



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

MCPB
Item # 10
11/19/09

MEMORANDUM

November 13, 2009

TO: Montgomery County Planning Board

FROM: Rollin Stanley, Director, Montgomery County Planning Department *RS*
Dan Hardy, Chief, Transportation Planning *DKH*
Pamela Dunn, Planner Coordinator, Research & Technology Center *PD*

SUBJECT: Montgomery County Bill 38-09 Growth Policy Amendments

STAFF RECOMMENDATION: Approval to transmit the following comments.

The Planning Board:

- concurs with the proposal to rename the Growth Policy as the Subdivision Staging Policy;
- does not concur with the elimination of the current purpose clause of the Growth Policy, but suggests a minor revision to this clause;
- does not concur with reducing the duties of the Washington Suburban Sanitary Commission which has not played a significant role in Growth Policy to date, but whose involvement should be retained;
- concurs with the recommendation to change from a biennial review process to a quadrennial review process, to be held in the second year of each Council term, provided that the Board's annual updates for Policy Area Mobility Review (PAMR) and school adequacy be retained.

Background:

On November 3, 2009 Councilmembers Floreen and Knapp sponsored the introduction of Bill 38-09, Growth Policy Amendments. A public hearing on the bill is tentatively scheduled for December 1, 2009 at 1:30 p.m.

Bill 38-09 would rename the County Growth Policy as the Subdivision Staging Policy and modify its purpose by eliminating the current purpose clause of the Growth Policy.

Bill 38-09 proposes a new purpose clause that is a modification of a simplified description currently in the County code. The proposed purpose clause does not explain the purpose of the Subdivision Staging Policy as much as it states when the policy should be adopted, and what should be included in the policy document.

Bill 38-09 is attached; note that boldface type indicates a heading or defined term, underlined text is text that is being added to the existing law by the original bill, and single boldface brackets indicate text to be deleted from the existing law by original bill.

Discussion:

Planning staff supports two components of Bill 38-09; renaming the County Growth Policy as the Subdivision Staging Policy, and changing the process under which the growth policy is carried out, from a biennial review to a quadrennial review. We concur with Council staff that WSSC has not been an active participant in recent Growth Policy reviews, but that we need to better integrate their work into our growth management thinking as the need to consider both infrastructure financing and public health is of increasing importance.

We concur that the term "Growth Policy" is misleading as it is currently applied to subdivision staging. One of our explanatory messages during the past year has been that:

- master plans define where growth should occur
- zoning and subdivision regulations define how growth should occur, and
- growth policy, as it has been defined to date, defines when growth may occur

To the extent that the term Growth Policy connotes a comprehensive vision for growth direction and management the current law suggests that revisions only occur biennially. In fact, the County Council amends their comprehensive growth policy each time they adopt a master plan, zoning text amendment change, or subdivision regulation. Growth Policy is also affected, although only subtly, by other Council actions in the operating arena such as budget adoption or enforcement mechanisms. Growth Policy is also affected through coordination of the County's role in both state and regional growth plans and requirements. Renaming the biennial (or quadrennial) review and action on subdivision staging would clarify the focus of the review on the definition of adequacy and the staging or timing of growth.

We find, however, that the current purpose clause in Section 33A-15 remains appropriate for the regular review of Subdivision Staging Policy, as it is the only time that all of the growth mechanisms are considered holistically and in tandem. Each master plan amendment considers only specific geographies or functional elements. Each zoning text amendment (with the exception of the current comprehensive review) considers only certain types of land uses. The periodic review currently called Growth Policy is the appropriate time to consider how all the growth management tools work in concert. Even after the review is renamed Subdivision Staging Policy, it is important that the County Council continue to:

Give policy guidance to agencies of government and the public on matters concerning land use development and growth management, while considering related environmental, economic, and social issues.

This appropriate statement reflects just a minor edit to the existing purpose clause in Section 33A-15. In fact, the last three words, "environmental, economic, and social", comprise the triple-bottom line cited in most definitions of sustainability. These considerations have truly global impacts, as increasingly recognized and reflected by federal, state, and local plans and regulations. Removing them from the County Council's purpose clause would be a mistake.

The last two iterations of the biennial growth policy have increased the integration of environmental, economic, and social considerations into the subdivision staging process. The County Council is increasingly interested in how broader definitions of health and welfare should be applied to planning and zoning decisions. Removing these considerations from the purpose clause of the Subdivision Staging Policy would result in a return to a more narrow focus on road, school, and sewer capacity; contrary to the progressive direction that both the Planning Board and County Council are heading in.

The Planning Department staff looks forward to discussing the details of these changes at a future Council Committee worksession.

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 38-09, Growth Policy - Amendments

Bill 38-09, Growth Policy - Amendments, sponsored by Councilmembers Floreen and Knapp, is scheduled to be introduced on November 3, 2009. A public hearing is tentatively scheduled for December 1 at 1:30 p.m.

Bill 38-09 would:

- rename the Growth Policy as the Subdivision Staging Policy to better reflect its actual primary function;
- repeal unused scope provisions in the current Growth Policy enabling law which mislead observers into concluding that the Growth Policy serves broader functions than it actually has;
- reduce the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development; and
- change the current biennial review process to a quadrennial review, to be held in the second year of each Council's term. Amendments could still be considered at any time, as is now allowed.

The Bill also makes conforming changes to related laws.

This packet contains

Bill 39-09

Legislative Request Report

Circle

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9

Bill No. 38-09
Concerning: Growth Policy -
Amendments
Revised: 10-30-09 Draft No. 2
Introduced: November 3, 2009
Expires: May 3, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen and Knapp

AN ACT to:

- (1) rename the County Growth Policy and modify its purposes; and
- (2) revise the process to adopt and amend the County Growth Policy, and conform related laws.

By amending

Montgomery County Code
Chapter 33A, Planning Procedures.
Section 33A-15, Growth Policy

Chapter 52, Taxation
Sections 52-47, 52-49, and 52-94

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 33A-15 is amended as follows:**

2 **33A-15. [Growth] Subdivision Staging Policy.**

3 **(a) *Purpose.***

4 [(1) The purpose of this Article is to establish a process by which the
5 County Council can give policy guidance to agencies of
6 government and the public on matters concerning:

7 (A) land use development;

8 (B) growth management; and

9 (C) related environmental, economic, and social issues.

10 (2) The policy guidance will be provided through the adoption by the
11 County Council of a growth policy, which is intended to be an
12 instrument that facilitates and coordinates the use of the powers
13 of government to limit or encourage growth and development in a
14 manner that best enhances the general health, welfare, and safety
15 of the residents of the County.]

16 **[(b) *Simplified description.*]**

17 The County Council must adopt a [growth] subdivision staging policy
18 [must be adopted] every [2] 4 years [by the County Council]. [It
19 consists of policy] The policy must include guidelines for the Planning
20 Board, and other agencies as appropriate, for their administration of
21 Section 50-35(k) and other laws and regulations which affect the
22 adequacy and timing of public facilities needed to support growth and
23 development. This policy is the growth policy referred to in Article 28
24 of the Maryland Code and in Section 50-35(k) and elsewhere in the
25 County Code.

26 **[(c)] (b) *Duties of the County Planning Board.***

27 Every [odd-numbered] fourth year, in the second year of a Council

28 term, the Planning Board must produce a recommended [growth]
29 subdivision staging policy.

30 (1) By June 15, the [Planning] Board must send to the [County]
31 Council a staff draft [growth] subdivision staging policy which
32 includes:

33 (A) a status report on general land use conditions in the county,
34 including the remaining growth capacity of zoned land,
35 recent trends in real estate transactions, the level of service
36 conditions of major public facilities and environmentally
37 sensitive areas, and other relevant monitoring measures;

38 (B) a forecast of the most probable trends in population,
39 households, and employment for the next 10 years,
40 including key factors that may affect the trends;

41 (C) a recommended set of [policy] guidelines for the
42 [Planning] Board, and other agencies as appropriate, with
43 respect to subdivision staging and administration of related
44 laws and regulations which affect growth and
45 development; and

46 (D) any other information or recommendations relevant to
47 [growth] subdivision staging policy, or requested by the
48 [County] Council in the course of adopting the [growth]
49 subdivision staging policy or by a later resolution.

50 (2) By August 1, the Board must [produce] approve and send to the
51 Council a recommended [growth] subdivision staging policy
52 [which reflects the Planning Board's views].

53 (3) The [Planning] Board must promptly make available to the
54 County Executive, other agencies (including the Office of Zoning

and Administrative Hearings and the People's Counsel), and the public copies of the staff draft and the Board's recommended [growth] subdivision staging policy.

[(d)] (c) *Duties of the County Executive.*

- (1) Every [odd-numbered] fourth year, in the second year of a Council term, the [County] Executive must send to the [County] Council by September 15 any revisions to the [growth] subdivision staging policy recommended by the Planning Board in the form of specific additions and deletions.
- (2) The [County] Executive must promptly make available to the Planning Board, other agencies, and the public copies of the [County] Executive's recommendations.
- (3) The [County] Executive must assist the Planning Board to compile its status report for the recommended [growth] subdivision staging policy by making available monitoring data which is routinely collected by executive branch departments.

[(e)] (d) *Duties of the County Board of Education.*

- (1) Every [odd-numbered] fourth year, in the second year of a Council term, the Board of Education must send to the [County] Council by [October 1] September 15 any comments on the recommended [growth] subdivision staging policy submitted by the Planning Board and the Executive's recommendations, including any proposed revisions in the form of specific additions or deletions.
- (2) The Board of Education must promptly make available to the Planning Board, the [County] Executive, and the public copies of these comments and revisions.

- (3) The Board of Education must assist the Planning Board to compile its status report for the [growth] subdivision staging policy by making available monitoring data which is routinely collected by Montgomery County Public Schools staff.

[(f)] *Duties of the Washington Suburban Sanitary Commission.*

- (1) Every odd-numbered year, the Washington Suburban Sanitary Commission must send to the County Council by October 1 any comments on the recommended growth policy submitted by the Planning Board and the Executive's recommendations, including any proposed revisions in the form of specific additions or deletions.
- (2) The Commission must promptly make available to the Planning Board, the County Executive, and the public copies of these comments and revisions.
- (3) During the year, the Commission must assist the Planning Board to compile its status report for the growth policy by making available monitoring data which is routinely collected by Commission staff.]

[(g)] (e) *Duties of the County Council.*

- (1) After receiving the recommended [growth] subdivision staging policy, the recommendations of the [County] Executive, and any other agency comments, the [County] Council must hold a public hearing on the recommendations and comments.
- (2) Every [odd-numbered] fourth year, in the second year of a Council term, the [County] Council must adopt by November 15 a [growth] subdivision staging policy to be effective until November 15 [two] four years later. If the [County] Council

does not adopt a new [growth] subdivision staging policy, the [growth] subdivision staging policy adopted most recently remains in effect.

[(h)] (f) *Amending the [growth] subdivision staging policy.*

(1) The County Council, the County Executive, or the Planning Board may initiate an amendment to the [growth] subdivision staging policy.

(2) If the Executive initiates an amendment:

(A) the Executive must send it to the Council, the Planning Board, and other agencies, and make copies available to the public;

(B) the Planning Board must send any comments on the proposed amendment to the Council and the other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [growth] subdivision staging policy after giving the Planning Board and Board of Education an opportunity to comment and holding a public hearing.

(3) If the Planning Board initiates an amendment:

(A) the Planning Board must send it to the Council, the Executive, and other agencies, and make copies available to the public;

(B) the Executive must send any comments on the proposed amendment to the Council and other agencies within 45 days after receiving the amendment (unless the Council

requests an earlier response), and must make copies of any comments available to the public; and

(C) the Council may amend the [growth] subdivision staging policy after giving the Executive and Board of Education an opportunity to comment and holding a public hearing.

(4) If the [County] Council initiates an amendment:

(A) the Council must send it to the Executive, the Planning Board, and other agencies, and make copies available to the public;

(B) the Executive and the Planning Board must send any comments on the proposed amendment to the Council and other agencies within 45 days after receiving the amendment (unless the Council requests an earlier response), and must make copies of any comments available to the public; and

(C) the [County] Council may amend the [growth] subdivision staging policy after a public hearing.

(5) If it finds that an emergency so requires, the [County] Council may hold the public hearing and adopt an amendment before receiving comments under subparagraphs (2)(B), (3)(B), or (4)(B).

Sec. 2. Sections 52-47, 52-49, and 52-94 are amended as follows:

52-47. Definitions.

* * *

Growth policy means the [annual growth] subdivision staging policy most recently adopted under Chapter 33A to provide guidelines for the administration of the Adequate Public Facilities Ordinance.

* * *

[Planning policy] Policy area means any geographic area designated as a transportation policy area in the growth policy.

* * *

52-49. Imposition and applicability of development impact taxes.

* * *

(c) The following impact tax districts are established, consisting of the listed [Planning] Policy Areas as defined in the Growth Policy:

* * *

(3) General: Any part of the County, including any municipality, not located in a listed [planning] policy area.

* * *

52-94. School Facilities Payment.

(a) In addition to the tax due under this Article, an applicant for a building permit for any building on which a tax is imposed under this Article must pay to the Department of Finance a School Facilities Payment if that building was included in a preliminary plan of subdivision that was approved under the School Facilities Payment provisions in the County [Growth] Subdivision Staging Policy.

(b) The amount of the Payment for each building must be calculated by multiplying the Payment rate by the latest per-unit student yield ratio for any level of school found to be inadequate for the purposes of imposing the School Facilities Payment in the applicable [Growth] Subdivision Staging Policy and for that type of dwelling unit and geographic area issued by MCPS.

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LEGISLATIVE REQUEST REPORT

Bill 38-09

Growth Policy – Amendments

DESCRIPTION:	Renames the County Growth Policy and modifies its purposes. Converts the current biennial review to a quadrennial process. Reduces the duties required of the Washington Suburban Sanitary Commission, which has not actively participated in the Growth Policy development.
PROBLEM:	Because of its name, many people perceive the Growth Policy as more sweeping and extensive than it actually has been – i.e. essentially a mechanism to implement the County's adequate public facilities requirement. Review every 2 years has proven less necessary but takes valuable time of Councilmembers, Planning Board members, and staff. The Council which approves a Growth Policy in its first year is often reluctant to consider major changes in its third year.
GOALS AND OBJECTIVES:	To rename the Growth Policy and redefine its purposes to better reflect its actual function. To avoid unnecessary but time-consuming reconsideration of an adopted Growth Policy every 2 years by converting the current biennial review process to a quadrennial review.
COORDINATION:	Planning Board, County Executive, Council
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	Minimal.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936.
APPLICATION IN MUNICIPALITIES:	Applies only to County Growth Policy.
PENALTIES:	Not applicable.