PHED COMMITTEE #1
November 19, 2009

MEMORANDUM

November 18, 2009

TO: Planning, Housing, and Economic Development Committee

FROM: Linda McMillan, Senior Legislative Analyst

SUBJECT: **Discussion:** Bill 13/38-07, Moderately Priced Dwelling Units (MPDU) – Amendments – Follow-up from Work Group Requested at September 14 PHED Committee session

The PHED Committee held a worksession on this bill on September 14^{th}. At that session, the Committee continued to discuss the major issues in the proposed legislation including, affordability pricing (for-sale units), alternative payment agreements for high-rise buildings (for-sale and rental), and alternative location agreements for high-rise buildings (for-sale and rental). The Committee heard from representatives from the building industry regarding their continued objections to affordability pricing and the amendment to the statement of policy which they believe moves the county away from a program where the cost of constructing a MPDU is covered by the sale price. Representatives from the building industry also opposed the staff proposed methods for calculating an alternative payment, which were based the payment or recovery of some percentage of the "affordability gap" or difference between the cost of the MPDU and a similar market-rate unit.

At the end of the session, the Committee asked DHCA to convene a work group with representatives from the building industry to see if a proposal "that works" could be brought back to the Committee before the Council's winter recess. Given the range of issues raised by representatives from the building industry at the PHED Committee session and their overall comments about the loss they incur building MPDUs, at the end of the session, Council staff specifically asked the Committee whether the minimum requirement for 12.5% MPDUs was something the Committee was interested in changing. The Committee responded that they were not looking at changing this part of the basic requirements.

The requested MPDU work group met on October 21^{st} and November 6^{th}. At these sessions both DHCA and the representatives from the building industry provided revised proposals and options for further discussion. **However, there is not consensus on any of the**

major policy areas. Representatives from the building industry are proposing a re-write of both the MPDU law and the Workforce Housing law which would change the minimum requirements for both programs. There is also a substantial difference in the amount that DHCA and Council staff believe appropriate for an alternative payment and the amount proposed in the package from the building industry. **DHCA, Council staff, and the representatives from the building industry are seeking additional policy guidance from the PHED Committee on these issues.**

Five documents are attached to this memo:	**Circle**
Nov. 4, 2009 memo from DHCA Director Nelson in preparation for Nov 6th work group meeting	1-9
Nov. 6, 2009 memo from Emily Vaias on behalf of MPDU work group building industry representatives in response to Nov 4th memo from Director Nelson	10-17
Nov. 16, 2009 memo to PHED Committee from MPDU work group building industry representatives summarizing work group sessions. (This memo has not yet been reviewed or responded to by DHCA. Attachments to the memo, which include a re-write of Chapter 25A are not provided in this packet.)	18-24
Oct. 12, 2009 memo from DHCA Director Nelson in preparation for the October 21st work group meeting	25-34
Oct. 15, 2009 memo from Emily Vaias on behalf of MPDU work group building industry representatives in response to Oct 12th memo from Director Nelson	35-37

Council staff suggests that the Committee discuss and provide guidance on the following issues/questions.

1. Should the work group only address amendments to the MPDU program or should Workforce Housing also be included in this discussion?

Bill 38/13-07 amends only the MPDU program and does not make any changes to the Workforce Housing program. The MPDU program provides units to households with an income of 70% or less of the area median income (AMI). The Workforce Housing program provides units to households that earn between 70% and 120% of AMI. The MPDU program is a county-wide requirement. The Workforce Housing program is limited to zones in Metro transit areas.

As noted on ©10, representatives of the building industry believe that the MPDU program has not worked well for several years and needs a substantial overhaul. They argue that looking only at the MPDU program without looking at Workforce Housing requirements does not address the extent of the problem. They further believe that the PHED Committee did not limit the work group to only discussing the amendments to the MPDU program.

Council staff and DHCA understood the PHED Committees direction was to address the MPDU program issues raised in Bill 38/13-07 and not to address other building requirements, including Workforce Housing. While Council staff agrees the issued raised by the building community regarding Workforce Housing are legitimate, Council staff believes it is possible for the Committee and Council to move forward with changes to improve the MPDU program without opening the Workforce Housing program as a part of the same legislation.

2. Should there be any change to the minimum requirement that 12.5% of units be MPDUs?

The proposal from the building industry representatives would combine the MPDU program and Workforce Housing program into one "Affordable Housing" program. The minimum requirement would be that 10% of total units would serve those in the MPDU income range (70% or less of AMI) and 5% of total units would serve those in the Workforce Housing income range (71% to 120% of AMI). The building industry argues that this complies with the PHED Committee instruction not to lower the minimum of 12.5% of units required in Chapter 25A. (©12)

Council staff understands why from an economic standpoint the building industry is proposing this 10% MPDU and 5% Workforce Housing requirement as they argue that the affordable housing burden to too great. However, Council staff strongly disagrees that the proposal provides the housing required in Chapter 25A. The availability of housing for households with incomes of 70% of AMI or less is a much more significant problem than the availability of housing for households earning between 70% and 120% of AMI. While Council staff recognizes that in approving Workforce Housing the Council was finding a way to ensure that a variety of incomes would be able to find housing in Metro transit areas, the Council did not indicate that it had changed its policy on the need to provide housing for lower incomes, county-wide.

Is the Committee interested in changing the requirements regarding the number of MPDU that must either be provided in site, through an alternative payment, or at an alternative location from the minimum of 12.5%?

3. Should the amendments focus on the problems that are particular to high-rise construction or is there a need to amend the MPDU program county-wide for all types of construction?

The building industry has proposed changing the MPDU program county-wide. The mix of 10% MPDUs and 5% Workforce Housing (all referred to as "affordable housing units") would apply to all developments whether they are high-rise, garden apartments, townhouses, or single family homes.

Council staff suggests that the Committee reject this proposal. Up until this time, there have not been issued raised regarding an inability to comply in other than high-rise buildings. Concerns were raised by a builder of single family/townhomes regarding the impact of affordability pricing but Council staff believes this should be addressed separately (Issue #5).

4. What should the method be for calculating an alternative payment and what might be a reasonable price for such a payment?

Bill 13/38-07 as originally introduced would eliminate alternative payments (or "buy-outs"). The Committee has agreed that an alternative payment may be more beneficial that building MPDUs in certain high-rise developments and representatives from the building industry also support having an alternative payment. The Executive continues to support the original prohibition but DHCA has worked to provide alternatives for finding an appropriate way to calculate an alternative payment should the amendment be approved. Committee discussion has centered around the "affordability gap" between market prices and MPDU prices and the expectation that an alternative payment along with the monies provided by the MPDU buyer would allow another unit to be acquired in the same planning area (although the amendment does not require the money to be spent in the same planning area.)

At the first meeting of the workgroup, DHCA provided information on alternative payments from other jurisdictions and an example of how an alternative payment would be calculated based on the "affordability gap" (©33). The example used the 2008 median price for a new high-rise two-bedroom condo in the Bethesda planning area. The resulting payment would be $438,960 per forgone MPDU. Based on discussion at the first session, DHCA provided a modified proposal at the second session. Both to moderate the size of the alternative payment and to simplify how it would be calculated, DHCA proposed that a 4% fee be paid each time a market rate unit is sold. As can be seen on ©6, in a hypothetical 100 unit building in Bethesda, a fee of $23,840 would be made when each one-bedroom market rate unit sold. This is almost ½ the amount that would be assessed under the affordability gap model based on 2008 prices ($46,300 per market rate one-bedroom apartment). Because the fee would be paid as market rate units are sold there is no need for appraisals and the payment would be made as revenue is realized. Under this method, the "buy-out" of the one-bedroom MPDU would be $158,900. When combined with the $160,000 a MPDU household would likely be able to contribute, it is expected that an alternative unit could be acquired. At the last work group session, DHCA agreed that would consider further revisions to the 4%.

The representatives from the building industry propose that the alternative payment be $42,000 for a condominium and $33,300 for each rental unit (©19). And there was discussion at the work group sessions that alternative payments in the range of $20,000 to $30,000 might be appropriate in order to make projects viable.

Council staff continues to recommend that the amount of the alternative payment should be sufficient, along with the contribution from the MPDU buyer, to acquire another unit in the planning area or adjacent to the planning area. The alternative unit does not

need to be new but the payment should not be so low that it takes payments from two, three, or four, units to accomplish this goal.

That said; the amount proposed by the representatives of the building industry is in line with some of the previously approved alternative payments for high-rise developments where apartments have been offered since 2005. DHCA's preliminary look at 15 high-rise buildings that have offered units since 2005 shows that six managed to construct all the required MPDUs without an alternative payment or assistance from a Payment-In-Lieu of Taxes (PILOT), while the remaining nine had assistance either through a buy-out or a PILOT. The alternative payments ranged from $21,000 to $55,000 per MPDU. A more recent alternative payment agreement (for a building that has not been offered) calls for a payment of $113,330 per forgone MPDU.

The work group needs direction from the Committee regarding this issue. Council staff believes that an alternative payment that is a percentage of each market rate unit sold is clear, equitable, and changes with the prices in the market place. It solves cash flow issues that would arise if a lump-sum alternative payment were required up-front or after a certain number of units were sold. Council staff also believes that while the previous agreements may have looked in detail at a project's finances to come up with the alternative payment, there is a fairness issue raised when one developer can forgo building an MPDU for $21,000 while another is required to pay $50,000 or $100,000. The MPDU is not built under any of these scenarios but the resources to replace it are substantially different.

Based on comments from the building industry, the Committee agreed that there should also be alternative payments allowed for rental buildings. If this same method were applied to rental properties, appraisals would be required on what the market-price of a unit would be.

5. Does the Committee continue to support "affordability pricing" and what adjustment has DHCA looked at to reduce fluctuations in the final price?

The Executive has proposed a move to "affordability pricing" which would base the sales price of an MPDU on what is affordable to households earning 60% of AMI. Certain assumptions regarding percent of income dedicated to housing, interest rates, and down payments are made. Condominium or HOA fees must be a part of the overall affordability price. This recommendation has been to ensure that MPDUs are in fact affordable to the income ranges eligible for the program.

Representatives from the building industry argue that the basis of the MPDU program is that the builder will not incur a loss by constructing the unit and that the sales price (or really the amount provided to the developer) must cover the construction cost. If there is a difference between the construction cost and the price an eligible MPDU household can afford, other programs or resources should cover this difference. (©12-13 and ©18).

At the work group session, a building industry representative specifically noted the uncertainty that comes from setting the price late in the process as the interest rate assumptions could change significantly over the time it takes to develop and offer a product.

To address the overall price issue, DHCA has proposed shifting the affordability price from being based on 60% of AMI to 70% of AMI (©4). This may mean that other resources will need to be brought to the table in order to get families earning 50% or 60% of AMI into MPDUs. In addition, DHCA believes it can set a ceiling on the interest rate assumptions to address the concern raised at the session.

6. What should the policy be regarding the use of Payment in Lieu of Taxes (PILOTS)?

PILOTs are one of the tools the county can use to reduce the cost of providing affordable housing. The proposal from the building industry representatives is that a PILOT be provided when requested by a developer to offset some of the cost of providing units on-site (©20). The developer would not have to show that the PILOT is needed for economic viability.

DHCA and Council staff agree that PILOTs are an important tool for the county. However, Council staff notes that every PILOT is forgone revenue to the county and there should be a clear policy when they will be used in non-HOC projects. In the high-rise developments offered since 2005, some received PILOTs and some did not. Three that received PILOTs also bought-out of a portion of the MPDUs required. Should PILOTs only be approved when all required MPDUs are provided on site? What if a portion is provided through an alternative location agreement? Should a PILOT ever be used when alternative payment has been approved?

7. What is the definition of "bonus density?"

A main concern of the building industry is that there is insufficient additional density provided to make providing MPDUs and Workforce Housing cost neutral. In their proposal, every development would automatically receive a 10% density bonus in order to provide the 15% affordable housing units (10% MPDUs and 5% Workforce Housing).

Council staff is concerned that there is an assumption that the approved existing density did not take into account the provision of 12.5% MPDUs. Council staff is also concerned that if every developer automatically gets a 10% density bonus then it really isn't a bonus at all; it is the approval of 10% additional density over what is described in the master plan. The PHED Committee is also currently considering the CR zone and it is not clear how this proposal would work within the CR zone that sets a maximum FAR with options on how to achieve the maximum density.

MEMORANDUM

November 4, 2009

TO: MPDU Development Work Group

FROM: Richard Y. Nelson, Jr., Director
Department of Housing and Community Affairs (DHCA)

SUBJECT: Bill 38/13-07: Moderately Priced Housing – Amendments
Second Meeting with the Development Community
November 6, 2009, 2:00 pm

The next meeting of the MPDU Development Work Group will take place on November 6, 2009, from 2:00 pm to 4:00 pm, in the Fifth Floor Council Conference Room in the Council Office Building, 100 Maryland Avenue, Rockville, MD 20850.

Prior to the first meeting on October 21, 2009, DHCA presented its proposals for implementing an affordability based pricing system, a proposed system for establishing alternative payments in lieu of building MPDUs, and a proposal relating to alternative location agreements. At the meeting, representatives of the development community provided an alternative proposal that included several changes to the MPDU and Workforce Housing laws. This memorandum provides DHCA's comments on the development community proposal, and, based on the discussions during the first meeting, also refines DHCA's affordability and alternative payment proposals that were set out in the October 12, 2009 memorandum..

Development Community Proposal - Summary

The development community's proposal includes the following:

- Combine the MPDU and Workforce Housing laws together into one "Affordable Housing" law that establishes a base minimum requirement of 15% affordable housing (10% MPDUs and 5% workforce housing) for all residential subdivisions of 20 or more dwelling units, which would entitle the applicant to a 10% density bonus, even if the affordable units are provided off-site (the proposed percentage of affordable units would be even lower for high rise buildings (5%) and mid-rise buildings (12%));

- Allow additional bonus density for providing more than the required 15% affordable units at a rate of seven (7) bonus units per additional MPDU and three (3) bonus units per workforce housing unit for high-rise buildings (with density bonuses for mid-rise buildings and townhouses to be determined);
- Allow developers of mid-rise buildings to provide only 10% affordable units on-site, and developers of high-rise buildings to provide only 5% affordable units on-site, while still allowing a 10% density bonus to be constructed on-site;
- Allow off-site locations for affordable housing units, while still allowing a 10% density bonus to be constructed on-site;
- Allow alternative payments to the Housing Initiative Fund for both sale and rental buildings in lieu of providing affordable housing units on a fee per square foot of gross floor area that increases with FAR (not including any square footage for bonus density or affordable housing), while still allowing a 10% density bonus to be constructed on-site, as follows:
  - First 1.0 FAR: $1.50/square foot;
  - Next 1.0 to 3.0 FAR: $4.00/square foot;
  - Next 3.0 and above FAR: $8.00/square foot;
- Reduce the control periods for both programs to 20 years for both sales and rental units;
- Require that the County provide PILOTs (payments in lieu of taxes) for all high-rise and mid-rise buildings that include affordable housing units on-site, if requested by the applicant;
- Eliminate the shared profit requirement for the MPDU and Workforce Housing programs; and
- Establish a Voucher Program through the Housing Initiative Fund to provide housing vouchers throughout the County for eligible households.

DHCA Comments on Development Community Proposal

The proposal from the development community represents an extensive rewrite of the MPDU and Workforce Housing laws. The proposal also represents a significant departure from 35 years of established County housing policy and drastically changes an inclusionary housing program that has essentially worked well over that same period of time. Also, the proposal is significantly outside the scope of the charge provided by the Planning, Housing, and Economic Development (PHED) Committee to the MPDU Development Work Group, which was as follows:

1) Determine an affordable MPDU sales price;
2) Determine an Alternative Payment for high-rise condominium and rental MPDUs; and
3) Establish guidelines for Alternative Location Agreements.

Following is a review of how the development community proposal does not address the PHED Committee's charge.

1) **Affordability**: The proposal does not address the issue that the sales prices of MPDUs, particularly MPDUs in high rise for sale buildings, are increasingly unaffordable to the program's target audience (households earning between 50% to 70% of area median income). This issue was one of the primary findings in the 2007 report of the Office of Legislative Oversight (OLO Report Number 2007-9, "A Study of Moderately Priced Dwelling Unit Program Implementation"). DHCA was charged with proposing a solution to this problem; therefore, a solution needs to be central to any proposed changes in the MPDU law.

2) **Alternative Payments**: Alternative payments would be allowed for both sale and rental buildings, and developers would still be allowed to construct 10% bonus density on-site. However, the proposed alternative payments, which are significantly lower than in the current MPDU law, bear no relation to the replacement cost of providing an affordable housing unit in Montgomery County. In the base case scenario provided at the meeting, the developer of a high-rise building on a 25,000 square foot site with a 4.0 FAR would pay a total of $397,500, or $26,500 per required affordable housing unit.

This amount is insufficient to purchase a replacement unit of affordable housing, based on recent sales data provided by both the development community and Park and Planning. Although alternative payments for mid-rise and townhouse units are not spelled out in the proposal, it appears from the example provided that these would be lower than the payments for high-rises, given that the example proposes lower payment rates per square foot for FARs of less than 3.0. The development community counters that instead of purchasing replacement affordable units, the MPDU alternative payments should be used to fund housing vouchers for individual households. A housing voucher program represents a long-term commitment of staff and financial resources that would quickly exhaust the minimal funds generated by the one-time alternative MPDU payments.

3) **Alternative Location Agreements**: In all cases, developers would still be allowed to construct 10% bonus density on-site. Additionally, for single family and townhouse developments, the proposal retains the requirement in current law for the DHCA Director to find that approving an Alternative Location Agreement would be to the public benefit, and would further the objective of providing a broad range of housing opportunities throughout the County. It does not require, however, that any additional affordable units be provided. The proposal also includes the following provisions:

a) Mid-rise buildings – 12% affordable housing units would be required off-site within any Metro Station Policy Area, and 15% affordable housing units would be required off-site anywhere else within the County, as compared to 10% affordable housing units required on-site. No finding of public benefit would be required.
b) High-rise buildings – 10% affordable housing units would be required off-site within any Metro Station Policy Area, and 15% affordable housing units would be required off-site anywhere else within the County, as compared to 5% affordable housing units required on-site. No finding of public benefit would be required.

4) **Summary:** In summary, the development community proposal would provide much less affordable housing than required under current law while granting much more bonus density than

allowed by current zoning or current master plans. It also would make changes that would significantly reduce long-term affordability by shortening control periods, and income to the Housing Initiative Fund by eliminating shared profit and allowing alternative payments that are minimal in nature. Furthermore, the proposal introduces completely new elements to the program such as housing vouchers. The OLO Report, which prompted the County Executive to propose Bill 38-07, did not recommend any of the changes to the MPDU program that are outlined in the development community proposal.

Modifications to DHCA's Original Proposal

1) Determining an Affordable MPDU Sales Price – Affordability Model:

The development community stated that the proposed affordable sale prices for MPDUs in high rises are too low to make the projects financially feasible. To address this concern, DHCA proposes that MPDU sales prices in high rise MPDUs be based on 70% Area Median Income (AMI), rather than 60% AMI as originally proposed. Using the same assumptions as previously, this change would result in the following maximum sales prices per unit size:

Maximum Affordable Sales Prices Per Unit Size

Unit Type	Sales Prices Under New Proposal	Sales Prices Under Original Proposal
Efficiency	$160,600	$131,800
One Bedroom	$164,300	$134,000
Two Bedroom	$195,000	$160,600

2) Determining an Alternative Payment for High-Rise Condominium MPDUs

At the first meeting, the development community claimed that DHCA's proposed alternative payment was too high. The following concerns were expressed, followed by DHCA's response:

a) The median sales price for a new condominium unit in Bethesda used in DHCA's alternative payment example is not representative of sales prices for a new two-bedroom condominium in Bethesda.

DHCA has used the 2009 new sales data provided by the Maryland-National Capital Building Industry Association (M-NCBIA) to calculate new condominium median sales prices for Bethesda and Silver Spring based on number of bedrooms. The Bethesda median sales prices are based on three (3) high rise projects in downtown Bethesda: Lionsgate, the Trillium, and the Adagio. The Silver Spring median sales prices were based on the Argent, the only Silver Spring building with new condominium sales in 2009. Units with dens and multiple bathrooms have been included within each bedroom category. Use of this data produces the following median sales prices:

2009 Median High-Rise Condo Sale Prices,
Downtown Bethesda and Silver Spring

Unit Type	Bethesda	Silver Spring
Efficiency	N/A	$248,000
One Bedroom	$596,000	$321,000
Two Bedroom	$1,184,000	$496,000
Three Bedroom	$1,671,000	N/A

b) The soft cost allowance is too small.

The originally proposed soft cost allowance of 22.5% was based on the allowable sales price for MPDUs as defined in MPDU Executive Regulation 13-05AM, Section 5, "Establishing Sale and Rental Prices" (COMCOR 25A.00.02.05). DHCA has added construction loan expenses (represented by the prime rate plus 2 points) and a Marketing/Sales commission that is more reflective of market assumptions to this soft cost allowance, resulting in a new soft cost allowance of 28.5%.

c) Affordability Delta Method vs. Percent Fee Per Unit Method

Even after increasing the MPDU sales price and the soft cost allowance, the alternative payments for condominiums in Bethesda using DHCA's original method (an "Affordability Delta" method) are much higher per required MPDU than in the original example, because the median sales prices for two- and three-bedroom units are much higher than the original example (see below):

Alternative Payment Per Required MPDU
Affordability Delta Method

Unit Type	Bethesda	Silver Spring
Efficiency	N/A	$62,491
One Bedroom	$308,666	$112,041
Two Bedroom	$707,135	$215,215
Three Bedroom	$1,005,505	N/A

(Note: although the MPDU law does not require three-bedroom MPDUs in multi-family buildings, the affordable price for a three-bedroom MPDU has been used to calculate the buy-out for a three-bedroom unit because otherwise the alternative payment would have been higher than shown.)

DHCA is therefore now proposing a different method for calculating alternative payments, which would be a per-unit fee of 4% charged to each unit in a building, based on actual sales prices and payable at settlement. A more detailed spreadsheet is attached, but a summary is provided below, with a comparison to the Affordability Delta method:

Fee for Each Unit in a 100-Unit Hypothetical Building

Unit Type	4% Fee/Unit		Affordability Delta Method	
	Bethesda	**Silver Spring**	**Bethesda**	**Silver Spring**
Efficiency	N/A	$9,920	N/A	$12,498
One Bedroom	$23,840	$12,840	$46,300	$14,260
Two Bedroom	$47,360	$19,840	$87,032	$26,902
Three Bedroom	$66,840	N/A	$134,067	N/A
Total Fee/Bldg.	**$4,557,800**	**$1,549,400**	**$8,594,086**	**$1,922,850**

The revised method of calculating an alternative payment results in a total payment of $4,557,800, which is significantly less than the $8,594,086 that would be paid using DHCA's initial proposal. Allocating this $4.5 million across the 13 required MPDUs in this hypothetical building, would result in lower payments per MPDU (as adjusted by the bedroom mix that would have been required).

Fee Per Required MPDU in a 100-Unit Hypothetical Building

Unit Type	4% Fee/Unit		Affordability Delta Method	
	Bethesda	**Silver Spring**	**Bethesda**	**Silver Spring**
Efficiency	N/A	$49,600	N/A	$62,491
One Bedroom	$158,900	$100,900	$308,666	$112,041
Two Bedroom	$408,100	$158,700	$707,135	$215,215
Three Bedroom	$408,100	N/A	$1,005,505	N/A

Different bedroom compositions have been used for the Bethesda and Silver Spring hypothetical buildings, based on the bedroom compositions of existing or proposed high-rise buildings in each of these areas, as follows:

- Bethesda: 20 One Bedroom, 65 Two Bedroom, 15 Three Bedroom
- Silver Spring: 5 Efficiency, 55 One Bedroom, 40 Two Bedroom

In addition, as noted above, in the Affordability Delta method the affordable price for a three-bedroom MPDU has been used to in calculate the alternative payment for a three-bedroom unit (even though three-bedroom MPDUs are not required in multi-family buildings) because otherwise the alternative payment would have been higher. However, in the percent fee per unit scenario, the two and three bedroom units have been averaged (the overall total does not change).

Use of the 4% fee per unit method results in an alternative payment amount per required MPDU that, when combined with the MPDU affordability price per unit type, is sufficient to purchase a new or used condominium in each of the respective planning areas (based on 2009 sales data provided by M-NCBIA):

Bethesda			
Unit Type	**Fee Per Required MPDU**	**MPDU Affordability Price**	**Total Available to Purchase an Alternative Unit**
Efficiency	N/A	-----	-----
One Bedroom	$158,900	+ $164,300	= $323,200
Two Bedroom	$408,100	+ $195,000	= $603,100

Silver Spring			
Unit Type	**Fee Per Required MPDU**	**MPDU Affordability Price**	**Total Available to Purchase an Alternative Unit**
Efficiency	$49,600	+ $160,600	= $210,200
One Bedroom	$100,900	+ $164,300	= $265,200
Two Bedroom	$158,700	+ $195,000	= $353,700

3) <u>Establishing Guidelines for Alternative Location Agreements</u>

No change to original DHCA proposal.

4) <u>Determining an Alternative Payment for High-Rise Rental MPDUs</u>

If the PHED Committee and the Council wish to establish an Alternative Payment for high-rise rental MPDUs, DHCA would recommend use of the same formula as for high-rise condominiums, but that the fee per unit be based on an appraisal of the unit. The fee would need to be paid at the time of permanent financing, but no later than two (2) years after the initial occupancy permit is obtained. DHCA will consider alternative recommendations from the development community related to the schedule for paying the fee in rental buildings.

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Hypothetical 100-Unit Building, Downtown Bethesda

I. Percent Fee Per Unit Method

		4% Fee/Unit
Median 2009 One BR Unit Sales Price =	$596,000	$23,840
Median 2009 Two BR Unit Sales Price =	$1,184,000	$47,360
Median 2009 Three BR Unit Sales Price =	$1,671,000	$66,840

	Sales	4% Fee/Unit
20 One BR Units		
(Median One BR Sale Price x 20)	$11,920,000	$476,800
65 Two BR Units		
(Median Two BR Sale Price x 65)	$76,960,000	$3,078,400
15 Three BR Units		
(Median Three BR Sale Price x 15)	$25,065,000	$1,002,600
Total Sales/Fees	$113,945,000	$4,557,800
Average Fee Per Substituted MPDU =		$350,600
(13 required MPDUs)		
Fee Per Substituted One BR MPDU =		$158,900
(3 required)		
Fee Per Substituted Two BR MPDU =		$408,100
(10 required)		

II. Affordability Delta Method

	One BR	Two BR	Three BR	
Median 2009 Sales Price =	$596,000	$1,184,000	$1,671,000	
Less MPDU Price (@ 70% AMI)	- $164,300	- $195,000	- $264,700	
Difference Between Market and MPDU Price	$431,700	$989,000	$1,406,300	
Less Soft Costs (28.5%)	- $123,035	$281,865	- $400,796	
Fee Per Substituted MPDU =	$308,666	$707,135	$1,005,505	
Total Fees	$925,997	$5,657,080	$2,011,009	$8,594,086
(3 One BR, 8 Two BR, 2 Three BR)				
Fee Per Unit in Building =	$46,300	$87,032	$134,067	
Percentage of Sales Price/Unit =	7.8%	7.4%	8.0%	

Hypothetical 100-Unit Building, Downtown Silver Spring

I. Percent Fee Per Unit Method

		4% Fee/Unit
Median 2009 Efficiency Unit Sales Price =	$248,000	$9,920
Median 2009 One BR Unit Sales Price =	$321,000	$12,840
Median 2009 Two BR Unit Sales Price =	$496,000	$19,840

	Sales	4% Fee/Unit
5 Efficiency Units		
(Median Efficiency Sales Price x 5)	$1,240,000	$49,600
55 One BR Units		
(Median One BR Sales Price x 55)	$17,655,000	$706,200
40 Two BR Units		
(Median Two BR Sales Price x 40)	$19,840,000	$793,600
Total Sales/Fees	$38,735,000	$1,549,400
Average Fee Per Substituted MPDU		$119,185
(13 required MPDUs)		
Fee Per Substituted Efficiency MPDU =		$49,600
(1 required)		
Fee Per Substituted One BR MPDU =		$100,900
(7 required)		
Fee Per Substituted Two BR MPDU =		$158,700
(5 required)		

II. Affordability Delta Method

	Eff.	One BR	Two BR	
Median 2009 Sales Price =	$248,000	$321,000	$496,000	
Less MPDU Price (@ 70% AMI)	- $160,600	- $164,300	- $195,000	
Difference Between Market and MPDU Price	$87,400	$156,700	$301,000	
Less Soft Costs (28.5%)	- $24,909	$44,660	- $85,785	
Fee Per Substituted MPDU =	$62,491	$112,041	$215,215	
Total Fees	$62,491	$784,284	$1,076,075	$1,922,850
(1 Efficiency, 7 One BR, 5 Two BR)				
Fee Per Unit in Building =	$12,498	$14,260	$26,902	
Percentage of Sales Price/Unit =	5.0%	4.4%	5.4%	

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ATTORNEYS AT LAW

MEMORANDUM

TO: Richard Y. Nelson, Jr., Director
Department of Housing and Community Affairs
Montgomery County

FROM: Emily J. Vaias on Behalf of the MPDU Work Group

DATE: November 6, 2009

RE: Response to Your Memorandum of November 4, 2009 regarding Moderately-Priced Housing Amendments

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Thank you for your memorandum of November 4, 2009 in advance of our MPDU development work group meeting scheduled for November 6, 2009.

We still do not see a recognition of the realities of the market place in the proposals offered to date. Further, the continued effort to make the housing industry shoulder 100% of a community wide goal of providing more affordable housing is not achievable, productive, or equitable. The extreme positions still being proposed are inefficient, will result in a further shutdown of the housing industry in the County, further increase existing housing costs and the affordability gap due to a lack of supply, and lead to fewer affordable housing units or subsidy resources in the end. The MPDU program, originally designed for green field development, where the promise of increased density offset the cost of providing a 'public good,' has over the years produced fewer and fewer units as large-tract development decreased and in-fill, vertical construction increased. Increased requirements of development, combined with the 2005 changes made by the Council did not result in more units, despite the lowering of the threshold. The program, in fact has not worked well for several years, as evidenced by several proposals to "fix it." Today, as new development is increasingly directed to high-rise development on the most expensive real estate in the County, it is clear that the program needs a substantial overhaul to once again be a workable model throughout the country. That said, we are responding to your memo on a point-by-point basis.

A. <u>Development Community Proposal – Summary</u>

You have summarized our proposal in a succinct form; however, this necessarily misses some of the important points, which we tried to address in the legislation. For instance, in your first bullet point it is correct that we are proposing, as the standard; a 15% affordable housing requirement that provides for a 10% density bonus even if the units are off-site. However, you then say that this would be 5% for high-rise and 12% for mid-rise, but this is not accurate.

What we have proposed is that:

- if a mid-rise or high-rise development is to locate affordable units off-site anywhere within the County, the new development would still be required to provide the 15%.
- for mid-rise buildings, if the off-site locations get closer to the otherwise financially challenging areas, the 15% would go down to 12% if the off-site location is within the Metro Station policy area, and to 10% if the MPDUs are built on-site.
- for high-rise buildings, if the MPDUs are built within the same policy area, the requirement would be set at 10%, and if provided onsite, it would be 5%.

As we have discussed, the intention of this provision is to make affordable housing financially possible in high-rise and mid-rise structures and in areas close to Metro, with recognition that these areas are inherently more expensive. Therefore, if there is no reduction or accommodation for their increased costs, they cannot be economically produced. In point of fact if they could be produced, they would be.

The remaining summarized items are fairly accurate. However again, we would point out that the ability to construct the 10% density bonus onsite, ***even*** if the affordable units are provided elsewhere, is a logical way to fund such units. Control of the building density rests with the Planning Board to be determined at the time of site plan. This is essentially a zoning and site plan issue that has to do with the County's recognition that higher densities must be provided in order to house the expected inflow of population. Therefore, by simply providing more units, this does not equate to bad housing policy nor bad zoning policy; consequently, this should not be a concern to DHCA and the inference that allowing the 10% bonus is somehow an unreasonable modification, does not seem well placed. Overall, the County needs to provide more housing; doing so will help to level the playing field and the affordability of all units. More importantly, it will allow for the potential production of more affordable units as well.

B. <u>DHCA Comments on Development Community Proposal</u>

In your opening paragraph on page 2 under this section, you state that the development community has presented "an extensive rewrite of the MPDU and workforce housing laws."

You go on to say that this "represents a significant departure from 35 years of established County housing policy and drastically changes an inclusionary housing program that has essentially worked well over that same period of time. Also, the proposal is significantly outside the scope of the charge provided by the PHED Committee."

- We take issue with this characterization. We believe the PHED Committee charged us to develop a proposal that will produce the 12.5% mandate imposed by Chapter 25A while insuring that a development be viable. There is no way for the private sector to constructively comment on the existing MPDU law (Chapter 25A) without considering the implications of the Workforce Housing law (Chapter 25B). Therefore, for us to only propose minor modifications to one law and not address the other would not be addressing the full extent of the issue. The proposed comprehensive "redo" is, in our opinion, the only way that we can comply with the PHED directive.

Also, we again do not believe that the PHED Committee limited the scope of our work together to looking at the affordable sales prices, alternative payments for high-rise condominium and rentals, and guidelines for alternative location agreements. We believe the Committee recognizes the issues of the private sector being able to provide affordable units especially in high-rise and mid-rise structures and asked us to come up with reasonable, practical, and achievable solutions. We believe we have provided a working draft, albeit it not perfect, for accomplishing this goal.

You go on to address each of these issues independently and we shall respond to them accordingly.

1. Affordability

You correctly indicate that our proposal does not specifically address the gap between affordability and pricing for MPDUs. This is because we are attempting to make the production of affordable housing units reasonably affordable to developers. You are seeking only to look at this equation from the side of the consumer, whereas if you properly consider the production side, it will naturally have an effect on the ultimate pricing. If the overall price of producing the units can be made affordable, and developers can find a way to provide units and/or provide payments to the County, then those residents in need of housing can find it at a price point which they can afford. The OLO Report No. 2007-9, focuses only on the cost to the consumer without any consideration of the cost to produce the units. Therefore, this report is essentially flawed and was viewed in a vacuum. Further, the concept that the ultimate purchase price for the qualified resident is directly tied to the price that the developer must pay to buy out or provide units as well as the costs to a person to own such units is flawed. As we have discussed, the affordable housing unit purchaser who may wish to buy a condominium unit, should actually determine that the payment of fees and costs to live in the condominium outweigh any benefits they may ultimately receive as they are not entitled to any investment return on their purchase. This seems again to be an unreasonable position that discourages the purchase of MPDU condominiums, and it is also not good public policy to steer affordable households in this direction.

2. Alternative Payments

Again, it is correct that we have provided for alternative payments off-site and still allowed for the 10% bonus density on-site in order to fund these off-site units. The statement that the proposed payments are less than what the current MPDU law provides is not correct. The current law does not set the alternative payments. In fact, it requires that the Director take into account the market factors affecting the feasibility of this program as we have been illuminating in our discussions to date. If the current MPDU law were working, we would not be trying to fix it. Lastly, there is no relationship between the replacement cost of providing an affordable unit with the payment costs, as this is exactly the affordability model that you are proposing and which we know does not work. If in fact we could afford to pay the difference in the affordability model, we would be providing the units. While this appears to be an attractive housing model for the County, the affordability cost simply cannot, and should not, be borne by the market buyers and the private housing sector cannot be expected to wholly fund the gap in housing costs.

If affordable housing is considered a "public good" by the general public and government, the cost to bridge this gap should not be borne by one particular sector of the development community. The MPDU law was not suppose to be a burden and in fact was suppose to allow for an equalizing of value between market rate units and MPDUs such that there was no loss to the developer. This fundamental fairness is how the law has withstood legal challenge.

If you are to transform this into a pure affordability model, as you are proposing, there is no relationship between the cost a developer is required to expend in order to fund the County's housing program. Further, there is no linkage between the provision of housing and the need to provide affordable housing. This burden must be borne by the community at-large if an affordability model is pursued. Expecting a one-to-one exchange is simply an unattainable, economically unviable goal, and is not consistent with the marketplace or conversations that we have had with the County over the past several years and particularly within the past year.

You mentioned that we did not provide the alternative payment price for mid-rise and townhouse units, but as we continue to work with these builders we will ascertain reasonable numbers for your consideration. However, your assumption that these payment rates would be lower is not entirely accurate.

You also mentioned that the housing voucher program is a long term commitment of staff and resources; we do not disagree. However, two less costly alternatives to providing yearly subsidies are: to provide below market financing, which lowers the monthly carry to the point where it is affordable, and/or providing funds to increase the MPDU buyer's down payment so as to lower the loan amount to an affordable level. Further, we also believe that there has been significant investment of staff and resources on both the public and especially the private side regarding the existing MPDU program and the intended Workforce Housing program. It is time that the County accesses the future realities of these programs and their ability to serve the intended purpose.

3. Alternative Location Agreements

Again, you seem troubled by the fact that we need to obtain the 10% bonus density in order to help pay to locate affordable units off-site. This is simply an economic reality and if units could be obtained off-site for no cost then presumably the County could provide them itself. Consequently, a price must be paid by someone and the use of increased density is a no cost option for the County. Further, it is accurate that although we have maintained the current system regarding single family units, this is again in part because this current MPDU program seems to have worked adequately for these types of units (although we continue to solicit input from this currently decimated sector of our industry). Also, as we have discussed, the majority of the economic issues with the MPDU mandate are found in high-rise and mid-rise construction.

However, as everyone seems to recognize, mid-rise and high-rise construction cannot shoulder the burden of affordable housing as the laws currently exist today. Therefore, these multi-family units can not be subjected to the burden of proof required for approval of these alternative location agreements. The law itself must recognize this up front and not require individual findings of public benefit.

4. Summary

Your opening line states that the development community's proposal "would provide much less affordable housing than required under current law while granting much more bonus density than allowed by current zoning or current master plans." This is simply not a fair nor accurate statement. It assumes that housing will continue to be proposed and constructed in Montgomery County, disregarding that the law may continue as it is or in fact become more burdensome, as is being proposed. This ignores the marketplace and the fact that many developers are looking elsewhere solely because of Montgomery County's MPDU and Workforce Housing laws. Because of the burden placed upon housing developers under the current law and the proposed amendments, not only will affordable housing be severely reduced but market rate housing will as well. This reduction in overall housing units simply adds to the demand and the ultimate cost of housing in Montgomery County. As to zoning and master plan permitted density, the development community proposal provides the Planning Board with the authority to ascertain the correct density and compatibility of a project with the surrounding community. Therefore, it should not be the concern of DHCA that these projects can include more density and in fact should include more density on sites close to public transportation. DHCA should be concerned with producing more overall housing units and in turn, more affordable units. Ultimately, there will be a balancing between the Planning Board's planning and design objectives and the County's housing policy. The fact that the OLO Report did not recommend the changes that the development community has proposed is simply because it did not consider the production side of the equation or the marketplace realities of producing affordable housing.

C. Modifications to DCA's Original Proposal

We appreciate your willingness to modify some of your original proposals however, as you will see below, these proposals do not go far enough to make a housing program that we believe will work in the near or long term.

1. Determining an Affordable MPDU Sales Price – Affordability Model

We appreciate the increase in the area median income (AMI) from 60% to 70% for MPDUs and high-rise structures. We would simply add that in some instances this may need to be even higher.

2. Determining an Alternative Payment for High-Rise Condominium MPDUs

a. Sale Prices

You explained that you have used median sales prices for three (3) projects and it appears that these may actually be averages instead of medians. Further, this is a subset of the entire pool of units and there are inconsistent size comparisons within these charts. It is also true that an MPDU can be constructed and sold for less then a market rate unit, based on ultimate finishes, appliances, etc. Therefore, to use the median sales price based on your current data as the starting point for a comparison of affordability is not accurate. It also ignores the range of resale units that are available at affordable prices.

b. Soft Cost Allowance

We appreciate your increase of soft cost from 22.5% to 28.5%, however, we believe and have presented information to you showing that these costs are actually closer to 33.5% and may even be higher for smaller projects and as regulatory costs increase.

c. Affordability Delta Method Versus Percent Fee Per Unit Method

Clearly, we appreciate your recognition that the proposed or previously proposed affordability delta method, even with the new median and soft cost allowance, would produce infeasible buyout figures -- $308,000 for a one bedroom unit in Bethesda, $112, 041 in Silver Spring; $707,135 for a two bedroom in Bethesda, $215,215 in Silver Spring; and $1,005,505 for a three bedroom in Bethesda.

Looking at the 4% fee method, this still results in payment amounts far exceeding those which the industry can afford including $158,900 for a one bedroom in Bethesda and $109,000 in Silver Spring, with two bedroom units costing $408,100 in Bethesda and $158,700 in Silver Spring. This 4% fee calculation assumes many more three bedrooms than are generally provided and ultimately results in payments that are eight to ten times greater than the development community had proposed. With such a huge gap it is difficult to provide a detailed response thereto. However, the overall inequity here, as mentioned above is simply that all new housing development is being required to fund and/or provide affordable housing for all County residents. This is simply unfair and there is no linkage to new housing and affordability that would justify such action. Further, there is no requirement that only new housing should be considered for housing residents of moderate income. Therefore, using pricing of new units skews this fee substantially. There must at some point be a better balancing of equities in this program that can again result in the production of more housing units throughout the County. The proposed 4% fee does not accomplish this result.

3. Establish Guidelines for Alternative Location Agreements

Overall, the prior alternative location section did not provide the bonus density for off-site units, which as we have mentioned is simply not practical nor in the County's interest and efforts to promote affordable housing. This again ignores the economics of project development and we have continued to provide information to address this issue but it seems to be ignored. Further the proposed increase in the off-site requirement simply increased an already infeasible burden.

4. Determining Alternative Payments for High-Rise Rental MPDUs

Essentially, you are proposing a similar fee structure for rental as you did for condominium units based on an appraisal. Although payment of the fee after occupancy is appreciated, it does not address the first problem of the payment amount far exceeding the practical ability of a developer to fund the construction of affordable units.

We continue to work within the development community to ascertain more data and economics to support the few missing pieces in our position, however, we believe there must be substantial changes in policy that recognize the current problems with the MPDU and the Work force Housing laws, and there must be an ability to review these items in a comprehensive manner to construct a more realistic and pragmatic housing program.

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

MEMORANDUM

TO: PHED Committee

FROM: Building Industry – Affordable Housing Working Group
Edited by Emily J. Vaias, Raquel Montenegro, Peter Gartlan, Tom Farasy

DATE: November 16, 2009

RE: Status of MPDU Legislation

Working Group Efforts

Since the PHED Committee worksession on September 14, 2009, the Affordable Housing Working Group has met twice and has exchanged memoranda in an attempt to craft strategies for updating the County's Affordable Housing legislation. The Affordable Housing Working Group consists of the DHCA Director, DHCA Staff, Linda McMillan (from Council Staff), Tiffany Ward (from Marc Elrich's Staff), and representatives from the Building Industry (several mixed use/multi-family developers, builders and MNCBIA Representatives). DHCA prepared two memos (dated October 12, 2009 and November 4, 2009, both attached hereto as Exhibit "A") and the Building Industry prepared two memos (dated October 15, 2009 and November 6, 2009, both attached hereto as Exhibit "B").

In summary, there has not been consensus on several major points of discussion and it seems the Council needs to provide some additional guidance as to how it would like the Working Group to proceed in trying to find a solution to the current housing situation. We have provided below a summary chart identifying the points of contention; however the one overarching policy disagreement is whether the County recognizes that due to the higher costs of land and construction in more densely populated urban areas, that high-rise multi-family housing projects cannot provide MPDUs and WFH units under the current program nor can they make use of the unrealistic alternative payment option as currently written or proposed by DHCA. If the County wants multi-family projects in Metro Station and CBD areas, there must be a shift of policy.

Comparison and Comments		
DHCA's Proposal	**Building Industry (BI) Proposal**	**Comments**
1) Look only at MPDU Law not considering impact of WFH	1) Combine MPDU and WFH into one Affordable Housing Law; comprehensive review	1) MPDUs cannot be viewed in a vacuum, not realistic; we need a comprehensive solution
2) Affordability Model to determine Sales Prices for MPDUs – results in 2-bedroom prices of $195,000	2) Sales prices must be enough to cover the cost to develop the unit and if this is not affordable to an MPDU	2) The MPDU Law was originally enacted, and withstood legal challenge, in part

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Comparison and Comments		
DHCA's Proposal	**Building Industry (BI) Proposal**	**Comments**
and 1-bedrooms at $164,300	purchaser, the County must make up the difference, not the developer.	because it was not intended to be a tax, penalty or fee on housing developers; the language read, "Ensure that private developers constructing [MPDUs] under this Chapter incur **no loss or penalty as a result thereof**, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision…"
3) Affordability Model for alternative payments for high-rise buildings – Payments calculated by charging a 4% fee on sales of all units in a project (and for rentals, use appraised value) – Results in per-MPDU payments in Bethesda for 2-bedroom units = $408,000, 1-bedroom unit = $158,900; in Silver Spring, a 2-bedroom unit = $158,700, 1-bedroom unit = $100,900	3) Reasonable Fee per square foot comparable to neighboring jurisdictions – Using the DHCA 12.5% MPDU ratio results in alternative payments for each AHU unit of approx: $42,000 ea condo unit $33,300 ea rental unit based on 1,350 & 1,050 GSF avg/unit. No WFH has been built to date in a for-profit environment. – Price per unit type varies with the mix of units for a given project	3) Note DC exempts most CBD locations from both on site AHU or Fee requirements
4) No bonus density allowed if MPDUs are not built on-site	4) Provide bonus density whether units are on-site or off-site	4) The cost to provide the units must be made up in extra market rate units, regardless of whether on-site or not

Comparison and Comments		
DHCA's Proposal	**Building Industry (BI) Proposal**	**Comments**
5) Maintain 12.5% MPDUs and no bonus, with bonus up to 22% when 15% is provided, and 10% WFH with 10% FAR increase	5) Provide 10% bonus for providing 15% Affordable Housing Units (10% MPDUs and 5% WFH); increase bonus 7 du/1 MPDU and 3 du/1 WFH	5) Developers' proposal provides a no-cost incentive to providing both types of units
6) Calculate required MPDUs including bonus density, so true 22% bonus never achieved	6) Calculate both bonus density and MPDUs/WFHs on base density, not on bonus	6) The County's methodology does not provide the true bonus, instead of 22%, only get approx. 16%
7) Average median income (AMI) increased for MPDUs from 60% to 70%	7) AMI minimum of 70% with increases as needed	
8) Looking at Boulder, Colorado, San Francisco, CA and Berkley, CA as comparisons	8) Compare to Arlington, VA and D.C., these are our competitors	
9) PILOTS allowed under current regulation which requires proof that the "reduction allowed by the PILOT is the amount needed to make the project financially feasible with the [MPDUs] provided on-site."	9) PILOTS that do not require a showing of financial feasibility for the whole project, or that units be provided on-site	9) PILOT currently not always available; PILOT will provide "reasonable expectation of profit" that MPDU law always promised. Only uses real estate tax revenue which increases dramatically along w/ other tax revenue when a project goes forward
10) Federal tax credit programs must still account for full 99 years of MPDU rental program per DHCA "interpretation"	10) Federal or State tax credit programs that provide more units for lower income people, should not be subject to 99 year requirement	10) The greater public benefit received by providing more units at lower income level should offset the longer

Comparison and Comments		
DHCA's Proposal	**Building Industry (BI) Proposal**	**Comments**
		time period
11) Housing Vouchers are too expensive	11) Housing Voucher Programs provide a better match between families and housing	11) Simply one more tool to maximize Housing Improvement Fund ("HIF") flexibility & meet need
12) Unit size and vertical location parity is not addressed	12) Establish minimum sizes for high-rise AHUs by type	12) The changes made to Ch. 25A in 2005 inefficiently added costs reducing the ability to add AHU's or financial resources
13) Concerned about density bonus increasing beyond master plan calculations	13) Providing affordable housing is a goal that needs to be recognized even if it exceeds master plan recommendations	13) Grants Planning Board ability to exercise their judgment on planning issues such as compatibility
14) Differentiate high-rise only	14) Draw a distinction between high-rise, mid-rise, townhouse and single-family for bonuses and alternate payments	14) One size does not fit all
15) Permits off-site location within Policy Area only	15) Allows off-site locations county-wide	
16) Decisions of on- or off-site must be made at site plan	16) Extend time for deciding if units are on- or off-site until occupancy	
17) Control period requiring 99 years for rental and 30 years for sale	17) Reducing control period to 20 years for all units	17) Regardless of prior unexplained silence by the industry, it does affect values and the cost to provide AHUs

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As you consider the Building Industry's Proposal and recommendations and compare it to the proposed legislation and DHCA's latest Proposals and Comments, we respectfully request you keep in mind the following:

General Background

- Moderately Priced Dwelling Units (MPDUs) – limited production of both market rate units and MPDUs
- Work Force Housing (WFH) – no private WFH since inception
- Pending MPDU Legislation – further "taking", a "killer" and "not feasible" as proposed
- We are constraining Smart Growth and transit-oriented development (TOD), because the current MPDU/WFH legislation makes high-rise development prohibitively expensive. As written, the MPDU/WFH legislation is a disincentive for Smart Growth/TOD.
- MPDU and WFH requirements are wasteful and not an efficient use of resources as currently required; DHCA and/or HOC can and should produce more units and do so more cost effectively.
- The producers of new housing cannot and should not be asked to shoulder the inflated 1:1 cost to produce an MPDU as proposed by DHCA under the pending legislation; this is a community wide issue and needs to be addressed and funded in an equitable manner.
- Federal, 25A MPDU and 25B WFH programs are simply different points of the housing affordability spectrum and must be considered together as they relate to the housing industry's ability to contribute to this community-wide AHU goal and obligation to the extent legislated.

Specific Background

1. Alternative Agreements

- 1989 thru 2003 – 19 total, only 7 high-rise and 2 mid-rise multi-family buildings on County's list; Alternative payments escalated from $15-18,000 and peaked in the $20-30,000 range/MPDU unit.

- 2004 to April 2005 – Few with some not built; major issue – Condo "buyout" prices escalated from mid-teens to around $50,000/MPDU unit; few rental projects or comparables; and the latter ones were not successful investments

- April 1, 2005 to present – Alternative Review Committee (ARC) in place with only 1 example, "Woodside Court", a small stick-built building.

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2. Recent Projects w/ MPDU Bonus Density – Most typically started as condo and especially those with 15% bonus, expecting buyout. No alternative agreements have been executed since the market peaked in late 2005, except one (1). Again, many of the condo projects have not been successful.

3. Related and referenced bodies of work references

- *"Strengthen the [MPDU] Program – A 30 Year Review"*, a Report to the Montgomery County Council on Future Program and Policy Options, February 2004. ***[Notes impediments to providing AHUs in high-rises, especially rentals, and need for alternative agreements to maximize community benefits. DHCA's current efforts are inconsistent with this nearly 6-year-old finding by the County].***

- *"A Study of [MPDU] Program Implementation"*, Office of Legislative Oversight, Report # 2007-9, July 19, 2007 does not take economic feasibility or real-world conditions into account. ***[Note: County starting to tighten AHU requirements while multi-family market was past peak beginning in 2004 and 2005 with few new rentals in process. This Study simply assessed a system that kept 25A alive and on life support with Alternative Agreements and PILOT's during the late 90's and early 2000's. No systemic or significant adverse findings were reported. The changes from 2005 forward hurt an already declining housing situation and the proposed MPDU changes introduced with and after this report was issued are a continuation of this failed approach to simply layer more costs on an overburdened industry without regard for the economic consequences of the burdens or the economics of producing housing (e.g., only one ARC approval since 2004!)].***

- *"Housing Policy Element of the General Plan: Preliminary Pro Forma Analysis of MPDU Bonus Density"*, memo by Jacob Sesker, et al., to the Montgomery County Planning Board, May 8, 2008. ***[Concludes that the MPDU bonus density returns decline with the 22% bonus approach). The Building Industry proposal provides an updated option].***

Comments

The Building Industry has also recommended Affordable Housing mitigation measures in addition to those in the proposed revision/consolidation of 25A & B which include:

A. Alternative Agreements – Continue, allow, and encourage alternate agreements under all affordable housing programs; promote economic activity, equity, and flexibility and provide the kind of housing needed. We have requested demographic information from DHCA to better understand the type of demand here. (See attached email to DHCA, Exhibit "C")

B. DHCA can be more active in creating more and a broader range of Affordable Housing – Alternative Agreements with payment to HIF can fund DHCA projects, which provide more targeted, cost-effective housing paired with efficiencies of public financing, and where need is greatest. Possible teaming with non-profits, etc. may help here (e.g., MHP).

C. Find other HIF & AHU-generating revenue sources – Either provide additional general revenue source or other dedicated funding sources; new market-rate housing implementation and development can no longer carry the "community- wide" moral responsibility, public policy generated financial burden of funding affordable housing.

D. Land Use Policy – Encourage more density, height and associated AHU bonus density in CBD's and other transit and core areas in that 22% is no longer enough to subsidize AHU's in most urban planning areas (see Sesker's memo dated 5/8/08).

E. Impact, PAMR and Permit Fees – Eliminate all of these changes for CBD developments. A positive, per-project encouragement for CBD rather than suburban development, and helps more urban development better compete with sprawl.

F. Moratoriums in the CBD's – The threat of moratorium in County growth areas is unsustainable and will stifle growth around transit stations.

G. Foreclosures – Consider a program that allows HOC to buy up foreclosed properties and enter them into the affordable housing program. This addresses a major concern regarding vacant foreclosed properties, and also may allow a dispersed stock of affordable housing under the control and stewardship of HOC.

Thank you for your consideration. Please remember, we can only create affordable housing, fund AHUs, and limit rent growth with additional supply if we are able to produce new market housing within the competitive constraints of the marketplace.

Attachments

L&B 1255032v4/01086.0018

MEMORANDUM

October 12, 2009

TO: MPDU Development Work Group

FROM: Richard Y. Nelson, Jr., Director
Department of Housing and Community Affairs (DHCA)

SUBJECT: Bill 38/13-07: Moderately Priced Housing – Amendments
Meeting with the Development Community

At the September 14, 2009 work session of the Planning, Housing, and Economic Development (PHED) Committee, the PHED Committee members requested that DHCA meet with representatives of the development community to discuss several issues pertaining to the above bill. DHCA has scheduled a series of meetings to review these issues (see enclosed letter).

The following are initial recommendations by DHCA (further details and analysis are included on subsequent pages of this memorandum):

I) Determining an Affordable MPDU Sales Price – Affordability Model

- Recommendation: Affordability set at 60% of Area Median Income (AMI), adjusted for household size, assuming 30% of gross monthly income is available for monthly housing costs.

II) Determining an Alternative Payment for High-Rise Condominium MPDUs

- Recommendation: For each required MPDU, 77.5% of the difference between the actual sales price of a market unit and the affordable MPDU price of the unit, based on number of bedrooms.

III) Establishing Guidelines for Alternative Location Agreements

- Recommendation: The number of MPDUs provided at the alternative location or locations would need to be at least 15 percent of the total approved units in the original building.

IV) Determining an Alternative Payment for High-Rise Rental MPDUs

- Recommendation: The same methodology as for-sale projects would apply, but payment would be based on the appraised value of a unit rather than its sales price.

I) Determining an Affordable MPDU Sales Price – Affordability Model

Under the MPDU affordability pricing model, the Department would set the MPDU sales price based on an amount that is affordable to households eligible to participate in the MPDU program based on the households' verified income and household size. To calculate this, DHCA would first determine the amount of gross monthly income available to make mortgage loan principal and interest payments. From this, DHCA would calculate the total mortgage a household can support (assuming prevailing mortgage interest rates, loan types, and loan terms). This mortgage amount, combined with a 5% down payment, would constitute the affordable MPDU sales price.

Methodology

MPDU sales prices would be set at a level affordable to households earning 60 percent (60%) of the area median income, as adjusted by household size. DHCA has selected this income level because the MPDU Program is designed to serve "moderate-income" households; that is, households earning between 50% and 70% of median. DHCA would then set the portion of a household's gross monthly income it is expected to pay towards housing expenses (a "monthly housing income"). Under DHCA's proposed model, an eligible household would be expected to pay no more than thirty percent (30%) of its gross monthly income towards its monthly housing costs including expenses such as mortgage principal, mortgage interest, real estate taxes, hazard insurance, private mortgage insurance, and condominium/homeowners' association (HOA) fees, but excluding utilities. The Department would then determine the sale price using the following pricing model and procedures described below.

The gross annual income used to calculate the sales price is based on one and one half (1½) people per bedroom. Therefore:

(1) The maximum sales price for an efficiency unit is calculated using the income for a one person household.

(2) The maximum sales price for a one bedroom unit is calculated using the mid-point between the income for a one person household and a two person household (e.g. 1.5 people per bedroom).

(3) The maximum sales price for a two bedroom unit is calculated using the income for a three person household.

(4) The maximum sales price for a three bedroom unit is based on the mid-point between the income for a four person household and a five person household (that is, 4.5 people per bedroom).

Bedroom Size	Household Size
0	1 person
1	1.5 people
2	3 people
3	4.5 people

To calculate the sales price for any unit by bedroom size, DHCA would first calculate the the corresponding household's "gross monthly income" by dividing the gross annual income by twelve (12) months. This gross monthly income is then multiplied by thirty percent (.30) to determine the household's "monthly housing income". For example, the sales price for a 2-bedroom condominium would be calculated based on the gross annual income for a 3-person household earning 60% of the median income. In current numbers, this would be as follows:

Household Size	(a) Annual Gross Income at 60% AMI*	(b) Monthly Gross Income [column (a)/ 12 months]	(c) Monthly Housing Income [column (b) x .30]
3 people	$55,500	$4,625	$1,388

* - rounded to the nearest $500

In determining the affordable sales price based on this total monthly housing income, DHCA would also assume that each household would provide a 5% down payment, with 95% of the purchase price financed though a conventional, 30 year, fixed-rate mortgage. Furthermore, DHCA would develop estimated monthly housing expenses for items such as real estate taxes, hazard insurance, private mortgage insurance (PMI), and condominium/HOA fees. Currently, DHCA has set the following values for these expenses:

- Real estate taxes = 1% of property value, annually
- Hazard insurance = $200 per year
- PMI = as set by PMI rate tables, this varies by loan type, amount financed, and other factors; in this example and at 95% financed, the percentage of PMI would be 0.78% (.0078) of the mortgage amount
- Annual condominium/HOA Fees = $4.25 per sq. ft (high rise) and $1.25 per sq. ft. (non-condominium townhouses)

From the maximum "monthly housing income", subtract monthly condominium fees, monthly hazard insurance, monthly private mortgage insurance, and monthly real estate taxes to calculate the amount available to pay the principal and interest on a mortgage, as the following example for a high rise condominium demonstrates:

High Rise Condominium Example
(Based on a 900 square foot unit)

Monthly Housing Income	**$ 1,387.50**
Less: Monthly Condominium Fee	**- $ 318.75**
Less: Monthly Insurance Premium & Real Estate Taxes	**- $ 150.51**
Less: Monthly PMI Payment	**- $ 99.18**
Equals: Amount Available for Principal and Interest Payments	**$ 819.06**

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Divide the total amount available for principal and interest by the applicable annual mortgage loan constant[1] for a 30 year, fixed rate conventional mortgage at the prevailing mortgage interest rate. (DHCA will use the interest rate charged by the Housing Opportunities Commission's First Trust Mortgage Purchase Program for first-time home buyers, which is currently 5.0%). The resulting figure represents the "maximum mortgage amount" the eligible purchaser can afford to support.

(a) Monthly Housing Income Available for Principal and Interest	(b) Mortgage Constant for a 30 Year Mortgage, 5.0% Interest Rate	(c) Maximum Mortgage Amount
$ 819	0.005368	$152,570

Divide the "maximum mortgage amount" by ninety-five percent (95%) to calculate the "maximum affordable MPDU sales price" after accounting for a down payment of five percent (5%).

Maximum Mortgage Amount	**$ 152,570**
Divided by: 100% - 5% down payment	**.95**
Equals: Maximum Affordable MPDU Sales Price	**$ 160,600**

The maximum affordable MPDU sales price in the example above would be $160,600 after accounting for monthly condominium fees and other factors. An example of how this model would be used to calculate the maximum affordable sales price for a three-bedroom, non-condominium townhouse is shown below.

Three-Bedroom Townhouse Example
(Based on a 1,200 square foot unit)

Household Size	(a) Annual Gross Income at 60% AMI*	(b) Monthly Gross Income [column (a)/ 12 months]	(c) Monthly Housing Income [column (b) x .30]
4.5 people	$64,000	$5,333	$1,600

* - rounded to the nearest $500

[1] The mortgage constant, or installment to amortize, represents the amount of each periodic loan payment expressed as a percentage of the original loan, necessary to pay the contract rate of interest (expressed as *i*) and the entire principal in equal periodic installments over the term of the loan (expressed as *n*). It is the periodic payment necessary to repay a loan of $1 completely without resorting to a balloon payment. Thus, the mortgage constant is always the periodic payment for a loan of $1 expressed on an annual basis. As a mathematical product, the applicable loan constant can be found on standard charts.

Monthly Housing Income	**$ 1,600.00**
Less: Monthly HOA Fee	**- $ 125.00**
Less: Monthly Insurance Premium & Real Estate Taxes	**- $ 202.19**
Less: Monthly PMI Payment	**- $ 137.47**
Equals: Amount Available for Principal and Interest Payments	**$ 1,135.34**

Divide the total amount available for principal and interest by the applicable annual mortgage loan constant for a 30-year, fixed rate mortgage.

(a) Monthly Housing Income Available for Principal and Interest	(b) Mortgage Constant for a 30 Year Mortgage, 5.0% Interest Rate	(c) Maximum Mortgage Amount
$ 1,135	0.005368	$211,438

Divide the "maximum mortgage amount" by ninety-five percent (95%) to calculate the maximum affordable MPDU sales price.

Maximum Mortgage Amount	**$ 211,438**
Divided by: 100% - 5% down payment	**.95**
Equals: Maximum Affordable MPDU Sales Price	**$ 222,566**

The maximum affordable MPDU sales price in the example above would be $222,566 after accounting for monthly HOA fees and other factors.

Additional Considerations

The affordability-based model for establishing MPDU sales prices is affected by annual changes in household median incomes, shorter term fluctuations in prevailing mortgage rates, and condominium and HOA fees. Because the model is intended to ensure that the units are produced are affordable for purchase by the households served by the MPDU program, DHCA proposes that the sales prices be set at the time the units are offered for sale to MPDU program participants (that is, at the time the MPDU Offering Agreement is executed between the builder and DHCA). It is only at this time that the prevailing mortgage interest rates are known. To set the sales price at any time prior to this would negate the intent to make the unit affordable to person in the MPDU program.

Finally, as part of this model, the Department will periodically establish and review the assumptions and factors it will use under this pricing model. In addition, if this model is adopted, DHCA would establish more specific and instructive minimum specifications for MPDUs.

II) Determining an Alternative Payment for High-Rise Condominium MPDUs

The County Executive does not support an alternative payment option for MPDUs, because use of this option will reduce the promotion of income diversity within communities that is one of the underlying goals of the MPDU program. However, at the direction of the PHED Committee, DHCA and Council staff have researched alternative payment options for inclusionary zoning programs in several cities around the country in order to develop a recommendation for discussion with the development community and the PHED.

All of the options that staff reviewed are based in some way on the "affordability gap" (i.e., the difference between either the market price or development cost of a housing unit and the affordable sales price to a household whose income falls within the target range of the inclusionary zoning program). While most of the programs reviewed set their affordability prices at a higher level than Montgomery County (between 80% and 120% of Area Median Income (AMI), compared to the proposal for 60% of AMI for Montgomery County), most also have lower thresholds for triggering inclusionary zoning requirements (generally between 5 and 10 units, compared to 20 units in Montgomery County), and require a higher percentage of inclusionary units (from 15% to 20%, compared to 12.5% to 15% in Montgomery County).

Following is a brief review of some alternative payment options, and DHCA's recommendation for an alternative payment methodology for the MPDU program.

Alternative Payment Based on a Percentage of the Difference between Individual Market Sale Prices and the Affordable Price for an Inclusionary Unit

Example: Berkeley, CA

Berkeley's inclusionary zoning program was adopted in 1986, but the city did not adopt an alternative payment provision until 2006. The city actively encourages alternative payments for condominium units, due to expensive condominium fees (alternative payments are not allowed for rental projects, however). Therefore, in devising a formula for alternative payments, the city sought to set a fee of approximately two-thirds of the difference between the market price and the affordable price of inclusionary units.

Berkeley's alternative payment is based on the actual market sales prices of the market units in the development. The fee is the equivalent of 62.5% of the difference between the sales price and the affordable price of inclusionary units (affordability is based on 80% of AMI). However, the fee is spread out over all of the market units in a development, rather than applied to specific "substituted" units, which prevents any potential price manipulation of the substituted units. Because Berkeley's required percentage of inclusionary units is 20% (whether on-site or alternative payment – the ordinance has no provision for off-site units), the fee works out to 12.5% of the difference between the sales price of each unit in a development and the affordable price of an inclusionary unit (20% of 62.5% equals 12.5%). Because 12.5% is the required condominium conversion fee in Berkeley, city staff felt that charging an equivalent amount for alternative payments would be justified.

The number of household members used to determine affordability is based on square footage of units rather than number of bedrooms, with a maximum of 1,200 square feet (6 person household). The fee is due at the time of closing on each market unit in a development. The alternative payment option is as of right, and there is no minimum on-site requirement or development size, so developments as small as 5 units (the program threshold) can opt for the alternative payment. If the program administrator suspects that the sale of any given unit is not "arms length," the appraised value of the unit may be used instead of the sales price.

Alternative Payment Based on Difference Between Cost of Constructing an Inclusionary Unit and the Affordable Price for an Inclusionary Unit

Example: San Francisco, CA

San Francisco's inclusionary zoning ordinance was adopted in 2003, but several changes were made to the ordinance in 2006. San Fransisco's alternative payment amount is calculated as the difference between the construction cost per unit of a certain bedroom size and the affordable sales price of a unit of the same bedroom size. An initial construction cost per unit type was determined through a study conducted in 2006; the construction costs are adjusted annually based on changes in the Construction Cost Index published by Engineering News-Record (ENR). The city intends to commission a new analysis of construction costs every 5 years.

The city has a uniform, city-wide alternative payment based on number of bedrooms, ranging from \$179,952 for an efficiency unit to \$374,712 for a three-bedroom unit (in 2008). The affordable sales price per unit type is based on 80% of AMI, and ranges from \$181,193 for an efficiency unit to \$265,114 for a three-bedroom unit. The program threshold is 5 units, and the alternative payment requirement is applied to 20% of the total units (if affordable units are constructed on-site, the requirement is 15%). The alternative payment option is allowed as of right, but this option must be selected prior to plan approval (a developer may decide later on to provide the units on-site, but cannot select the alternative payment option after plan approval). The alternative payment may be applied to either for-sale or rental projects, but in either case the entire payment is due prior to release of the first site or building permit.

Alternative Payment Based on a Percentage of the Difference between Median Sales Prices Per Unit Type and the Affordable Price for an Inclusionary Unit

Example: Boulder, CO

Boulder's inclusionary zoning program was adopted in 2000. At that time, the alternative payment was calculated based on a portion of the difference between median sales prices of detached and attached units, and the affordable price of an inclusionary unit (the full difference was not charged because the city acknowledged that other sources of financing would be available to leverage additional affordable units). The affordable inclusionary price is based on a 1,200 square foot unit.

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The current (2009) alternative payment is $119,922.35 for a detached unit, and $110,117.70 for an attached unit. (Boulder does not have any high rises due to a 55-foot citywide height limit.) The alternative payment amount changes yearly based on the percentage change in median sales prices of housing units that are 1,200 square feet or less, built within the last 10 years. If a developer wishes to build market rate units that are smaller than 1,200 square feet, he/she may calculate the alternative payment by multiplying 20% of the total floor area of the market rate units by a constant (in 2009, $99.94 for detached units and $91.81 for attached units). However, in either case, at least half of the inclusionary units must be on-site, or the alternative payment will be increased by 50% (unless the project is a rental development).

The maximum inclusionary sales price is currently 70.7% of AMI, and maximum income for purchasers of inclusionary units is 80.7% of AMI (including an asset test). The full alternative payment is due prior to issuance of building permits. Boulder's inclusionary zoning requirement applies to both sales and rental projects, but all privately developed inclusionary units must be sales units due to a state prohibition on rent-controlled units. (The city uses alternative payment fees to develop affordable rental housing through non-profit associations.)

Boulder has no threshold number for its inclusionary zoning requirement – even single-unit developments must comply, although most pay an in-lieu fee. At least 20% of the total number of units must be made permanently affordable to low- to moderate-income households, unless some method of alternative compliance is selected (in addition to the alternative payment, land dedication or dedication of existing off-site units is permitted).

The current alternative payment covers approximately 50% of the affordability gap. However, since the program was adopted, the affordability gap in Boulder has doubled. City staff is now seeking a change in the inclusionary zoning ordinance to allow a 15% increase in the alternative payment each year until the payment reaches 75% of the affordability gap.

Analysis of Alternative Payment Options

San Francisco's and Boulder's approaches to the alternative payment fee have the advantage of ease of determining the alternative payment requirement, which provides greater certainty for developers, and also provide a mechanism for determining alternative payments for rental as well as sales projects. However, a uniform alternative payment requirement does not take into account differences in market prices throughout a jurisdiction, which are considerable in Montgomery County. Moreover, requiring an up-front payment of the full fee at building or site permit is a considerable burden, particularly for rental projects.

Berkeley's alternative payment method, although more complicated to administer, has several advantages for Montgomery County. Unlike the other methods, basing alternative payments on actual market sales would capture differences in land values throughout the County, and would also increase the ability of the County to finance affordable units in the same planning area as the original development. The timing of payment of the fee (at closing of individual units rather than at building permit) would be more easily absorbed by developers, and would also provide some protection if market values drop precipitously between project approval and unit closings (while conversely allowing the County to capture a portion of the "windfall" if market values increase significantly). Berkeley's method also avoids the speculation involved in estimating construction costs or determining which types of units should be included in annual median sales.

Recommendation for Montgomery County

DHCA recommends that the County's alternative payment for an MPDU be set at 77.5% of the difference between a market sales price and the affordable price of an MPDU. This percentage is derived by deducting 22.5% in soft costs (the soft cost allowance built in to current MPDU sales prices).

Following is an example of how the proposed alternative payment fee would be applied to a two-bedroom high-rise condominium market unit in a 200-unit building with a sales price of $727,000 (the 2008 median sales price of a new, high-rise condominium unit in the Bethesda planning area), assuming an income of 60% of AMI for a 3-person household (1.5 people per bedroom), and an inclusionary requirement of 12.5%:

Montgomery County Example: Alternative Payment Proposal

Sales Price of Two-Bedroom Market Unit		**$727,000**
Less: Affordable MPDU Price (3 person household @ 60% AMI; 5.0% Interest)	-	$160,600
Difference between Market Price and MPDU Price		$566,400
Deduct Soft Cost Percentage (22.5%)	x	.775
Alternative Payment Per Required MPDU		**$438,960**

III) Establishing Guidelines for Alternative Location Agreements

The proposed amendments to Chapter 25A for alternative location agreements are an attempt to provide a specific public benefit for alternative MPDU locations (i.e., a higher percentage requirement of MPDUs), rather than leaving the determination of public benefit to the Director of DHCA, as provided in the current law. The alternative location option would be as-of-right for high-rise buildings, provided that the MPDUs are built or rehabilitated to standards established by DHCA, and the proposal meets the following criteria:

- The number of MPDUs provided at the alternative location or locations is equal to at least 15 percent of the total approved units in the original building;
- At least one more MPDU is provided than would have been built if 12.5% of the units in the original building were MPDUs;
- No more than one-third of the total number of units at the proposed alternative location or locations will be MPDUs; and
- The MPDUs at the proposed alternative location or locations have at least as many bedrooms as would have been required under Sections 25A-5(b)(3) if all MPDUs had been located on the site of the original building.

As with alternative payments, any subdivision for which an alternative location agreement is approved would not be eligible for a density bonus.

IV) Determining an Alternative Payment for High-Rise Rental MPDUs

As with condominiums, the County Executive does not support an alternative payment option for rental MPDUs, for the reason stated above. However, at the direction of the PHED Committee, DHCA and Council staff have endeavored to develop a recommendation for alternative payments for high-rise rental buildings for discussion with the development community and the PHED.

Determining alternative payments for rental units is even more problematical than determining such payments for condominium units. For a sale unit, the value of the difference between the market price and the inclusionary price can be captured at a specific point in time (i.e., at the closing of each market unit). However, the rent differential between a market unit and an inclusionary unit spans a 99 year period (the length of the control period for rental units in Montgomery County).

Rather than trying to capture some proportion of this 99-year rent differential, DHCA recommends that an alternative payment for rental units be calculated according to a method similar to the proposal for alternative payments for sale units. Instead of sales prices, alternative payments would be based on appraisals of individual rental market units of each required bedroom type (as if they were sales units), and payments would be due in up to four quarterly installments of equal amounts. The first would be payable when the building is 70% leased, or 2 years after the initial occupancy date (whichever is earlier), with subsequent payments due every three months afterwards until the full amount is paid. Alternatively, this amount could be a loan with a market interest rate payable over a 5 year period.

The above methodology would require a change in the most recent draft of the MPDU bill, which states that the alternative payment for a rental project would be based, for each unbuilt MPDU, on a percentage of the difference between the annual rental charged for each market price unit and the rent that would be charged for the same unit if it were an MPDU.

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LINOWES AND BLOCHER LLP

MEMORANDUM

TO: MPDU Working Group

FROM: Emily Vaias

DATE: October 15, 2009

RE: Proposed Revisions to MPDU And Workforce Housing Laws

EXECUTIVE SUMMARY

Overview: We were tasked to develop a revised MPDU and Workforce Housing Law that is simple, fair, and reasonable, and yet maintains the affordable housing inclusionary zoning regime that has been in place since 1974. To that end we have made the following revisions:

1. Combined the MPDU and Workforce Housing laws together in one "Affordable Housing" law. We will need to delete Article V (Workforce Housing) from Chapter 25B as well as make other corresponding amendments to 25B. In addition, changes will be needed to Chapter 59 (Zoning) as well as the relevant Executive Regulations.

2. Reduced the control period for both programs, for both rental and sales units to 20 years. The current control periods of 30 and 99 years causes the units to be stigmatized, and fails to account for renovation costs which will lead to a deteriorating housing stock and "ghettoization" of the units.

3. Established a base requirement that all residential subdivisions containing 20 or more dwelling units must provide at least 15% affordable housing which is made up of a minimum of 10% MPDUs and minimum 5% workforce housing. These requirements are then adjusted for multi-family buildings, with a distinction made between mid-rise (up to 5 stories/wood frame) and high-rise (more than 4 stories, steel and concrete construction). There is a recognition that multi-family dwellings, especially high-rise, are more expensive to construct and it is very difficult to provide units in these buildings without suffering substantial economic losses. Therefore, lower requirements are established if the affordable units are provided on-site, and then off-site options are provided, by right, that provide greater requirements as the units are placed further away from the project.

4. Established that the minimum 15% affordable housing requirement entitles the applicant to a 10% bonus density, and that all bonus densities are allowed even if the affordable units are provided off-site. This is necessary in order to fund the units, wherever they may be located.

5. The calculation method has been codified (it's currently unwritten and convoluted) so that the affordable housing and bonus density are based upon the base density allowed under the zone or sector plan, which precludes using the bonus units to calculate the affordable housing requirement and vice versa. We have also eliminated the rounding disparity and specified that all rounding shall be up to the next whole number.

6. Providing more than the require 15% affordable units entitles an applicant to increased bonus density based on the type of units. The bonus is calculated at a rate of 7 bonus units per additional MPDU and 3 per workforce housing unit for high-rise buildings. These numbers are consistent with the memo provided by Jacob Sesker at M-NCPPC.

7. Allowed the height and density limits to be exceeded for the purpose of providing affordable housing, but do not specify how much the limits may be exceeded and leave it to the Planning Board to determine the final height and density at site plan.

8. Allowed the payment of a fee in lieu of providing affordable housing units that is fair and reasonable based on unit types.

9. Allowed the Housing Initiative Fund to establish a Voucher Program and use some of its funds to provide vouchers throughout the County so that people can live where they choose and don't necessarily have to live in an MPDU or Workforce Unit in order to get the benefit of the program.

10. Use of the payment option does not eliminate the bonus density which is an across the board bonus of 10% for providing 15% affordable units, or payment of the fee based square footage. The fee is still an exaction, which is directed at a problem not caused by the project. The government should be required to offer some compensation otherwise it acts as an unauthorized and improper tax.

11. Require the use of PILOT programs when requested by the applicant and will help provide units on-site.

12. Leave low-income housing to the County to provide and manage, except that federal or state programs that do provide for low income housing may be used as a substitute to the new law at the election of the developer.

13. Eliminate the limits on re-sale that have nothing to do with, and are outside of the control period. People who live in a house for 20 years should be able to sell it without

paying the government a percentage of the profit. Also the government should not want to stigmatize the affordable units by treating them differently in the long term.

14. We need input on the mid-rise, townhouse and single-family buy-out options, so please provide this if possible.

As you know, we are scheduled to meet with DHCA next Wednesday, October 21, 2009 at 2:00 p.m.; therefore, we need to get everyone's thoughts and comments quickly (I apologize for the short fuse). We would like to hear from everyone by 6:00 p.m. on Monday, October 19, 2009. Thereafter, we hope to send this to DHCA on Tuesday, prior to our meeting on Wednesday.

Thanks.