that will be made in the current year. However, with a projected FY18 revenue shortfall exceeding \$100 million, additional action needs to be taken. As such, I

am recommending that the County reduce the FY18 prefunding contribution to the OPEB trust funds as a one-time measure to strengthen reserves and for temporary budget relief. The current fiscal situation is not the result of a declining economy, but likely a one-time event driven by speculation on changes to tax law. Within this context, it is appropriate to isolate the corrective action to the current year.

“I am proposing that the FY18 OPEB prefunding amount be reduced by about \$21 million. More than \$100 million will be contributed to the OPEB trust as originally planned. I am also proposing that an additional \$41 million in OPEB trust assets be used to pay for FY18, current year claims, creating equivalent savings for the General Fund. These actions will allow us to meet

## April Program, cont.

our current year benefit cost obligation, while still providing for partial pre-funding of future liabilities. Further, the current year savings resulting from these actions will help us to end FY18 closer to our reserve target of 8.9 percent, despite the unexpected shortfall in revenues. As stated above, this approach will be a one-time diversion from our policy of pre-funding retiree health benefits. My FY19 recommended budget assumes that full pre-funding will be restored in the coming year.”

### FUNDING THE BUDGET

“My budget includes a decrease of approximately two cents to the property tax rate. Due to increasing home values, the median County homeowner will see a \$2.25 per month increase in property taxes over the

next year, due to higher property values. As I noted above, holding taxes to the Charter Limit is appropriate given the significant increase in the property tax rate approved by the Council in FY17. The property tax for each owner-occupied residence will include a credit of \$692 to limit the burden on homeowners and maintain a progressive property tax structure in the County.

“I am recommending no change to the Water Quality Protection Charge in FY19.

“I am recommending no changes to the solid waste charges for County residents in FY19.

“I am recommending a Washington Suburban Sanitary Commission budget that would result in an increase in water and sewer rates of 4.5% in FY19 in accordance with the budget recently proposed by the WSSC.” ■

## SOMETHING TO TALK ABOUT?

*Need to share a community concern?*

*Want to know how to do something for your own civic association?*

*Would like to meet your fellow civic activists?*

**Come early to the April 9 meeting. From 7:00 to 7:45 p.m., members of the MCCF Executive Committee will be available to talk in the EOB Auditorium.**

**Light refreshments will keep you from going hungry. Be social, be a part of the civic movement, and be here.**

## Water Under the Bridge: Leggett to Privatize Mont. County's Stormwater Program

*By Danila Sheveiko, Second Vice President*

Days after [our presentation](#) highlighting problems with Montgomery County's mammoth stormwater pollution management program, County Executive Ike Leggett announced plans to privatize it. The decision to shift responsibility for implementing the federal Clean Water Act from the County's Department of Environment Protection to a public-private partnership was outlined in a memo to the County Council.

Despite spending several hundred million dollars, Montgomery County government failed to meet its obligations to improve water quality under what's known as the MS-4 Permit issued by Maryland Department of the Environment on behalf of the U.S. EPA. The deadline

for meeting the mandate came and went back in 2015, so now the State of Maryland is alleging numerous violations, and the County is facing a consent decree.

By far the largest and most expensive environmental program in Montgomery County, MS-4 Permit implementation is largely funded by the Water Quality Protection Charge (AKA "the rain tax") and debt securities issued by the County. Since 2004, the WQPC collected a whopping \$210,913,442, but most of the proceeds from the charge do not actually go directly into physical stormwater infrastructure projects. Fiscal aspects of MS-4 Permit compliance were [covered in detail](#) by Adam Pagnucco at the influential political blog The Seventh State, prompting an open letter response

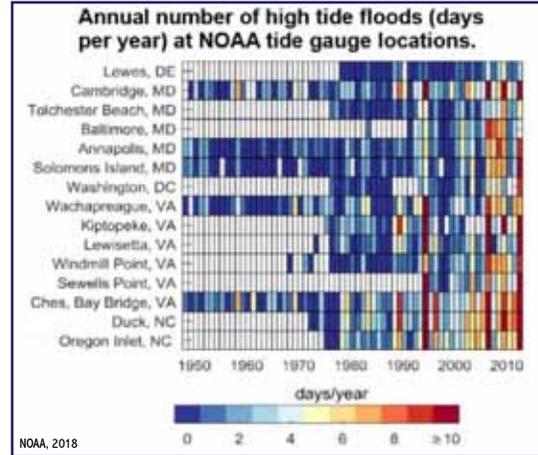
from Montgomery County Attorney Patrick Lacefield, who portrayed The Seventh State's coverage as "off-the-mark" while making wildly inaccurate statements easily refuted by official language from the draft consent decree itself, a fact Mr. Pagnucco took the opportunity to [point out in a rebuttal](#).

One inconvenient fact not mentioned in the exchange is the County issuance of revenue bonds against future WQPC earnings, so it appears that we are paying 3-4% to rent our own money. Moreover, in addition to the financial burdens of a consent decree, the MS-4 Permit failure is exposing Montgomery County to millions in unfunded legal liabilities from potential lawsuits by environmental groups.

## Stormwater, cont.

It can be easy to forget about the environment when so much money is at stake, but MS-4 Permit implementation is indeed a crucial program that goes far beyond managing stormwater pollution. Governed by the Maryland Stormwater Management Act of 2007, the MS-4 Permit mandates we work together with nature instead of against it by requiring the County to implement Environmental Site Design to the maximum extent practicable—vegetated bio-retention, infiltration, and evapotranspiration devices like green roofs, green walls, and rain gardens to capture and slow down rainwater before it runs off and creates stormwater pollution that continues to destroy our rivers, creeks, and the Chesapeake Bay.

As the Civic Federation has highlighted for years, all these green



stormwater technologies have **ancillary benefits beyond water quality**: essentially, providing ecosystem services like improvement in air quality and decrease of the urban heat island effect, reduced heating/cooling costs, reducing infrastructure and maintenance costs, increased property values, and, last but not least, **sustainable green jobs** that cannot be outsourced.

Unfortunately, Mont. County has been able to avoid fully implementing the Environmental Site Design approach by exploiting a loophole in the MS-4 Permit requirement to treat 4,400 acres of impervious surfaces around the County to the maximum extent practicable. Treatment officially means controlling the runoff from that acre using ESD technologies from an approved list of best management practices that happen to somehow include conventional ponds that were built for flood control by the U.S. Corps of Engineers back in the 1950s, something the County government finds very convenient. Why bother building green roofs and green walls when you can just dredge some old ponds that don't really improve water quality? It's all just water under the bridge... until somebody sues. ■

## **Danger on Our Turf: Is MCPS Protecting Athletes?**

*Analysis: A Class-Action Lawsuit, A Questionable Standard, and Failed Safety Tests*

*By Chris Atkinson, Thomas Mande, and Jessie Solomon*

*[Reprinted with permission from The Black and White, Walt Whitman High School, March 19, 2018.]*

In 2008, [Montgomery County Public Schools] installed [its] first turf field at Richard Montgomery High School. [The] contractor told [MCPS it was] getting “break-through” technology and touted “unmatched durability” against wear—the “safest system you can buy,” as described in company sales pitches.

Now, 10 years later, FieldTurf—the company that installed all six Montgomery County high school turf fields—is the target of a federal class-action suit brought by organizations in 46 states and the District of Columbia, alleging the company know-

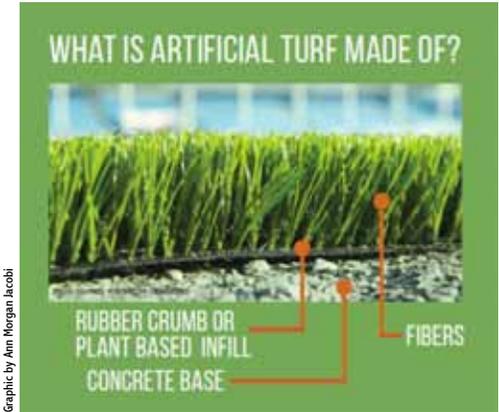
ingly sold “inherently and materially defective” fields.

A major player in the international turf industry, FieldTurf has been forced to replace one MCPS high school’s field three years ahead of schedule “to assure the safety of athletes,” because the carpet on the field was “deteriorated” and “heavily worn,” according to a January 2017 Montgomery Parks department press release.

FieldTurf, for its part, stands by the safety of its fields.

“Every single field in Montgomery County is proven the safest possible field in existence,” FieldTurf regional sales representative John McShane said in a phone interview Feb. 28.

Over the past decade, MCPS



Graphic by Ann Morgan Jacobi

has replaced some of its grass fields with artificial turf because it offers increased field-time and durability, MCPS athletic director Jeffrey Sullivan said.

Whitman, along with Einstein High School and Julius West Middle

## Danger on Our Turf, cont.

School, is in line to get a turf field this summer. The Montgomery County Council approved \$4.9 million to fund construction of the fields; Montgomery Soccer, Inc., agreed to cover \$4.2 million of the cost in exchange for 1,000 hours of field time per year over a 10-year period. The Whitman All-Sports Booster Club will contribute an additional \$300,000 to the school's project.

FieldTurf is among the bidders in the district's open bid process, McShane confirmed.

Meanwhile, tests at two of the current turf fields have revealed spots that at times have been worn to the point of being deemed unsafe for athletic competition, per MCPS and industry standards. Continued use of the fields has raised concerns

over the validity of MCPS's testing protocol and whether MCPS is doing enough to ensure the safety of athletes.

### FAULTY TECHNOLOGY...

In 2005, FieldTurf started selling fields made of Duraspine fiber, which they marketed as a breakthrough product that would last at least 10 years, according to sales pitches cited in the class-action suit. FieldTurf sold at least 1,450 Duraspine fields all over the country between 2005–2012, the lawsuit states, including the field at Montgomery Blair High School. Two other MCPS fields—at Richard Montgomery and Walter Johnson High Schools—are made of FieldTurf Duraspine fiber as well.

FieldTurf stopped selling the Duraspine fields in 2012 after complaints over the durability of the

fields, according to the lawsuit.

The class-action lawsuit against FieldTurf came in the wake of national criticism following a 2016 investigative series titled "The 100-Yard Deception," written by NJ Advance Media, a content provider for newspapers across New Jersey and Pennsylvania. The piece alleged that FieldTurf knew about the defects with the Duraspine fiber but continued to sell the fields anyway.

FieldTurf denied the allegations in the NJ Advance Media story, saying that concerns with Duraspine never compromised field safety and only affected some fields.

"There is not and has never been any issue with the safety of these fields for playing on," FieldTurf CEO Eric Dalieri wrote in an open letter late 2016.

In 2011, the company sued [its]

## Danger on Our Turf, cont.

supplier for defects in the manufacture of the Duraspine fiber. Daliere said in the open letter that the defects only affected “how a field looks over time in certain UV environments,” particularly in the Southern and Southwestern regions. However, many organizations that have joined the national suit against FieldTurf—including Montgomery Parks—are not located in high UV environments.

From the sale of these Duraspine fields, FieldTurf made an estimated revenue of \$570 million, mostly at the expense of taxpayers, NJ Advance Media reported.

Blair was forced to replace [its] Duraspine field, owned and overseen by Montgomery Parks, three years earlier than expected after it failed a safety test midway through the fall



**TURF AT WALTER JOHNSON,  
A FIELD INSTALLED WITH  
DURASPINE TECHNOLOGY**

sports season in October 2016. The field was still under warranty, Parks director Michael Riley wrote in a letter April 5, 2017, though it wasn’t clear at the time how much—if any—the company would pay for the “approximately \$725,000” replacement. A Jan. 27, 2018, NBC4 report cites an unnamed “official” as saying the replacement was billed to taxpayers, but *The Black & White* was unable to verify this report. Montgomery Parks joined the class-action lawsuit against FieldTurf in January 2018.

MCPS, which owns all other turf fields and will own Whitman’s, is currently monitoring the conditions of its fields and will join the lawsuit if it becomes necessary, MCPS spokesman Derek Turner said in a phone interview Feb. 28.

### ...LEADS TO UNSAFE FIELDS

Athletes say the fields at Richard Montgomery and Walter Johnson have more visible patches of exposed crumb rubber pellets than other turf fields. The suit against FieldTurf alleges that Duraspine fibers shed from the field during normal use, meaning they hold infill less effectively, as can be seen by these exposed patches. Infill is more easily moved around and off the field, compromising the safety of the turf.

Tests at the Richard Montgomery and Walter Johnson fields have

## Danger on Our Turf, cont.

revealed both to be potentially dangerous to MCPS athletes per industry standards. Still, MCPS continues to allow athletic competition on the fields, leading some experts to question their testing procedure and standards for turf safety.

One important measure of turf field safety is the GMAX level test, which measures shock absorption and intensity of impact when an athlete falls on the field. The higher the GMAX level is, the less shock the surface absorbs and the more dangerous the field is for athletes, specifically in terms of knee and head injuries.

Turf infill is intended to soften the playing surface, cushioning the concrete base underneath. When the field is used, the pellets are displaced from high traffic areas and the

GMAX levels there increase as the layer of shock absorption between player and concrete is thinned.

GMAX levels above 200 can be life threatening if a player hits [his or her] head on the field, according to Penn State's Center for Sports Surface Research.

The Synthetic Turf Council, an industry trade association, recommends a standard maximum of 165, which is also used by the NFL and Fairfax County. For reference, the average natural grass field has an equivalent GMAX rating of 90, Maryland SoccerPlex states on its website. Yet the MCPS standard for GMAX is anything below 200.

"When you see something that looks like grass, you think you can play on it," said Gastón de los Reyes Jr., an assistant professor of strategic management and public policy at George Washington University. "But

if the GMAX levels are above 200, then it might be closer to playing on concrete, and that's when you get the risk of head and knee injuries."

In October 2016, Athletic Field Consultants, Inc., a company sub-contracted by FieldTurf, tested Blair's field during a mandated biannual test. GMAX levels on the field measured over 200 in multiple areas, a report published by the Montgomery County Parents Coalition revealed. Initial repairs were made before play resumed, and the field was replaced in 2017. However, it's likely that students played on the field while the levels were still unsafe: the Blair Blazers had played a home football game just three days before the test.

"Current guidelines for GMAX have a limit of 200, but we are well, well below that limit. That's

## Danger on Our Turf, cont.

a threshold limit and all our fields are well below that,” county athletic director Sullivan said in a phone interview. “We follow MCPS standards and make sure our levels are well in compliance with those testing standards.”

MCPS doesn’t own the Blair field, but its fields suffer similar is-

suess. Tests in the summer of 2016 on the fields at Richard Montgomery and Walter Johnson revealed that both had average GMAX ratings around 180, with multiple spots at Richard Montgomery registering well over 200, according to reports by the companies FieldTurf contracted to test the fields. One spot at RM registered over 250, significantly higher than the threshold for life-threatening. This information was first published in an Aug. 16, 2016, *Forbes* article and a Nov. 2, 2016, *Bethesda Magazine* article.

Instead of immediately replacing the fields like Montgomery Parks did at Blair, MCPS waited to have the fields retested. The turf tester noted in his report that maintenance crews added rubber infill to high-use areas and groomed the fields immediately prior to tests. Resulting average GMAX levels dropped close to 30

points at each site.

Though he has not been involved in MCPS fields, de los Reyes expressed concern about this testing method.

“We also want to know what the field was testing at before you went to do your test,” de los Reyes said. “That would show what children are actually exposed to so they should know what the test number revealed before they added the infill.”

A FAQ on turf fields posted on the MPCS website states, “areas reading close to 200 in GMAX will be monitored and rejuvenated as needed by decompacting infill and adding infill mix to increase depth.”

While this process can lower GMAX levels temporarily, if a field has GMAX levels in the 250s in some areas, like Richard Montgomery had in 2016, simply adding infill



## Danger on Our Turf, cont.

can't bring down those levels for any length of time, said Buzz Splittgerber, owner of Idaho-based turf testing company BuzzTurf. Especially on a high-use high school field, the infill is going to get moved around very quickly, creating an inconsistent surface, he said.

"I've never seen a case like that, and I've tested a lot of fields. When it gets to be that high [then] the turf is worn out, so the infill material itself just doesn't stay in," Splittgerber said in a phone interview.

Splittgerber has not tested any Montgomery County fields.

Ryan Teeter, who administered the June 2016 test of the Richard Montgomery field, corroborated this view in an interview that year with *Bethesda Magazine*. Teeter said in the interview that the grass fibers are

responsible for holding the crumb rubber infill in place and, if the fibers fail, which Teeter said they had, the field can quickly deteriorate.

In any case, both Duraspine MCPS fields are dangerously close to—if not over—even the weakest of standards.

"Any ratings close to 200 should be cause for concern and should not be considered to be safe," Splittgerber said in an email. "In my opinion, accepting average readings of 199 is not safety first."

### FOR MCPS ATHLETES, WHAT HAPPENS NEXT?

MCPS will install a turf field at Whitman in the near future. Installation is planned to start immediately after the spring sports season, county athletic director Sullivan said. FieldTurf has submitted a bid for the field, sales representative

McShane confirmed. FieldTurf no longer uses Duraspine technology.

Asked if FieldTurf remains a serious contender for the new contract, MCPS spokesman Turner replied: "MCPS has a formal bid process for fields where any qualifying vendors can submit their bids. No announcement has been made about who will receive the contract at this time." MCPS has offered no public indication of concern over FieldTurf itself and has not yet followed Montgomery Parks in joining the class-action lawsuit against the company.

"FieldTurf has installed a lot of successful fields across the country," Sullivan said.

The MCPS Board of Education has twice delayed awarding a contract for the three fields. In anticipation of the new turf field, Whitman's Bermuda grass field never under-

## MCCF Annual Awards Celebration is Friday, May 18th

*By Bailey Condrey, 1st Vice President*

The Montgomery County Civic Federation will hold its annual awards celebration on Friday, May 18th at New Fortune Chinese Restaurant in Gaithersburg. The restaurant is just north of I-370 on Route 355 at So. Westland Drive. The address is 16515 South Frederick Avenue, Gaithersburg, MD 20877. The phone is 301.548.8886.

Tickets are \$50/person, \$75/couple and, if three tickets are purchased, the fourth one is free. However, to obtain the fourth free ticket, that three-ticket-purchase must be made in advance by Wednesday, April 18th.

The menu for the evening will include the following dishes:

■ Egg Drop soup and vegetable egg rolls,

■ Chinese broccoli/oyster sauce,  
■ Double mushrooms/vegetables,  
■ Chicken or vegetable lo mein,  
■ Tofu with mixed vegetables in garlic sauce with ginger.

For dessert: Oranges and for-

tune cookies. Soft drinks will be provided. Beer and cocktails may be purchased separately from the bar. The Civic Federation will provide red and white wine.

MCCF presents three awards annually to deserving residents

MORE

## Danger on Our Turf, cont.

went its regular winter maintenance. Since the turf won't be installed until summer, Whitman's spring athletes will now be forced to play home games on the grass anyway. Sullivan said the field will be ready for play in time for the spring season.

This summer, the Richard Montgomery field will have completed its 10th year of use, but Richard Montgomery athletic director Chamarra Wijeratne said he wasn't aware

of any definite plan to replace it. The Walter Johnson field will have completed its eighth year. At present, MCPS has not allocated funds to replace either the Walter Johnson or the Richard Montgomery field.

MCPS athletes will spend hundreds of hours playing on the two fields this spring. Given ongoing lawsuits, defective technology, and weak testing standards, their safety is questionable at best.

*[Tiger Björnlund and Sam Shiffman contributed to this report.]* ■

## MCCF Annual Awards, cont.

of Montgomery County. The Executive Committee is seeking both volunteers to serve on the Awards committee and nominations for the awards. The following awards will be presented:

■ **The Sentinel Award**, sponsored by *The Montgomery Sentinel* newspaper, is awarded to an individual or group for a significant contribution to good government at the local level.

■ **The Wayne Goldstein Award** recognizes and honors an individual



or group for outstanding service to the people of Montgomery County.

■ **The Star Cup** is awarded to the Civic Federation delegate or committee performing the most outstanding public service on behalf of Montgomery County.

If you know of someone or some group in your community, or county-wide, that has done or continues to do extraordinary, above-and-beyond volunteer work in the county during the past year, please contact [info@montgomerycivic.org](mailto:info@montgomerycivic.org) with a brief (a few paragraphs) description of the person or organization and what qualifies them to receive the award, as well as your contact information for follow-up. If the nominated organization (or person) has a website, please include that.

Use the registration form on the next page (or on the [MCCF website](#)) to make your reservations. ■

## CIVIC FED TONIGHT!

### SEEKING POSSIBLE SPEAKERS FOR YOUR CIVIC ASSOCIATION MEETINGS?

Members of the MCCF Executive Committee have extensive experience in issues such as transportation, land use and zoning, schools, parks, environmental concerns, taxes, and public spending. Plus, they have a community-oriented perspective on these matters. If you would like an executive committee member to speak at a meeting, contact President Jim Zepp at *president at montgomerycivic dot org*. Include topics/possible dates.

## Reserve Your Tickets Now for Montgomery County Civic Federation's **2018 ANNUAL AWARDS DINNER**

**FRIDAY, MAY 18, 2018**

### **Dinner**

6:30 to 9:00 p.m.

### **Awards Presentations**

7:15 to 8:15 p.m.

### **NEW FORTUNE RESTAURANT**

16515 South Frederick Avenue  
Gaithersburg, Maryland 20877

*Buffet dinner includes appetizers,  
choice of five entrées, dessert,  
red/white wine, and soft drinks.  
Beer and cocktails at cash bar.*

**SPACE IS LIMITED**

**PLEASE RESERVE BY APRIL 18**

Questions? Contact Bailey Condrey,  
*veep1 AT montgomerycivic DOT org*

### **MCCF Annual Awards Dinner**

I/We will attend the Awards Dinner on Friday, May 18, 2018:

**\$50 per person**    **\$75 per couple**    **\$150 per group of four\***

*\*Group of four tickets must be purchased by Wednesday, April 18*

Number Attending \_\_\_\_\_

**Name(s):**

\_\_\_\_\_

**Association or Organization (as applicable):**

\_\_\_\_\_

**Contact Information: Phone** \_\_\_\_\_

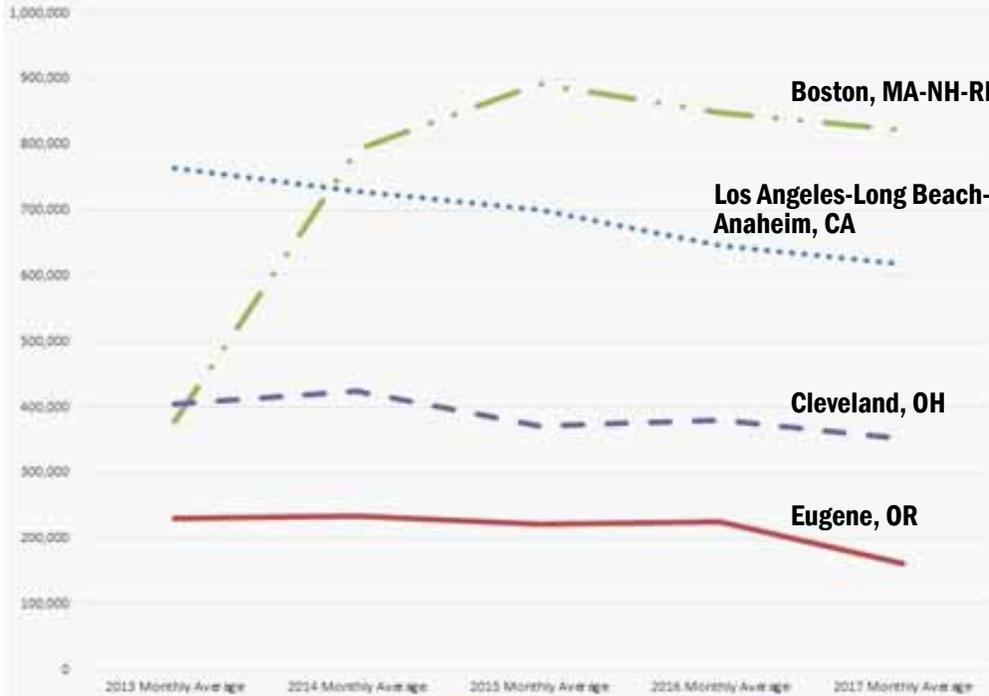
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## WHAT'S TRENDING IN THE COUNTY

### Ridership is Declining for Major US BRT Systems



### Maryland's Fiscal Hole Billions in Unfunded State Pension Liabilities Loom Large

*By Danila Sheveiko, Second Vice President*

With little to no discussion on the campaign trail in Montgomery County, Maryland's largest fiscal crisis continues only slightly abated amid a booming investment year as State pension liabilities remain underfunded to the tune of \$15 billion.

Maryland has a financial obligation to over 400,000 current and former State employees who participate in the retirement system, including teachers, state police, and judges. Even though the State increased employee plan contributions and offloaded pension liability for teachers down to the counties back in 2011, it appears those reforms

## Maryland's Fiscal Hole, cont.

have not produced the desired result, and the funds are struggling.

In the spring of 2016 even *The Washington Post* had to acknowledge that the measly return of 0.12% to date **may not exactly justify** the estimated management fees of \$320 million for the fiscal year. With no signs of concern from leaders in Annapolis, the Maryland Public Policy Institute **sounded the alarm** in 2017 when the pension system reached a \$20 billion shortfall as the management fees rose to an estimated \$500 million annually. This is a staggering number considering that Maryland's pension funds were underperforming their peers across the nation – dragging behind in the 10th lowest percentile. According to the MPPI, “*The exact amount of fees Maryland's pension*

*fund pays may never be known because the board has never requested a full accounting. Maryland, like many states, passed laws that keep most money management fee arrangements secret. In fact, the financial industry's influence is so pervasive that the Municipal Accounting Standards Board, which sets standards for state and local government accounting, allows states to ignore most private equity and hedge fund fees for record-keeping purposes.*”

According to the *Baltimore Business Journal*, last year's bullish stock market brought the pension system's return to “**finally average**,” raising assets up \$4 billion from a year ago to \$50.3 billion, but the funds **still lagged** behind peers: “*The Mary-*

*land Retirement Agency said it uses a conservative investment strategy to protect against downturns in the stock market and partially blamed the Trump administration.*” Re-

gardless of **who is to blame**, a rather optimistic fiscal 2017 valuation of the portfolio shows the system is 72% funded – projected to reach 80% by 2026 under favorable conditions. In the meantime, Montgomery County Public Schools has \$2 billion in pension liabilities and \$2.6 billion in other post-employment benefits outstanding.

This fiscal hole will only get deeper unless people start asking questions about lagging performance, lack of transparency, and outrageous management fees at upcoming forums, debates, and meet-and-greets. ■



## Maryland's Secret Laws and Court Holdings Used to Justify Heinous Senate Bill 132

By Danila Sheveiko, Second Vice President

The Civic Federation's [resolution to amend](#) Senate Bill 132 has failed to sway legislators in Annapolis. The Maryland [Senate passed SB 132](#) with a vote of 46 to 0 last month, and the legislation has now advanced to the House, cementing [Maryland's reputation](#) as a haven for child sex predators. If enacted, [SB 132 will undermine](#) extant State mandates and [Attorney General opinions](#) requiring those with knowledge of child sex abuse to make a report with child protective services and the local police.

Maryland and Wyoming are the only two states in the nation without penalties for the failure to report child sex abuse. Efforts to introduce criminal penalties in Maryland have

failed since the late 1980s. Not to be outdone, two years ago the General Assembly allowed convicted child sex [predators to expunge their criminal records](#). Efforts to change this heinous statute were killed in committees last year, and so now child sex offenders are getting their records expunged. Both the Maryland Board of Education and Montgomery County Public Schools seem to be making things easier for predators. MCPS reportedly only does background checks for Maryland, even for out-of-state applicants, and the State Department of Education has decided to [stop using the national background check service](#) back in 2015. MCPS Superintendent Jack Smith is taking a [wait-and-see](#) approach.

Activists label SB 132 a Trojan

Horse, and the Parents' Coalition [recently secured](#) great WJLA 7 On Your Side coverage highlighting all the problems with the bill. In contrast, [opponents of the bill](#) claim existing mandates to report child sex abuse are "*draconian enough*," and any penalties for failure to report would criminalize teachers and first responders, "*treat dedicated professionals like robots*," and "*turn trusted community members into criminals*." Unfortunately, this misinformation pales in comparison to the talking points churned out by the bill's supporters. SB 132's sponsor, Senator Bobby Zirkin D11, claims it's "the tightest" in the nation ([video here](#), 0:15:30), but it hinges on the concept of 'actual knowledge' that is not defined in the bill itself, not

## Md.'s Secret Laws, cont.

defined by any Maryland law, and not defined in any Maryland court holding, so if the bill is enacted into law, it could take the courts a decade or more to define the term 'actual knowledge,' and potentially undermine prosecution of individuals covering up for the rape of children.

The bill is **heavily lobbied** by the Baltimore Child Abuse Center, but BCAC's definition of 'actual knowledge' **looks to change** depending on who is asking. The mystery was to be finally revealed at the House Judiciary Committee hearing when Delegate Deborah Rey D29B confronted Joyce Lombardi, BCAC's Director of Government Relations & Legal Services, about the lack of definition in the bill and in existing law (**video here**, 1:41:00). Incredibly, Ms. Lombardi, former Maryland

People's Counsel and Baltimore City prosecutor, repeatedly claimed that 'actual knowledge' is indeed defined in Maryland Code and court holdings – pertinent excerpts from the exchange below:

**Del. Deborah Rey:** *"Reading through the opposition testimony, explain what 'actual knowledge' is and how do you prove it, and the opposition testimony says there is no standard and it is not defined in law anywhere, so can you address that, please? Is it defined in law?"*

**Ms. Joyce Lombardi:** *"It is."*

**Del. Rey:** *"So is it defined in law or just through a court case?"*

**Lombardi:** *"Through a court case."*

**Del. Rey:** *"So it isn't defined in law!"*

**Lombardi:** *"Actual knowledge' exists both in criminal and civil law."*

**Del. Rey:** *"But again, just in a court case, not in a written definition in our Code?"*

**Lombardi:** *"It's both. It's both."*

Despite the certitude of Ms. Lombardi's statements, she refused to cite the Maryland statute or Maryland court holding defining 'actual knowledge' that she repeatedly claimed exist. Tragically, the House Judiciary Committee (**video here**, 0:19:30) had no problem with secret laws that nobody is allowed to see. Unless a witness is sworn in, the penalty of perjury does not apply, but Maryland Law frowns upon attorneys that provide materially false testimony to a legislative body while acting in a professional capacity. Our **legislators should probably learn this one: Annotated Code of Maryland, Maryland Rules,**

## Md.'s Secret Laws, cont.

### Title 19. Attorneys, Chapter 300. Maryland Attorney's Rules of Professional Conduct, Advocate, Rule 19-303.9. Advocate in Non-Adjudicate Proceedings (3.9):

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, attorneys engage in activities that are comparable to those of an advocate appearing before a tribunal. For example, attorneys present facts, formulate issues and advance argument in the matters under consideration. *The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. An attorney appearing before such a body should deal with it honestly and in conformity with*

*applicable rules of procedure.*

[2] Given these policies, this Rule requires that an attorney who appears before legislative bodies or administrative agencies in such non-adjudicative proceedings must adhere to Rules 19-303.3 (a) through (c) (3.3), 19-303.4 (a) through (c) (3.4), and 19-303.5 (3.5). Attorneys appearing under these circumstances must also adhere to all other applicable Rules, including Rules 19-304.1 (4.1) through 19-304.4 (4.4).

### Rules 19-303.3 Candor Toward the Tribunal:

(a) An attorney shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

(4) offer evidence that the attorney knows to be false. If an attorney

*has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.*

### Rule 19-303.4. Fairness to opposing party and attorney:

An attorney shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. An attorney shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

The House Judiciary Committee will be voting on SB 132 any day now. Committee members from Montgomery County are Del. Kathleen Dumais (D15), Del. David Moon (D20), and Del. Pam Queen (D14). ■

## Investigation of County's Green Streets 'Rain Gardens' by ABC News Reveals Problems

By Joan Beerweiler, President, Aspen Hill Community Organization

A “Seven On Your Side” investigation by ABC Channel 7 News on Montgomery County rain gardens was broadcast more than a year ago. What we’ve discovered since that broadcast:

(1) Now we know, ultimately, the County Executive and County Council are responsible for the Green Streets program, *not* the county’s Department of Environmental Protection (DEP). A year ago, councilmembers said they were not responsible because they never had to vote on the creation of the program. At the time, Councilmembers passed the buck—the responsibility—to DEP.

We feel our job as citizens is one of putting the responsibility on the

County Executive and the County Council, where it belongs, and informing the public of the reality of Green Streets. DEP, the County Executive, and the County Council are misleading—even deceiving—the public.

These are *not* “gardens.” They are 20–40 foot pits constructed in front of our homes. Their purpose is not to be a garden, but to hold large quantities of polluted, toxic water from the street. Not all drain in two days and not all are maintained properly. Polluted water often remains in the concrete “inlets,” even after there is no longer water in the pits.

They are permanent. Once they are built, homeowners are stuck with them. They are dangerous health and safety hazards. They are de-

structive of our individual properties and destructive of our neighborhoods.

We are putting the responsibility for Green Streets rain gardens where it belongs: on the County Executive and the County Council. No passing the buck to DEP. The Council appropriates hundreds of millions of dollars for Green Streets. The Council approves the ever-escalating “rain tax” of \$104.25 per year (in 2017) added to the property tax of a typical homeowner to pay for Green Streets. Additionally, the County borrows money, in the form of Water Quality Protection Bonds, to pay for Green Streets.

The County Executive and County Council authorize DEP to do whatever it wants in our front yards,

## 'Rain Gardens,' cont.

on the county-controlled right-of-way, however dangerous and destructive. The county defends DEP's actions with the police and the courts.

(2) The County Executive and Councilmembers said a year ago that they knew nothing of underground stormwater management, like Rainstore. The fact is, they do know about it. It was used extensively, at great expense, in Sligo Park Hills.

A year ago, after the broadcast, we proposed one large underground stormwater facility to replace all rain gardens in a neighborhood. We saw it as an alternative to open pits, which are dangerous trip and fall hazards. In Sligo Park Hills, there are permeable pavers with Rainstore underground facilities below them. People can walk and

drive both cars and trucks on the permeable pavers. DEP and the county turned down our proposal for underground stormwater management.

(3) Kit Gage, who speaks in favor of rain gardens in the broadcast, has a monetary interest in promot-

ing them. She has a business in which she charges \$100 per hour for designing Rainscapes rain gardens. Additionally, Kit Gage may speak for her neighborhood, Sligo Park Hills, but the same does not apply to other neighborhoods. The county is mis-

MORE



## 'Rain Gardens,' cont.

leading the public in using Kit Gage as the Green Streets "homeowner spokesperson" for the county.

(4) Lisa Feldt stepped down from her role as director of DEP in early November 2017. Patty Bubar, who was the deputy director, is now serving as Acting Director.

### GOOD POINTS MADE IN THE BROADCAST

(1) ABC 7 News calls them "pits." The broadcast opens with a reporter asking, "How would you like a 20-foot pit in your front yard?"

(2) Toxic landfills. The reporter says, "Many homeowners say they are toxic landfills."

(3) Neighborhoods and homeowners don't have a choice. They don't have a say; they don't have a vote. Note: Most homeowners don't

know anything about it until they are shocked to find construction beginning in their front yards.

(4) High costs both to design and build (\$25,000–\$35,000 per rain garden) and to maintain (\$2,000 per rain garden per year).

(5) Pits ("rain gardens") can be hazardous. Maria Michas, who lives in Silver Spring, isn't a fan of her rain garden that already gobbled up a friend. She says, "This was full of leaves and they didn't see it. They fell down. They fell in."

(6) One homeowner accuses the county, "You created the problem and you're looking to solve it through us."

(7) Rain gardens will lower property values. Alan Willsey, who has a home in Kensington Estates, says, "Property values are going to drop."

Green Streets rain gardens are pits—dangerous pits (trip and fall haz-

ards), mosquito pits, taxpayer money pits. Tell the County Executive and County Council, you do not want one in your front yard, nor do you want hundreds in your neighborhood.

### UPDATE (3/28/2018)

DEP announced that 25 Montgomery County stormwater projects have been cancelled. The canceled projects include Kensington Estates, Wheaton Woods, and Manor Woods Green Streets.

Not all Green Streets projects are cancelled. At press time, there was no list available of the 25 cancelled projects. DEP is currently updating DEP project webpages, for those 25 projects, to reflect the cancellations. Why were the 25 projects cancelled? DEP determined that it can meet state requirements for the MS4 permit that ends in 2018 without the 25 projects. ■

## New Congressional Budget Protects Hemp Farming

*By Eric Steenstra, President, Vote Hemp*

Congress passed a new budget and included a provision which protects the U.S. hemp industry from federal overreach. The President signed the budget into law in late March. An amendment added by Senator McConnell (R-KY) to protect hemp commerce states:

*SEC. 729. None of the funds made available by this Act or any other Act may be used (1) in contravention of section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940); or (2) to prohibit the transportation, processing, sale, or use of industrial hemp, or seeds of such plant, that is grown or cultivated in accordance with subsection section 7606 of the Agricultural Act of 2014, within or outside the State in which the indus-*

*trial hemp is grown or cultivated.*

A second amendment that was introduced by Rep. Rohrabacher (R-CA) specifically protects hemp from DEA and Dept. of Justice interference was also included:

*SEC. 537. None of the funds made available by this Act may be used in contravention of section 7606 (“Legitimacy of Industrial Hemp Research”) of the Agricultural Act of 2014 (Public Law 113–79) by the Department of Justice or the Drug Enforcement Administration.*

These amendments are important, as they allow the U.S. hemp industry to continue to grow. [Hemp and marijuana are both part of the Cannabis family, but are completely different in function, cultivation, and application. Hemp is known to have more than 25,000 applications.] ■

## Bicycling as Alternative Transportation

*By Peggy Dennis, Transportation Committee Member/Past President*

Work on the Bicycle Master Plan is not entirely finished. Since I last reported, there have been five work sessions at M-NCPPC. The sessions can be [viewed or read here](#). Work Session #6 will take place on Thursday, April 19, and there will be public hearing on the final version before the County Council in June.

The Bike Loaner Program at the C&O Canal National Historical Park, Old Tavern at Great Falls, resumed on the weekend of March 31-April 1. For bikers of all ages and abilities, this program allows everyone to enjoy the tow path for two hours on the bicycle of your choice for two hours, free! [Read details here.](#) ■  

## Minutes of the March 12th, 2018, Meeting #893

*By Danila Sheveiko, Second Vice President*

**Call to Order:** President Jim Zepp called the 893rd session to order at 7:45pm. Introductions followed.

**Agenda:** It was moved and seconded to approve the agenda.

**Minutes:** The February 12th, 2018, general meeting minutes were approved by affirmation.

**Treasurer's Report:** Treasurer's report is available upon request.

### PROGRAM

Our annual **State of the County's Environment** program took an objective look at the health of our environment and solutions to our

most urgent environmental problems. Topics included air quality, water quality, radon, lead, PCBs, climate change, environmental site design, renewable portfolio standards, and the many benefits of industrial hemp. Presentations by 2nd Vice President Danila Sheveiko and 1st Vice President Bailey Condrey were followed by vigorous discussion (YouTube video available here: [Part 1](#) and [Part 2](#)).

### COMMITTEE REPORTS

#### *Legislation*

■ State Delegate Ben Kramer (D-19) legislation to **create an Office of Inspector General** for the Washington Suburban Sanitary Commission is moving through the **Delegation review** both in Montgomery and Prince George's Counties.

■ The membership voted to support an emergency resolution to oppose late filed bills, Senate Bill 1188 and House Bill 1767, Wireless Facilities, Permitting and Siting sponsored by Senator Middleton and Delegate Davis. These bills would preempt local governments from exercising their zoning and siting authority over facilities installed in their right-of-way.

■ The membership also voted to support an emergency resolution to oppose House Bill 1363, Eminent Domain "Quick Take," sponsored by Delegate Parrott.

#### *Education*

■ SB132 was unanimously voted out of committee, with all but one member of the Senate Judicial Proceedings Committee signing on to co-sponsor the bill. SB132 was then

## March Minutes, cont.

passed by the full Maryland Senate with a vote of 46-0. Companion House bill HB500 had a hearing in the House Judiciary Committee, but no vote has been taken yet. Both bills would **undermine existing mandates** to report **child sex abuse in Maryland**.

### *Planning and Land Use*

■ A public hearing for new ZTA 18-02, Telecommunications Towers, Limited Use, submitted by the County Executive was scheduled for March 20 (and now rescheduled for April 3rd). The ZTA would reduce the public notice and hearing process for siting wireless facilities within residential neighborhoods and would reduce the setbacks from residences from 60 feet to 20 feet. The membership voted to support a

resolution to oppose the ZTA in its current form and support changes to the ZTA that would provide for adequate public notice, input and setbacks from sensitive locations. Many other local governments have designed their ordinances with community input and environment in mind.

### **OLD BUSINESS**

■ The April and May MCCF general sessions will be held at the same location: Executive Office Building Lobby Auditorium in Rockville, 101 Monroe Street.

**Adjournment:** The meeting adjourned at approximately 9:53p.m. ■

## Minutes of the March Executive Committee Meeting

*By Bailey Condrey, 1st Vice President*

The Executive Committee (Ex-Comm) convened via conference call on March 22, 2018.

**Call to Order:** Jim Zepp, President, called the meeting to order at 7:51 p.m. Present: Jerry Garson, Danila Sheveiko, Carole Ann Barth, Bailey Condrey, and Jacquie Bokow.

**Adoption of Meeting Agenda:** Jim Zepp called for and received unanimous approval of the proposed agenda.

**Treasurer's Report:** The report was appended from the previous meeting to show that Jorge Ribas has renewed MCCF membership for

## March ExComm Mtg., cont.

Mid-Atlantic Hispanic Chamber of Commerce.

### ANNOUNCEMENTS

■ Jim Zepp will send an announcement regarding the Awards Dinner to all of the candidates running for elective office in Mont. County.

■ Jerry announced that the SB 1188 bill, which would preempt local authority on cell tower siting, was withdrawn by sponsor Senator Middleton.

■ The County Council has placed further consideration of Montrose Parkway East on hold as they continue to “study” BRT.

### APRIL PROGRAM

The Montgomery County Fiscal Year 2019 Budgets will be coordinated by Jerry Garson. The Director

of Finance for the County will participate.

### MONTHLY PROGRAM TOPICS

■ *May.* The May program would be on Economic Development.

■ *June.* The program will focus on Transportation.

### COMMITTEE REPORTS

#### *Awards Dinner*

■ Discussion on preparations.

#### *Education*

■ Lots of developments on MCPS child sex abuse cover-up issues.

■ Recognize Chris Atkinson for his article in the Walt Whitman High School *Black and White* on syn turf.

#### *Land Use*

■ **Farm Road** situation: the people are now homeless; patriarch has now died; fundraising campaign.

■ FDA may be increasing employees from 10K to 18K at White Oak.

#### *Transportation*

■ The County Council still pushing Bus Rapid Transit, even though ridership is decreasing nationally and regionally. Other modes of transportation are increasing.

■ Telecommuting, Uber, Lyft having impact.

■ Eighty percent of car trips are non-commuter related; 33% of traffic on the Beltway is pass-through at any time of the day. Fifty percent of all trips are less than three miles in distance.

■ Transit advocates only look at commuters for work and not the general population. Many trips are recreation related; you’re not going to take the kids to athletics on the bus.

## March ExComm Mtg., cont.

### Environment

■ Seventh State article on Leggett Administration trying to **privatize storm water management** and non-compliance with the pending Consent Decree.

■ Elevated **levels of lead** in 12 out of 21 tested schools.

■ Cost to maintain Green Streets is \$2,000 per feature/year.

■ New volunteer for the Environment Committee—Kylie Carhart.

### Legislation

■ **WSSC IG bill** has moved from the House to the Senate.

■ Eminent Domain Quick Take legislation withdrawn.

■ Child Sexual Abuse legislation SB 132 was cross-filed, hearing on 3/27 and was voted out of committee 47-0.

### NEW BUSINESS

■ Date and location of next General meeting: April 9th, 7:45–9:45 p.m., at the County Executive Office Building, 101 Monroe Street, Rockville, Md., in the main level meeting room.

■ Stories for the newsletter must be submitted to Jacquie Bokow on March 26th.

■ The Civic Federation is seeking a Legislation Chair.

**Adjournment:** Jim called for and received unanimous approval for adjournment at 9:21 p.m. ■

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### Montgomery County Civic Federation

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