

ELIMINATING UNIMPROVED BUILDING LOTS UNSUITABLE FOR DEVELOPMENT

ISSUE

In the Inland Bays watershed, approximately 22,000 unimproved-recorded building lots exist. A significant number of these lots were subdivided (many into ¼ acre lots) prior to the current septic system regulations of July 1985—including a ½-acre density requirement. All unimproved lots that were platted less than ½ acre prior to April 8, 1984, were “grandfathered,” and are not required to meet the ½-acre density requirement cited in the current septic regulations.

In 1997, in order to address this problem, the County approved an ordinance that would sunset any subdivision that was not started within five years of the recordation date. However, if the subdivision was initiated prior to that date, it could be developed at the density at which it was recorded. This ordinance does not address minor (less than five lots) subdivisions. Consequently, the potential exists for a large number of small (¼-acre) lots being developed under the County’s current ordinance in areas requiring the use of septic tanks.

These small lots present difficulties for County management. Additionally, DNREC has difficulty permitting septic systems on them due to regulated isolation distances. Often, in order to permit a septic system, isolation distances from shellfish waters, property boundaries, easements and watercourses are relaxed and shortened. Even isolation distances between a well and septic system may be reduced.

In some cases, owners on these small lots must move neighbors’ wells with minimum isolation distances in order to construct their own septic systems. These subdivisions usually do not have stormwater management structures. They are often located on soils that are not suitable for development using either septic systems or sewer due to poorly drained soils and seasonal high water tables at or near the soil surface.

In order to accommodate development on some of these parcels, DNREC permits permanent holding tanks. If platted prior to April 8, 1984, current septic system regulation allows holding tanks to be placed on lots denied a septic system due to poor soils or the inability to meet isolation distances. As a result, the Inland Bays Watershed has become peppered with holding tanks. The Department has documented that owners do not pump their holding tanks (See Holding Tank fact sheet).

The Department adopted Nutrient TMDLs for the Indian River, Indian River Bay, and Rehoboth Bay on December 10, 1998. These regulations call for significant reductions in nitrogen and phosphorous loads of between 40 to 85 percent. The use of septic systems on these small lots

will lead to increase nutrient loads to Inland Bays, in opposition to these regulations.

Projections of residential land acres needed in the immediate future may be calculated from the land use changes observed in the 1992 and 1997, land use and land cover data. This data shows:

- 🏠 In 1992, urban uses were 26,158 acres (14 %) of Basin.
- 🏠 In 1997, 30,899 acres were urban (17 %) of Basin.
- 🏠 If development continues at same rate, approx. 29% of Basin will be urban by 2020.

Since for every *net 1 acre gain in residential land*, 6.43 acres of land will be disturbed by land clearing, grubbing, grading, and construction to accommodate the expected growth, this means that 77 percent of the watershed will be developed by 2020. At this rate of land consumption, we cannot allow development to occur on lots that do not meet minimal requirements. Such irresponsibility will result in both the County and State paying millions of dollars to correct environmental and health problems created by such development—Ellendale sewer district, for example.

If the State merely regulates property use in a manner consistent with state’s police power, then no compensation needs to be paid, even though the owners’ use of his property, or even its value, has been substantially diminished. Section 3.15 of the current Septic Regulation states that a permit to install a new septic system can be issued only if each site has received an approved site evaluation and is free of encumbrances, which could prevent installation or operation of the system from being in conformance with these Regulations. Many of these lots would be denied an approved site evaluation. Additionally, the State must also show clearly that by allowing development to occur on the parcel, damage would be done to the environment and that harm would not be in the State’s best interest.

A number of communities in Inland Bays watershed need to be connected to the County sewer system. Such communities include:

- 🏠 Plantation Park
- 🏠 Miller's Creek
- 🏠 Shady Dell
- 🏠 Ocean Aire Park
- 🏠 Quaint Acres- Dogwood Acres
- 🏠 Indian River Acres
- 🏠 Possum Point
- 🏠 Roger's Haven

Additionally, efforts are underway to provide sewer to Rosedale Beach, Riverdale and Oak Orchard.

OPTIONS

- ✎ County ordinances or state laws should be established that would prohibit the development of lots on unsuitable soils as defined by current regulations or lots on freshwater or tidal wetlands.
- ✎ The existing ordinance should be expanded to include minor subdivisions.
- ✎ Legislation should be enacted that would prohibit DNREC or any other State agency from relaxing regulated isolation distances in order to permit a domestic or commercial well or a septic system in the Inland Bays Watershed. This type of prohibition may also need to include regulations applying to dwellings or structures.
- ✎ Any old record subdivisions that is unimproved but will be developed before sunseting takes affect should be required to have a central wastewater treatment system or be connected to the County sewer.
- ✎ The subdivisions listed above should be given priority over new proposed subdivisions for County sewer extensions.
- ✎ Legislation should be enacted that would not allow DNREC or any other State agency to drain or remove stormwater from these subdivision in order to allow development.

TYPICAL COSTS

- § The County may lose revenue due to the loss of building permit fees and taxes.
- § Developers would incur costs to re-subdivide property that are substantially higher than when the subdivision was first recorded.
- § The new development would have fewer developable lots or parcels, which may also result in loss of revenue to the developer.
- § Developers would incur costs to construct central wastewater systems or to connect to a County sewer system.
- § The State and County may have to absorb additional costs to extend sewer into some of these subdivisions.

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INLAND BAYS WATERSHED

This fact sheet was prepared by the Delaware Department of Natural Resources and Environmental Control's Whole Basin Team, at the request of the Inland Bays Tributary Action Teams, for citizens and stakeholders interested in one of Delaware's most environmentally and economically attractive areas—the Inland Bays and its surrounding lands, surface and ground waters.

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