

**MEMORANDUM**

October 9, 2009

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney   
SUBJECT: Subdivision Regulation Amendment 09-02, Subdivision Approval – Conflict Resolution

SRA 09-02 would, in the opinion of Councilmember Floreen, establish a procedure in the subdivision process to resolve conflicts between departments and agencies in an efficient manner. On June 23, 2009 Subdivision Regulation Amendment (SRA) 09-02 was introduced at the request of Councilmember Floreen. The Council held a public hearing on July 28, 2009. The Committee held a worksession on ZTA 09-02 on September 21, 2009. At that worksession the Planning Board Chair and the Director of the Department of Transportation agreed to meet with building industry representatives (Frank Bossong, Bill Kominers, and Joe Davis) and other interested parties at their discretion to:

- 1) establish principles for improving conflict resolution in the development review process that may include a renewal of the lead agency concept;
- 2) review internal deadlines or other ideas to speed the review of projects; and
- 3) identify legislative impediments to a timely review of applications.

The Committee received a written statement from the Planning Board Chair and the Director of the Department of Transportation on October 8, 2009.

The Committee will review the statement and determine if future action is required.

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

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MONTGOMERY COUNTY  
COUNCIL

2009 OCT -8 AM 11:40

October 5, 2009

The Honorable Mike Knapp  
Chair, PHED Committee  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Mike:

At the PHED meeting held September 21, 2009, the committee asked for a written statement from the Chairman of the Planning Board and the Director of the Department of Transportation to address the Council's concern with the need for timely resolution of development-related conflicts. This document is intended to outline the Planning Board and the Executive Branch proposals for methods to improve the current Development Approval Process (DAP) and a procedure to promptly resolve conflicts between members of the Development Review Committee (DRC) and the Planning Board. Our proposals are outlined below.

As we both pointed out, there is an informal process in operation now that involves the Director of Planning Department and Directors from various Departments in the Executive branch in resolving conflicts between planning and executive departments. The Planning Department has also been working independently with stakeholders to streamline the development review process, which may result in amendments to the current review procedures and/or governing laws. We agree, however, that it would be desirable to adopt formal rules (and, where necessary, changes in law) that will govern the way that agency participants involved in the development review process respond to applications, interact and resolve differences.

We will form a working group consisting of key agency representatives and other stakeholders, and schedule the first meeting before the end of this month. Although we anticipate that the Work Group members will rely on their staffs and others to assist them in this process, it is important that the Work Group be limited in the number of participants to ensure a timely report to the Board, Executive and other agencies by the end of January 2010.

The work program should include at a minimum:

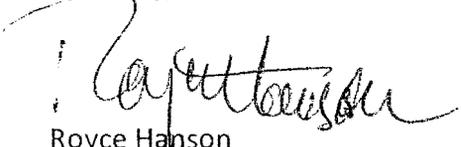
- Redefine and re-establish lead agency roles based on current agency structure. It is important to note that the roles of several lead agencies, as established in the 1992 DAP Implementation Report, have changed or evolved due to reorganization and are no longer relevant. For example, DPS did not exist at that time, and laws that have been enacted recently, e.g. the new Executive Regulations for Context Sensitive Road Design have assigned authority in different ways.

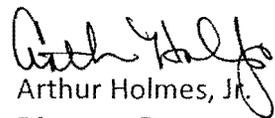
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- Analyze and recommend ways to reduce the delays caused by the need for conflict resolution.
  - Identify inherent conflicts among existing rules and regulations.
  - Establish a procedure which allows development applicants to solicit DRC review comments and context sensitive design priorities - in advance of submitting a formal preliminary plan.
  - Establish a policy that identifies ahead of time which rule or regulation will take precedence in certain standard reoccurring conflicts.
  - Consider re-establishment of realistic response deadlines after which an agency will be considered to have approved a project as submitted if no comments have been received.
- Develop a procedure for resolution of disagreements within and among agencies, , and between applicants and an agency. This procedure must:
  - Require all critical recommendations to be made prior to action by the Planning Board (i.e., no issues may be left up in the air);
  - include specific timing mechanisms for a resolution to be reached so that plan review doesn't simply grind to a halt
- Analyze the current operation of the Development Review Committee to determine where improvements can be made.
  - A process to assure that information for review is complete before the meeting
  - Meeting schedule
  - Goal of the meeting – what should be accomplished?
  - Most appropriate agency representatives and their authority
  - Information required for review
  - Timelines for agency decision-making and applicant responses before and after the DRC meeting

We are confident that by bringing the appropriate parties together for a full discussion of the complexities and inherent conflicts involved in plan review that we can establish a process that will be less frustrating for everyone involved and should lead to better outcomes.

Sincerely,

  
 Royce Hanson  
 Chairman of the Planning Board

  
 Arthur Holmes, Jr.  
 Director, Department of Transportation

CC: Timothy Firestine  
 Carla Reid  
 Robert Hoyt

Rollin Stanley  
 Steven Silverman  
 Richard Bowers

Ordinance No.:  
Subdivision Regulation Amend. No.: 09-02  
Concerning: Subdivision Approval –  
Conflict Resolution  
Draft No. & Date: 3 - 6/19/09  
Introduced: June 23, 2009  
Public Hearing:  
Adopted:  
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Floreen

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An Amendment to the Subdivision Regulations to:

- (1) resolve certain conflicts between departments and agencies concerning the conditions of the approval of a preliminary subdivision plan; and,
- (2) generally revise the requirements for the approval of preliminary subdivision plan.

By amending:

Montgomery County Code  
Chapter 50, Subdivision of Land  
Section 50-35

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



27 after the Subdivision Review Committee meeting at which the  
 28 conflict arose, the Planning Director must submit the conflict  
 29 within 35 days after that Subdivision Review Committee meeting  
 30 to a meeting of the Directors of all County Departments which  
 31 are represented at the Subdivision Review Committee. The  
 32 meeting must include the Director of:

- 33 (A) each appropriate County Department;  
 34 (B) the Planning Department; and  
 35 (C) if necessary to resolve the conflict, the Washington  
 36 Suburban Sanitary Commission.

37 (4) The Planning staff must document each issue submitted to the  
 38 Department Directors in the record of the subdivision plan.

39 (5) The Department Directors must meet to resolve each conflict  
 40 within 30 days after the conflict was submitted to them.

41 (6) The Department Directors must resolve each conflict and must  
 42 report their resolution of the conflict to the Planning Board within  
 43 5 days after their meeting.

44 (7) The Planning Staff must distribute the Department Directors'  
 45 report to the parties of record within 2 days after the Board  
 46 receives the report.

47 (d) *Road grade and road profile.* Before the Board finally approves a  
 48 preliminary plan, the subdivider must furnish road, and pedestrian path  
 49 grades and a street profile approved in preliminary form by the County  
 50 Department of Transportation.

- 51 (e) *Wells and septic systems.* Before the Board approves a plan for lots  
 52 with individual wells or septic systems, the plan must be approved by  
 53 the Department of Permitting Services.
- 54 (f) [*Presentation of plan to*] *Board action.* Every preliminary plan must be  
 55 presented to the Board for its review and action at the earliest regular  
 56 meeting after the Planning staff has completed its study and is ready to  
 57 make its recommendation, but not later than the first regular meeting  
 58 which occurs after 60 days after the Planning staff accepted the  
 59 application as complete. Any extension of time granted for review by  
 60 other agencies or for resolution of a conflict by the relevant Department  
 61 Directors must be added to the 60 days. The Board must take one of the  
 62 following actions:
- 63 (1) Approve, if the plan conforms to the purposes and other  
 64 requirements of this Chapter.
- 65 (2) Approve, with any conditions or modifications necessary to bring  
 66 the proposed development into compliance with all applicable  
 67 requirements.
- 68 (A) If it approves a preliminary plan for a cluster or MPDU  
 69 optional method development, the Board may require that,  
 70 to resolve specific environmental or compatibility issues,  
 71 certain detached dwellings must not be included in an  
 72 application for a record plat until a site plan is approved  
 73 under Division 59-D-3, and as required in Sections 59-C-  
 74 1.521 and 59-C-1.63.
- 75 (B) Any modification of a road or grades must be approved by  
 76 the County Department of Transportation.

77 (C) If the Board approves a preliminary plan that involves a  
78 conflict which was resolved under subsection (c), the  
79 resolution of the conflict must be made a condition of  
80 approval and is binding on each participating department  
81 or agency.

82 (3) Disapprove, if contrary to the purposes and other requirements of  
83 these regulations. [, said] Any disapproval [to be by written  
84 notice to the applicant stating the reasons therefor] must specify  
85 each reason in writing and be sent to the applicant. The Board  
86 must not disapprove a plan because of any resolution of a conflict  
87 submitted to it under subsection (c).

88 [Following approval of] After the Board approves a preliminary plan  
89 [by the Board], [no] another agency [shall] must not require a  
90 substantial change in the plan[,] other than [those] a change which [may  
91 be] is required by [conditions] a condition of approval specified by the  
92 Board, [except upon amendment of] or as the Board later amends the  
93 plan[, approved by the Board,] or [under procedures for revocation of a  
94 plan as provided by] revokes its approval under subsection (i) [of this  
95 section, title, "revocation of approval."].

96 *Approved:*

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Isiah Leggett, County Executive Date

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

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Linda M. Lauer, Clerk of the Council Date