MCPB
Item #
10/21/10

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

October 13, 2010

MEMORANDUM

TO: Montgomery County Planning Board

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

FROM: Jacob Sesker, Planner Coordinator (301.495.650-5619) JS
Vision/Community-Based Planning Division

SUBJECT: Update on White Flint Financing Legislation

The White Flint Sector Plan contains staging triggers that must be met before new approvals can be granted by the Planning Board for projects within the White Flint Sector Plan area. One such phasing trigger is that a financing tool must be in place within six months from the adoption of the Sectional Map Amendment. In essence, if a financing mechanism is not in place in January of 2011 then no new development can be approved.

On September 27, 2010 the County Executive submitted a proposal to the County Council. That proposal was introduced as legislation on October 5, 2010. A briefing will be held on October 19, and a public hearing will be held on October 26. Following the public hearing, the legislation will be discussed by a joint committee (PHED/MFP).

The Executive's proposal (see Attachment A) is to create a special tax district. While the proposal is called a "development tax district" it is not a Chapter 14 "development district." It is an ad valorem property tax to be charged to all properties within the Sector Plan area, excluding a limited universe of existing residential properties.

The Executive's accompanying memorandum (see page circle 15 of attachment) addresses seven concerns raised by stakeholders:

1) The tax revenues should be spent only within the Sector Plan area.
2) The tax revenues should be spent only for a defined list of infrastructure projects (the so-called "district bucket").
3) The tax will be collected for a finite period of time and will expire when sufficient revenues have been raised for all of the infrastructure items on the list.
4) There is no upper limit set on the tax rate in the legislation that is proposed, but the Executive recommended a policy statement in the resolution that the rate should not exceed 10 percent above the current property tax rate.

5) The boundaries of the district have been set to exclude existing residential properties.
6) The transportation impact tax will continue to be collected within the Sector Plan area. This recommendation is opposed by many stakeholders.
7) The County will not commit to fund/close any financing gaps. This recommendation, like the previous one, is opposed by many stakeholders.

While the Executive's proposed financing mechanism is different from that recommended by the Planning Board, Planning staff sees merit in most of the individual recommendations. However, taken as a whole, the Executive's proposal fails to address how a relatively modest stream of revenue will secure bonds to pay for large infrastructure projects in a timely manner.

Finally, circle page 16 of the attached Executive's memo states that Planning staff, private sector stakeholders, and officials from both the County's Department of Transportation and Department of General Services walked the streets of the Sector Plan area taking pictures of and observing the state of the existing streetscapes. The Executive's memo further states, "This collaborative effort resulted in conclusions that some roads are satisfactorily completed for that purpose and the costs could therefore be removed from the development tax district."

To be clear, this collaborative effort did not result in Planning staff recommending that future Planning Boards be bound to find the streetscape improvements to be sufficient at some undetermined date in the future. Rather, as a result of that walk it was determined that the magnitude of the streetscape costs would likely be lower than previous estimates. The Executive has recommended removing this one item, which is a phasing trigger, from the list of improvements to be funded by the special tax. If a future Planning Board should find that the streetscapes are not sufficiently improved to satisfy the phasing trigger in the Plan, then that future Planning Board is still free to make such a determination. What the Executive has recommended is that in that case, the funds for any required improvements would not come from the special tax.

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Attachment: Attachment A – County Executive Proposal to the County Council
(http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=6&clip_id=536&meta_id=11820)

ATTACHMENT A

Agenda Item 8
October 5, 2010
Introduction

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 50-10, Special Taxing District – White Flint - Creation

Bill 50-10, Special Taxing District – White Flint - Creation, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on October 5, 2010. A public hearing is tentatively scheduled for October 26 at 7:30 p.m.

Bill 50-10 would establish a White Flint Special Taxing District. The Bill would also authorize the levy of an ad valorem property tax to fund transportation infrastructure improvements that are specified in an implementing resolution (see Item 4H today) and authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements. The Executive's detailed memo on ©11-17 explains the background of and reasons for the proposals in this Bill and the related resolution and appropriation request (see Item 4G today).

Council staff added more general language to the Bill's long title (purpose clause) to give the Council added leeway to restructure the financing mechanism or otherwise amend the Bill as it sees necessary.

A letter to the Council from the White Flint Partnership (see ©21) raised questions about some policy decisions that are incorporated in the Executive's proposal.

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Bill No. 50-10
Concerning: Special Taxing District - White Flint - Creation
Revised: 10-1-10 Draft No. 2
Introduced: October 5, 2010
Expires: April 5, 2012
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

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

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

Sec 1. Chapter 68C is added as follows:

Chapter 68C. White Flint Special Taxing District.

68C-1. Definitions.

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

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

Cost means the cost of:

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

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

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

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

(5) architectural, engineering, financial, and legal services related to providing a transportation infrastructure improvement for the District;

(6) any plan, specification, study, survey, or estimate of costs and revenues related to providing a transportation infrastructure improvement for the District;

(7) any administrative expense incurred by the County necessary or incident to determining whether to finance or implement a transportation infrastructure improvement for the District; and

(8) any other expense incurred by the County necessary or incident to building, acquiring, or financing a transportation infrastructure improvement for the District.

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

Transportation infrastructure improvement means:

(1) the construction, rehabilitation, or reconstruction of a road, street, or highway that serves the District, including any:

(A) right–of–way;

(B) roadway surface;

(C) roadway subgrade or shoulder;

(D) median divider;

(E) drainage facility or structure, including any related stormwater management facility or structure;

(F) roadway cut or fill;

(G) guardrail;

(H) bridge;

(I) highway grade separation structure;

(J) tunnel;

(K) overpass, underpass, or interchange;

(L) entrance plaza, approach, or other structure that is an integral part of a street, road, or highway;

(M) bicycle or walking path;

(N) designated bus lane;

(O) sidewalk or pedestrian plaza;

(P) streetscaping and related infrastructure; including placing utilities underground; and

(Q) other property acquired to construct, operate, or use a road, street, or highway; and

(2) a transit facility that serves the needs of the District, including any:

(A) track;

(B) right-of-way;

(C) bridge;

(D) tunnel;

(E) subway;

(F) rolling stock;

(G) station or terminal;

(H) parking area;

(I) related equipment, fixture, building, structure, or other real or personal property; and

(J) service intended for use in connection with the operation of a transit facility, including rail, bus, motor vehicle, or other mode of transportation.

68C-2. Creation; Boundaries.

(a) The White Flint Special Taxing District is coterminous with the approved and adopted White Flint Sector Plan area.

(b) The following properties, identified by street address, are not included in the District: 11700 Old Georgetown Road, 11701 Old Georgetown Road, 11750 Old Georgetown Road, 11800 Old Georgetown Road, 11801 Rockville Pike, 5800 Nicholson Lane, 5802 Nicholson Lane, 5809 Nicholson Lane, 5440 Marinelli Road, 5503 Edson Lane, 5505 Edson Lane, 5507 Edson Lane, 5509 Edson Lane, 11201 Woodglen Drive, 11203 Woodglen Drive, 11205 Woodglen Drive, 11207 Woodglen Drive, 11209 Woodglen Drive, 11200-11219 Edson Park Place, 11222 Edson Park Place, 11224 Edson Park Place, 11226 Edson Park Place, 11228 Edson Park Place, 11230 Edson Park Place, 11232 Edson Park Place, 11234 Edson Park Place, 11236 Edson Park Place, 11238 Edson Park Place, and 11240 Edson Park Place.

68C-3. Levy of Tax; Limits.

(a) Each tax year the County Council may levy against all the assessable real and personal property in the District a sum on each $100 of assessable property that does not exceed an amount sufficient to cover the costs of transportation infrastructure improvements that have been identified in a Council resolution approved under Section 68C-4.

(b) Under Section 9-1302 of Article 24, Maryland Code, the limit in Charter Section 305 on levies of ad valorem taxes on real property to finance County budgets does not apply to revenue from any tax imposed under this Chapter.

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

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

68C-4. Transportation Infrastructure Improvement Resolution.

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

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

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

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

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

(1) a list of recommended transportation infrastructure improvements to be entirely or partly paid for by a tax imposed under Section 68C-3;

(2) the estimated cost, including a contingency amount, for each listed improvement; and

(3) an estimated tax rate for each tax to be imposed under Section 68C-3.

68C-5. District Fund.

(a) The Director of Finance must establish a separate fund for the proceeds collected from any tax imposed under this Chapter. The proceeds of any tax imposed under this Chapter must be pledged to and paid into this fund.

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

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

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

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

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

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

68C-6. Issuing Bonds.

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

(b) Each resolution under this Section must:

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

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

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

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

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

(3) how and on what terms the bonds must be sold;

(4) how, when, and where principal of, and interest on, the bonds must be paid;

(5) when the bonds may be executed, issued, and delivered;

(6) the form and tenor of the bonds, and the denominations in which the bonds may be issued;

(7) how any or all of the bonds may be called for redemption before their stated maturity dates;

(8) the nature and size of any debt service reserve fund;

(9) the pledge of other assets in and revenues from the District to pay the principal of and interest on the bonds;

(10) any bond insurance or any other financial guaranty or credit or liquidity enhancement of the bonds; and

(11) any other provision consistent with law that is necessary or desirable to finance any transportation infrastructure improvement that has been identified in a Council resolution approved under Section 68C-4.

(d) (1) The County covenants to levy ad valorem taxes against all assessable real and personal property in the District at a rate and amount sufficient in each year when any bonds are outstanding to:

(A) provide for the payment of the principal of, interest on, and redemption premium if any, on the bonds;

(B) replenish any debt service reserve fund established with respect to the bonds; and

(C) provide for any other purpose related to the ongoing expenses of and security for the bonds.

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

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

(f) The bonds issued under this Chapter:

(1) are special obligations of the County and do not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or the County's general taxing power;

(2) may be sold in any manner, either at public or private sale, and on terms as the Executive approves;

(3) are not subject to Sections 10 and 11 of Article 31, Maryland Code; and

(4) must be treated as securities to the same extent as bonds issued under Section 9-1301 of Article 24, Maryland Code.

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

(h) The bonds must be payable from the fund required under Section 68C-5 and any other asset or revenue of the District pledged toward their payment. When any bond is outstanding, the monies in the fund are pledged to pay the costs of any transportation infrastructure improvement funded entirely or partly by the proceeds of the bonds, including the costs of issuing the bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds. In addition to ad valorem taxes, the bonds may be secured by any other asset in or revenue generated in the District.

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

68C-7. Expiration of district.

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

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 SEP 28 PM 12: 20

September 27, 2010

TO: Nancy Floreen, President, County Council

FROM: Isiah Leggett, County Executive

SUBJECT: White Flint Development Tax District:
Legislation; Legislative Report Form; Fiscal Impact Analysis
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

I am pleased to transmit for introduction a package of legislative items necessary for the County to commence implementation of the transformational White Flint Sector Plan. This sector plan, a model for smart growth, will be a platform for exciting new redevelopments that will make the White Flint area more pedestrian and bicycle friendly as well as inviting for residents and businesses.

Enclosed for introduction is legislation creating the new White Flint Development Tax District which will implement the financing vehicle envisioned by the recently adopted White Flint Sector Plan. If implemented this district will help fund some of the extensive public infrastructure called for in the Sector Plan. A resolution accompanies the draft legislation. The resolution identifies the specific list of transportation infrastructure to be funded by the White Flint Development Tax District and includes a district funding and rate setting policy statement.

With the legislation and the resolution, I am transmitting an amendment to the FY11-16 Capital Improvements Program and a supplemental appropriation in the amount of $385,000 to the FY 11 Capital Budget for the new White Flint District West: Transportation project (No. 501116) to enable design to begin on infrastructure to be paid for from White Flint Development Tax District funds. This work is critically important to refine the assumptions relative to the district for roadway improvements in the first stage of the recently approved White Flint Sector Plan. This project is needed to accelerate the preliminary engineering for one new, one relocated and three existing roads, and one new bikeway, so that more accurate designs and cost estimates can be established. Funds to pay for 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 long term 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 road and bikeway improvements will greatly aid and expedite the planned development for the area.

Other specific Capital Improvements Projects for development district infrastructure will be transmitted with the FY12 amendments in January. To address transportation impact taxes in White Flint, I intend to send a second bill to the Council that will modify the transportation impact tax as it relates to the White Flint Sector Plan Area. The modifications that I will be recommending are to retain the 50 percent metro station policy area rate that applies throughout the district, but require that the tax be applied only for infrastructure within or related to the development within the White Flint Sector Plan. This would include intersections identified through the comprehensive local area transportation review that require improvement due to development within the district. I believe that the opportunity to pay this tax over time rather than as a lump sum payment up front should be available provided that property owners who are benefitting provide a first lien to the County.

The packet that is transmitted with this memorandum reflects many months of meeting with stakeholders and interested parties. Executive staff has held a series of meetings with developer and resident stakeholders, along with Planning Board and County Council staff, to develop the list of improvements that will be funded by the special district tax and the key elements of the district enabling legislation. While the attached draft legislation does not necessarily reflect a consensus of the stakeholders, it does reflect significant input from *all* of the interests represented.

To assist the Council in its deliberations and to facilitate the public discussion regarding this package, I am providing the Council with some of the key considerations that went into the funding plan that is reflected in the attached package.

<u>The Special Tax District</u>

One of the underpinnings of the White Flint Sector Plan is that there be a new funding mechanism to pay for some of the significant transportation infrastructure that is called for in the plan, including the creation of workarounds, street grids, streetscaping and bike lanes. With the limitations of Charter Section 305, it is important that the new tax be structured so that it does not use up fiscal capacity within that limitation and thus preclude the availability of these funds for other important projects in the County.

The development tax district is simple, straightforward and can be easily implemented – all important considerations for the timely realization of the redevelopment of White Flint. The development tax district also provides for certainty of revenues and spreads the burden equally over the entire plan area – except for existing residential which is to be outside of the district. The legislation, which is to be adopted under recently enacted Senate Bill 828, gives bond counsel, and the bond market greater certainty in the County's authority to implement the district and impose an ad valorem tax on all properties except for existing developed residential. In addition, under this special authority, the bonds can be issued as special obligation bonds, the debt service of which will not compete for capacity with other County debt. The development district tax is intended to be implemented in time for the FY12 tax bill.

The development district tax provides substantial benefits to property owners within the plan area while protecting the County taxpayer from the greater fiscal burden. The County has historically required that development pay for itself. With development density doubling throughout the sector plan area, the special tax district provides a means of assessing properties to ensure the government's lower rate of financing for infrastructure that would historically have been required of developers to meet transportation capacity requirements. The County's financing rates are less than rates that the private sector could obtain. In addition to the near doubling of development density, the *quid pro quo* for this additional tax is that properties that are being redeveloped will not be required to go through the transportation capacity reviews that are generally required to satisfy adequate public facilities review. With the steady flow of tax revenues, there is better certainty that the district roads will be built rather than relying on piecemeal development to drive the delivery of needed improvements and capacity. This certainty benefits the property owners as well as the residents and businesses of Montgomery County who must navigate the area. Another benefit of the special district tax is that it is simply fairer. The entire sector plan area picks up the expenses rather than those that are first-in with a development application being charged disproportionately.

Other tax mechanisms were considered but all in all, for the certainty, reliability, ease of implementation and fairness, the special tax district is the better way to go for the White Flint Sector Plan area. Some of the other revenue raising mechanisms that were evaluated but rejected in favor of the recommended funding plan included:

Tax Increment Financing (TIF). This was an approach that had been initially suggested by some in the development community and was discussed by Planning Board staff. This mechanism has been rejected for a number of reasons. As a funding source it has issues of reliability, constraints on fiscal management and equity concerns. Tax increment financing pledges increases in tax revenues to pay for infrastructure. As evidenced by recent history, the development cycle and reliability of projections can be difficult to predict and sometimes wrong. TIFs are dependent upon development moving forward on a predictable schedule. If redevelopment does not occur, the remainder of the County – and in this case the general fund – would have to pick up the fiscal obligations of the debt. This particular funding approach is more typically used in blighted areas and is better suited to large tracts of land that will be redeveloped rather than piecemeal property ownerships reflected in the White Flint Sector Plan area. The lack of assurance of a critical mass of redevelopment occurring is challenging for the issuance of debt, particularly in the context of the sector plan where improvements and capacity are critical to the implementation and staging of the plan.

It is also worth pointing out that a TIF would use tax revenues that are subject to Charter Section 305 limits and would therefore force the funding for these roads to compete with schools, libraries, fire stations, community centers, etc. throughout the County. A TIF also raises fundamental equity issues. Developers would be paying increased taxes based on increases in assessments if they redevelop. They would not be paying for infrastructure as has been historically and is currently required throughout the County. This would be a departure from the general and longstanding policy that development must pay for itself. While the rest of the county would bear the overall total expenses from redevelopment and the risk of carrying up to the full load of that funding if development did not take place as represented, there would be little risk to the development community and their revenues would be pledged to bettering White Flint only, rather than other areas of the County. Further, the County would lose significant flexibility as it manages through difficult fiscal years. Pledging revenues right off the top, while retaining the burden of providing the infrastructure is ill-advised, particularly given recent experiences with our economy.

Some within the development community have proposed *both* a TIF and a special tax district with the special tax district being a back up only if the taxable base for the TIF fails to increase as projected when the debt is issued. For a number of reasons, such an approach is unworkable and impractical and will create financial uncertainty. Implicit in the suggestion is the fact that the TIF is in itself risky. The district tax would by necessity have to be higher up front because it would be bailing out a failed TIF pursuant to which debt had already been incurred. This would be a significant hardship for the residents and businesses that moved to White Flint under the expectation of a TIF only and then find themselves facing a district tax that would need to be set high enough to bail out the failed TIF. The simplicity of the straight development district tax that I am recommending is a far better approach as it can be set at the outset before new development proceeds in White Flint and revenues can begin to be generated before any debt is issued. It provides greater stability and certainty to the County taxpayer, the residents and property owners.

Special Assessments: This was rejected because under current law it is based upon front footage and would be an extremely inequitable way of funding the needed infrastructure.

Chapter 14 Development District: This form of district funding is more cumbersome and requires multiple council actions. It inherently has points following creation where controversy can arise and create uncertainty. It is dependent upon the votes of participants and by design would capture less than the entire district, reducing the equity of the district and increasing the likelihood of the rate increasing to ensure the revenues to be generated. In sum, it would be more difficult to put in place, and is better suited to large tracts of land that will be redeveloped rather than piecemeal property ownerships reflected in the White Flint Sector Plan area. It will also be significantly more time consuming to implement, calling into question timelines that are assumed or necessary to begin implementation of the White Flint Sector Plan. History calls into question whether the district would ever be realized.

Excise Tax: Excise taxes were also evaluated. It was concluded that an excise tax would be more difficult to implement as the targeted stakeholders may have concerns about fairness of taxation and the bond markets would need to understand the nuances of a newly developed excise tax. Additionally, the taxing of an activity that would occur in other locations within the County could generate interest and concerns on the part of similar enterprises. The County's recent experience with a proposed tax on surface parking lots illustrates the concern.

Issues Discussed

Seven primary areas of concerns were raised by the stakeholders in worksessions: 1) the tax is to be spent only in the White Flint Sector Plan area; 2) the tax is to be for a defined list of infrastructure; 3) the period of time during which the tax is to be collected is to be finite; 4) the tax should not exceed 10 percent of the current rate; 5) existing residential should not be charged; 6) the tax should replace transportation impact taxes; and 7) if the tax is insufficient to fund all of the infrastructure in the list during any stage of the plan, the County should commit to funding the difference.

I am not recommending everything that was raised by all of the stakeholders; I am however recommending much of what was raised. I very much appreciate the commitment, level of effort, and forthright and informed discussions and support provided by developers, residents, and staffs of the Planning Board, the Council and the Executive Branch throughout the stakeholder worksessions over the spring and summer. These efforts have resulted in a funding plan that can be readily implemented and have helped to focus the issues that will likely be raised for discussion at the County Council.

The bill that I am sending to you requires that the tax be spent only in the White Flint Sector Plan and only for the list of infrastructure in the accompanying resolution. It is also for a finite period of time and will expire when sufficient revenues have been raised to pay for all of the infrastructure items on the list. The boundaries of the district have been set to exclude existing residential properties. I am not recommending a cap on the tax rate in the bill, but I have recommended a stated policy in the resolution that the tax rate should not exceed 10 percent of the total tax rate not including the development tax. The reason I have not included a cap in the legislation is that I am concerned that doing so will result in a less favorable rating on any bonds that are issued, which in turn would result in a higher interest rate on the bonds. This would make the infrastructure more expensive to the tax payers. I believe that concerns over the level of the tax rate can be addressed through the implementation process and adherence to a 10 percent policy goal.

The two areas I am not prepared to recommend at this time are that the transportation impact tax not apply and that the County commit to fund any gap if the district revenues are not adequate to cover the projected costs for the development tax district infrastructure. The cost projections that are identified for the district infrastructure are estimates. The County's estimates and the White Flint Partnership's (a group of White Flint developers) are fairly consistent, and both include many assumptions which if not borne out will result in changes to the projected costs for the infrastructure. One key area where this can occur is in the area of the costs of right-of-way for the many roads provided for in the plan. These roads carve through properties and the White Flint Sector Plan is predicated on an optimistic assumption that the grid of roads as they cut through properties will result in new blocks of properties that can serve as the basis for exchanges of lands.

It is also assumed that there will be extensive dedications of rights-of-way for these roads. If these assumptions are wrong, the risk of potential gaps in cost versus revenue generation will be greatly increase and the County could be at risk for a substantial sum of money. Likewise, these assumptions reflect current construction prices, which may be more favorable than in a recovered economy. Another area that impacts costs is how the Planning Board views the state of some of the existing roads. As part of the stakeholder worksessions Planning Board staff, a representative of the White Flint Partnership and representatives from the Department of Transportation and the Department of General Services walked some of the existing Sector Plan roads to get a sense of what is needed to complete streetscaping along these roads for purposes of authorizing moving from one stage of the plan to the next. This collaborative effort resulted in conclusions that some roads are satisfactorily completed for that purpose and the costs could therefore be removed from the development tax district.

Significant staff and stakeholder effort was spent developing an understanding of the above described assumptions and any potential gap between the costs of the infrastructure and the revenues projected to be generated by the district. It has been suggested that the County commit up front to cover any "gap." Among other problems, this request is for an as yet undefined amount of money in an as yet undefined CIP budget. I cannot commit an undisclosed amount of money for future years, nor can the Council. I also believe that it would be ill advised to commit to fund an amount of money that may or may not be needed – particularly given the many important needs throughout the County that must compete for that same money.

As for the transportation impact tax, I weigh the fact that development density in the White Flint Sector Plan area was just doubled or nearly doubled for a majority of properties; that development is relieved of the need for transportation capacity review; and that the entire plan area is a Metro station policy area which translates into an already reduced rate of 50 percent of the transportation impact tax rate. I believe that, at least at this point in time, it would be imprudent to recommend elimination of the tax. However, I am recommending that those tax revenues be committed to being spent within the White Flint Sector Plan area or for improvements needed due to the increased development recently authorized for this area. I recognize that we are in the throes of – and hopefully emerging from – a significant recession and that the private financing realm will be different – particularly at the outset. Therefore, I do think that it makes sense to allow developers the opportunity to pay the tax over a period of time (perhaps 10 years to get to project stabilization) if they are able to provide the County with a first lien to assure the payment of the deferred transportation impact tax.

I recommend that the County Council approve the legislation, resolution and amendment to the FY11-16 Capital Improvements Program and special appropriation in the amount of $385,000 and specify the source of funds as Current Revenue General with repayment in FY12 from White Flint Development District tax funds. These efforts will allow us to implement the White Flint Sector Plan which, as I mentioned at the outset, will be transformational, smart growth of which we can all be extremely proud.

I appreciate your prompt consideration of these actions.

IL:ad

Attachments: Legislation to create the White Flint Development Tax; Infrastructure and Policy Resolution; Amendment to the FY11-16 Capital Improvements Program and Special Appropriation #4-E11-CMCG-3; Fiscal Impact Analysis

cc: Jennifer Barrett, Director, Department of Finance
Joe Beach, Director, Department of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
Mike Faden, Senior Legislative Attorney, County Council
Marc Hansen, Acting County Attorney
Ken Hartman, Director, BCC Regional Service Center
Art Holmes, Director, Department of Transportation
Diane Schwartz Jones, Assistant Chief Administrative Officer

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 27, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Bill XX-10, White Flint Development, Tax District - Creation

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Bill would establish the White Flint Development Tax District by adding Chapter 68C, Sections 68C-1 – 68C-6 to the Montgomery County Code. The bill would authorize the levy of an ad valorem property tax to fund certain transportation infrastructure improvements; authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements; and generally provide for a White Flint Development Tax District.

FISCAL SUMMARY

The legislation would allow the County Council to levy a property tax against all assessable real and personal property in the Tax District. The tax imposed as a result of this bill would be used to cover the costs of transportation infrastructure improvements identified by Council resolution that lists each transportation infrastructure improvement, its estimated cost, and estimated completion date.

The transportation infrastructure improvements in the White Flint Development District will support the White Flint Sector Plan development. The proposed White Flint Sector Plan area covers approximately 430 acres located approximately ¾ mile around the White Flint metro station. Upon completion, the Sector Plan contemplates 14,341 residential units and approximately thirteen million square feet of commercial space. Redeveloped and proposed new commercial development is projected to include office, retail, industrial and hotel uses. Fiscal and economic impact projections of the Sector Plan are contained in a study prepared by MuniCap, Inc. in October 2009. In that study, the net projected 40 year cumulative County surplus of the White Flint Sector Plan is $6,857 million, while the private development grows from about $2 billion today, to about $29 billion in 2050.

Projected Net Surplus – 40 year cumulative total	$ millions
Revenues	$9,871
County Public Services	1,261
Montgomery County Public Schools	1,224
Total Expenditures	2,485
Net Montgomery County Revenues	7,386
Capital Costs	529
Net Montgomery County Surplus	$6,857

This bill allows the County to begin the implementation of the White Flint Sector Plan by establishing a new special tax to fund approximately $200 million in transportation improvements (in 2010 dollars) that are necessary to serve the transportation needs of that area of the County over the next few decades. The next two tables show the direct impact of the enactment of the special tax authorized by the subject legislation ($208 million) and the impact on the County's CIP program ($378.1 million) funded by general obligation bond and other County resources. These are order-of-magnitude, FY10 estimated capital costs which have not been inflated and need to be further refined.

WHITE FLINT DEVELOPMENT TAX DISTRICT
DISTRICT FUNDED IMPROVEMENTS
(Direct Impact of the Legislation)

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) (25% of project)	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	64,261,000
Nicholson Lane: Old Georgetown Rd. (MD 187) to CSX tracks	12,942,000
Nebel Street: Nicholson La. To Randolph Rd.	9,200,000
Executive Blvd. Ext.: Marinelli Rd. to Old Georgetown Rd (MD 187)	13,500,000
Second Entrance to Metro	35,000,000
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
Main Street Bridge	2,000,000
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	208,017,000

WHITE FLINT SECTOR PLAN
COUNTY FUNDED CIP PROJECTS

Improvement Description	Estimated Cost
Marinelli Rd.: Citadel Ave. to Wentworth Pl.	$2,200,000
Randolph Rd.: Nebel St. to CSX Tracks	5,043,000
Montrose Pkwy. Phase 2 (MD 355 Interchange): Chapman Ave. to Parklawn Dr.	72,156,000
Nebel St.Extended (North): Randolph Rd. to Plan Area Boundary	13,931,000
Chapman Ave. (Citadel/Maple): Old Georgetown Rd. (MD 187) to Plan Area Boundary	27,075,000
Montgomery Aquatic Center (MAC) Expansion	19,104,000
Fire Station with Police Substation and Urban District Office	29,960,000
Bus Depot	130,530,000
Civic Green	11,390,000
Elementary School	20,000,000
Recreation Center at Wall Park	37,420,000
Old Georgetown Road (MD 187): Hoya St. to Rockville Pike (MD 355) (25% of project)	1,925,000
Nicholson La: Old Georgetown Rd. (MD 187) to CSX Tracks	7,344,000
CLATR Intersections Outside of District	TBD
TOTAL	$378,078,000

The scope of the White Flint Sector Plan has required more analytical resources than are currently available in the Executive Branch. In order to perform the in-depth analysis required by the Plan, the Executive contracted with one of its financial advisors to perform the Fiscal Impact Analysis of the Plan, and to provide preliminary financial analyses of the special taxing district that would be implemented under this bill. In FY11, the Executive expects that these analyses and studies necessary to implement the district will approximate at least $35,000. These funds have been recommended in an amendment to the FY11-16 Capital Improvements Program and special appropriation to the FY11 Capital Budget for the new White Flint District West: Transportation project number 501116. This amount does not include the many hours that Executive staff have spent on complementary fiscal, financial and tax analysis and outreach to interested parties in the White Flint Sector Plan area.

The following contributed to and concurred with this analysis: Alex Espinosa and John Cuff, Office of Management and Budget; and David Platt and Mike Coveyou, Department of Finance.

JFB:jc

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Office of the County Executive
Jennifer Barrett, Director, Department of Finance
David Platt, Department of Finance
Alex Espinosa, Office of Management and Budget
John Cuff, Office of Management and Budget
Jacqueline Carter, Office of Management and Budget

THE WHITE FLINT PARTNERSHIP

September 24, 2010

Ms. Nancy Floreen, President
And Members of the Montgomery County Council
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: September 28, 2010 County Executive update on White Flint financing

Dear President Floreen and Members of the Montgomery County Council:

The members of the White Flint Partnership have negotiated in good faith with the County Executive for the past six months and have reviewed the latest draft of the proposed White Flint district legislation. Unfortunately, if the draft legislation in its form submitted to us by County Executive Staff is approved by the County Council, White Flint's redevelopment in all likelihood will not happen. Three of the four core issues, which the private sector raised at the beginning of this process two years ago, have not been addressed by the Executive's draft legislation; resulting in a financing plan that is not economically feasible or acceptable to the community.

The White Flint Sector Plan is an unprecedented opportunity for the County. Eleven property owners control almost all of the developable land within the Sector Plan, which means that if implemented correctly, White Flint could be one of the most user friendly new communities in the country, with increased mobility and built in sustainability. Even more important to the County is that seven of these eleven property owners are local Montgomery County based companies. We live in this community and we care about the future of our County. Below is a description of the core issues of concern to the business community, and suggestions for how these issues can be resolved.

1. **THE CASE FOR WHITE FLINT:** The County Executive's own economic analysis projects that White Flint will produce $7 Billion in net new tax surplus and over 30,000 jobs for the County with minimal up front County investment. To afford to pay for the costs of other needed economic development in areas such as Wheaton and the Route 29 corridor, the County should view White Flint as a funding source rather than a liability. Just as Bethesda was the economic engine that enabled the County to redevelop Silver Spring in the 80's and 90's, White Flint is where the revenue will come from to pay for other County priorities.

   Secondly, White Flint is already part of a large Science Triangle that exists in the County today. The Triangle stretches from NIH and Bethesda Naval Medical Hospital, through White Flint and Twinbrook, and then northwest to West Gaithersburg along Shady Grove Road. It turns easterly to White Oak, where FDA's presence is critical to the future of economic development in the Eastern County. White Flint and Twinbrook are already home to the Department of Health and Human Services, the Nuclear Regulatory Commission, and the largest percentage of NIH and FDA office space outside their main campuses. White Flint is a critical piece of the Science Triangle because of its proximity to Metro's Red Line, which will enable it to attract both non-taxpaying federal agencies and research tenants, as well as high tax paying private sector tenants. This Science Triangle can work symbiotically to be an incredible economic engine and job creator for the County, but it requires some upfront investment in infrastructure by the County, and a commitment from the County to see it through.

2. **TRIPLE TAXATION WILL NOT LEAD TO A NEW WHITE FLINT**: The business community has agreed to replace impact taxes with a 10% special assessment tax to fund the lion's share of infrastructure in White Flint. This special assessment is more than double the $50 million in impact taxes the County would ordinarily receive from the development community in White Flint. The County Executive now wants to charge both the special assessment, which is more than double the impact taxes we would ordinarily pay, and on top of this still collect impact taxes. The total of this crippling triple tax burden renders most new development in White Flint economically infeasible.

   The triple tax simply furthers the gap in the cost of doing business in Montgomery County as compared to Northern Virginia. There are several reasons why Hilton, Northrop Grumman, SAIC, Volkswagen, and most recently VeriSign have all chosen Northern Virginia over Montgomery County for their headquarters in the past 2 years, but at least one major reason relates to the actual and perceived lack of competitiveness of Montgomery County's business climate versus Northern Virginia's. With the Silver Line of the Metro opening shortly in Fairfax County, the competition for jobs will grow even stronger. The entire region is looking to White Flint as the premier example of rebuilding our inner ring suburbs into vibrant places both economically and for the local community. If the County is unable to take advantage of eleven well capitalized locally based property owners who are willing to invest billions in the future of the County, and to leverage the investment in public infrastructure that all of the property owners in White Flint are offering to make, it will send another signal to the business community that Montgomery County is simply not open for business.

   RECOMMENDATION: As has always been discussed, the Special Tax Assessment must be in lieu of paying transportation impact fees. School impact taxes, of course, should continue to be paid.

3. **NO COUNTY INVESTMENT IN WHITE FLINT INFRASTRUCTURE:** The total cost of additional road and transportation infrastructure resulting from the recent White Flint Sector Plan approval is roughly $640 million. The business community has agreed to fund $400 million (developer bucket) of the $640 million (roughly 63%) directly as conditional requirements of individual site plan approvals. On top of this, the business community has offered to accept a 10% special tax in lieu of transportation impact fees in order to raise an additional $150 million[1] (private contribution to district bucket) over the next 30 years for a total of $550 million (roughly 86%) in privately funded new infrastructure. This leaves a gap of approximately $90 million in funding (public contribution to district bucket).

   (NOTE: In addition to the $640 million in transportation infrastructure costs discussed above, there is roughly $105 million (County Bucket) in public life safety and community amenities that are required as part of the Sector Plan. The County has agreed to fund these non transportation related costs which includes the police and fire station, the Civic Green, the renovation of Wall Park and the Aquatics Center, and a new community recreation facility. This brings the total capital cost of the plan to $745 million. If the County were to cover the $90 million gap in the district bucket as proposed by the White Flint Partnership plus the $105 million they have already agreed to fund as part of the county bucket, they would still only be paying for 26% of the capital costs necessary to make White Flint happen.)

   As expected, the $90 million gap is largest in phase 1, because it will take a number of years for new development to get started and to increase the assessed base of the property on which the tax is computed. Over time, the tax revenue will grow exponentially both from inflation on existing tax paying properties and from the assessment of newly added development within the taxing district. For two years, we have discussed the need for White Flint to have both private and public investment in order for infrastructure to generally keep pace with new development. The $90 million gap in funding is only a small fraction of the $7 billion net tax surplus that Montgomery County expects to earn in White Flint from new development alone. It is an investment in the future of the County, with a return on that investment that would be the envy of every jurisdiction in the country.

   Because there is a quantifiable gap in infrastructure funding, if the County does not invest in White Flint, the construction of needed infrastructure will be delayed. Ultimately, if White Flint is going to be successful, it needs to remain economically competitive. The property owners are offering to pay three times the impact taxes normally collected from development and offering to begin funding that amount in ADVANCE of development. In order for the public private

[1] $150 million represents an average of the County and the White Flint Partnership's estimates of the revenue that can be generated from the special tax.

partnership that we have talked about for the past two years to be successful, a partnership must in fact be formed. This requires both sides to make an investment and take the up front risk necessary to secure future opportunity.

The Executive will argue that revenue earned from the District after significant development takes place will be sufficient to pay for all the improvements contemplated. Therefore, we should impose the tax today and then proceed with those improvements in a decade when the revenues catch up. Unfortunately, beyond the basic concept that adding too much cost to future development will kill it before it gets started, this "wait until the revenue is raised" strategy is antithetical to the original concept of providing the infrastructure generally concurrently with new development. If this theory is implemented, the District will break down before it has a chance to start. Development will not occur with any rapidity, infrastructure will not be sufficient to support and encourage future growth, and the County will be left behind in the regional race for jobs and long term fiscal security.

RECOMMENDATION: The County should either invest alongside the development community in each phase, or move some infrastructure improvements to the County's bucket so that they can be funded as CIP projects. This would reduce the bucket of District infrastructure improvements to a level that could be adequately funded by the special tax.

4. **BUSINESS COMMUNITY HAS UNLIMITED RISK:** The final major concern to the business community is that the Executive's legislation allows for the tax rate to change on an annual basis (e.g. exceed 10%) in order to cover the full cost of the infrastructure in the district bucket. This leaves the business community's cost exposure completely up in the air over the life of the plan, and means that the County could simply increase the tax rate rather than invest in White Flint. We propose a reasonable 10% increase in ad valorum taxes as a special tax as the target for sizing the bond traunches, along with an agreement with the County to help fund any unprecedented shortfalls or funding gaps, particularly in Phase 1.

   RECOMMENDATION: Create a covenant that states that the bonds will be sized so that the tax rate should not exceed 10%. This will allow the legislation to be more flexible as is necessary for marketing the bonds. We agree that if assessments drop, the tax rate would have to rise in order to cover the debt payments in place; however, our concern is that the County should not issue bonds initially knowing that the tax rate for them will exceed 10%.

Thank you for your consideration.

Very truly yours,

The White Flint Partnership

Combined Properties
Federal Realty Investment Trust
Gables Residential
Lerner Enterprises
The Holladay Corporation
The JBG Companies
The Tower Companies