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## **Planning Process Issues and Improvements Development Process Review Subcommittee Maryland National Capital Building Industry Association January 2012**

Costs, delays, uncertainties and complexities of the approval process hamper the Economic Development opportunity for residential and commercial investment in Montgomery County. This effects new investment and results in business decisions that place Montgomery County in a competitive disadvantage compared with adjacent jurisdictions in Maryland, the District and Northern Virginia and constrains existing businesses from expansion opportunities. The problem exists in spite of the County's many positive attributes, its location and an international reputation for a high quality of life. The factors affecting the business calculation concerning investment opportunity fall into the following main categories:

The High Cost of Fees and Taxes for Permit Applications and Approvals  
The Lengthy Time to Obtain Un-appealable Approval  
The High Risk Associated with the Complexities and Uncertainties in the Process  
Overly Restrictive Standards  
Anti-development Staff Mind-set and Poor Responsiveness  
Antiquated Surety Policies

### **Overriding Issues:**

Of all the issues however, the most commonly raised and most harmful include:

1. Plan requirements cannot be fully known until the process reaches the final plat stage leaving the project sponsor unsure of their potential yields until the very end of the process. Citizen opposition plays a key role throughout the process. This raises risk, raises costs and constrains new investment.
2. The time it takes from initial application to final, un-appealable approval can push a development plan into new market conditions substantially different than when the process began. This is especially difficult for securing financing and responding to market changes that effect either the potential tenant or product. This effects current projects and scares off new investment.
3. Staff attitude, especially with environmental regulations, seems a constant battle of extremes with staff using their discretion to require conditions that can exceed approved standards and regulations. When staff is successful in requiring an additional condition beyond the standards required, that condition then becomes a new requirement for all future projects. This results in constantly changing requirements and makes it difficult to estimate the costs associated with the development of a project. In addition, some staff seem to be especially difficult to contact and can be unresponsive. This builds a poor reputation and can unduly add unexpected costs.

4. A constant climate of regulatory changes can effect plans currently in process and can substantially reduce yield and add costs. This can effect current projects and scare off new investment.

### **General Solutions:**

In general, the solutions to the above critical issues can be summarized as follows:

1. Institutionalize the practice that Preliminary Plan approvals survive the remaining site plan approval process. This should include yield, type of product, road configurations, storm water management concept plans, amenity requirements and tree conservation plans. The site plan process must only be a detail of construction plans to implement the approved preliminary plan.
2. Establish fixed time frames for each approval process step. Collect the data to identify where the process exceeds the expected time frame, identify the hold-ups and come up with changes.
3. Promote a mind-set that discourages placing conditions that exceed legislated standards.
4. Establish and publish organizational standards for responsiveness to phone calls and emails (the best enforcement may be sunshine).

#### **I. Cost and Fee Schedule**

Fees are roughly 30-60% more than Northern Virginia fees. Montgomery County has the highest Impact Taxes in the State of Maryland.

Resubmittals that result from changes made to accommodate changes can result in a duplication of payments.

DPS fees can exceed the cost of Engineering. Permit fees for roads and storm sewers, where the permit fee is 7.5% of the costs of the project plus an automation fee, exceeds the cost of the preparation of the plans being submitted by the engineers. This is an obvious disconnect between cost recovery and review time.

The up-front (30%) permit fee at application for land development permits can easily exceed the total cost for design and engineering suggesting that the review time exceeds the design time. This seems unreasonable.

#### **Solutions**

1. Reduce the upfront application fee for Method 3 Fees to 10% of the permit fee.
2. Reprogram the permit fees to reduce Method 3 Fees.
3. Survey other jurisdictions to determine the competitive position of the Montgomery County Fee structures and set new targets for administrative costs and administrative budgets.
4. Reduce fees for resubmittals of preliminary plans and site plans.

#### **II. Time**

A normal subdivision process can take twice as long in Montgomery County than adjacent subdivisions.

It can take longer for an opinion to be written after approval than the time it takes for the approval process. And if there is a mistake, the opinion has to be redone and reapproved by the Planning Board.

A large subdivision process can easily take 5 – 10 years for the first approvals.

Largely due to constant community review, no decision can be considered final until record plat.

#### **Solutions**

1. When an applicant submits an initial application, it would help if they were given a “tentative” application number that at the end of ten days would be final unless the submission was not acceptable. The applicant can accelerate the notice requirements and begin to circulate the plan to all reviewing agencies without having to wait for staff.

2. An application once accepted should be assigned an automatic default date for scheduling the DRC meeting.
3. Because the NRI/FSD needs to be approved before other reviews, there needs to be a set time frame to review and approve the NRI/FSD.
4. Currently if an applicant proceeds to DRC and get comments on a Preliminary Plan, they must wait for an approved SWM concept plan before proceeding to Site Plan. Given that the Site Plan approval process often changes the SWM concept plan, the approval of the SWM concept plan ought not to hold up the site plan submission.
5. Set a mandatory time frame for approval of Resolutions after the Board Hearing.
6. Set a mandatory time frame for Subdivision and Site Plan hearings after the DRC Review Meeting.
7. Public files should be available to the public on a walk-in basis and not require advanced appointments.
8. Allow a third party to write the first draft of an opinion. This is done in other jurisdictions and by no means commits the Planning Board to accept the draft as a final opinion.
9. Allow the applicant to see the draft opinion before it goes to the Planning Board to correct any errors or resolve any mistakes.

### **III. Complexities**

Often the determination of particular requirements involves more than one County agency. To overcome the difficulty in reaching a decision, the county recently came up with the “lead agency” agreement. This is having a positive effect and may be going a long way to solving the problem of multiple interpretations. However, to get to the point where a lead agency determination may be required can still involve many months of multiple negotiations between the developer and the various agencies to either reach a point of clear agreement or a point of obvious entrenchment between agencies. This can be truncated if the developer can request a lead agency determination and decision early in the process.

In cases where a special exception is required in a zone that requires a site plan, currently the applicant must go through two procedures with the same information and bounce between the Planning Board and the Board of Appeals. Further, the special exception comments should carry forward as the site plan comments.

As the State and the County has changed the SWM requirements from the measure of impervious surfaces to the measure of nutrient loads and use of Environmentally Sensitive Design (ESDs), the laws and the conditions should reflect these changes and allow permeable surfaces. In addition, the monitoring requirements for Special Protection Areas are no longer relevant.

MNCPPC ought to be able to approve road abandonments where a road is not paved and in current operation. Otherwise it goes to DOT and the Council that can be painfully slow and hold up the rest of the approval process.

When an applicant has to change a site plan, even when trip generation does not change or gets smaller, staff will often require a new traffic mitigation agreement.

### **IV. Standards exceed State Regulations**

30” Critical Root Zone (CRZ) around saved trees

Monitoring pollution loads in Special Protections Areas (SPA)

100% SWM containment in urban areas (twice the State standard)

Buffer zones next to concrete channels and underground channels

#### **V. Staff Direction and Accountability**

There does not seem to be any measure of a staff person's competence, responsiveness, creativity and adherence to rules and regulations. We urge that an Employee standard guide be established that sets expected time frames for specific reviews. We also recommend a Performance Survey be included after each major approval procedure to determine applicant satisfaction concerning the responsiveness of the staff, the satisfaction of the reviews, comments and complaints.

#### **VI. Park and Planning Surety Requirements**

Park and Planning does not accept a Letter of Credit as Surety for site plans and requires a surety bond. Paradoxically, a Letter of Credit is significantly easier to "call" than a bond. However, due to antiquated language in the code, the fix can take months to correct. From a developer's perspective, usually a bond is cheaper and easier to get than a Letter of Credit, but not always. There is no reason for the lack of flexibility in the Law. (We are told a ZTA is coming to allow Letters of Credit.)