

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM:  Michael Faden, Senior Legislative Attorney
Jeffrey L. Zyontz, Legislative Attorney
Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Worksession:** SRA 11-01, Adequate Public Facilities – Validity Period

SRA 11-01, Adequate Public Facilities – Validity Period, sponsored by Council President Ervin, Councilmember Floreen, Council Vice President Berliner, and Councilmembers Leventhal, Navarro, and Riemer, was introduced on January 18, 2011.

SRA 11-01 would temporarily extend, for 2 more years, both the minimum and maximum validity period for a determination of adequate public facilities by the Planning Board.¹ It would also extend by 2 years the validity period of any preliminary subdivision plan already approved or that is approved in the next 2 years. This SRA would essentially extend for 2 more years the extensions the Council granted in 2009 in SRA 09-01 (enacted as Ordinance 16-35 on March 31, 2009), which expire on April 1.

A public hearing on this SRA was held on March 1. The Planning Board, without extensive discussion, supported the SRA (see Board testimony and staff memo on ©7-11). The County Executive did not testify at the hearing but submitted a brief statement endorsing this SRA (see ©12). At the hearing and in other communications, representatives of land developers stressed the need to continue extending these validity periods; see developer testimony and letters on ©13-20. The only unaffiliated speaker at the hearing, Linda Grahill, opposed this SRA because it would “tie the future to the past” and “hold open the door to tired old projects”.

Issues

Which pending projects deserve an automatic 2-year extension? Should projects to be approved in the next 2 years be given an extended validity period?

¹This determination only applies to the adequate public facilities transportation test. The school test is treated differently and is not affected by this legislation.

In analyzing these proposed extensions, it may be helpful to split them up into different categories:

- 1) developments approved long ago and about to expire;
- 2) developments approved more recently and not close to expiration; and
- 3) developments to be approved in the next 2 years.

SRA 11-01 would automatically extend for 2 years the validity period of any *existing* approved preliminary subdivision plan and the Planning Board's determination of adequate public facilities adequacy. These extensions would apply to any plan or determination that remained valid on March 31, 2011, no matter how old or inactive the development is, and would add to the 2 year extensions that were granted in 2009. This SRA also would automatically add another 2 years to each *new* adequate public facilities determination and preliminary subdivision plan that the Board approves in the next 2 years. In other words, the range of the standard APF validity period would be 7-12 years instead of the current 5-10 years. For preliminary plan approvals, the validity period would be extended from 3 to 5 years for preliminary plans approved during that same period.

The central question this SRA poses is **whether all 3 categories of developments should receive an automatic 2-year extension** (instead of the case-by-case extension that the Planning Board already can allow under the current law²). The first category – **projects close to expiring** -- has the best argument for a blanket extension. They have been most impacted by the recent economic recession because they have been prevented from going forward by lack of financing and, without this extension, would have to reapply to the Planning Board for APF or subdivision approvals, which entails added costs and delays. (See, for example, the developments described in the developer letters on ©18-20.)

Contrast those projects with developments which have recently received Planning Board approval or which will receive that approval in the next 2 years. They will have the full validity period – 5 to 10 years, depending on the size and nature of the project -- to obtain financing and proceed to construction; in other words, they will not be impacted by a looming deadline for another 5 to 10 years. And, when facing the deadline (as already mentioned), they can apply to the Planning Board for an extension, which the Board can grant if it finds that the project is still viable.

This SRA would short-circuit the Board's case-by-case review by giving all approved developments – not just those about to expire -- another 2 years of validity. If the extension allowed by this SRA is added to that granted in 2009, the functional effect is to increase the APF validity period, for most affected projects, from the nominal 5-10 years to an actual 9-14 years. That runs counter to the Council's policy decisions, up to 2009, to shorten the validity periods in order to reduce the pipeline of approved development.

As the Planning staff report (see ©10) noted, the first limits on the validity of an adequate public facilities finding were set in 1989, and those limits were tightened in 1999 and further tightened most recently in 2007. The Council and Planning Board's recent trend regarding the pipeline of development has been to reduce the maximum validity periods that are allowed in the

²County Code §50-20(c)(5)-(12); §50-35(h)(3).

law, with the goal of “freshening” the pipeline – that is, clearing out deadwood projects (those that are likely never to be completed) which absorb transportation capacity that newer projects could better use. The public interest in making these adjustments was to limit the use of, and reduce reliance on, outdated traffic studies and obsolete infrastructure requirements. These changes were expected to benefit both the public and the development community.

For projects that the Planning Board reviews in the future, the current law directs the Board to consider each application individually and set its validity period, within the standard 5-10 year range, based on its particular situation. Under the current law (not amended in 2009 or by this SRA), the developer of a project whose APF validity period is about to expire can apply for an extension of 2½ to 6 years, depending on the type of development, and the Planning Board can grant one if the Board finds that the project is partly built or sufficient numbers of building permits have been issued. Similarly, the Board can extend a preliminary plan validity period, if the Board finds that the project remains viable, for delays that are not the applicant’s fault.³

A longer pipeline, with more projects that are no longer viable (in Council staff’s term “zombie projects”) has tangible negative effects: by assuming more background traffic, it increases the burdens on developers of newer projects or makes those projects less viable. It also continues reliance on outdated traffic studies, which likewise transfers the burden to other developers (or, in some cases, to road users or the County government) to cope with the actual current traffic conditions.⁴

Council staff is skeptical of the need to further bend the rules for all developments and believes that the best approach is to rely on the Planning Board’s case-by-case review to extend the validity periods of those expiring projects that deserve to be extended. If more assurance of old developments’ continued validity is needed, since the construction market is showing some signs of revival, as Mr. Spalding and Mr. Kominers candidly noted on ©13 and 17, a case can be made for amending this SRA to extend these approvals for one year rather than 2, setting up an opportunity at this time next year for the Council to reassess the state of the markets.

As yet a further middle ground, Council staff suggests a narrower, less generous blanket extension, giving 2 more years to each development that would expire during the next 2 years but no extension for new developments. **Council staff recommendation:** delete the amendments on ©2 through ©5, line 85 (except for the stylistic improvements on ©4, lines 62-72). Amend the temporary provisions on ©5-6 so they only apply to approvals scheduled to expire between April 1, 2011, and March 31, 2013.

³In assessing the viability of a project that seeks an extension, the Board is governed by §50-35(h)(3)(D):

The Planning Board, in considering a request for an extension, may deny the request if it finds that the project, as approved and conditioned, is no longer viable. In considering the viability of a project, the Board must consider such factors as whether the project is capable of being financed, constructed, and marketed within a reasonable time frame and demonstrated by the applicant upon request by the Planning Board or its staff.

⁴In both its testimony and its staff’s memo, for reasons that are not clear to Council staff, the Planning Board failed to discuss these implications of this SRA. The Board also did not analyze the effects, if any, of the 2009 extensions.

This packet contains

SRA 11-01
Planning Board testimony and staff memo
County Executive statement
Public hearing testimony

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Ordinance No. 17-
Subdivision Regulation Amend. No. 11-01
Concerning: Adequate Public Facilities-
Preliminary Subdivision Plans –
Validity Period
Revised: 1-7-11 Draft No. 2
Introduced: January 18, 2011
Public Hearing: March 1, 2011
Adopted: _____
Effective: _____

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

By: Council President Ervin, Councilmember Floreen, Council Vice President Berliner, and
Councilmembers Leventhal, Navarro, and Riemer

AN AMENDMENT to:

- (1) extend the validity period for a determination of adequate public facilities for certain developments;
- (2) extend the validity period for certain preliminary subdivision plans; and
- (3) otherwise revise the validity period for certain developments.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Sections 50-20 and 50-35

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

Sec. 1. Section 50-20 and Section 50-35 are amended as follows:

50-20. Limits on issuance of building permits.

* * *

(c) * * *

(3) (A) A determination of adequate public facilities made under this Chapter is timely and remains valid:

(i) for 12 years after the preliminary plan is approved for any plan approved on or after July 25, 1989, but before October 19, 1999;

(ii) for no less than 5 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after October 19, 1999, but before August 1, 2007;

(iii) for no less than 7 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after April 1, 2009, but before April 1, [2011] 2013; and

(iv) for no less than 5 and no more than 10 years after the preliminary plan is approved, as determined by

22 the Board at the time of approval, for any plan
23 approved on or after August 1, 2007, and before
24 April 1, 2009, or on or after April 1, [2011] 2013.

25 * * *

26 (4) The Planning Board may extend a determination of adequate
27 public facilities for an exclusively residential subdivision
28 beyond the otherwise applicable validity period if the
29 Department has issued building permits for at least 50 percent
30 of the entire subdivision before the application for extension is
31 filed. The Board may approve one or more extensions if the
32 aggregate length of all extensions for the development do not
33 exceed:

34 (A) for a preliminary plan approved before April 1, 2009, or
35 on or after April 1, [2011] 2013:

36 (i) 2½ years for a subdivision with an original validity
37 period of 5 years; or

38 (ii) 6 years for a subdivision with an original validity
39 period longer than 5 years; and

40 (B) for a preliminary plan approved on or after April 1, 2009,
41 and before April 1, [2011] 2013:

42 (i) 2½ years for a subdivision with an original validity
43 period of 7 years; or

44 (ii) 6 years for a subdivision with an original validity
45 period longer than 7 years.

46 * * *

47 **50-35. Preliminary subdivision plans-Approval procedure.**

48 * * *

49 (h) *Duration of Validity Period and Actions Required to Validate the Plan.*

50 * * *

51 (2) *Duration of Validity Period.*

52 (A) An approved preliminary plan for a single phase project
 53 remains valid for 60 months after its Initiation Date for any
 54 preliminary plan approved on or after April 1, 2009, but
 55 before April 1, [2011] 2013, and for 36 months after its
 56 Initiation Date for any preliminary plan approved on or
 57 after April 1, [2011] 2013. Before the validity period
 58 expires, the applicant must have secured all government
 59 approvals necessary to record a plat, and a final record plat
 60 for all property delineated on the approved preliminary
 61 plan must have been recorded in the County land records.

62 (B) An approved preliminary plan for a multi-phase project
 63 remains valid for the period of time allowed in the phasing
 64 schedule approved by the Planning Board. [Each phase
 65 must be assigned] The Planning Board must assign each
 66 phase a validity period on a case-by-case basis, the
 67 duration of which [must be proposed by] the applicant
 68 must propose as part of an application for preliminary plan
 69 approval, [or for preliminary plan] revision, or amendment,
 70 [and approved on a case-by-case basis by the Planning
 71 Board,] after considering such factors as the size, type, and
 72 location of the project. The time allocated to any phase

73 must not exceed 60 months after the initiation date for that
 74 particular phase for any preliminary plan approved on or
 75 after April 1, 2009, but before April 1, [2011] 2013, and
 76 36 months after the initiation date for that particular phase
 77 for any preliminary plan approved on or after April 1,
 78 [2011] 2013. The cumulative validity period of all phases
 79 must not exceed the APFO validity period which [runs
 80 from] begins on the date of the initial preliminary plan
 81 approval, including any extension granted under Section
 82 50-20(c)(5). A preliminary plan for a phase is validated
 83 when a final record plat for all property delineated in that
 84 phase of the approved preliminary plan is recorded in the
 85 County land records.

86 * * *

87 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2011.

88 **Sec. 3. Automatic Extensions.**

- 89 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
 90 validity period of any determination of adequate public facilities that
 91 was valid on March 31, 2009, or for which a timely application for an
 92 extension of the validity period was pending on March 31, 2009, is
 93 automatically extended for 4 years after the date when the validity
 94 period would otherwise have expired. This 4-year extension includes
 95 any extension granted automatically by Ordinance 16-35 and must be
 96 treated for all purposes as part of the validity period that was extended.
- 97 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
 98 validity period of any preliminary subdivision plan that was valid on

99 March 31, 2009, or for which a timely application for an extension of
100 the validity period was pending on March 31, 2009, including any
101 separate phase of a multi-phase plan, is automatically extended for 4
102 years after the date when the validity period would otherwise have
103 expired. This 4-year extension includes any extension granted
104 automatically by Ordinance 16-35 and must be treated for all purposes
105 as part of the validity period that was extended.

106 (c) Notwithstanding any provision of Section 50-20(c) to the contrary, the
107 validity period of any determination of adequate public facilities that
108 was valid on March 31, 2011, or for which a timely application for an
109 extension of the validity period was pending on March 31, 2011, is
110 automatically extended for 2 years after the date when the validity
111 period would otherwise have expired. This 2-year extension must be
112 treated for all purposes as part of the validity period that was extended.

113 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
114 validity period of any preliminary subdivision plan that was valid on
115 March 31, 2011, or for which a timely application for an extension of
116 the validity period was pending on March 31, 2011, including any
117 separate phase of a multi-phase plan, is automatically extended for 2
118 years after the date when the validity period would otherwise have
119 expired. This 2-year extension must be treated for all purposes as part
120 of the validity period that was extended.

121 *Approved:*

122
123 _____
Isiah Leggett, County Executive

Date



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

February 23, 2011

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Subdivision Regulation Amendment No. 11-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 11-01 at its regular meeting on February 17, 2011. After careful review of the material of record, the Board voted unanimously to recommend approval of the Subdivision Regulation Amendment as introduced and included as an attachment to the technical staff report accompanying this memorandum.

SRA 11-01 would continue the previously adopted extension of the standard minimum validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years and the standard minimum validity period of a preliminary subdivision plan from 3 to 5 years. SRA 09-01 (Ordinance 16-35), adopted by the County Council on March 31, 2009, provided these same extensions with a sunset two years after the effective date of the legislation, which would end on April 1, 2011. The subject SRA extends the previously adopted legislation for two more years.

The legislation also grants an additional 2-year automatic extension of all previously granted preliminary plan and APF approvals that remain valid as of April 1, 2011. SRA 09-01 also provided these same extensions.

The Board believes that, as with the extensions adopted by the County Council in 2009, this SRA would be an important measure for assisting developers and builders

during the current economic recovery period by allowing them to avoid extra steps and costs to request APF and preliminary plan extensions as the economy and lending market recover.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, February 17, 2011.

Françoise M. Carrier
Chair

FC:GR

Attachments

1. Technical Staff Report



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

MCPB
Item #7
2/17/11

DATE: February 7, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1
Cathy Conlon, Supervisor, DARC
FROM: Greg Russ, Functional Planning & Policy
REVIEW TYPE: Subdivision Regulation Amendment
PURPOSE: Generally amend the Subdivision Regulations to extend the standard validity period for a determination of adequate public facilities for certain developments and to extend the standard preliminary plan validity period.

SUBDIVISION REGULATION AMENDMENT: 11-01

INTRODUCED BY: Council President Ervin, Councilmember Floreen,
Council Vice President Berliner, and Councilmembers
Leventhal and Navarro

INTRODUCED DATE: January 18, 2011

PLANNING BOARD REVIEW: February 17, 2011

COUNCIL PUBLIC HEARING: March 1, 2011; 1:30pm

STAFF RECOMMENDATION Staff recommends approval as introduced of SRA 11-01 to extend the validity period for Adequate Public Facilities (APF) and Preliminary Plans. SRA 11-01 would continue the previously adopted extension of the standard minimum validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years and the standard minimum validity period of a preliminary subdivision plan from 3 to 5 years. SRA 09-01 (Ordinance 16-35—see Attachment 2), adopted by the County Council on March 31, 2009, provided these same extensions with a sunset two years after the effective date of the legislation, which would end on April 1, 2011. The subject SRA extends the previously adopted legislation for two more years.

The subject SRA also grants an additional 2-year automatic extension of all previously granted preliminary plan and APF approvals that remain valid as of April 1, 2011. SRA 09-01 also provided these same extensions.

Staff is in favor of the proposed limited time-frame extension of the minimum validity periods for preliminary plans and determinations of adequate public facilities, and of the additional automatic 2-year extensions for currently valid plans. As with the extensions adopted by the County Council in 2009, this would

be an important measure for assisting developers and builders during the current economic recovery period. Given the difficulty of obtaining financing coupled with the market slowdown, developers with approved plans would otherwise have to apply for extensions for which they might not be found eligible (economic feasibility is not considered a valid reason) or they might have to build or pay for costly infrastructure or pay for a new traffic study to obtain an APF extension. The SRA allows developers and builders to avoid these extra steps and costs as the economy and lending market recover.

BACKGROUND/ANALYSIS

Requirements (absent the extensions previously approved under Ordinance No. 16-35)

In Montgomery County, proposed development is tested for the adequacy of public facilities that will serve that development. Typically, the testing occurs at the time of the Planning Board's review of a preliminary plan of subdivision. Chapter 50 of the Montgomery County Code addresses the testing for adequate public facilities, as does the Growth Policy resolution adopted by the County Council every two years.

When the Planning Board finds that public facilities are adequate to support a subdivision, the finding has a limited validity period. Prior to July 25, 1989, there were no time limits on a finding of adequate public facilities. From July 25, 1989 until October 19, 1999, the time limit was 12 years. Beginning October 19, 1999, the time limits were changed to no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision. Beginning August 1, 2007, the time limits were changed to no less than 5 and no more than 10 years, as determined by the Planning Board at the time of subdivision.

Section 20 of Chapter 50 contains the language setting the time limits of a finding for adequate public facilities by the Planning Board. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities. All building permits for a development must be issued within these time limits, or a new test for adequate public facilities must be done.

Chapter 50 also establishes time limits for the validity of the Planning Board's approval of a preliminary plan of subdivision. Prior to the temporary extension granted under Ordinance No. 16-35, an approved preliminary plan for a single phase project remained valid for 3 years from its Initiation Date, which is 30 days from the date of mailing of the Planning Board's written opinion. Before the validity period expired, a final record plat for all property delineated on the approved preliminary plan must have been recorded among the County Land Records. An approved preliminary plan for a multi-phase project remained valid for the period of time established in a phasing schedule approved by the

Planning Board. The validity period for each phase could not exceed 3 years from the Initiation Date of the preliminary plan. Validation of a preliminary plan for a phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

Section 35 of Chapter 50 contains the language setting the time limits for the preliminary plan validity period. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the preliminary plan validity.

As introduced in SRA 11-01 (consistent with the language as adopted in Ordinance No. 16-35), the proposed legislation would extend the standard validity period for a determination of adequate public facilities under the subdivision regulations from a minimum of 5 years and maximum of 10, to 7 and 12 years, respectively. The standard validity period of a preliminary subdivision plan would be extended from 3 to 5 years. Finally, the validity periods for all currently approved and valid preliminary subdivision plans and APF determinations would be automatically extended by 2 years. Staff supports these proposed measures during the current economic recovery period.

CC/GR

Attachments

1. Proposed SRA No. 11-01
2. Ordinance No. 16-35



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

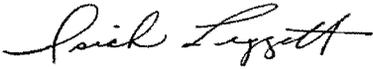
MEMORANDUM

March 3, 2011

RECEIVED
MONTGOMERY COUNTY
OFFICE

2011 MAR -3 AM 9:55

To: Valerie Ervin, Council President

From: Isiah Leggett, County Executive 

Subject: Subdivision Regulation Amendment 11-01, Adequate Public Facilities –
Validity Period

I am pleased to support the adoption of SRA 11-01, which extends the validity period for Adequate Public Facilities determination and the approval of existing preliminary plans. As the economy rebounds this legislation protects investments in development approvals and poises pending projects in the County to readily meet residential housing and employer facility needs. I urge the Council to enact this amendment.



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**Maryland National Capital Building Industry Association
 SRA 11-01 Adequate Public Facilities – Validity Period
 March 1, 2011**

**Presented by: Robert Spalding, Miller and Smith
 Chair, Montgomery Liaison Committee
 1738 Elton Road, Silver Spring, Maryland 20903**

Madame Chair and County Council members:

The above referenced Amendment clearly reflects the Council's position of supporting Economic Development efforts on behalf of the County through extending for two years the validity period of preliminary plan approvals and adequate public facility determinations. The members of the building industry greatly appreciate your sensitivity to our plight during these highly unusual economic conditions. This amendment supports many of our most recognizable and popular new communities under construction today in Gaithersburg, Silver Spring, Clarksburg and throughout the County.

The homebuilding industry represents a fully local industry that hires locally, manufactures locally and pays local corporate, payroll and property taxes. The industry supports a very high multiplier effect through hiring, buying materials, supporting related industries and through tax revenue. It has been estimated that for every one direct employee, there are five additional indirect employees hired as a result. And our industry represents net new growth adding improvements to land and buildings for higher tax assessments. Every new home contributes through impact fees and other fees. Every new community contributes to new road construction and improvements to our infrastructure, including parks, open space, water and sewer lines and stormwater management.

These are unusual times and we would prefer moving forward with our new community developments post haste. But, we can neither meet the County's schedule nor our own schedules and we all suffer the consequences. This amendment allows us to survive, hold on and maintain while the overall economy gets back on track. The good news is that we seem to be experiencing glimmers of hope and improvements in general interest. Montgomery County remains a highly desirable address and we are proud to be part of the community.

Again, thank you for your support and understanding.

BUILDING HOMES, CREATING NEIGHBORHOODS

Representing Calvert, Charles, Montgomery, Prince George's and St. Mary's Counties and Washington, D.C.
 Affiliated with the Maryland State Builders Association and the National Association of Home Builders





ATTORNEYS

PATRICK L. O'NEIL
PLONEIL@LERCHEARLY.COM

**Public Hearing on SRA 11-01
Adequate Public Facilities Validity Period
Hearing Before the Montgomery County Council
March 1, 2011**

Good afternoon President Ervin and members of the Montgomery County Council. My name is Patrick O'Neil and I am an attorney with Lerch Early & Brewer in Bethesda, Maryland. I am testifying in conjunction with my partner, Steve Robins, on behalf of several clients that have an interest in this matter, including the Camalier Limited Partnership and the Davis Brothers Montgomery Farm Limited Partnership.

Let me first thank President Ervin as well as all of the co-sponsors of this legislation for putting forth the legislation in such a timely manner. Of all the pieces of legislation dealing with the economy, this is critically necessary in order to help weather the storm in what has been an unprecedented economic environment. I also would like to thank the Council's Staff, the County Executive and his Staff, as well as the Planning Board and its Staff for favorably evaluating the SRA and supporting it.

The legislation that was reviewed by the Planning Board just a few weeks ago is technically sound and carries forward the extension that was granted in 2009 for an additional two years. As the Planning Board recently found, the legislation is a reasonable measure to provide some relief to those individuals that have valid preliminary plans and adequate public facilities determinations, but may not be able to finish the land use processes or move forward with construction at this time because of economic limitations. The legislation preserves and protects these approvals at this most difficult time. Of equal importance, this legislation sends out a positive message from the Council that this body is supportive of economic development



and the desire to help stimulate activity by giving applicants the ability to move forward and pursue approvals, knowing that they will be afforded somewhat longer validity periods.

I know that all of you have been sensitive to the economic pressures we face and have been trying to create opportunities to improve the economic situation here in Montgomery County.

This particular piece of legislation certainly is a welcomed relief. Thank you very much for your support. You are to be commended for acting swiftly and positively in your introduction of the legislation and thereafter, in what we look forward to being its approval.

Thank you for your consideration of our position.

Holland & Knight

3 Bethesda Metro Center, Suite 800 | Bethesda, MD 20814 | T 301.654.7800 | F 301.656.3978
Holland & Knight LLP | www.hklaw.com

William Kominers
301 215 6610
william.kominers@hklaw.com

March 1, 2011

The Honorable Valerie Ervin, President
and Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation Amendment SRA No. 11-01

Dear President Ervin and Members of the Council:

The purpose of this letter is to present my testimony in support of Subdivision Regulation Amendment SRA No. 11-01 (the "SRA"). This SRA will extend the validity periods for two years for Preliminary Plan approvals and Adequate Public Facilities ("APF") determinations. I wish we did not have to be here for this legislation.

Unfortunately, the devastating economic conditions that gave rise to similar legislation two years ago have not abated. While we all look desperately for glimmers of hope, or a light at the end of the tunnel, so far, that light has only been that of the oncoming train. Conditions have not improved to allow employers to hire, and thereby fill new commercial space with employees. Only employees with job security and salary certainty will take the step to buying homes. Financing available for commercial or residential development is negligible, if it exists at all.

Passage of this legislation will allow the business and development community an opportunity to stay alive and be available to rebound when the ultimate recovery arrives. I applaud the Council for its continued support of the business and development community in these anemic economic times by introducing Subdivision Regulation Amendment SRA No. 11-01. I urge you to follow that introduction with approval, and to do so before the end of March, when the prior legislation expires.

As can be deduced from the lack of applications for development approvals, reduction in transfers of commercial properties, and slow down in building permits and related activities, the development community has been virtually on hold for the past two years. As you begin the budget season, I know you are well aware of this reality, as County revenues have fallen in no small measure due to the lack of development activities. Just look at those County agencies operating as enterprise funds, in order to see the effect of no construction activity. By passing this measure, you give continued life to projects that are still hoping to move forward, but have been stymied by the lack of financing, market demand, adequate rents, or other issues related to the recession.

The Honorable Valerie Ervin

March 1, 2011

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Property owners in the County have lost value as land values have decreased in the past few years. The further loss of related entitlements would only exacerbate this downward tumble. The County Council can curb further loss by allowing these existing entitlements to be extended for two years, as you did two years ago.

The SRA follows the careful drafting format from 2009 to assure that the proposed extension applies only as intended and only for a limited period. The proposed extension will apply only to those APF approvals which remain currently valid and existing. At the same time, the provision is fair by including all such approvals, without distinction.

The SRA creates a corresponding extension for preliminary plan approvals, because that is the point in the process where the APF determination is made. Yet there is a separate validity period for the preliminary plan approval that is shorter than that of the APF approval. Both need to be extended in order to make either effective and meaningful.

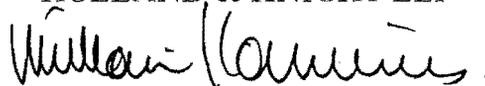
There are signs that the economy may be becoming healthier. As a result, jurisdictions in the Metropolitan Area are positioning themselves for the resurgence. By approving this measure, the County Council will put owners, businesses, developers, and employers in a better position to participate in the rebound. If owners have to go through lengthy and costly re-approval processes, development opportunities will be lost to other jurisdictions. Montgomery County cannot afford to be in that position.

The SRA gives approved plans an opportunity to weather this economic storm and remain prepared to lead the future recovery when conditions improve. This is exactly the kind of legislative response that is needed in these circumstances. The Planning Board and its Staff are to be commended for supporting this legislation, and I look forward to congratulating the Council on its passage.

I thank you, especially the SRA's many sponsors, for acknowledging that the economy has not recovered; that the recession is not over. I strongly urge you to approve this amendment, and to do so before the end of this month.

Thank you for your consideration.

Very truly yours,
HOLLAND & KNIGHT LLP



William Kominers

cc: Mr. Robert Kaufman

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Bethesda MD 20814

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Hampden Lane Associates, LLC

February 23, 2011

The Honorable Valerie Ervin
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation Amendment No. 11-01; Public Hearing March
1, 2011

Dear President Ervin and Members of the Council:

This letter is to express support for proposed Subdivision Regulation Amendment No. 11-01. This Amendment will extend the validity period for an adequate public facilities determination and a preliminary plan for an additional two years. We ask that the County Council adopt this legislation.

Hampden Lane Associates, LLP owns the properties at 4915, 4917, 4919, and 4921 Hampden Lane in Bethesda (the "Property"). In 2006, we received approval from the District Council for a local map amendment (No. G-842), development plan, and development plan amendment (DPA 06-2) in order to develop a residential project on the Property under the TS-R Zone, all in accordance with the Bethesda CBD Sector Plan. Neighbors appealed the approval to the Circuit Court and then to the Court of Special Appeals. The Court of Special Appeals affirmed the Council's decision in 2008.

While the appeal was pending, we filed and processed a Preliminary Plan Application (No. 120070500) and a Site Plan Application (No. 820070100) for the development of the Property. The Planning Board approved both Plans in late 2008. The Site Plan was certified in 2009.

Unfortunately, by the time the appeal was heard and decided and the Preliminary and Site Plans were approved, the economic downturn was well under way. Financing the project was virtually impossible and the market for new residential projects had disappeared. We had invested a significant amount of time and resources into obtaining -- and defending -- the necessary approvals, but

we were unable to proceed because of forces beyond our control. We are eager to proceed when the market allows.

We strongly support Subdivision Regulation Amendment No. 11-01 that will extend the validity period for an adequate public facilities determination and a preliminary plan for an additional two years. This Regulation will ensure that those who followed all applicable procedures and whose approved developments were delayed due to economic or other factors out of their control, will be protected from further uncertainty and expense. With this protection, we will be ready to respond to the needs of the County when the economic conditions rebound.

Thank you for your consideration of these comments.

Sincerely yours,

HAMPDEN LANE
ASSOCIATES, LLC

By: 

cc: William Kominers, Esquire
Susan M. Reutershan, Esquire

Miller & Smith.

ONE VISIT CAN CHANGE EVERYTHING

February 2, 2011

County Council President Valerie Ervin and
County Council Members
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Ervin and Members of the County Council,

Thank you for introducing Subdivision Regulation Amendment (SRA) 11-01, *Adequate Public Facilities – Preliminary Subdivision Plans – Validity Period*. Miller and Smith supports the SRA and encourages the prompt adoption before the provisions of SRA 09-01 expire on March 31, 2011. The SRA gives us the opportunity to increase Montgomery County's tax base by around \$60 million, pay over \$2.7 million in school impact taxes, widen Shawnee Lane to a 4 lane arterial road (at no cost to the County), provide homes for 256 homeowners, construct 32 Moderately Priced Dwelling Units, generate all of the associated economic activity in the community that new homes generate, and create/maintain jobs.

Without SRA 09-01, Gallery Park's approvals would have expired before the neighborhood was complete. This would have created substantial financing and procedural hurdles that could have threatened our ability to provide the benefits that Gallery Park is providing to Montgomery County. As a result of the two-year extension provided by SRA 09-01, Miller and Smith was able to improve the plan for neighborhood, remove 2 over 2 condos as desired by the Clarksburg Civic Association, start grading, and are now finalizing permits to start home construction this summer.

Even with SRA 09-01, we are still in a very tight race to build homes before our approvals expire. Unfortunately, the economic conditions haven't changed enough since 2009 to ensure we complete all 256 homes before our extended approvals expire. Working through the development approval process in Montgomery County takes years and restarting it delays the increase in County revenue, puts additional workload on regulatory agencies that have reduced staffing, and creates a substantial financial burden on applicants. SRA 11-01 gives us more certainty that we can weather the fits and starts that are likely as the economy recovers.

We are excited that the combination of the extensions will allow us to build a better neighborhood design with more desirable homes. We thank you for the past extension and hope that each of you see there is a net County benefit to SRA 11-01 and will vote for its adoption in March.

Sincerely,



Robert J. Spalding, AICP
Development Director

cc: Michael Faden
Jeffrey Zyontz