

Streamlining Development Public Forum

February 14, 2012

Good afternoon, I am Frank G. Bossong IV with the firm of Rodgers Consulting Inc. and thank you for the opportunity to speak today on the Montgomery County Development Review Process. Being involved with the Development Review Process in Montgomery County for thirty four years I have firsthand knowledge of the many changes both in regulation, process and structure. My top two concerns with the current process is the economic burden and uncertainty instilled within the process which has caused Montgomery County to be much less attractive to new business and redevelopment, thus diminishing both economic competitiveness and job growth. With our changing demographics, a global economy, and regional competition, it is imperative to be competitive if we want to maintain the level of service and tax base this County has become accustomed to.

With limited testimony time, there are five points I believe that need to be addressed in order to revive the vitality and effectiveness of the process;

- 1. Specific time frames need to be established for both the reviewer and the applicant, thereby establishing a sense of urgency and responsiveness to completing reviews and submission of documents. A single County point person to lead the project through the process would be useful.**
- 2. Reducing the redundancy within the process, whether that is within the various county review agencies or within the process. Redundancy is not**

only dealing with specific tasks but redundancy in general i.e. MNCPPC environmental and MCDEP, MNCPPC Transportation Planning and MCDOT. But most of all is having all the review agencies on the same page and not trying to compete with one another. This includes not only the Executive Branch and MNCPPC, but WSSC, the Utility Companies and SHA.

3. Application review fees have increased to such a level that the fees themselves are often multiples of the cost to actually design, prepare and produce the documents. This hinders applicants from moving forward. I understand the need for the fees to cover some or all costs for review, but refinement of what actually needs to be reviewed is necessary.
4. Inconsistency of both reviews and adherence to appropriate laws causes frustration and time for both applicant and reviewers. New interpretations are made by reviewers from unpublished, undocumented sources which are mandated to the applicants causing significant delays or conflicts with other agencies who are also unaware of such policies or interpretation. Along with inconsistent reviews is the uncertainty of entitlements throughout the process. The applicant is never sure what he has secured until very late in the process which has many implications from lenders, investors, costs, delays and economic viability.
5. Attitude. There are always some bad apples in the basket, but I believe the process itself causes the indifference, not the individual reviewer. Many reviewers and agencies however have the mind set on how to deny or hold up a project versus working and communicating with the applicant and

public to come up with positive solutions. Managers and department heads need to direct their staff to have an attitude projecting the importance of moving applications forward, and not inserting roadblocks.

Montgomery County as well as MNCPPC has previously looked into the development process numerous times over the years with no real action being taken. Don't waste time and money pursuing revisions to the process unless real change is going to be made. This was evident by the Management Partners study commissioned by MNCPPC in 2006 which had valued recommendation for changes but was shelved. Don't hold back revising the process until ZAP (Zoning Advisory Panel) effort is complete. This just delays implementing needed improvements sooner.

Thank you for your time and I would be pleased to work with the Agencies on developing succinct process revisions for the benefit of all involved.



**Montgomery County Department of Permitting Services
Streamlining the Development Process
Public Forum -- Friday, March 9, 2012**

The Greater Silver Spring Chamber of Commerce commends your efforts to identify areas of the development process that can be simplified or streamlined to reduce time, and eliminate bottlenecks, duplication of reviews, inconsistencies, and inefficiencies.

We support your initial step, consolidating construction inspections currently being done by the Department of Permitting Services (DPS) and Montgomery County Fire and Rescue Services (MCFRS). This should help eliminate what many have called an expensive and time-consuming "ping pong ball game" between the two agencies for new construction and renovation projects. Many of our members have been bounced just that way.

That said, we are here today to express our concern and offer a recommendation about future conflicts that may arise from this practice. Specifically, we worry that the same disagreements on policy and interpretation that gave rise to the "ping pong ball game" in the past could simply come to the fore when the fire marshal arrives the following year for the required annual inspection, and disagrees with what DPS approved at construction.

What happens when a fire inspector comes in, doesn't like what DPS has approved, and tells the property owner that it needs to be changed? (Note, this assumes that the requirements of the fire code have not changed in the interim.) Will the property owner be required to make the change? If so, will he or she have to come to DPS for a permit to change something that DPS approved maybe a year or two earlier? What if DPS doesn't agree with what the fire marshal has ordered? Who is the final authority on questions like this? You can see how we might be concerned that a brand new ping pong ball game would ensue.

That's why we are recommending that DPS and MCFRS enter into a Memorandum of Understanding similar to one that has worked well for conflict resolution in the subdivision review process. Having agreement on the process, including resolution of conflicts, before potential concerns arise will go far in providing predictability and transparency for business and property owners who must abide by the regulations of both agencies.

And finally, we have one more issue we would like to bring to light today. Members of the Chamber have for some time been concerned about the implications of MCFRS as an "enterprise" operation, tasked with generating its own revenue to support its operations. As DPS takes on the responsibility for all construction inspections, MCFRS will likely need to look for some way to assure sufficient funding to maintain its current staff levels. Will that mean more inspections more often? Will it mean an increase in inspection fees? Or both? For now, it's unclear. But what is clear to us is that someone should look into why any government regulatory body should operate as a profit center.

Thank you for your time and your work to make the inspection and permitting process more efficient for business.

WRITTEN STATEMENT OF RICHARD N. WRIGHT, Ph.D, PE, Dist.M.ASCE

MARCH 9, 2012

FORUM ON STREAMLINING THE DEVELOPMENT PROCESS FOR MONTGOMERY COUNTY

Thank you for the opportunity to participate in this forum. My purpose is to provide information on important national resources that can assist Montgomery County in streamlining its development process. The County's objective "to streamline the approval process so that it is more user-friendly, understandable, reliable, consistent and efficient without compromising public participation, quality of development, environmental protection or public safety" is excellent and applicable to the national efforts I will describe.

I have been a participant in the national efforts as Director of the Building and Fire Research Laboratory of the National Institute of Standards and Technology, 1991-99, and since then as a volunteer member of the American Society of Civil Engineers' (ASCE) Committee on Sustainability and Committee on Adaptation to a Changing Climate, the Engineering Founder Societies Technologies for Carbon Management Project, and co-chair of the National Institute of Building Sciences' Sustainability Topical Committee. Locally, I have been involved in development issues in Montgomery County as a 27-year member of the Montgomery Village Foundation Board and a 6-year member of the Upcounty Citizens Advisory Board.

I have been assisted in preparing this statement by Mr. Robert Wible, a leader in the national efforts, initially as Executive Director of the National Conference of States on Building Codes and Standards and now as leader of the Alliance for Building Regulatory Reform in the Digital Age.

The Alliance for Building Regulatory Reform in the Digital Age has spent the past eleven years identifying and promoting best practices in regulatory streamlining that reduce the amount of time it takes to move a building from land acquisition to certificate of occupancy through the regulatory process.

Through Fiatech, www.fiatech.org, an international community of private and public sector stakeholders working together to lead global development and adoption of innovative practices and technologies to realize the highest business value throughout the life cycle of capital assets the Alliance is working on innovative technologies to streamline the construction and regulatory processes. Through Robert Wible & Associates, the Alliance is working with individual state and local governments to improve their regulatory systems - www.natlpartnerstreamline.org

In wake of the 2008-2011 national recession, a number of jurisdictions across the nation have begun to look at ways to better coordinate inter-agency processes to speed the construction process while enhancing public safety. Montgomery County's effort to look at ways of better coordinating multiple agency roles in that process is laudable.

In these comments, the Alliance shares suggestions gained from other jurisdictions undertaking similar endeavors, that Montgomery County may wish to consider in its initiative.

OTHER JURISDICTION'S ACTIONS

NEW YORK CITY - In the fall of 2011 the New York City Department of Buildings established the "Development HUB" a unique electronic plan review center that coordinates plan reviews for major buildings and major alterations linking together by video conferencing, webcams and smart boards eight different city agencies that touch some portion of the buildings review and approval. Those agencies include: Department of Buildings, Department of Transportation, the Fire Department, Department of Environmental Protection, Landmarks & Preservation, City Planning and the Department of Parks and Recreation. Submission to the system currently is voluntary.

LOS ANGELES

The Mayor's Office in Los Angeles has undertaken a project to develop a plan that will link together with access through a City portal a development center encompassing all of the city agencies that work on any aspect of community development through building construction or renovation. The objective is to make Los Angeles the fastest and most efficient major city in the nation to undertake a construction project. Among the issues L.A. is looking into in this effort is the need to have uniform city-wide electronic system for addressing clearances and conditions imposed upon construction by different regulatory agencies.

BEND, OR

To re-stimulate economic growth, Bend, Oregon now conducts all plan reviews electronically and links approved digital plans to field inspectors using mobile field inspection technology and ePermitting processes. The City also has expanded use of ePlan review technology across multiple agencies including Planning, Fire, Emergency Services and Public Works. Bend

provides responders with electronic as-builts of buildings as they roll up on them in response to a man-made or natural disaster.

Other cities exploring similar regulatory streamlining initiatives include Mecklenburg Co, NC; Osceola County, FL; Clark County, NV; Dallas, TX; and Salt Lake City, UT.

INNOVATIVE TECHNOLOGIES

Through FIATECH the Alliance has been working on helping jurisdictions streamline their regulatory processes through several initiatives that should be of interest to Montgomery County.

ICC GUIDELINE FOR REPLICABLE BUILDINGS

Working with the International Code Council, FIATECH in 2010 aided the ICC in developing and releasing for jurisdictions to adopt – a Guideline for Replicable Buildings (www.iccsafe.org/Store/Pages/Product.aspx?id=7050S10) that allows for structures whose construction plans have been reviewed and deemed code compliant by a designated expert to be accepted by state and or local jurisdictions without further reviews except for local construction and site issues.

Early demonstration of the Guideline by Target Corporation in California, New York, Philadelphia and Texas resulted in savings of up to \$150,000 per store for a series of uniform renovations.

AutoCodes Project

Working together with the International Code Council and other model construction and fire code groups, FIATECH is demonstrating the ability to produce an automated construction code checking tool that will reduce plan checking time by up to 80% of current levels, and speeding construction code compliance. Phase I, just completed demonstrated the ability to check for access and egress provisions for retail construction. Under Phase II FIATECH will be working with the health care industry, code groups and selected state and local jurisdictions across the nation to demonstrate other code review compliance for medical facilities.

CLOSING CONCEPT - LINKING SUSTAINABLE COMMUNITIES WITH DISASTER RESILIENCY

The activities envisioned by Montgomery County to streamline and link all agencies within the construction process in a single system will move the county in the forefront of this national trend. Moreover it will enable the County to strengthen its sustainability and be more resilient to natural, accidental and willful hazards.

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Streamlining Development Public Forum

I am an engineering consultant representing business owners, developers, home owners, institutions, and religious organizations who desire to make modifications to, or expand their business, develop land, improve or expand their residence, improve or expand their organization, build or expand a place of worship or provide community outreach. I primarily deal with the Water Resources and Right-of-way Sections of the Department of Permitting Services and the Department of Transportation in its subdivision related review and review of Traffic Control Plans. I also deal with WSSC on water and sewer related issues. I appreciate this opportunity to comment on the development process. Some general and specific suggestions for improvement I have and the issues they relate to are as follows:

Make Workable Solutions the Primary Focus of Communication and Relationships between Agencies and between Agencies and the community.

Many individuals I deal with in the County already do this; however, it has also been my experience that it is often necessary to get all of the stakeholders involved in solving a problem because the agency or group not involved will be the one tasked with the solution. If in all dealings, everyone is looking for the best solution to a problem rather than being combative or looking for the solution that affects them or their agency the least; than I believe the overall process would work much better.

Increase the use of internet communication technology to facilitate meetings and testimony.

It is difficult to coordinate meetings that require representatives from multiple agencies to attend or to get agency staff to testify at the Planning Board. This problem is most acute in the coordination of Special Protection Area Pre-application Meeting set-up, the set-up with meetings with the Department of Transportation and just recently at the Planning Board where the applicant had to defer the project in order for the Planning Board to get a DPS staff member to come and testify. I understand the difficulty in getting people with busy schedules to attend meetings. It's a problem in the private sector. However, conference calls, internet based meetings and video conferencing can in some part address this problem. My daughter was recently visiting Japan. With an iPad and an Internet Connection, I could Video call her for as long as I wanted for no extra charge. The same thing is possible between staff in Rockville and Silver Spring or staff in Rockville and Gaithersburg. Because meetings are typically held at the location of one of the involved agencies, it will take some effort by the County to facilitate this change.

Modify the Current Law or Develop a Workable policy that allows individuals or entities other than the property owner to be the Soil Erosion and Sediment Control Permittee.

Recently we have had a number of projects where the requirement that the property owner must be the permittee has delayed the plan approval and permit process. The problem is most acute on projects where there are off-site improvements on private property, where there is the transfer of building lots from one owner to multiple owners and/or builders, and where

developers making applications for property they plan to purchase. Recently, the County has stopped accepting SESC/SWM Plans for review unless the appropriate purchaser documentation is provided up front. If this requirement cannot be changed, I would suggest pushing the documentation requirement from acceptance of the plan to permit or some other simpler or less restrictive requirement.

Work With WSSC to develop a more reasonable level of requirements for Building Permit Release.

Historically, WSSC would sign off on a building permit with little more than the submittal of Water and Sewer Plan and the payment of connection fees. Over time, WSSC has added more and more requirements to their sign-off to the point where a fully approved plan is required. In addition, WSSC has added more and more requirements to the plan approval process. I understand that the County has little control over WSSC and they are not part of the group covered by this process; however, the WSSC building permit release is a part of the County requirement. I understand that there have been some discussions between the County and WSSC concerning a phased building permit release. Often, bank loans, consultant payment, Federal loans or Grants are conditioned on the granting of a building permit. In addition, there is generally months of work that must be done before water and sewer service must be provided. On many redevelopment projects the water and sewer service exists but is being relocated on-site to accommodate a new or additional connection. On many projects it should be easy to determine that water and service can and will be provided. It is also understandable that some projects have requirements where there could be problems that would unacceptably delay water and sewer service to a building. For example where public extensions by others outside of the control of the respective permittee are required or where additional rights-of-way are required. I have tried to work with WSSC to address this issue with little success. I write this to suggest that the County take an active position in establishing a dialogue with WSSC to eliminate the added delay in building permit release so all projects do not get held up by policies established to cover the few projects with problems that could unacceptably delay water and sewer service.

The solutions I've suggested may not be the best or most appropriate; however, the problems are real and I respectfully request that a serious effort be made to address them.



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**MARYLAND-NATIONAL CAPITAL
BUILDING INDUSTRY ASSOCIATION**

**Planning and Permit Approval Process Streamlining
Development Process Review Subcommittee
Maryland National Capital Building Industry Association
March 9, 2012**

Montgomery County Competitiveness

Costs, delays, uncertainties and complexities of the planning approval and permit 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:

Main Areas of Concern

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

Recent Kudos

Over the last few years there have been major improvements within DPS both in time and quality of reviews. The general attitude of the Department Managers has been to help work out problems and find ways to solutions. DPS, in spite of a number of critical retirements and the many recent changes in management has none-the-less maintained a high level of performance. Recent specific examples include the change in Fire Inspection, the addition of a partial inspection for residential building and the work with the Record Plat committee to simplify the record plat.

Park and Planning has suffered the most severe loss of staff and have recently begun to add staff. This is most evident with improvements at the Information Desk and with Intake. We also acknowledge proposed improvements with the minor subdivision clarification and the capping of fees and some reduction in fees involving subdivision applications. We look forward to the implementation of Project Docs which should greatly improve the process.

Common Issues

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

1. Park and Planning requirements are not finalized 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 planning 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. The simple act of taking an approved plan through record plat can take nearly half a year which delays selling and settlements of lots.
3. Staff attitude in some Planning departments, especially with environmental regulations, seems a constant battle 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 and policy 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. Policy changes happen at any time without public review or notice

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 in planning and permitting. Collect the data to identify where the process exceeds the expected time frame, identify the hold-ups and come up with changes. The intent is not to punish but to identify problem areas in order to consider possible solutions
3. Prohibit policy changes that have not been vetted and properly circulated with an opportunity for review and appeal.
4. Promote a mind-set that discourages placing conditions that exceed legislated standards and replace this with the attitude to work through issues and resolve issues in a cost conscious manner
5. Establish and publish organizational standards for responsiveness to phone calls and emails (the best enforcement may be sunshine).

Opportunities for Improvement

I. Cost and Fee Schedule

Issues:

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

2. Resubmittals for Plan approval that result from changes made to accommodate requested changes can result in a duplication of payments.
3. DPS fees can exceed the cost of Engineering. Permit fees for roads and storm sewers, where the **permit fee is 14.93% 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.
4. The up-front (30%) DPS 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 DPS 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 P&P fees for resubmittals of preliminary plans and site plans.
5. Review the Automation Fee for appropriate automation improvements and revisit the fee amount. The fee was initially raised for "Y2K" issues and has survived well beyond its intended use.

II. Time

Issues

1. A normal subdivision approval process can take twice as long in Montgomery County than adjacent subdivisions. As an example, 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. Currently the developer of Cabin John has been waiting over three months for a draft opinion to go before the legal department whereas a plan for White Flint took one month.
2. A large subdivision process can easily take 5 – 10 years for the first approvals.
3. Many plans require approval by the DPW&T department that is severely understaffed and overworked and a department where plan and permit approval is a very minor element of their scope of services and receives very little attention.
4. The simple act of recording a plat can easily take 20 weeks (nearly half a year!) after plat submission from an approved site plan. This delays the selling cycle and delays settlements of lots.
5. Largely due to constant community review, no decision can be considered final until a plat is recorded and a permit is issued.

Solutions

1. When an applicant submits an initial subdivision 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.
10. Set mandatory time frames for record plat approval by P&P and DPS
11. Transfer the transportation approval process to DPS from DPW&T and add staff (review can take 120+ days)

III. Complexities

Lead Agency

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 (MOU). 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.

Special Exceptions

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

SWM

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. Further, the SWM requirements make urban redevelopment nearly infeasible.

Planning Approval Holdups

Currently, the request for a road abandonment goes to DPW&T and the Council. This 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.

Forest Conservation

Submission requirements to obtain a forest conservation exemption meet the requirements necessary for a full forest conservation plan saving no time or money to the applicant seeking an exemption.

Solutions

1. Allow a developer to request a lead agency determination and decision early in the process.
2. DEP and DPS can request approval from MDE for Watershed Management Plan in redevelopment areas. Where WMPs are in place, applicants have more option for dealing with storm water management such as regional stream restoration and retrofits.
3. Allow a minimal application process for Forest Conservation exemptions
4. MNCPPC ought to be able to approve road abandonments where a road is not paved and in current operation
5. Eliminate the Special Protection Area requirements and monitoring.
6. Assign a staff to coordinate special exceptions between P&P and the Board of Appeals

IV. Standards often exceed State Regulations or are Redundant

Examples:

- 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 required next to concrete channels and underground channels
- No need for stream monitoring with TMDL standards and requirements
- Standards for Tree Save Variances have become increasing unforgiving and unavailable

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.

I have worked for the past 30 years as a land use and zoning attorney in Montgomery County. I have the following suggestions:

1. Create an expedited review and approval process for small subdivisions of up to 5 lots that do not otherwise qualify for a Sec. 50-35A minor subdivision or for an expedited amendment to an existing subdivision. I recently handled a 2-lot subdivision that did not qualify under either of the aforementioned procedures that took nearly 2 years to complete. The expedited process I am proposing should take only a few months to complete following acceptance of a completed application .
2. Consolidate overlapping offices between the County and Park and Planning (ex. – traffic/transportation, environment, etc) The existence of separate departments in separate locations is frequently counterproductive and time-consuming. One-stop shopping would definitely be preferable. Alternatively, if the departments cannot be consolidated, they should at least be housed at the same location to facilitate meetings and prompt resolution of differences.

Submitted by Larry Gordon – Shulman Rogers -- 12505 Park Potomac Ave., Potomac, 20854 -- 301-230-6576 – lgordon@shulmanrogers.com.

FEBRUARY 14, 2012

STREAMLINING THE DEVELOPMENT PROCESS

PRELIMINARY SUGGESTIONS OF ROBERT R. HARRIS

PART I – MNCPPC

A. Procedural

1. Allow filing of Site Plans before Preliminary Plan/Project Plan resolutions are adopted.
2. Require resolutions within 45 days.
3. Allow parties to submit draft resolutions for Staff/Planning Board/party review.
4. Address problem of delayed prerequisite approvals before filing Preliminary Plan/Sector Plan.
 - NRI/FSD
 - SWM Concept
5. When making initial application, provide case number immediately to allow notices, etc.
6. If no comments within 10 days of initial application, deemed accepted for filing.
7. Automatic default date for DRC.

B. Substantive

1. Better organize internal P&P conflict resolution (e.g. environmental v. transportation) to break down silos; Planning Director or deputy assigned authority to resolve conflicts.
- *2. Master Plans
 - a. Delete master plan consistency requirement in Zoning Ordinance/Subdivision Regulations (or at least have mechanism to allow Planning Board/Council to decide how relevant when they review application).
 - Or add “unless circumstances have changed”.
 - Or allow parties to take matter to Council for approval of Plan that might not conform with Master Plan
 - b. Strive to avoid detailed standards/design/plans/etc. in Master Plan or provide note re flexibility (at most, state goals and policies, not standards and designs).
- *3. Establish policy that guidelines are not mandates or minimums; alternatives may be appropriate under circumstances (delete CR Zone requirement for compliance with Design Guidelines).
4. Eliminate Special Exception requirement when Project Plan/Development Plan/Site Plan required.
5. LATR

- Change de minimis requirement for LATR from total trips greater than 30 trips to new trips greater than 30.
6. Allow privately-funded minor master plan studies to facilitate minor master plan amendments.

PART II – OTHER AGENCIES

A. Procedural

- *1. Resolve issues in more timely manner.
- *2. Increased staffing/resources to enable expedited responses (particularly DOT letters to M-NCPPC)
- *3. Provide more flexibility in DOT standards and/or reasonable methods for exceptions (particularly for urban redevelopment and TND residential).
4. TMAG approval streamlining.
5. Expedite ZHE hearings for zonings/special exceptions (use multiple weekdays); goal of 2-3 months.
6. Designate agency staff (below Department Director level) to resolve problems.
7. Reduce plat recordation time.

B. Substantive

1. Fees and taxes higher than neighboring jurisdictions (see data provided previously to County Council/DPS).
- *2. Eliminate County SWM standards more onerous than state of Maryland.
3. Consider supporting relaxation of existing state SWM requirements for urban infill/redevelopment sites.
4. Work with utilities re PUE locations/dimensions (especially TND, mixed-use urban, etc.).
5. More favorable tax measures to support development.
 - TIF
 - Tax credits
 - Development districts



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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:

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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.)



Development Review Process Public Forums Guidelines

The Development Review Process Subcommittee of the Montgomery County Liaison Committee for the Maryland National Capital Building Industry Association

Please share your thoughts and experiences concerning the **Land Development and Building Permit approval process**. The County Executive is committed to a thorough review of the process and is committed to making changes to improve and streamline the process. Your specific experiences and examples provide the best opportunity to identify problems and come up with fixes. The County Executive is committed to making changes. As part of the preparation for this effort, *DPS has already worked with Park and Planning to improve the process of inspections for forest conservation and with the Fire Marshall to consolidate and improve the fire inspection for new construction. Additionally, Park and Planning has already revised and lowered some fees for site plan review.* Everything is open to review!

To assist you in your comments, the DRPS has prepared an outline of the general issues that you may wish to use for your comments. In general the comments can be organized in the following categories:

1. Management Issues
2. Laws and Policies
3. Procedures
4. Fees
5. Staff

Management Issues includes issue of

Accountability – The measure of staff competence, responsiveness, timeliness and adherence to appropriate laws and regulations?

Time – The length of time it takes for a process and how consistent the process? What is an appropriate measure of review time?

Attitude – How do staff generally behave? Is staff encouraged to be cooperative or combative?

Staffing – are there enough staff? Is the right staff in the right job? Is staff skilled, trained and competent? Is staff responsive? Do you know who is in charge and responsible for your review?

Intra and Inter department interface – How are conflicts handled between and among agencies and departments? Is authority clear?

Consistent Interpretations – Do policies and interpretations depend on specific staff or are they consistent no matter the reviewer?

Review Interruptions – Have staffed lost plans and asked for resubmittals? Have staffed stopped reviewing while waiting for another department's reviews? Has staff been taken off your reviews?

Laws and Procedure

Relevance - Is the law outdated and no longer relevant?
Have you faced an un-vetted policy effecting reviews and decisions?
Has the "interpretation" of an ordinance changed or is it consistent?
Are regulations and standards excessive and out of step with normal development or building requirements?

Process includes issues related to:

Duplication – Have you had to submit the same information to more than one department for review and approval?
Length of time needed to review an application – what is your experience?
Order and sequence – are reviews held up while other departments do their review. Are you required to provide detail that is out of step with reasonable planning efforts?
Authority – have decisions and approvals been changed by other reviewing agencies or by public comments?
Coordination – Have reviewing agencies cooperated or have you faced conflicting reviews?

Fee issues concerns:

Relation between the fee and the review time required for review, the reasonableness of the fees.
Comparison of the fee to comparable fees in other jurisdictions
Timing of the fee payment
Duplication of fee payments

Staff issues involve:

Training issues – is staff skilled and prepared for the reviews in their responsibility
Responsiveness – can you reach staff and are they responsive? Do they regularly communicate?
Attentiveness - Is staff attentive or do they wait for the last minute? Do you have an adequate opportunity to correct errors and make necessary changes to avoid denials?
Attitude – Have you experienced good problem solvers or do you face obstacles and entrenchment? Do they appreciate urgency and the importance of time?

We urge you to participate and ask that you submit brief outlines of your issues and provide copies to the MNCBIA so that we may consolidate the comments and follow-up. For those who cannot make the public forum or choose not to participate you may still send comments in **anonymously** through the DPS web page. In addition, you can share your thoughts with the MNCBIA and we will make sure your comments are conveyed anonymously. Outlines and bullet points work, narrative reports are not necessary. Make it simple.

THIS IS YOUR CHANCE FOR CONSTRUCTIVE CRITICISM THAT MATTERS.

Questions, comments contact:

Bob Kaufman, Director of Government Affairs
301 445.5408
bkaufman@mncbia.org

Pritam Arora

To: Pritam Arora
Subject: Emailing: Montgomery County, MD - Press Releases.htm

Based on direct involvement and about 40 years experience w/ the site as well as building permit process in Montgomery County as well as other jurisdictions including Maryland, Virginia, District of Columbia, and other jurisdictions, I offer the following comments for consideration by the appropriate review agencies as well as other stakeholders:

1. Plan reviews related to a development project should be simultaneous at all levels . Such a process was available in Gwinnett County Georgia and the overall permit for a new Atlanta Marriott Hotel was secured in about in few weeks rather than years.
2. Maximum Duration of each ~~submittal~~ ^{review} should be 2 to 3 weeks. MSHA already has such a policy in place to review within 3 weeks.
3. It is desirable to simply issue a review letter similar to what is used by MSHA. The agency should be able to email the review comments w/o the applicant and/or his engineer send a messenger to pick up the package. This could save some time and expedite the review.
4. Community meetings should be replaced w/ community notification w/ access to the FTP site for review of plans.
5. All application packages should be allowed to filed w/o any appointment.
6. The initial filing fees should be eliminated or reduced to say maximum of \$50 for any submittal.

Pritam

Pritam Arora, P.E.
President

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RESIDENTS GOVERNMENT BUSINESSES CULTURE & LEISURE



DPS Forum Testimony

Sylke Knuppel PE, Land Development Manager with Winchester Homes

Vice Chair of DPS Advisory Committee

Let me start by saying that we are all in this together and we have the same end goal of keeping Montgomery County a successful and vibrant County.

Efficiency, simplicity, and predictability of process is critical.

1. Establish timeframes and adhere to them. Certain neighboring jurisdictions set timeframes for both agencies and applicants.
 - a. MNCPPC –Site Plan approvals to Planning Board, 60/90 days - rather than 10 months
 - b. MNCPPC –
 - c. DEP – Water Quality- used to be the critical path but most recently was much improved
 - d. DOT – ROW permit for that took 6 weeks to obtain
2. Simplify process
 - Flow charts are great tools for explaining to any professional and/or layperson how the process flow needs to flow within an agency and identify points of contact. I would recommend that agencies utilize these and place on websites
 - There has been a great “knowledge drain” over the last few years and there are many new inexperienced engineers/ planners being inducted into what is a very complicated Entitlement system.
 - DPS – Improve the structure for bonding and permitting for land development of phased/ complex projects. Need to consider a more flexible structure that allows for phased bonding and permitting amounts of large projects.
 - Grandfathering is not a bad word – there are projects that are in mid-stream that need to be considered when regulations change in a fair and reasonable manner
3. Cooperation among agencies is imperative - the Lead Agency initiative has had very positive results, although there are still conflicts that occur. It may not be evident but I’ve experienced the benefit of facilitation on Site Plan being resolved at my level rather than being raise to the highest level.
4. Written Regulations vs Policy
 - a. WSSC – I have seen much frustration with my engineering consultants because they design a plan to meet the regulations and are required to make changes.
 - b. WSSC – Being delayed by a Design Standard (DG03 Auto Flow Control Valve) that is still being finalized but that I am in process of completing final engineering of a WSSC CIP contract.

Thank you for your consideration.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 26, 2012

The Honorable Roger Berliner, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Planning Department Ideas for Streamlining Development

Dear Mr. Berliner:

On March 8th, 2012, staff presented 12 suggestions to the Planning Board for streamlining the development process. These include changing the way plans are submitted to the Planning Department; requiring applicants to submit revised drawings in a timely fashion; changes to the way historical area work permits are submitted; and changes to current laws. The complete list is attached.

Some of the suggested changes on the attached list are in the process of being implemented including one that requires staff to draft resolutions prior to the Planning Board hearing and having the Planning Board approve the resolution when the development application is approved. In addition, the hiring of new staff has reduced the initial review of record plats from 9 weeks to 4 weeks and the second review to less than 1 week. Also, additional staff allows the Planning Department to review building permits, to ensure development applications comply with the Planning Board's conditions, in the same month the permit is forwarded to us from the Department of Permitting Services.

None of the changes suggested include the improvements that we know will accelerate plan reviews. Eplans, our version of Project Dox, will allow all plan reviewers to receive and review development applications electronically and send multi-agency markups to applicants in one file. Eplans will allow the plan reviewers to compare different versions of plan sheets to ensure unexpected changes do not occur between submissions reducing the time staff needs to review multi-page plan submissions. Also, changes to the zoning ordinance will consolidate the Planning Board approvals of development applications into fewer plan types. As you know some development applications must get Project, Preliminary, and Site plan approval from the Planning Board before moving forward with a project. This change will shorten the number of times a plan must be reviewed and reduce costs to both the public and private sector.

Thank you for the opportunity to provide suggestions on streamlining the development review process and believe the Planning Department is making substantial strides to reduce review times, though there is room for more improvement.

Sincerely,

A handwritten signature in black ink, appearing to be 'Rollin Stanley', written over a circular scribble.

Rollin Stanley
Planning Director

Cc: Nancy Floreen

STAFF SUGGESTIONS FOR STREAMLINING PLAN REVIEW

Pre-Planning Board Approval

Intake

1. Combine the preliminary and final forest conservation plans, so that only a single forest conservation plan is required, or at least, require final forest conservation plans to be approved prior to record plat submittal.
2. Require applicants to have a pre-application meeting with DOT, followed by a confirmatory letter with the submittal-hoping to address all of the issues prior to submittal.

Plan Reviews and Staff Reports

3. Require applicants to submit revised drawings within 90 days of DRC meeting.
4. Send all tree variance requests to the County Arborist immediately upon receipt.
5. Attach draft resolution to the staff report for cases in which no appeal is anticipated, as is already being done with consent agenda items. This resolution need not be posted online when the staff report is posted, but should be ready for placement in the Board's brief books (one week prior to the hearing).
6. Establish a three tier hierarchy (administrative, consent, full board) for all review processes.
7. Revise staff reports and resolutions so there is less text concerning the tree variance similar to what occurs for other waivers/variances granted by the Board.

Post-Planning Board Approvals

8. Require all certified preliminary and site plans to be submitted by applicants within 90 days of the resolution mailing date. If such plans are found to have more than 3 inconsistencies with the conditions of approval, they will be rejected and a fee will be charged upon resubmittal.

Historic Preservation

9. Enhance and streamline the Historic Area Work Permit process by delegating to the Planning Director authority for intake of HAWP applications.
10. Encourage DPS to implement a process to use the Planning Department's historic preservation GIS layer to identify historic resources, and enhancing controls to ensure permits issued by DPS are consistent with approved HAWPs.

Legal Changes

11. Support legislative changes that would require a forest conservation variance to be required when only more than 1/3 of the critical root zone is impacted or the tree is proposed for removal. Current requirement is for any impact to certain trees.
12. Introduce legislation to expand the exclusions for site plan amendments under 59-D-3.0.1.2. Changes exempt from conforming to an approved site plan to include fences, entrance features, etc.. This section of the code states:

"If the site plan was completed at least 5 years before the change, any owners' association may, without a finding of conformance to an approved site plan, change the following: (a) landscaping, unless such landscaping was required for screening or buffering of adjoining property; or (b) an addition to a paved surface from the approved site plan that does not exceed 500 square feet if the change is not located in a special protection area.

Any modification to an improvement shown on an approved site plan that is identified in this section does not require an amendment to the site plan."

13. Establish a three tier hierarchy (administrative, consent, full board) for all review processes (Repeat of #6)

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FAX 301 664.6299
www.ballardspahr.com

Roger D. Winston
Direct. 301 664 6201
winstonr@ballardspahr.com

March 30, 2012

Via E-mail

Diane Schwartz Jones
Department of Permitting Services
Montgomery County
255 Rockville Pike, 2nd floor
Rockville, Maryland 20850-4166

Re: Streamlining Initiative

Dear Diane:

Ballard Spahr represents the ROFR Coalition, a group of 30 multifamily property owners and related industry leaders who share the common goal of amending the right of first refusal ("**ROFR**") provisions of Chapter 53A of the Montgomery County Code ("**Code**") so that the availability of affordable housing can be preserved and enhanced without imposing unnecessary burdens on multifamily property owners. It is our understanding that the Department of Permitting Services is seeking comments to identify areas in the development process that can be simplified or streamlined to reduce time, inconsistencies and inefficiencies. We fully support the streamlining initiative and are grateful for your efforts and those of other County leaders to solicit as much input as possible to make the streamlining initiative a success.

The development process is not limited to the initial permitting and approval steps, but spans the lifecycle of any given project, including renovation, redevelopment, and change in ownership. As such, the ROFR Coalition's goal of amending Chapter 53A to eliminate inefficiencies is entirely consistent with the aims of the streamlining initiative. ROFR Coalition members are gravely concerned about the costly, time consuming and unnecessary burdens imposed by Chapter 53A on ordinary rental housing purchase and sale transactions. The ROFR Coalition fully supports the objective of insuring that quality affordable housing is available to County residents, but believes that certain provisions of Chapter 53A are actually counter-productive to reaching that objective and should be addressed as part of the streamlining initiative. Without increasing the availability of affordable housing, Chapter 53A has resulted in numerous examples of inefficiency that have substantially delayed multifamily rental facility sales, significantly increased the costs of such transactions, and caused property owners to reconsider constructing new affordable multifamily projects in Montgomery County. As a result, we suggest Chapter 53A be amended in the following ways:

DMEAST #14820293 v2

Unnecessary and seldom used provisions of Chapter 53A, including ROFRs available to DHCA and tenant organizations should be eliminated. Since amendments to Chapter 53A were enacted in 2007, neither DHCA nor any tenant organization has purchased any rental housing facilities pursuant to Chapter 53A. Nonetheless, the statutory notice and certification periods applicable to tenant organizations and the documentation requirements applicable to providing a ROFR to DHCA continue to delay and unduly burden every rental facility sale transaction. In addition, granting HOC an automatic 180 day financing contingency wreaks havoc on these transactions and is unnecessary since HOC has indicated that it can exercise its ROFR without relying upon this financing contingency.

Rental agreements should be automatically accepted. DHCA has expressed interest in supporting “naturally occurring affordable housing”. Amending Chapter 53A to provide automatic acceptance by the County of rental agreements containing specified statutory terms would encourage multifamily rental property purchasers to enter such rental agreements with the County, which would broaden the availability of privately owned affordable housing. The ROFR Coalition proposes that Chapter 53A be amended so that any rental agreement presented to the County would be automatically accepted if it complied with statutorily specified terms. Because Chapter 53A currently affords the County absolute discretion as to whether and on what terms it will accept a rental agreement, many rental housing facility owners have concluded that the rental agreement is not a realistic avenue for Chapter 53A compliance. Thus, buyers who might otherwise agree to the rental agreement provisions under Chapter 53A do not even investigate the rental agreement option because of the uncertainty associated with the current process.

ROFR exemptions should be restored. Initially, the ROFR provisions of Chapter 53A did not apply to rental facilities that were built after 1981, so developers, property owners, investors and lenders relied upon that exemption. However, when amendments to Chapter 53A were enacted in 2007, all rental facilities became subject to the ROFR provisions of Chapter 53A, regardless of date of construction, and therefore all property owners have been required to absorb the unanticipated expenses associated with ROFR compliance. The significant amendments adopted in 2007 have caused a certain degree of economic uncertainty for multifamily property owners, which is inconsistent with the County’s goal of providing economically sustainable housing. ROFR exemptions should exclude transactions involving transfers of membership interests among existing members as well as transactions involving properties built after February 5, 1981. The ROFR Coalition is seeking amendment to the ROFR law to restore the law’s original purpose by repealing the 2007 amendments so that properties built after 1981 would again be exempt from the Chapter 53A ROFR requirements. In addition, changing ownership allocations among existing members should not trigger requirements of ROFR compliance, whether such membership interests are for minority or majority interests.

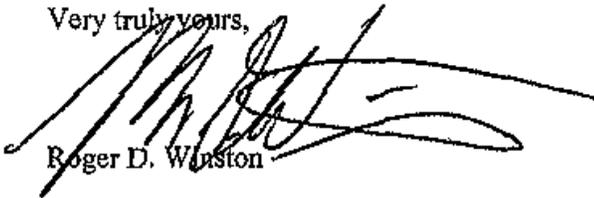
Conversion definition. Unfortunately, as written, Chapter 53A has the effect of discouraging multifamily property owners from undertaking certain renovations and rehabilitation to rental facilities. Chapter 53A should be amended so that the “conversion” definition would be revised so that neither (i) raising rents within the voluntary rent guidelines (plus an allowance for capital

Diane Schwartz Jones
March 30, 2012
Page 3

expenditures), nor (ii) rehabilitating property when reasonable alternative housing is offered, would be deemed a conversion.

Chapter 53A does not result in an increase of the availability of affordable housing in the County, but it does impose significant burdens on property owners in every transaction in which a multifamily rental facility is sold. We remain eager to participate in a work group to address these issues with DHCA and other County agencies and leaders.

Very truly yours,

A handwritten signature in black ink, appearing to read "RDW", written over a horizontal line.

Roger D. Winston

RDW/

Jetter, Reginald

From: Robert Kaufman [bkaufman@mncba.org]
Sent: Monday, February 13, 2012 11:20 AM
To: Jones, Diane
Cc: Jetter, Reginald, Silverman, Steve
Subject: FW: Conservation Montgomery February 2012 Updates

In case you have not seen this
 Bob

From: Conservation Montgomery Board of Directors [mailto:conservationmontgomery@live.com]
Sent: Sunday, February 12, 2012 8:26 PM
To: Robert Kaufman
Subject: Conservation Montgomery February 2012 Updates

Conservation Montgomery

February 12, 2012

Community Updates

Our Links

New Trail Opens in the
Down County

Patch Editorial
on street trees

Visit our website and
community calendar

Make a tax-exempt
donation

First public forum set for Feb. 14

'Streamlining Development' Presents Prime Issue for Citizen Involvement

A Jan. 20 press release issued by County Executive Isiah Leggett has left community members scratching their heads about the impact the proposal could have on green space. County taxpayers have waited



six years for the Executive to make good on a 2006 campaign promise to improve the county Forest Conservation Law (FCL), three years for the Department of Environmental Protection to produce a much-heralded urban tree bill, and several years for a separate bill to protect street trees. But the Executive's proposal to streamline building permits appeared out of the blue and in warp speed.

Our Partners

- Audubon Naturalist Society
- Chesapeake Climate Action Network
- Choose Clean Water Coalition

- Citizens League of Montgomery County_
- Equestrian Partners in Conservation
- Friends of Sligo Creek
- Granito de Arena
- Greater Sandy Spring Green Space _
- Hiking Along
- Little Falls Watershed Alliance_
- Montgomery Bicycle Advocates _
- Montgomery County Civic Federation_
- Montgomery Countryside Alliance_
- Montgomery Parks Foundation
- Muddy Branch Alliance_
- Neighbors of the Northwest Branch_
- Potomac Conservancy_
- Rock Creek Conservancy (formerly FORCE)
- Seven Oaks-Evanswood Citizens Association_
- Washington Women Outdoors_
- West Montgomery County Citizens Association_
- Woodrock Homeowners Association_

Corporate affiliates

- Clean Currents
- ecobeco
- Rock Creek Sports Club
- Silver Cycles
- The Green Commuter
- Jobuntu LLC IT Services

As written, the press release was confusing and seemed to indicate that there will no longer be requirements for field inspections of a building site in order to fully apply and to enforce the Forest Conservation Law prior to issuance of a building permit:

"Modification of the process for the MCPB's review of building permit applications Building permits are issued by DPS, but Planning Board staff also reviews these applications and performs field inspections related to approved forest conservation plans Inspections associated with an approved forest conservation plan will still be required, but they will no longer be required prior to issuance of a building permit. Implementation of the approved plan will be addressed in the field in the ordinary course of inspections - just as adherence to other approved plans is addressed in the field. This will help to streamline the permit issuance process without compromising the requirement that developers adhere to approved forest conservation plans. This change is effective immediately "

Planning Department officials are trying to clarify the information. "The Planning Department will release our hold on the building permit if the only outstanding requirement is the need to have a pre-construction meeting," wrote Mark Pfefferle, Acting Chief for Development Applications and Regulatory Coordination at the Planning Department, in an e-mail. "In the past, we held the building permit until the pre-construction meeting and tree protection devices were installed. Every other requirement will remain in place and is still required before the Planning Department will 'release' the hold on the building permit. "

Pfefferle noted that typical requirements include satisfying all Planning Board conditions of approval, the need for a certified site plan, plat recordation, recordation of conservation easements, adequate public facilities and financial security submission. Specific to enforcement of the FCL, Pfefferle said:

- Applicants will still need a pre-construction meeting with Planning staff for properties subject to the FCL before any land disturbance occurs.
- Applicants still need to implement tree protection and have it inspected by Planning staff for properties subject to the FCL before any land disturbance occurs
- Applicants still need to post financial security (performance bonds, letter of credits) with the Planning Department when there is a planting requirement before any land disturbance occurs.
- Applicants still need to record conservation easements, if required, before any land disturbance occurs.
- Applicants who move forward without a pre-construction meeting will continue to be issued violations and/or stop work orders.
- Applicants who move forward without an approved FCL plan, certified site plan, recorded plats, etc. will continue to be issued stop work orders.



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- The building permit is not equivalent to Sediment Control Permits. They are separate tracks.
- It is still the applicant's responsibility to request pre-construction meetings with Department of Permitting Services and Planning staff
- Planning staff continues to enforce all aspects of the FCL.

Residents who have expressed concern about the proposal to date recommend **strong public participation** in a series of upcoming meetings on the permit streamlining plan.

"It is imperative to attend the public meetings on this since more authority is being shifted to DPS," said Conservation Montgomery Vice Chair Ginny Barnes of West Potomac.

Her concerns were echoed by others, including Lydia Sullivan, a member of the Kensington Town Council, and Conservation Montgomery Secretary Arlene Bruhn.

"In theory, there is no problem here as long as planning takes place first. In practice, this new program could be very beneficial -- or disastrous -- depending on whether or not field inspectors are willing to step in and halt bad behavior, said Bruhn. "When it comes to trees, the damage has usually been done, and covered up, by the time an inspector arrives."

[A website set up by DPS can be accessed here.](#)

Public forums are listed below:

Date: Tuesday, February 14, 2012

Time: 2:30pm - 4:30pm

Location: Executive Office Building,
101 Monroe St. Lobby Auditorium, Rockville, MD 20850

Date: Friday, March 9, 2012

Time: 1:30pm - 3:30pm

Location: Executive Office Building,
101 Monroe St. Lobby Auditorium, Rockville, MD 20850

**Parks
Matter.org**

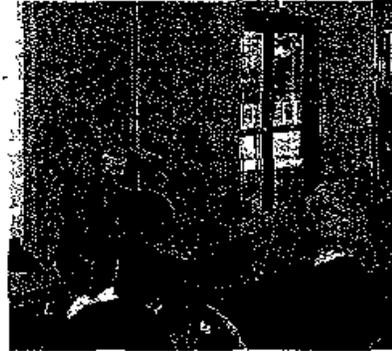
*School Siting on Park Land
Continues as a Community
Dilemma*

The Help Save Our Park Coalition held a public meeting on January 29 at the Coffield Community Center to provide information to the community about the second site selection process for a new middle school in the Bethesda-Chevy Chase cluster. Over the past year, the site selection has been problematic

due to the lack of available space for the new school and the targeting of parkland as candidate sites by Montgomery County Public Schools (MCPS). Although it was a beautiful Sunday afternoon, about 50 residents attended for an update on the site selection process. Also in attendance was Gabriel Albornoz, Director of Recreation, Mike Riley, Deputy Director of Parks, William Crane, manager of the Forest Glen Garrison, and Casey Anderson, Commissioner from the Maryland National Capital Park and Planning Commission (M-NCPPC).

Silver Spring resident Roger Paden explained why a new site selection is taking place. Following the selection of Rosemary Hills-Lyttonsville Local Park by the first Site Selection Advisory Committee (SSAC), Planning Board Chair Francoise Carrier wrote a letter noting that park land is not available to MCPS. The Board of Education then voted to use Rock Creek Hills Local Park as

the alternative site. As this park had once housed a school, MCPS retained the legal right to claim the land for educational use. However, the Rock Creek Hills Homeowners Association immediately raised three objections. First, they filed complaints about violations of the Open Meetings Act. They raised other procedural complaints and also questioned whether the use of Program Open Space (POS) funds in Rock Creek Hills Park would prevent the conversion of parkland into a school site. Last November, MCPS Superintendent Joshua Starr announced a new start on the site selection for the middle school. Restarting the process allows MCPS to conduct business openly. Dr. Starr hopes to address open meeting and other procedural complaints. (Continued..Click the next link.)



Parks Dept Deputy Director Mike F Riley speaks to residents who live adjacent to Rosemary Hills-Lyttonsville Park on Jan 29

[READ THE FULL UPDATE AT THIS LINK](#)

Background Links:

[April 27, 2011 Letter from the Planning Board Chair to the BOE Chairman](#)
[November 8, 2011 Letter from MCPS Superintendent Starr on the site selection process](#)
[Patch Story on the new process starting again for site selection](#)
[Summer 2011 Gazette Story published as Kensington fought for their park](#)

2012 LEGISLATIVE OUTLOOK

 **STATE**



The 2012 Maryland General Assembly reconvened on January 11th. Over the next 3 months as many as 2,000 bills will be considered, including the budget. Here are a few bills related to green space, plastic bag waste reduction and protection of our County Agricultural Reserve

Plastic Bag Reduction

The Community Cleanup and Greening Legislation will add a 5 cent fee on plastic bags use across Maryland. This method has proven to be a winner in reducing plastic bag use and the associated problems. On January 1st, the Montgomery County Bag Bill became effective. [Find a fact sheet here](#)

Right to Farm Legislation that will protect farmers' rights in the Agricultural Reserve, which includes conservation easement protection. [Find the Montgomery Countryside Alliance notice here](#), so you can take action. Find the legislation [here](#).

New Legislation on Gas Leaks and Trees

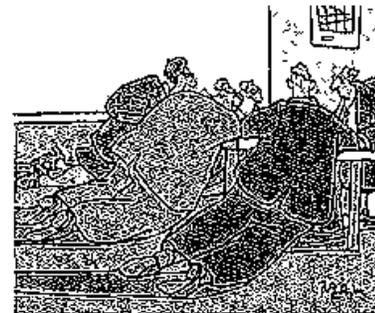
County resident Barbara Schubert and a representative from Washington Gas will address the county Forest Conservation Advisory Committee on Feb. 21st at 7 p.m. to discuss the problem of gas leaks damaging and killing community trees. Find a summary of what led to legislation to be introduced by Del. Al Carr [here](#).

For a [comprehensive summary of all state environmental issues](#), read the Issue Papers prepared by the Maryland Department of Legislative Services for the General Assembly. Skip or scroll to page 229 to read current information on environmental issues. Or visit the [Maryland League of Conservation Voters site](#) to read about environmental legislation in Annapolis.



COUNTY

- There is no apparent action and no update available on pending and long-awaited county legislation to protect street trees or separate legislation to protect trees that are not covered by the existing Forest Conservation Law.
- Bus Rapid Transit (BRT) is gaining traction as an answer to the county's traffic congestion problems.



"What we need is a decision, not more foot-dragging."

The Council recently endorsed BRT as a preferred mode for the Corridor Cities Transitway (CCT) in light of a study showing a greater economic benefit to the County if the project is built sooner. [Find an analysis commissioned by the county at this](#)

[link](#)

Conservation Montgomery is a 501(c)(3) nonprofit organization dedicated to environmental education and action to make a connection between the stewardship of local natural resources and community quality of life. Donations are tax-deductible to the fullest extent of the IRS code. **To donate or sign up as a member.**



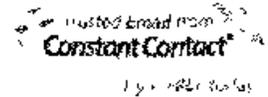
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