

The Pulte development saga: Judges ruled in favor of Planning Board and Development, to the detriment of Ten Mile Creek

Friends of Ten Mile Creek and Little Seneca Reservoir (FoTMC) has fought persistently and valiantly for many years to protect the high quality Ten Mile Creek from Pulte's proposed development project, called Creekside at Cabin Branch. This project would irreparably harm the two tributaries that the Master Plan recognizes as the most sensitive and high quality subwatersheds in the Ten Mile Creek watershed, LSTM 110 and 111. The Master Plan singled out these two tributaries for extraordinary protection in the 2014 Amended Master Plan and made it clear that to preserve the quality of these headwaters, imperviousness must be kept not exceed 5%. However, Pulte's development plan would go well beyond the 5% limit and severely degrade these subwatersheds.

FoTMC testified behalf of the Ten Mile Creek watershed at Montgomery County Planning Board hearings in December 2020 and again in September 2021. Nevertheless, the Montgomery County Planning Board approved the Pulte plan, in violation of the language, intent, and spirit of the *Ten Mile Creek Area Limited Amendment adopted in 2014*. The Planning Board also rejected FoTMC's Petition to Reconsider Approval of Creekside at Cabin Branch in February 2021.

On October 12 2021, FoTMC filed a petition at the Circuit Court for judicial review of the Planning Board's decision to approve the Pulte site plan. Three FoTMC board members who live in the Ten Mile Creek watershed joined the appeal as petitioners. The Montgomery County Circuit Court judge ruled in favor of the Planning Board and the Pulte developer when the case was finally heard on August 1, 2022. FoTMC then filed an appeal on August 30, 2022 with the Appellate Court of Maryland. That hearing was held on May 3, 2023. Once again, in their July 18, 2023 ruling, the judges sided with the Circuit Court and the Planning Board, despite their opinion recognizing the importance of imperviousness and its impact on the tributaries. FoTMC has petitioned for a *writ of certiorari* filed in the Supreme Court of Maryland seeking review of this decision. We await the results of this last effort.

We have only been able to go this far thanks to the generous representation of our pro bono attorneys at Keller and Heckman LLP (David Fischer, Galen Rende, and Benjamin James), who have argued brilliantly, passionately, and tirelessly for the protection of Ten Mile Creek.

The Planning Board and ensuing legal decisions unlawfully disregard the Clarksburg Master Plan's requirements for protecting Ten Mile Creek, which is considered Montgomery County's "last best creek," by wholly concentrating development in its two most ecologically sensitive sub-watersheds. The Planning Board's actions undermine both the Montgomery County Council's ability to determine environmental and land use policies, and the public's confidence in the County's Master Plan process.

