



January 14, 2011

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Rollin Stanley, Planning Director *RS*
FROM: Jacob Sesker, Planner Coordinator (301.650.5619)
Dan Hardy, Chief, Functional Planning and Policy Division
SUBJECT: White Flint Staging/Sketch Plan

PURPOSE

Clarify the Planning Board's interpretation of the White Flint Sector Plan's staging section with respect to the creation of public entities or financing mechanisms necessary to implement the Sector Plan. The Board's support of this clarification would complete the provisional action on January 13 allowing additional development to proceed.

SECTOR PLAN LANGUAGE

In order for additional development to proceed, the following requirement must be met:

Additional development may proceed (emphasis added) subject to existing regulatory requirements (including LATR and Policy Area Review, when appropriate) and subject to the following:

- o *Create public entities or financing mechanisms necessary to implement the Sector Plan within 6 months of adopting the sectional map amendment..."*

On January 13, 2011, the Planning Board discussed whether every public entity recommended in the Sector Plan constituted a public entity "necessary to implement the Sector Plan." Staff's recommendation was, and remains, that the Planning Board should find that this requirement (above, in italics) is satisfied by the creation of the special taxing district and development coordination and oversight function now mandated by County law.

Staff further notes that the approved and adopted Sector Plan does not specify the kind of public entities or financing mechanism necessary to implement the Sector Plan, and that the Sector Plan does not require that both public entities and a financing mechanism be created.

Attached is an e-mail from Glenn Orlin, Deputy Director of Council Staff, indicating that the Council did not intend that all public entities recommended in the Sector Plan must be created within six months.

Executive staff is working with stakeholders to determine the best mechanism for delivery of urban services. It may be premature for an urban maintenance district of the type that currently exists elsewhere in the County. Work will continue to determine how to address this need as redevelopment begins within the Sector Plan Area.”

Neither an Urban Service District nor a Parking Management Authority is a condition precedent for allowing development to proceed. In the near term, however, the Planning Board could address a need for such public entities by attaching conditions to preliminary plan or site plan approvals in White Flint.

JS:ha: G:\Sesker\WFSP Implementation\Memo Jan 20.doc

Attachment A: E-mail from Glenn Orlin dated January 13, 2011

Attachment B: Staff memo for January 13, 2011

http://www.montgomeryplanningboard.org/agenda/2011/documents/20110113_White_Flint_Staging_000.pdf

cc: Glenn Kreger, Acting Chief, Area 2
Piera Weiss, Master Planner
Catherine Conlon, Master Planner, Area 3

ATTACHMENT A

Sesker, Jacob

From: Orlin, Glenn [Glenn.Orlin@montgomerycountymd.gov]
Sent: Thursday, January 13, 2011 1:55 PM
To: Sesker, Jacob
Cc: Michaelson, Marlene
Subject: White Flint-Urban Service District and Parking Management Authorities

Jacob,

Marlene and I believe that the interpretation expressed in your memo to the Board was correct. The urban service district is definitely not required within 6 months of adopting the sectional map amendment; it will not be needed until at least some of the planned streetscaping is completed and there is a need to maintain it. Neither is the parking management authority required within 6 months of the SMA, but we agree that how parking is handled must be resolved in the short-to-medium term--that is, before new subdivisions are approved.

-- Glenn

-----Original Message-----

From: Sesker, Jacob [mailto:Jacob.Sesker@mncppc-mc.org]
Sent: Thursday, January 13, 2011 11:56 AM
To: Orlin, Glenn
Subject: White Flint-Urban Service District and Parking Management Authorities

We had a lengthy discussion this morning with the Planning Board discussing a sentence from the staging plan: "Create public entities or financing mechanisms necessary to implement the sector plan within 6 months of adopting the sectional map amendment."

In my memo to the Board for today's discussion I had recommended that the public entities or financing mechanisms necessary to implement the sector plan (for purposes of staging) were in place. As evidence I cited specifically Bill 1-10 (development coordination and oversight) and Bill 50-10 (special taxing district), as well as resolution 16-1570 (white flint implementation strategy).

However, it seemed that we should clarify whether any public entity identified and recommended in the Sector Plan (but not in the staging section) qualifies as "necessary to implement the Sector Plan..." This would include both an urban service district and a parking management authority (the only other "public entity" identified specifically in the sector plan is a "redevelopment office or similar entity", and I believe that Bill 1-10 creates an executive branch function that clearly qualifies as a "similar entity").

Was it the Council's intent that any public entity recommended in the Sector Plan (including those that were removed by the Council from the language of the staging plan) would be required as a staging trigger?

Jacob Sesker
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ATTACHMENT B

MCPB
Item # 2
1/13/11

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

January 5, 2011

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Rollin Stanley, Planning Director *RS*

FROM: Jacob Sesker, Planner Coordinator (301.650.5619) *JS*
Dan Hardy, Chief, Functional Planning and Policy Division *DKH*

SUBJECT: White Flint Staging

PURPOSE

Provide the Planning Board with recommendations for action regarding White Flint staging.

RECOMMENDATIONS

- 1) Find that prerequisites have been met that will allow additional development applications in White Flint to proceed subject to existing regulatory requirements (including LATR and PAMR) until July 23, 2011. "Proceed" means that the Planning Board may review and approve sketch plans, preliminary plans, and site plans.
- 2) Find that additional development applications may not proceed beyond July 23, 2011 unless or until the Planning Board later finds that a transportation approval and monitoring program has been created that satisfies the requirements set forth in the Sector Plan.
- 3) Find that prerequisites for opening Phase One have not been satisfied, and therefore staging capacity may not be allocated at this time.

Recommendation #1: Prerequisites have been satisfied that will allow development applications to "proceed" subject to existing regulatory requirements

a. Finding

In order for additional development to proceed, the following requirement must be met:

Additional development may proceed (emphasis added) subject to existing regulatory requirements (including LATR and Policy Area Review, when appropriate) and subject to the following:

- *Create public entities or financing mechanisms necessary to implement the Sector Plan within 6 months of adopting the sectional map amendment...*

The approved and adopted Sector Plan does not specify the kind of public entities or financing mechanism necessary to implement the Sector Plan. The Sector Plan also does not require that both public entities and a financing mechanism be created.

Staff recommends that the Planning Board find that the following actions constitute satisfaction of the requirement cited above:

- Bill 1-10¹ (Development-Coordination, Oversight), passed November 1, 2010
- Bill 50-10² (Special Taxing District-White Flint-Creation), passed November 30, 2010
- Resolution 16-1570³ (Implementation Strategy and Infrastructure Improvement List), passed November 30, 2010

With respect to public entities, Bill 1-10 was passed on November 1, 2010 and will become effective on January 29, 2011. This bill requires the Executive to assign a staff person to coordinate and oversee the development in White Flint. Staff believes that the creation of this position is a critical step towards successful implementation of the Sector Plan.

To date, an Urban Service District has not been created, and the Sector Plan does not specify that one must be created. Currently, there are only three urban service districts in the County (Bethesda, Silver Spring, and Wheaton). Staff notes that White Flint is urbanizing, but it is not yet so urban as to clearly require an Urban Service District.

Bill 50-10 authorized the creation of the White Flint Special Taxing District. The Special Taxing District will begin generating property tax revenue on July 1, 2011. Resolution 16-1570 outlines the specific improvements that would be financed by the special tax revenues, and a general implementation strategy.

The Council also passed Resolution 16-1571, which amended the FY11-16 CIP to fund, using current revenues, preliminary engineering for certain transportation improvements necessary in the near term. Resolution 16-1571⁴ is significant, but does not constitute either a financing mechanism or a public entity.

Based on the facts outlined above, staff believes that additional development applications may proceed.

¹ See Attachment B.

² See Attachment C.

³ See Attachment D.

⁴ See Attachment E.

b. Discussion

The Planning Board has previously (December 9, 2010) discussed the meaning of “proceed.” In that discussion, the Planning Board agreed with staff’s recommended interpretation of this undefined but critical term in the Sector Plan’s staging section. The Planning Board agreed that “proceed” should be interpreted to mean that the development may apply for—and the Planning Board may approve—sketch plans, preliminary plans, and site plans. However, “proceed” does not include application for—or Planning Board approval of—any Staging Allocation Approval (see Recommendation #3). A development may proceed through the Planning Board processes of sketch plan, preliminary plan, or site plan. However, no Staging Allocation Approvals can be granted by the Planning Board until certain other prerequisites have been satisfied (see Recommendation #3), i.e. no development that needs a Staging Allocation Approval should be granted a footing-to-grade building permit until the Planning Board has opened Phase One for development.

It should be noted that until the County Council approves legislation (legislation yet to be proposed by the Planning Board) that would change Chapter 8 of the County Code, the Department of Permitting Services will be accepting applications under the current law.

Recommendation #2: Additional development may not “proceed” beyond July 23, 2011 unless or until the Planning Board makes a finding that a transportation approval and monitoring program has been created that satisfies the requirements of the Sector Plan

a. Finding

The Sector Plan states the following:

“Additional development may proceed (emphasis added) subject to existing regulatory requirements (including LATR and Policy Area Review, when appropriate) and subject to the following:

- *Create public entities or financing mechanisms necessary to implement the Sector Plan within 6 months (emphasis added) of adopting the sectional map amendment.*
- *Develop a transportation approval mechanism and monitoring program within 12 months (emphasis added) of adopting the sectional map amendment.*
 - *Planning Board must develop biennial monitoring program for the White Flint Sector Plan area. This program must include a periodic assessment of development approvals, public facilities and amenities, the status of new facilities, and the Capital Improvements Program (CIP) and Growth Policy as they relate to White Flint. The program must include a Comprehensive Local Area Transportation Review (or comparable analysis) that will identify and recommend for Council approval and action specific projects and services necessary to promote adequate transportation service. The program should conduct a regular assessment*

of the staging plan and determine if any modifications are necessary. The biennial monitoring report must be submitted to the Council and Executive prior to the development of the biennial CIP.

- *The Planning Board must establish an advisory committee of property owners, residents and interested groups that are stakeholders in the redevelopment of the Plan area, as well as representatives from the Executive Branch, to evaluate the assumptions made regarding congestion levels, transit use, and parking. The committee's responsibilities should include monitoring the Plan recommendations, identifying new projects for the Amenity Fund, monitoring the CIP and Growth Policy, and recommending action by the Planning Board and County Council to address issues that may arise."*

Staff has recommended that the facts support a finding that public entities or financing mechanisms necessary to implement the Sector Plan have been satisfied (see Recommendation #1). While the "within 6 months" requirement has been met, the "within 12 months" requirement has not.

The transportation approval and monitoring program has not been completed because the biennial monitoring program is still in development. In addition, the transportation approval mechanism will not be completed until required changes to the County law (Chapter 8) and Subdivision Staging Policy have been adopted by the County Council and the Planning Board has adopted *White Flint Implementation Guidelines* that describe the transportation approval process and requirements.

Based on the facts outlined above, the Planning Board may not allow additional development to "proceed" (approve sketch plans, preliminary plans, and site plans) beyond July 23, 2011 unless or until the Planning Board finds that all aspects of the Sector Plan's requirement for a transportation approval and monitoring program have been satisfied.

b. Discussion

If the Planning Board does not make an affirmative finding that such an approval mechanism and monitoring program is in place prior to July 23, 2011, then no additional development should be allowed to proceed. This would result in the functional equivalent of a moratorium in White Flint.

During the next six months, staff will be working to complete the work necessary to satisfy the requirements of the Sector Plan. To do so will require the efforts of nearly every division in the Department.

Recommendation #3: Prerequisites for opening Phase One have not been satisfied, therefore additional development may not be "approved" (i.e. no staging capacity may be allocated)

a. Finding

The Sector Plan establishes the following prerequisites:

“Before any additional development can be approved (emphasis added), the following actions must be taken:

- *Approval and adoption of the Sector Plan.*
- *Approval of the sectional map amendment.*
- *Amend the Growth Policy to expand the White Flint Metro Station Policy Area (MSPA) to encompass the Sector Plan boundary, and to exempt development within White Flint from the Policy Area Review test. The traffic from existing and approved development in the White Flint MSPA would still be counted in the Policy Area Review of all other Policy Areas, including North Bethesda.*
- *Establish the Sector Plan area as a State of Maryland Bicycle Pedestrian Priority Area.*
- *Initiate development of plans for through-traffic access restrictions and other appropriate protective measures for the residential neighborhoods abutting the Sector Plan area, including traffic from future development in White Flint, and implement these plans if sufficient neighborhood consensus is attained.”*

At this time, the area has not been established as a State of Maryland Bicycle Pedestrian Priority Area. As such, not all prerequisites have been met at this time. As such, no staging capacity may be allocated by the Board. Given this, any discussion regarding the final requirement (neighborhood protective measures) is moot.

Based on these facts, staff recommends that the Planning Board should find that staging capacity may not be allocated at this time. When the facts support a different conclusion, staff will recommend that the Planning Board make a finding that the requirements have been satisfied and that the Planning Board should declare Phase One to be open.

b. Discussion

The Planning Board has previously discussed (December 9, 2010) the meaning of “approved.” In that discussion, the Planning Board agreed with staff’s recommended interpretation of this undefined but critical term in the Sector Plan’s staging section. That interpretation is that “approved” is meant to refer to the approval at which staging capacity is drawn down.

Previously (November 4, 2010), the Planning Board asked staff to create a staging allocation policy in which staging capacity would be drawn down immediately prior to the submission (to the Department of Permitting Services) of an application for a footing-to-grade building permit. In effect, the Planning Board has asked staff to begin the work necessary to create a new Planning Board approval for development in White Flint. The Planning Board supported the Staging Allocation Policy proposed by staff (December 9, 2010).⁵ Implementation of that policy will require changes to County law.

⁵ See Attachment A, Staff Memo for December 9, 2010.

Those changes would include a requirement that the Department of Permitting Services only accept an application for a footing-to-grade building permit if the applicant can present a valid Staging Allocation Approval.

This finding does not affect the Planning Board's ability to approve sketch plans, preliminary plans, or site plans (see Recommendation #1, above). The Planning Board's intent, based on the discussion that occurred on December 9, is that any project that is able to get Planning Board approval of a sketch plan, preliminary plan, or site plan may not get a building permit until all prerequisites have been satisfied (including the establishment of the White Flint Sector Plan area as a State of Maryland Bicycle Pedestrian Priority Area).

On December 9, the Planning Board supported staff's recommended interpretation of "additional." Additional development would be any development that does not have APF approvals or development plan approvals that predate the adoption of the Sector Plan. Those projects would not need a Staging Allocation Approval from the Planning Board in order to apply for a footing-to-grade building permit. The Planning Board confirmed its intent that four specific projects that meet these requirements should not be subject to staging.

NEXT STEPS

Staff will continue to come back to the Planning Board with frequent updates with respect to White Flint implementation.

Those updates will address topics including:

- Status of the State of Maryland Bicycle Pedestrian Priority Area.
- Information received from discussions with the Department of Permitting Services regarding the Staging Allocation Approval process.
- Necessary legislation to implement the White Flint Sector Plan, including amendments to Chapter 8 of the County Code necessary to implement the Staging Allocation Approval policy, and minor changes to the Subdivision Staging Policy.
- Progress towards developing a White Flint Staging web page.
- Other components of the transportation approval and monitoring program to be incorporated in the Planning Board's *White Flint Implementation Guidelines*.

JS:ha: G:\Sesker\WFSP Implementation\5th Draft Memo Jan 13.doc

cc: Glenn Kreger, Acting Chief, Area 2
Piera Weiss, Master Planner
Catherine Conlon, Master Planner, Area 3

Attachment A: Staff Memo for December 9, 2010

http://www.montgomeryplanningboard.org/agenda/2010/documents/20101209_WhiteFlightStaging_Corrected_000.pdf

Attachment B: Bill 1-10

http://www.montgomerycountymd.gov/content/council/pdf/bill/2010/20101019_1-10a.pdf

Attachment C: Bill 50-10

http://www.montgomerycountymd.gov/content/council/pdf/bill/2010/20101130_50-10A.pdf

Attachment D: Resolution 16-1570

http://www.montgomerycountymd.gov/content/council/pdf/res/2010/20101130_16-1570.pdf

Attachment E: Resolution 16-1571

http://www.montgomerycountymd.gov/content/council/pdf/res/2010/20101130_16-1571.pdf



ATTACHMENT A

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

**MCPB
ITEM # 3
12/9/10**

CORRECTED

December 2, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *JK*
Vision/Community-Based Planning Division

FROM: Jacob Sesker, Planner Coordinator (301) 650-5619 *JS*
Vision/Community-Based Planning Division

SUBJECT: White Flint Staging Allocation Policy Report

STAFF RECOMMENDATION

1. Approve a general approach to White Flint Sector Plan staging allocation, as outlined in this memorandum.
2. Confirm that four specific projects will not count against the Sector Plan staging limits
3. Clarify two typographic errors in the Council's resolution.

SUMMARY

A staging allocation policy must be developed so that the Planning Board can begin granting approvals and so that all stakeholders will understand the meaning of those approvals. The role of the Planning Board in managing the staging of the White Flint Sector Plan is to:

- grant approvals;
- count those approvals against staging capacity; and,
- make sure that certain infrastructure projects or performance metrics have been satisfied prior to releasing the capacity of the subsequent stage.

The Planning Board directed staff to develop a process in which staging capacity can be allocated at building permit, because not all developments would be subject to any single Planning Board approval process (e.g. preliminary plan or site plan), and because developers who proceed to building permit are likely to move forward. There is no existing Planning Board approval that occurs just prior to the issuance of building permit. As such, a new approval must be created; this memo outlines the issues associated with that new approval.

1. Staging Allocation Policy

a. Description of the proposed staging allocation process

An applicant for staging allocation must submit to the Planning Board a Staging Allocation Request application stating intent to apply for a building permit. The request should state that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, site plan approvals, development plan approvals, or any other Planning Board or Council approval. The request should indicate both the gross amount of new development and the net amount if there is demolition.

Once a complete staging allocation application has been received by the Planning Department, the request for capacity is placed in a queue and that capacity will not be available to other applicants unless and until the request expires. The application will then be processed as a consent agenda item. Planning Board approval of an application for staging capacity will be valid for 90 days, i.e. the applicant has 90 days to move from getting Planning Board approval of staging capacity to DPS acceptance of a building permit application. If DPS has not accepted the application for a building permit within the 90-day validity period, then the capacity previously allocated becomes available to the next applicant in the queue. In such a case, the property owner would have to return to the Planning Board and re-file the application for staging allocation.

This process is part of the Transportation Approval Mechanism for which the Sector Plan specifies a one-year timeframe (due July 23, 2011). During the next few months staff should develop a sample application for staging approval and any necessary guidelines, including diagrammatic representations of the process. Staff should continue to meet internally and with DPS, and MCPS if necessary, to refine the staging allocation process.

Implementing this process will require changes to Section 8 of the county code.

b. Issues raised on/since November 4th that will not to be addressed at this time.

During and following the Planning Board's discussion of this issue on November 4th, the following additional issues were raised:

- 1) Tracking and monitoring the new development in White Flint;
- 2) What happens if a development receives its staging allocation from the Planning Board and then fails to utilize the allocated capacity; and
- 3) The relationship between school APF and transportation staging capacity.

With respect to tracking and monitoring, internal meetings and meetings with the Department of Permitting Services have begun or have been scheduled. *Status updates on this issue will be part of subsequent work sessions on the entire transportation approval mechanism and monitoring program, of which this staging allocation policy is just one part. The Planning Board will need*

to find that a transportation approval mechanism and monitoring program is in place prior to July 23, 2011—if one is not in place at that time the Planning Board must not allow development to proceed.

Staff recommends keeping this staging allocation process as simple as possible. With respect to the second issue above, few projects will get as far as building permit and not move forward. This was, in fact, one of the justifications used to support this timing. *If capacity hoarding proves to be a significant problem in the future, a subsequent biennial monitoring report can recommend changes to law and process that would be necessary in order to effectively track whether projects that have received staging allocations have used those allocations.*

With respect to the relationship between staging allocation and school APF, staff points out that the Council added specific language to the resolution indicating an intent that no change occur with respect to the current schools adequacy test in White Flint:

- “Residential development must pass the school adequacy Test in the Growth Policy. This test is assessed annually.”

Additionally, staff points out that stakeholders have generally opposed allocating staging at preliminary plan or site plan (when APF approvals are granted) or moving APF in White Flint to the pre-building permit timeframe. *Staff recommends exploring, though not resolving at this time, potential complications with respect to the relationship between staging allocation and schools APF.*

c. Staging/phasing of White Flint Sector Plan

The White Flint Sector Plan’s staging plan requires the following triggers be met before any additional development can be approved.

1. Approval and adoption of the Sector Plan. (done)
2. Approval of sectional map amendment. (done)
3. Amend the Growth Policy to expand the White Flint Metro Station Policy Area (MSPA) to encompass the Sector Plan boundary, and to exempt development within White Flint from the Policy Area review test. The traffic from existing and approved development in the White Flint MSPA would still be counted in the Policy Area Review of all other Policy Areas, including North Bethesda. (done)
4. Establish the Sector Plan area as a State of Maryland Bicycle Pedestrian Priority Area. (in process)
5. Initiate development of plans for through-traffic access restrictions and other appropriate protective measures for the residential neighborhoods abutting the Sector Plan area, including traffic from future development in White Flint, and implement these plans if sufficient neighborhood consensus is reached. (in process)

The Sector Plan further states that “additional development may proceed subject to existing regulatory requirements (including LATR and Policy Area Review, when appropriate)” and subject to the following additional requirements.

1. Create public entities or financing mechanisms necessary to implement the Sector Plan within six months of adopting the sectional map amendment (i.e. must be in place by January 2011).
2. Develop a transportation approval mechanism and monitoring program within 12 months of adopting the sectional map amendment (must be in place by July 2011).
 - a. Planning Board must develop a biennial monitoring program. This program must include a periodic assessment of development approvals, public facilities and amenities, the status of new facilities, and the Capital Improvements Program and Growth Policy as they relate to White Flint. The biennial monitoring report must be submitted to the Council and Executive prior to the development of the biennial CIP.
 - b. The program should conduct a regular assessment of the staging plan and determine if any modifications are necessary.
 - c. The program must include a Comprehensive Local Area Transportation Review (or comparable analysis) that will identify and recommend for Council approval and action specific projects and services necessary to promote adequate transportation service.
 - d. The Planning Board must establish an advisory committee...to evaluate the assumptions made regarding congestion levels, transit use, and parking. The committee's responsibilities should include monitoring the Plan recommendations, identifying new projects for the Amenity Fund, monitoring the CIP and Growth Policy, and recommending action by the Planning Board and County Council to address issues that may arise.

Once the first five staging triggers are met, development can proceed under the "old rules." However, if the calendar triggers are not satisfied by specified dates (public entities/financing mechanism and transportation approval/monitoring) then additional development may not proceed.

In short, it is possible that White Flint could be "open for business" for some part of the period between now and July 2011 and then subsequently closed for business due to a failure to either meet the six month deadline (public entities or financing mechanisms) or the 12 month deadline (transportation approval and monitoring).

d. Meaning of "approve"

The language of the Sector Plan clearly refers to Planning Board approvals. According to the Sector Plan, additional development may not be approved until certain triggers are met, and the quantity of development that can be approved by the Planning Board in each phase is set forth in the plan. It is assumed that the word "approved" has the same meaning in each place that it appears in the Staging Plan.

Of the five triggers that must be met prior to approving new development, the first three have already been satisfied and the fourth doesn't require completion. The fifth, establishing the area as a State of Maryland Bicycle and Pedestrian Priority Area, however, has proven somewhat problematic. This trigger involves the agreement of the State Highway Administration and the



Maryland Department of Transportation. While staff has been pursuing closure of this issue, the time line doesn't favor a speedy resolution.

By moving the approval (for staging purposes) to later in the development process, the Planning Board would essentially postpone the deadline for resolution of the issue of the State of Maryland Bicycle and Pedestrian Priority Area. Based on staff's interpretation, this extends the time available until such time as the first Staging Allocation Request is before the Board. This should be sufficient time for the SHA to fully ascertain the implications of the proposed Priority Area on their public road commitments and budget and, if necessary, request that the County Council amend the language of the sector plan accordingly.

e. Meaning of "proceed"

The language of the Sector Plan states that "additional development may proceed subject to existing regulatory requirements" subject to two calendar triggers being met—those triggers are the creation of public entities or financing mechanisms (by January 23, 2011) and the development of a transportation approval mechanism and monitoring program (by July 23, 2011).

These calendar triggers must be met in order for development to proceed, and are requirements in the Sector Plan that are independent of the other staging prerequisites. Approval, for purposes of staging, occurs when the staging allocation is made by the Planning Board. Planning Board approvals of sketch plans, preliminary plans, and site plans do not constitute approvals for staging. *If the calendar triggers are not met, then projects may not advance through any process, i.e. if the Planning Board finds that a calendar trigger has not been met then the Planning Board must not grant further approvals of sketch plans, preliminary plans, site plans, or staging allocations.*

f. Biennial Monitoring and Staging

The Planning Board may approve up to 3,000 dwelling units and two million square feet of non-residential development when the first phase is opened. During Phase 1 (and subsequent phases) the biennial monitoring program will provide updates and make recommendations, including whether modifications to the staging plan are necessary. Presumably, any such modifications would be effective at the commencement of the subsequent stage/phase.

Recommendations that the Council modify the staging plan could originate either at the Planning Board or the Advisory Committee.

g. White Flint Sector Plan Implementation Guidelines

The staging policy recommended herein is linked to the transportation approval and monitoring program required by the Sector Plan. *Because traditional transportation APF tests will not apply, staff suggests that the best place for all of these policies is not the LATR/PAMR Guidelines, but rather a separate White Flint Sector Plan Implementation Guidelines document.*

This staging policy will be incorporated into that document. The guidelines should be completed prior to July 23, 2011.

h. Next Steps

If the Planning Board approves the general approach outlined herein, then the following actions will need to be taken at later dates:

- 1) Open Phase One of development (January 2011). Planning Board may begin reviewing sketch plans, preliminary plans, and site plans.
- 2) Confirm that public entities or financing mechanisms necessary to implement the Sector Plan have been created by January 23, 2011.
- 3) Develop a transportation approval and monitoring program. Planning Board must determine that the transportation approval and monitoring program is in place prior to July 23, 2011.
- 4) If either (2) or (3) above are not satisfied by the specified dates, then the Planning Board must not take any action on any sketch plan, preliminary plan, or site plan in the Sector Plan area.
- 5) Develop tracking systems and databases necessary to manage the staging allocation and track master plan implementation.
- 6) Continue to pursue clarification of issues related to school APF and its relationship to staging allocation.
- 7) Determine that all staging prerequisites have been satisfied prior to granting the first of the staging approvals.

If the Planning Board does not approve the proposed approach, then staff recommends against opening Phase One of development until outstanding issues are resolved. Staff has already scheduled a Board item in January to recommend action by the Planning Board to open Phase One for development and allow development to proceed, on an interim basis, until such time as the transportation approval and monitoring program is completed, or until July 23, 2011 (whichever comes first).

2. Projects not counted against the staging limits

The Council's resolution of adoption states the following:

- "Any development approvals that predate the approval of this Sector Plan are considered to be in conformance with this Plan. For such approvals, only the difference between the amount of prior approval and any requested increase would be subject to the phasing caps."

Four approved projects that should not to be counted against the staging limits are the following:

- 1) North Bethesda Center (LCOR)
1,350 dwelling units
1.14 million square feet of office
202,037 square feet of commercial
Zone: TSM
Zoning Application: G-801; County Resolution No. 15-151
Preliminary Plan: 120040490
Site Plans: 820050340; 820080110

- 2) North Bethesda Market (JBG)
440 dwelling units
223,000 square feet of non-residential
Zone: TSM
Zoning Application G-830
Preliminary Plan: 120060310
Site Plan: 820060170

- 3) White Flint View (Quantum/Noland Plumbing)
183 dwelling units
29,500 square feet of non-residential
Zone: C-2
Preliminary Plan: 120070380

- 4) Metro Pike (Holladay)
247 dwelling units
201,822 square feet of non-residential
Zone: TSM
Zoning Application: G-860; Resolution No. 16-430

Staff recommends that the Planning Board confirm, for the benefit of all stakeholders, that the projects specified above are not to be counted against the staging limits and that the Guidelines include references to the four projects for the benefit of future reviewers.

Other projects not subject to staging include both (a) public projects submitted under the mandatory referral process and (b) any additional smaller private projects which can still be found to have a valid APF approval or Development Plan approval at the time of building permit without having been conditioned to submit a Staging Allocation Request.

3. Minor typographical errors in the Council's resolution

Two minor issues related to the language of the staging/phasing section of the resolution have been identified and brought to the attention of Council staff, who concur with the following reading of the resolution.

Page 23 of the resolution contains the first error. The language in the paragraph under Phase 1 is inconsistent with the bullets underneath, which were changed by the Council. The following is the language in the resolution, with the incorrect language in brackets and in bold.

- Work-around road projects west of Rockville Pike, including the streets for the civic core, should be contracted for construction during Phase 1 [**and completed before commencement of Phase 2**].

Page 24 of the resolution contains the second error. According to the resolution, the Phase 3 cap is set at 1.9 million square feet of non-residential development. That number is inconsistent with the number in the plan, which was derived from the transportation analysis. This typographical error has resulted in an inadvertent change in Phase 3 non-residential capacity from 1.69 million square feet to 1.9 million square feet.

The corrected language should say:

- Phase 3: 3,800 dwelling units and 1.69 million square feet non-residential development.

The Approved and Adopted Sector Plan has been published and is available on line. Staff can post an errata sheet. Staff also recommends that the Guidelines include references to these errors for the benefit of future reviewers.

JS/rb: M:\Sesker\White Flint\Dec 9 2010\Final Draft 12_9 Staging Memo.doc

Attachments:

- A. Draft Outline of Relationship between Staging Allocation and Development Process

Draft Outline of Relationship between Staging Allocation and Development Process

- 1) Projects subject to staging: what happens at preliminary plan (APF, conditions, etc.)**
 - a. Findings (not APF related)
 1. Conformance with sketch plan
 - b. Applicant must submit sufficient information to identify on-site or frontage-related transportation adequacy as related to topics such as traffic control devices, sight distances, internal access and circulation, queuing, etc.
 - c. APF finding, conditioned upon
 1. Payment in Special Taxing District to address LATR/PAMR, subject to Section 50 validity periods
 2. Findings regarding schools, fire/rescue, WSSC, public utilities, still subject to Section 50 validity periods
 3. Staged on-site infrastructure
 4. Staging Allocation Approval at Building Permit

- 2) Projects subject to staging: what happens at site plan (APF, conditions, conditions related to timely delivery of sketch plan proffered benefits, etc.)**
 - a. Findings (not APF related):
 1. Conformance with sketch plan and conditions of preliminary plan
 - b. For projects that did not go through preliminary plan, APF finding, conditioned upon
 1. Payment in Special Taxing District to address LATR/PAMR, subject to Section 50 validity periods
 2. Findings regarding schools, fire/rescue, WSSC, public utilities, still subject to Section 50 validity periods
 3. Staged on-site infrastructure
 4. Staging Allocation Approval at Building Permit

- 3) Projects subject to staging: what happens at pre-building permit staging allocation approval**
 - a. Timing of application – use typical consent agenda process
 - b. Planning Department acceptance of complete application places allocation in queue
 - c. Finding – sufficient staging capacity available at time of Board approval for new development proposed (net of any demolition)
 - d. Timing of validity period
 1. 90 days from staging allocation approval to DPS acceptance of complete building permit application
 2. DPS copies Planning Department on acceptance of building permit application
 3. If Staging Allocation Approval validity period expires without DPS acceptance of building permit application, Planning Department returns capacity allocation to the pool

- 4) Potential changes to law that will be necessary to implement this policy**
- a. Amendments to Section 8-24 to establish Planning Board Staging Allocation Approval and require valid Staging Allocation Approval for DPS to accept a building permit application in White Flint MSPA. This requirement would apply to all new development other than new development that has APF approval or development plan approval that predates the adoption of the Sector Plan.
 - b. Planning Board adoption of *Guidelines for White Flint Master Plan Implementation* to include Staging Allocation (because staging allocation is a master plan mandate, not a Subdivision Staging Policy mandate)

ATTACHMENT B

Bill No. 1-10
Concerning: Development – Coordination,
Oversight
Revised: 10-19-10 Draft No. 4
Introduced: January 19, 2010
Enacted: October 19, 2010
Executive: Returned unsigned
Effective: January 29, 2011
Sunset Date: None
Ch. 46, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Trachtenberg, Knapp, Berliner, and Andrews

AN ACT to:

- (1) provide further coordination and oversight of master-planned development;
- (2) provide further coordination and oversight of development districts; and
- (3) generally amend the law governing coordination of development.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-25
Chapter 14, Development Districts
Section 14-16

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:

54 infrastructure keeps pace with private development in that
55 development district.

56 (e) The Executive must report to the Council not later than January 15 and
57 July 15 of each year on the progress made during the preceding 6
58 months, and the significant steps to be taken during the following 6
59 months, regarding each development district for which the Council has
60 adopted a resolution under Section 14-6.

61 [(d)] (f) * * *

62 *Approved:*

63

64 *Nancy Floreen* 10/20/10
Nancy Floreen, President, County Council Date

65 *Approved:*

66

67 *returned unsigned*
Isiah Leggett, County Executive Date

68 *This is a correct copy of Council action.*

69

70 *Linda M. Lauer* 11/2/10
Linda M. Lauer, Clerk of the Council Date

ATTACHMENT C

Bill No. 50-10
Concerning: Special Taxing District -
White Flint - Creation
Revised: 11-30-10 Draft No. 5
Introduced: October 5, 2010
Enacted: November 30, 2010
Executive: December 9, 2010
Effective: March 10, 2011
Sunset Date: None
Ch. 52, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) establish a White Flint Special Taxing District;
- (2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
- (3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements;
- (4) generally authorize a White Flint Special Taxing District; and
- (5) generally amend or supplement the laws governing the use of infrastructure financing districts and similar funding mechanisms.

By adding

Montgomery County Code
Chapter 68C, White Flint Special Taxing District

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. Chapter 68C is added as follows:**

2 **Chapter 68C. White Flint Special Taxing District.**

3 **68C-1. Definitions.**

4 For purposes of this Chapter, the following terms have the meanings indicated:

5 Bond means a special obligation or revenue bond, note, or other similar
6 instrument issued by the County that will be repaid from revenue
7 generated by ad valorem taxes levied under this Chapter.

8 Cost means the cost of:

9 (1) the construction, reconstruction, and renovation of any
10 transportation infrastructure improvement, including the
11 acquisition of any land, structure, real or personal property, right,
12 right-of-way, franchise, or easement, to provide a transportation
13 infrastructure improvement for the District;

14 (2) all machinery and equipment needed to expand or enhance a
15 transportation infrastructure improvement for the District;

16 (3) financing charges and debt service related to a transportation
17 infrastructure improvement for the District, whether the charge or
18 debt service is incurred before, during, or after construction of the
19 transportation infrastructure improvement, including the cost of
20 issuance, redemption premium (if any), and replenishment of
21 debt service reserve funds for any bond that finances a
22 transportation infrastructure improvement for the District;

23 (4) reserves for principal and interest, the cost of bond insurance, and
24 any other type of financial guarantee, including any credit or
25 liquidity enhancement, related to a transportation infrastructure
26 improvement for the District;

- 27 (5) architectural, engineering, financial, and legal services related to
28 providing a transportation infrastructure improvement for the
29 District;
- 30 (6) any plan, specification, study, survey, or estimate of costs and
31 revenues related to providing a transportation infrastructure
32 improvement for the District;
- 33 (7) any administrative expense incurred by the County necessary or
34 incident to determining whether to finance or implement a
35 transportation infrastructure improvement for the District; and
- 36 (8) any other expense incurred by the County necessary or incident
37 to building, acquiring, or financing a transportation infrastructure
38 improvement for the District.

39 District means the White Flint Special Taxing District created under
40 Section 68C-2.

41 Transportation infrastructure improvement means:

- 42 (1) the construction, rehabilitation, or reconstruction of a road, street,
43 or highway that serves the District, including any:
 - 44 (A) right-of-way;
 - 45 (B) roadway surface;
 - 46 (C) roadway subgrade or shoulder;
 - 47 (D) median divider;
 - 48 (E) drainage facility or structure, including any related
49 stormwater management facility or structure;
 - 50 (F) roadway cut or fill;
 - 51 (G) guardrail;
 - 52 (H) bridge;
 - 53 (I) highway grade separation structure;

- 54 (J) tunnel;
- 55 (K) overpass, underpass, or interchange;
- 56 (L) entrance plaza, approach, or other structure that is an
- 57 integral part of a street, road, or highway;
- 58 (M) bicycle or walking path;
- 59 (N) designated bus lane;
- 60 (O) sidewalk or pedestrian plaza;
- 61 (P) streetscaping and related infrastructure; including placing
- 62 utilities underground; and
- 63 (Q) other property acquired to construct, operate, or use a road,
- 64 street, or highway; and
- 65 (2) a transit facility that serves the needs of the District, including
- 66 any:
- 67 (A) track;
- 68 (B) right-of-way;
- 69 (C) bridge;
- 70 (D) tunnel;
- 71 (E) subway;
- 72 (F) rolling stock;
- 73 (G) station or terminal;
- 74 (H) parking area;
- 75 (I) related equipment, fixture, building, structure, or other real
- 76 or personal property; and
- 77 (J) service intended for use in connection with the operation
- 78 of a transit facility, including rail, bus, motor vehicle, or
- 79 other mode of transportation.

80 **68C-2. Creation; Boundaries.**

- 81 (a) The White Flint Special Taxing District is coterminous with the
 82 approved and adopted White Flint Sector Plan area.
- 83 (b) The following properties, identified by street address, are not included
 84 in the District: 5411 McGrath Boulevard, 5440 Marinelli Road, 5801
 85 Nicholson Lane, 11700 Old Georgetown Road, 11701 Old Georgetown
 86 Road, 11750 Old Georgetown Road, 11800 Old Georgetown Road,
 87 11801 Rockville Pike, 5800 Nicholson Lane, 5802 Nicholson Lane,
 88 5809 Nicholson Lane, 5440 Marinelli Road, 5503 Edson Lane, 5505
 89 Edson Lane, 5507 Edson Lane, 5509 Edson Lane, 11201 Woodglen
 90 Drive, 11203 Woodglen Drive, 11205 Woodglen Drive, 11207
 91 Woodglen Drive, 11209 Woodglen Drive, 11351 Woodglen Drive,
 92 11418 Rockville Pike, 11200-11219 Edson Park Place, 11222 Edson
 93 Park Place, 11224 Edson Park Place, 11226 Edson Park Place, 11228
 94 Edson Park Place, 11230 Edson Park Place, 11232 Edson Park Place,
 95 11234 Edson Park Place, 11236 Edson Park Place, 11238 Edson Park
 96 Place, and 11240 Edson Park Place.

97 **68C-3. Levy of Tax; Limits.**

- 98 (a) Each tax year the County Council may levy against all the assessable
 99 real and personal property in the District a sum on each \$100 of
 100 assessable property that does not exceed an amount sufficient to cover
 101 the costs of transportation infrastructure improvements that have been
 102 identified in a Council resolution approved under Section 68C-4.
- 103 (b) Under Section 9-1302 of Article 24, Maryland Code, the limit in
 104 Charter Section 305 on levies of ad valorem taxes on real property to
 105 finance County budgets does not apply to revenue from any tax imposed
 106 under this Chapter.

107 (c) The tax imposed under this Chapter must be levied and collected as
 108 other County property taxes are levied and collected.

109 (d) The tax imposed under this Chapter has the same priority, bears the
 110 same interest and penalties, and in every respect must be treated the
 111 same as other County property taxes.

112 (e) Paying the tax imposed under the Chapter does not entitle any person to
 113 claim a credit against any other tax that the County imposes, including
 114 the development impact tax for transportation improvements imposed
 115 under Section 52-49 or the development impact tax for public school
 116 improvements imposed under Section 52-89.

117 **68C-4. Transportation Infrastructure Improvement Resolution.**

118 (a) After holding a public hearing, the Council may approve a resolution
 119 that lists each transportation infrastructure improvement that would be
 120 entirely or partly paid for by a tax imposed under Section 68C-3.

121 (b) The resolution must indicate the estimated cost, including a contingency
 122 amount, for each listed improvement.

123 (c) The Council may amend the resolution after holding a public hearing.

124 (d) The Council must present the resolution and each amended resolution to
 125 the Executive for approval or disapproval. If the Executive disapproves
 126 a resolution within 10 days after it is transmitted to the Executive and
 127 the Council readopts the resolution by a vote of 6 Councilmembers, or if
 128 the Executive does not act within 10 days after the resolution is
 129 transmitted, the resolution takes effect.

130 (e) Before the Council holds a public hearing under subsection (a) or (c),
 131 the Executive should transmit to the Council:

- 132 (1) a list of recommended transportation infrastructure improvements
- 133 to be entirely or partly paid for by a tax imposed under Section
- 134 68C-3;
- 135 (2) the estimated cost, including a contingency amount, for each
- 136 listed improvement; and
- 137 (3) an estimated tax rate for each tax to be imposed under Section
- 138 68C-3.

139 (f) Before the County loans or advances any funds to the District that the
 140 District is required to repay to the County, the Council must adopt a
 141 [[financing]] repayment plan in a resolution under this Section, or as
 142 part of an approved Capital Improvements Program resolution, that
 143 specifies:

- 144 (1) each transportation infrastructure improvement for which funds
- 145 would be advanced;
- 146 (2) the amount of funds advanced which the District must repay;
- 147 (3) the [[amount]] expected rate of interest, if any, the District must
- 148 repay;
- 149 (4) the time period during which the District [[must]] is expected to
- 150 repay the amount due; and
- 151 (5) [[the number and timing of installment payments, if any; and]]
- 152 [[6]] any other principal term of repayment.

153 Any [[financing]] repayment plan adopted under this subsection is
 154 binding on the District and the County, except as later modified in a
 155 Council resolution.

156 **68C-5. District Fund.**

157 (a) The Director of Finance must establish a separate fund for the proceeds
 158 collected from any tax imposed under this Chapter. The proceeds of

159 any tax imposed under this Chapter must be pledged to and paid into
 160 this fund.

161 (b) The Director of Finance must use this fund only to pay the cost of any
 162 transportation infrastructure improvement related to the District.

163 (c) If in any fiscal year a balance remains in the fund, the Director of
 164 Finance may use the balance to:

165 (1) pay the cost of any transportation infrastructure improvement for
 166 the District;

167 (2) create a reserve to pay the future costs of any transportation
 168 infrastructure improvement for the District;

169 (3) pay bond-related obligations or retire bonds then outstanding; or

170 (4) pay into a sinking fund required by the terms of bonds which
 171 finance the cost of any transportation infrastructure improvement
 172 for the District that may be incurred or accrue in later years.

173 **68C-6. Issuing Bonds.**

174 (a) Before the County issues any bond payable from ad valorem taxes
 175 levied under Section 68C-3, the Council must adopt a resolution
 176 authorizing the issuance of bonds that meets the requirements of this
 177 Section.

178 (b) Each resolution under this Section must:

179 (1) describe the types of transportation infrastructure improvements
 180 and related costs to be financed; and

181 (2) specify the maximum principal amount of bonds to be issued.

182 (c) Each resolution may specify, or authorize the Executive by executive
 183 order to specify:

184 (1) the actual principal amount of bonds to be issued;

185 (2) the actual rate or rates of interest for the bonds;

- 186 (3) how and on what terms the bonds must be sold;
 187 (4) how, when, and where principal of, and interest on, the bonds
 188 must be paid;
 189 (5) when the bonds may be executed, issued, and delivered;
 190 (6) the form and tenor of the bonds, and the denominations in which
 191 the bonds may be issued;
 192 (7) how any or all of the bonds may be called for redemption before
 193 their stated maturity dates;
 194 (8) the nature and size of any debt service reserve fund;
 195 (9) the pledge of other assets in and revenues from the District to pay
 196 the principal of and interest on the bonds;
 197 (10) any bond insurance or any other financial guaranty or credit or
 198 liquidity enhancement of the bonds; and
 199 (11) any other provision consistent with law that is necessary or
 200 desirable to finance any transportation infrastructure
 201 improvement that has been identified in a Council resolution
 202 approved under Section 68C-4.
 203 (d) (1) The County [[covenants]] must covenant to levy ad valorem
 204 taxes against all assessable real and personal property in the
 205 District at a rate and amount sufficient in each year when any
 206 bonds are outstanding to:
 207 (A) provide for the payment of the principal of, interest on, and
 208 redemption premium if any, on the bonds;
 209 (B) replenish any debt service reserve fund established with
 210 respect to the bonds; and
 211 (C) provide for any other purpose related to the ongoing
 212 expenses of and security for the bonds.

213 (2) The County further [[covenants]] must covenant, when any bond
 214 is outstanding, to enforce the collection of all ad valorem taxes
 215 under this Chapter as provided by applicable law.

216 (e) All proceeds received from any issuance of bonds must be applied
 217 solely towards costs of the transportation infrastructure improvements
 218 listed in the resolution adopted under Section 68C-4, including the cost
 219 of issuing bonds and payment of the principal of, interest on, and
 220 redemption premium if any, on the bonds.

221 (f) The bonds issued under this Chapter:
 222 (1) are special obligations of the County and do not constitute a
 223 general obligation debt of the County or a pledge of the County's
 224 full faith and credit or the County's general taxing power;
 225 (2) may be sold in any manner, either at public or private sale, and on
 226 terms as the Executive approves;
 227 (3) are not subject to Sections 10 and 11 of Article 31, Maryland
 228 Code; and
 229 (4) must be treated as securities to the same extent as bonds issued
 230 under Section 9-1301 of Article 24, Maryland Code.

231 (g) To the extent provided by law, the bonds, their transfer, the interest
 232 payable on them, and any income derived from them, including any
 233 profit realized on their sale or exchange, must be exempt at all times
 234 from every kind and nature of taxation by the State of Maryland and any
 235 county or municipality in Maryland.

236 (h) The bonds must be payable from the fund required under Section 68C-5
 237 and any other asset or revenue of the District pledged toward their
 238 payment. When any bond is outstanding, the monies in the fund are
 239 pledged to pay the costs of any transportation infrastructure

240 improvement funded entirely or partly by the proceeds of the bonds,
241 including the costs of issuing the bonds and payment of the principal of,
242 interest on, and redemption premium if any, on the bonds. In addition
243 to ad valorem taxes, the bonds may be secured by any other asset in or
244 revenue generated in the District.

245 (i) Any ad valorem tax imposed under this Chapter must not be accelerated
246 because of any bond default.

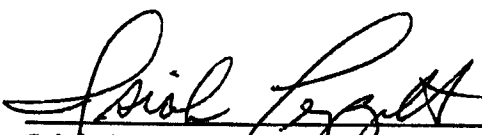
247 **68C-7. Expiration of district.**

248 Any special taxing district created under this Chapter expires by operation of
249 law 30 days after the cost of all transportation infrastructure improvements identified
250 in a Council resolution approved under Section 68C-4, including all outstanding
251 bonds and cash advances made by the County, have been paid.

252 *Approved:*

253  12/11/10
Nancy Floreen, President, County Council Date

254 *Approved:*

255  12/9/10
Isiah Leggett, County Executive Date

256

257 *This is a correct copy of Council action.*

258  12/10/10
Linda M. Lauer, Clerk of the Council Date

ATTACHMENT D

Resolution No.: 16-1570
Introduced: October 5, 2010
Adopted: November 30, 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

SUBJECT: White Flint Sector Plan Implementation Strategy and Infrastructure Improvement List

Background

1. On March 23, 2010, the County Council, sitting as the District Council, adopted the White Flint Sector Plan, which approved a long range vision of transforming the Sector Plan area into a pedestrian-friendly transit-oriented urban setting.
2. The White Flint Sector Plan envisions conversion of Rockville Pike (MD Route 355) into a walkable boulevard with bus rapid transit along with road networks to the west and east of Rockville Pike that will provide effective alternatives to the highly congested Rockville Pike and connected blocks for development and connectivity.
3. The Plan's focus on access to Metro transit and redevelopment of the extensively built environment make White Flint a priority smart growth area.
4. The White Flint Sector Plan Area is expected to be a leading economic engine for the County.
5. To provide greater assurance of achieving this vision, the Plan identified a need for a public financing mechanism to fund a portion of the transportation infrastructure. This public financing mechanism anticipates assessments against property or other means of revenue generation and is intended to replace payments that projects redeveloping in the plan area would have to pay under current adequate public facilities requirements for local area transportation and policy area mobility reviews (LATR and PAMR).
6. The Council enacted Bill 50-10, creating the White Flint Special Taxing District to raise revenues to fund certain transportation improvements. The White Flint Special Taxing District will provide greater assurances of reliable and consistent revenue generation and materially greater funds for transportation improvements than would be anticipated from combined payments under otherwise applicable transportation development impositions, including LATR, PAMR, and transportation impact taxes.

7. The Council pursued certain goals in enacting Bill 50-10, including (a) creating a mechanism that will produce a reliable and consistent source of funds to secure debt service and pay for specific transportation infrastructure items; (b) imposing a manageable and sustainable payment for transportation infrastructure associated with new development in the White Flint Sector Plan area without unduly burdening property owners; and (c) setting and maintaining a tax rate that will allow development and businesses in White Flint to be competitive in attracting businesses to the area.
8. County Code Chapter 68C, enacted in Bill 50-10, establishes the White Flint Special Taxing District, authorizes the levy of an ad valorem tax to fund transportation infrastructure improvements in the District, and authorizes the issuance of bonds to finance the transportation infrastructure improvements.
9. Chapter 68C-4 requires a resolution that lists each transportation infrastructure improvement that is to be paid for by the District special tax, and the estimated costs of each improvement, which must include a contingency amount.

Action

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

To comply with the requirements of Chapter 68C and to successfully implement the White Flint Sector Plan, the Council takes the following steps and adopts the following implementation strategy to maximize acceptable growth in the Plan area and to move from Stage 1 to Stages 2 and 3 of development envisioned in the Plan.

1. The County's goal is that the White Flint Special Taxing District special tax rate must not exceed 10% of the total tax rate for the District, except that the rate must be sufficient to pay debt service on any bonds that are already outstanding.
2. If the revenues from the special tax at the level in the preceding paragraph are not sufficient to afford additional infrastructure improvements as are necessary and ready for implementation to execute the White Flint Sector Plan, the County Executive, before recommending any increase to the tax rate above the level in the preceding paragraph, must consider alternative approaches, including the timing and scope of each infrastructure item and the structure of the financing plan to pay for it, and alternative revenue sources.
3. Without limiting the specificity of the preceding paragraph, before issuing debt secured by or intended to be paid by the White Flint Special Taxing District, the County Executive must carry out a feasibility or other study to assess whether repaying the debt will require a district tax rate that will exceed the 10% policy goal. If this analysis concludes that a rate higher than the 10% policy goal would be

required, the Council intends that either (a) the debt will not be issued at that time; or (b) the County will manage the debt issuance or repayment in a manner that will have the White Flint Special Taxing District rate stay within the 10% policy goal.

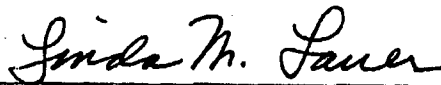
4. For the tax year that began on July 1, 2010, the total base real property tax rate in the White Flint Special Taxing District is \$1.027 per \$100 of assessed value.
5. For the tax year that begins on July 1, 2011, the rate of the White Flint Special Taxing District special tax is estimated to be \$0.103 per \$100 of assessed value. The Council will set the actual Special Taxing District tax rate when it sets other property tax rates in May 2011.
6. The specific transportation infrastructure improvements that will be financed by the White Flint Special Taxing District are listed in Exhibit A, along with an estimated cost for each improvement, including a contingency amount. The District will remain responsible for the actual cost of each designated infrastructure improvement, including any future cost increase.
7. If a gap results between the White Flint Special Taxing District revenue generation and the aggregate cost of those transportation projects to be funded by District revenues, and to assure adherence to the 10% policy rate goal and the prompt building of necessary infrastructure in the Sector Plan area, the Council policy is that, to promptly implement the Sector Plan, the Capital Improvements Program for this area will include forward funding or advance funds to design and build the following:
 - (a) that portion of Market Street from Old Georgetown Road to Woodglen Road, including a bike lane;
 - (b) realignment of Executive Boulevard from Marinelli Road to MD Route 187;
 - (c) the redesign of Rockville Pike (these 3 items collectively may be referred to as "forward-funded items"); and
 - (d) up to \$15 million for other items assigned to the District in Plan stages 1 and 2.Any forward funding or advance payment must be structured so that it does not count under applicable spending affordability guidelines.
8. As used in the preceding paragraph, forward fund or advance funds means
 - (a) For items 7(a), (b), and (c), the County would include these items in the County Capital Improvements Program and fund them accordingly, and the District, subject to applicable provisions of Chapter 68C, would, on a dollar for dollar basis, without any interest accruing during the first 10 years after that Capital Improvements Program is approved, repay the County when every District improvement listed in Exhibit A has been

funded either directly or through debt secured by the District. However, the District may repay the County earlier for any item to the extent that revenue generation exceeds the funds needed to pay for other improvements assigned to the District and no stage of development under the Sector Plan would be delayed; and

- (b) For item 7(d), the County would coordinate with planned private development and include infrastructure items necessary for that development to proceed in a timely fashion in the County Capital Improvements Program, and the District would reimburse the County for all costs incurred in connection with any advance, including interest costs.
9. The specified items subject to forward or advance funding have estimated costs shown in Exhibit A as follows:
 - (a) The realignment of Executive Boulevard and Market Street from Old Georgetown Road to Woodglan Road is estimated to cost \$24.8 million, not including right-of-way which is assumed to be dedicated by affected property owners.
 - (b) The redesign of Rockville Pike is estimated to cost \$7.7 million.
 10. The County Executive will include the projects comprising the forward funding in his January 2011 Capital Improvements Program Amendments, with initial expenditures in fiscal years 2015, 2016, and beyond until completed.
 11. Two items have been removed from District funding and must instead be paid for by County or other sources of public funds. These items are:
 - (a) the second entrance to the White Flint Metro Station, which is estimated to cost \$35 million; and
 - (b) the Nebel Street bike lane, which is estimated to cost \$9.2 million.
 12. One item has been modified for District funding: Market Street between MD Route 355 and Station Street (bridge across White Flint Metro station), at an estimated added cost of \$5.2 million and a total cost of \$7.2 million.
 13. The County Council intends that the annual joint State-County transportation priority letter would include a request to the Maryland Department of Transportation that the White Flint Sector Plan Area should receive a Transit Oriented Development designation, but also note that granting this status to the White Flint area does not mean that transportation infrastructure items in that area would supersede any other items in the priority letter.

14. The Council intends to amend the law authorizing the County transportation impact tax to create a White Flint impact tax district and to set the tax rate in that district at \$0. The Executive intends to submit a Bill to the Council to do this. The Council also intends that the transportation impact tax rate for the remaining buildings in LCOR Inc.'s North Bethesda Center development be set at \$0. This development had been approved under the former County Growth Policy's Alternative Review Procedure for Metro Station Policy Areas, under which its transportation impact tax rate is 75% of the applicable County-wide rate. This action would also be included in the transportation impact tax amendments bill.
15. The Council intends to fund, in the White Flint Special Taxing District Capital Improvements Program referred to in paragraph 10, to the extent legally allowable, personnel costs and other expenses of the development coordinator for the White Flint planning area that the Executive is required to designate under County Code §2-25(c), enacted in Council Bill 1-10. State law (including Maryland Code Article 24, §9-1302(a)(2), incorporating §9-1301(a)(3)(viii), and §9-1303(a)(2) and §9-1303(e)) authorizes funding of these costs by the District.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

Approved:

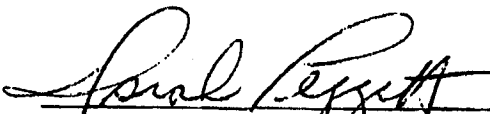

Isiah Leggett, County Executive

EXHIBIT A

WHITE FLINT SPECIAL TAXING DISTRICT
DISTRICT-FUNDED IMPROVEMENTS

Improvement Description	Estimated Cost
Old Georgetown Road (MD 187): Nicholson La./Tilden La. to Executive Blvd.	\$17,774,000
Old Georgetown Road (MD 187): Hoya St. to Rockville Pike (MD 355)	1,789,000
Hoya Street (formerly Old Old Georgetown Rd.): Executive Blvd. to Montrose Pkwy.	15,344,000
Rockville Pike (MD 355): Flanders Ave. to Hubbard Drive	66,961,000
Nicholson Lane: Old Georgetown Rd. (MD 187) to CSX tracks	12,942,000
Executive Blvd. Ext.: Marinelli Rd. to Old Georgetown Rd (MD 187)	23,500,000
Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Extended (Bikeway)	1,713,000
Main St./Market St.: Old Georgetown Rd. (MD 187) to Executive Blvd. Ext.	4,933,000
Main St./Market St.: Executive Blvd. to Rockville Pike (MD 355)	4,661,000
Market Street from Maryland Route 355 to Station Street	7,200,000
Executive Blvd. Ext. (East): Rockville Pike (MD 355) to Nebel St. Ext. (South)	16,700,000
Nebel St. Ext. (South): Nicholson La. to Executive Blvd. Ext. (East)	8,200,000
TOTAL	181,717,000

ATTACHMENT E

Resolution No.: 16-1571
Introduced: October 5, 2010
Adopted: November 30, 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

SUBJECT: Amendment (\$9.835 M) to the FY11-16 Capital Improvements Program and Special Appropriation #4-E11-CMCG-3 to the FY11 Capital Budget Montgomery County Government Department of Transportation White Flint District West: Transportation (No. 501116), \$385,000

Background

1. Section 308 of the Montgomery County Charter provides that a special appropriation: (a) may be made at any time after public notice by news release; (b) must state that the special appropriation is necessary to meet an unforeseen disaster or other emergency or to act without delay in the public interest; (c) must specify the revenues necessary to finance it; and (d) must be approved by no fewer than six members of the Council.
2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved capital improvements program at any time by an affirmative vote of no fewer than six members of the Council.
3. The County Executive recommends the following capital project appropriation increases:

<u>Project Name</u>	<u>Project Number</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
White Flint District West: Transportation	501116	PDS	\$385,000	Current Revenue General

- 4. This project is needed to accelerate the preliminary engineering for one new road, one relocated road, improvements to three existing roads, and one new bikeway in the White Flint Development Tax District so that more accurate designs and cost estimates can be established. Funds to pay for the analysis and studies necessary to implement the district are also included. The recommended amendment is consistent with the criteria for amending the CIP in that this project supports significant economic development initiatives, which in turn will strengthen the fiscal capacity of the County government. The new growth planned for the White Flint area in accordance with the recently approved Sector Plan will revitalize the region and strengthen the County as a whole. These roadway and bikeway improvements will greatly aid and expedite the planned improvements for the area.
- 5. The County Executive recommends an amendment to the FY11-16 Capital Improvements Program and a special appropriation in the amount of \$385,000 for White Flint District West: Transportation (No.501116), and specifies that the source of funds will be Current Revenue General with repayment in FY12 from White Flint Development District tax funds.
- 6. Notice of public hearing was given and a public hearing was held on October 26, 2010.

Action

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

- 1. The FY11-16 Capital Improvements Program of the Montgomery County Government is amended as reflected on the attached project description form and a special appropriation is approved as follows:

<u>Project Name</u>	<u>Project Number</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
White Flint District West: Transportation	501116	PDS	\$385,000	Current Revenue General

- 2. The County Council declares that this action is necessary to act without delay in the public interest, and that this appropriation is needed to meet the emergency.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

White Flint District West: Transportation -- No. 501116

Category
Subcategory
Administering Agency
Planning Area

Transportation
Roads
Transportation
North Bethesda-Garrett Park

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

September 27, 2010
No
None
Preliminary Design Stage

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	8,800	0	0	8,800	350	1,250	500	2,200	2,200	2,300	0
Land	1,000	0	0	1,000	0	0	600	0	200	200	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	35	0	0	35	35	0	0	0	0	0	0
Total	9,835	0	0	9,835	385	1,250	1,100	2,200	2,400	2,500	0

FUNDING SCHEDULE (\$000)

Current Revenue: General	0	0	0	0	385	-385	0	0	0	0	0
Development District -White Flint	9,835	0	0	9,835	0	1,635	1,100	2,200	2,400	2,500	0
Total	9,835	0	0	9,835	385	1,250	1,100	2,200	2,400	2,500	0

DESCRIPTION

This project provides for completing preliminary engineering, to 35% plans ^{and initial land acquisition} for one new road, one relocated road, improvements to three existing roads, and one new bikeway in the White Flint District area for Stage 1. Various improvements to the roads will include new traffic lanes, shared-use paths, the undergrounding of overhead utility lines, other utility relocations and streetscaping.

The proposed projects are as follows:

- o Main Street/Market Street (B-10) - Old Georgetown Road (MD187) to Executive Boulevard Extended - New 2 lane 700 foot roadway.
- o Executive Boulevard Extended (B-15) - Marinelli Road to Old Georgetown Road (MD187) - Reconstruct 900 feet of 4 lane roadway.
- o Old Georgetown Road (MD187) (M-4) - From Nicholson Lane/Tilden Lane to Executive Boulevard - Reconstruct 1,600 feet of 6 lane roadway.
- o Hoya Street (formerly 'Old' Old Georgetown Road) (M-4A) - From Executive Boulevard to Montrose Parkway - Reconstruct 1,100 feet of 4 lane roadway.
- o Rockville Pike (MD355) (M-6) - Flanders Avenue to Hubbard Drive - Reconstruct 6,300 feet of 6-8 lane roadway.
- o Main Street/Market Street (LB-1) - Old Georgetown Road (MD187) to Executive Boulevard Extended - Construct ⁷⁰⁰ 3,250 feet of bikeway.

The proposed projects will be White Flint Development Tax District funded and are located primarily in the western side of the White Flint Development District. All the roadway segments except for the Rockville Pike are specified for completion in Stage 1 of the White Flint Sector Plan and will be designed in FY11-13 with land acquisitions in FY13. The Rockville Pike segment will be designed in FY14-16 with land acquisitions in FY15-16. The Rockville Pike segment will be constructed during Stage 3 of the Sector Plan.

This project also provides for consulting fees for the analysis and studies necessary to implement the district, which are programmed in the "Other" cost element.

ESTIMATED SCHEDULE

Design is expected to commence on all projects except the Rockville Pike section in the Spring of 2011(FY11) and to conclude in the Spring of 2013 (FY13). Some property acquisition may occur in 2012-13 (FY13). Design on the Rockville Pike section will begin in the Fall of 2013 (FY14) and be complete in the Spring of 2016 (FY16). Some property acquisition may occur on this section in 2015 (FY15) and 2016 (FY16).

JUSTIFICATION

The vision for the White Flint District is for a more urban core with a walkable street grid, sidewalks, bikeways, trails, paths, public use space, parks and recreational facilities, mixed-use development, and enhanced streetscape to improve the areas for pedestrian circulation and transit oriented development around the Metro station. These road improvements, along with other District roads proposed to be constructed to be funded and constructed by developers will fulfill the strategic program plan for a more effective and efficient transportation system. The proposed improvements are in conformance with the White Flint Sector Plan Resolution 16-1300 adopted March 23, 2010.

FISCAL NOTE

The funding source for these projects will be White Flint Development District Tax revenues and related bond issues. Debt service on the bond issues will be paid solely from White Flint Development District revenues.

The advanced funds (Current Revenue: General) in FY11 will be repaid by White Flint Development District Tax funding sources in FY12.

The project cost estimates are based on FY10 costs and exclude escalation factors. Final construction costs will be determined after the preliminary

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP
Date First Appropriation FY11 (\$000)	M-NCPPC, White Flint Sector Plan	See Map on Next Page
First Cost Estimate	WMATA	
Current Scope FY11 9,835	City of Rockville	
Last FY's Cost Estimate 0	MSHA	
Appropriation Request FY11 0	Town of Garrett Park	
Appropriation Request Est. FY12 1,750	Neighborhood Civic Associations	
Supplemental Appropriation Request 385	Developers	
Transfer 0		
Cumulative Appropriation 0		
Expenditures / Encumbrances 0		
Unencumbered Balance 0		
Partial Closeout Thru FY08 0		
New Partial Closeout FY09 0		
Total Partial Closeout 0		

White Flint District West: Transportation -- No. 501116 (continued)

engineering phase. The total project cost for Stage 1 west-side White Flint Development Tax District -funded projects is anticipated to approximate \$59 million.

The total project cost for White Flint Development Tax District-funded projects planned for Stages 1, 2, and 3 of the White Flint Sector Plan are estimated at \$206 million

OTHER DISCLOSURES

- A pedestrian impact analysis has been completed for this project.