

**MEMORANDUM**

TO: Planning, Housing, and Economic Development Committee

FROM: <sup>MK</sup>Michael Faden, Senior Legislative Attorney  
<sup>GO</sup>Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Worksession:** Subdivision Staging Policy Amendment – White Flint staffing capacity

To implement the White Flint Sector Plan, the Planning Board on March 18 submitted an amendment (see ©3-4) to the 2009-2011 Subdivision Staging Policy (formerly County Growth Policy) to create an Alternative Review Procedure for staging development under the plan in the White Flint special taxing district. The Council held the required public hearing on this amendment on June 14 (see testimony, ©13-17).

**Summary** This SSP amendment is a followup to the White Flint implementation Growth Policy amendment that the Council approved on April 27, 2010, in Resolution 16-1324. The 2010 amendment:

- exempted any proposed development located in the White Flint Metro Station Policy Area from Policy Area Mobility Review (PAMR) if the development will be required to provide substantial funds to a new development district, impact tax district, special taxing district, or other comprehensive financing mechanism to finance master-planned transportation improvements in that Policy Area; and
- exempted any proposed development located in the White Flint Metro Station Policy Area from Local Area Transportation Review (LATR) if the development will be required to provide substantial funds to a new development district or a new impact tax district to finance master-planned public improvements in that Policy Area.

The pending amendment would replace and simplify the 2010 amendment's PAMR and LATR provisions to reflect the enactment later that year of a law and resolution creating a White Flint special taxing district. More importantly, it would authorize the Planning Board to adopt an Alternative Review Procedure, implemented through Planning Board guidelines, to allocate staging capacity in the White Flint sector plan area. The Board's draft implementation guidelines are shown on ©6-12. The primary effect of the guidelines is to move the timing of the staging allocation from adoption of the preliminary subdivision plan to issuance of a building permit.

The Board's approach was developed after extensive consultation with representatives of affected White Flint area property owners and seems to have achieved a consensus in support. At the

June 14 Council hearing, representatives of the White Flint Partnership endorsed the amendment and guidelines as proposed.

**Council staff redraft** Council staff also recommends that this amendment be approved in substance. However, the County Attorney informally questioned whether the Planning Board could be delegated the authority, without further Council review, to adopt the proposed implementation guidelines because they go beyond the process and mechanics of implementing the staging allocations and also control issues of substance. Council staff concurred that this kind of delegation of authority must be more tightly limited. In response, Council staff recommended to Planning staff that the pending SSP amendment be revised to authorize the Planning Board to implement the Alternative Review Procedure through a quasi-method 2 regulation, which would be subject to Council disapproval. The amendment as redrafted by Council staff is shown on ©18-21; the operative language is on ©20-21. We understand that the Planning Board accepts this revision and will transmit the implementing regulation in time for the Council to review it under method 2 before the end of July.

**Council staff recommendation:** approve the Subdivision Staging Policy amendment as shown on ©18-21.

This packet contains:	<u>Circle #</u>
Planning Board memo	1
Subdivision Staging Policy amendment	3
Draft implementation guidelines	5
Public hearing testimony	13
Subdivision Staging Policy amendment (Council staff revision)	18

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**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

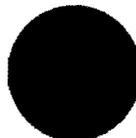
OFFICE OF THE CHAIRMAN

March 18, 2011

MF  
CC  
SBF  
LL  
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MM

The Honorable Valerie Ervin, President  
Montgomery County Council  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**061308**



RECEIVED  
MONTGOMERY COUNTY  
2011 MAR 21 PM 9:23

Dear Council President Ervin:

On behalf of the Planning Board, I am pleased to transmit a proposed amendment to the Subdivision Staging Policy that will create the necessary framework for the Planning Board to manage staging capacity in White Flint in a way that is consistent with the approved and adopted Sector Plan. The proposed amendment has been developed through extensive dialog and enjoys broad support from stakeholders.

The amendment we are proposing represents part of the "transportation approval mechanism" required by the White Flint Sector Plan as a prerequisite for approving the amount of development allocated to Phase 1 of the approved Staging Plan, 3,000 dwelling units and 2 million square feet of non-residential development.

The proposed amendment to the Subdivision Staging Policy accomplishes two objectives:

1. Create an alternative review procedure for new development in White Flint while maintaining the exemptions from policy area mobility review (PAMR) and local area transportation review (LATR) afforded by the creation of the White Flint Special Taxing District; and
2. Consolidate and clarify the language of sections TP 2.2.1 and TL 2 as amended by the Council as part of the 2010 White Flint Growth Policy Amendments (Resolution 16-1324).

The Planning Board is proposing an alternative review procedure under which the scope of Planning Board review will be limited to determining whether sufficient master plan staging capacity exists to accommodate the developer's request for staging capacity. The Planning Board proposes to determine whether there is sufficient staging capacity prior to application for a building permit, rather than at preliminary plan or site plan, as is typical with PAMR and LATR review. There is broad consensus among stakeholders that delaying the commitment of

The Honorable Valerie Ervin  
March 18, 2011  
Page Two

staging capacity to the building permit stage will serve to discourage property owners from hoarding limited capacity.

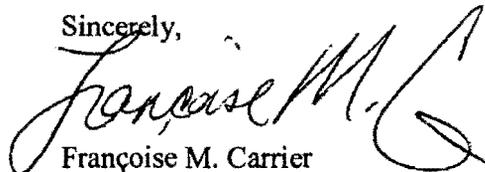
This recommendation was developed in consultation with the Department of Permitting Services. (DPS) Under Chapter 8-31 of the County Code, DPS may not issue a building permit unless the Planning Board has made a determination that public facilities will be adequate to serve the proposed development. The alternative review procedure, in combination with this requirement in Chapter 8, will serve as the mechanism for ensuring that development stays within the limits established in the Sector Plan.

The Planning Board's proposed consolidation and clarification of the 2010 White Flint Growth Policy amendment is consistent with the Council's Resolution 16-1324, but makes the following minor changes:

- Clarifies that the exemption from PAMR and LATR is effective on July 1, 2011, the date on which the County will begin collecting the White Flint Special Tax.
- Clarifies that all new development within the White Flint Special Taxing District is exempt from PAMR, including new development that is not required to file a preliminary plan of subdivision.
- Clarifies that all new development within the White Flint Special Taxing District is exempt from LATR even though the financing mechanism ultimately selected by the Council was a special taxing district rather than a development district or an impact tax district.

We believe that the attached proposal provides the framework for an efficient approach to the complex problem of managing staging capacity in the White Flint Sector Plan, and look forward to working with you to ensure that this staging prerequisite is satisfied in accordance with the requirements established in the Sector Plan.

Sincerely,



Françoise M. Carrier  
Chair

FMC/js/cm  
Attachment

## **Attachment A: Planning Board Amendment to Subdivision Staging Policy**

### TP2.2.1 Geographic Areas

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Policy Area Mobility Review if that development, as a condition of approval of a preliminary plan of subdivision, will be required to provide substantial funds to a new development district, new impact tax or special taxing district, or another comprehensive financing mechanism, to finance transportation improvements for that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Policy Area Mobility Review calculation for any development that is not exempt under this paragraph.]

### TL 2 Metro Station Policy Area LATR Standards

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Local Area Transportation Review if the development will be required to provide substantial funds to new development district or new impact tax district to finance master-planned public improvements in that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Local Area Transportation Review calculation for any development elsewhere.]

### TA 6 Alternative Review Procedure for the White Flint Policy Area

#### TA 6.1 Exemption from PAMR and LATR

Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

#### TA 6.2 Effect on development outside of the White Flint Special Taxing District

The traffic impact of such development within the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development outside the White Flint Special Taxing District.

#### TA 6.3 Planning Board to establish staging allocation guidelines

The Planning Board will approve guidelines establishing the protocol for allocating staging capacity under the White Flint Sector Plan.

#### TA 6.4 Staging Allocation Approval

A Staging Allocation Approval is a resolution from the Planning Board granting an applicant staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Approval, the effect of a Staging Allocation Approval, and any associated protocols will be established in Planning Board guidelines.

TA 6.5 Relationship to adequate public facilities in White Flint Policy Area

An applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a footing to grade or core and shell building permit. A Staging Allocation Approval and an APF approval have separate validity periods, and the expiration of one does not affect the validity of the other.

TA 6.5.1 Relationship to adequate public facilities in White Flint Special Taxing District

To the extent that the Department of Permitting Services is required under law to validate adequate public facilities for transportation, the Staging Allocation Approval shall satisfy this determination in the White Flint Special Taxing District.



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

MCPB  
Item #12  
June 16, 2011

**MEMORANDUM**

**DATE:** June 9, 2011  
**TO:** Montgomery County Planning Board  
**VIA:** Rollin Stanley, Director *RS*  
**FROM:** Jacob Sesker, Planner Coordinator *JS*  
Director's Office  
**SUBJECT:** White Flint Staging—Council update

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**UPDATE**

The County Council is beginning work on the amendments to the Subdivision Staging Policy associated with implementation of the White Flint Sector Plan, transmitted to the Council by the Planning Board on March 17, 2011. The amendments as proposed create an Alternative Review Procedure that would be implemented through Planning Board guidelines. Those guidelines have been the subject of significant discussions at the Planning Board over the last several months.

The PHED committee has one scheduled work session on the Subdivision Staging Policy amendments, and could schedule an additional work session as necessary. The Planning Board guidelines do not need to be approved by the Council; however, the PHED committee would like to have a copy of the latest draft of the guidelines available to assist its review of the proposed amendments. The Planning Board will be approving the guidelines in late June or early July.

Attachment A: Updated draft of Chapter 3 of the White Flint Implementation Guidelines  
Attachment B: Letter transmitting the Subdivision Staging Policy Amendment to the Council

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## **Attachment A: Updated draft of Chapter 3 of the White Flint Implementation Guidelines**

### **3. Transportation Approval Mechanism**

The streamlined transportation infrastructure delivery described on Page 54 of the White Flint Sector Plan directs the County to “establish an alternative adequate public facilities (APF) review procedure with an exaction process based on the planned transportation infrastructure as proportioned to the traffic generated by each development.” The alternative adequate public facilities review procedure is also referenced indirectly in the Sector Plan’s staging plan, which required the County to create public entities or financing mechanisms necessary to implement the Sector Plan, and required the Planning Board to “develop a transportation approval mechanism and monitoring program within 12 months of adopting the sectional map amendment.” The transportation approval mechanism and monitoring program replaces traditional transportation APF (PAMR and LATR) within the Special Taxing District. New development within the Sector Plan boundary but outside the Special Taxing District will be subject to traditional transportation APF, and will also count against the staging caps established in the Sector Plan.

The intent of the above-referenced language from the Sector Plan was fulfilled by the implementing legislation contained in Appendix A that established the Special Taxing District and the Alternative Review Procedure within the Subdivision Staging Policy. These Implementation Guidelines provide the operational details of the transportation approval mechanism authorized and described in the Alternative Review Procedure, and implement the staging plan described on pages 67 to 71 of the approved and adopted Sector Plan.

#### **3.1. Staging Allocation Request Process**

Under the White Flint Sector Plan, staging capacity in Phase 1 will be allocated based on the order in which requests are received. The advantages of this approach include fairness, predictability, and efficiency. Such a system potentially creates a “race for capacity,” which will accelerate new development and therefore the build-up of additional tax revenues that can be used to fund the infrastructure projects that are triggers under the Staging Plan. The biennial monitoring reports will provide the Planning Board with the information it needs to determine whether this approach is achieving the Sector Plan vision.

##### **3.1.1. Staging Allocation Request**

A Staging Allocation Request is a request for staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Request and the effect of submitting a completed Staging Allocation Request will be established in these Implementation Guidelines.

### **3.1.2. Contents of Staging Allocation Request**

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, or site plan approvals. The request should indicate the number of buildings proposed as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount of new development if there will be demolition of existing structures. If demolition occurred before the submission of the Staging Allocation Request, the applicant must furnish information showing the amount of demolition that occurred after the adoption of the Sector Plan. Each Staging Allocation Request must include a Staging Allocation Request Form (see Appendix 2).

### **3.1.3. Planning Board Review of Staging Allocation Request**

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request.

### **3.1.4. Effect of Staging Allocation Request**

In order to be deemed complete, a Staging Allocation Request must contain all information required under the Subdivision Staging Policy (Section TA6, Alternative Review Procedure for the White Flint Policy Area), and comply with these Implementation Guidelines. Once a Staging Allocation Request has been deemed complete, the capacity requested must be placed in reserve. The Planning Board must not allocate to any other applicant the reserved capacity, unless the Staging Allocation Request is rejected by the Planning Board or withdrawn by the applicant or unless a Staging Allocation Approval becomes void or expires under these guidelines. Under Section 3.1.3 above, a Staging Allocation Request that has been deemed complete must be approved by the Planning Board if sufficient capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request. If sufficient capacity is not available to accommodate the applicant's entire request, the Staging Allocation Request will be placed in a queue and will be scheduled for Planning Board action when capacity becomes available.

### **3.1.5. Staff approval of Staging Allocation Requests for zero net staging capacity**

#### *3.1.5.1. No net draw on capacity*

A Staging Allocation Request will always be approved, regardless of available staging capacity, if the Request is for an amount equal to or less than any development being removed. In such cases, the Staging Allocation Approval may be granted by staff without Planning Board review.

*3.1.5.2. Development approvals that pre-date the approval of the Sector Plan*

A Staging Allocation Request will always be approved, regardless of available staging capacity, for a project that has a valid Adequate Public Facilities approval or development plan approval that predates the approval of the White Flint Sector Plan. In such cases, the Staging Allocation Approval may be granted by staff without Planning Board review.

*3.1.5.3. Procedures for staff approval of Staging Allocation Requests*

Staging Allocation Requests that can be approved by staff under 3.1.5.1 or 3.1.5.2 must be approved by the Planning Director or designee. Such staff approvals must be included in the biennial monitoring report.

*3.1.5.4 Projects approved by staff under 3.1.5 not subject to certain provisions of these guidelines*

A Staging Allocation Approval that can be issued by staff under 3.1.5 is not subject to the requirements of the following subsections: 3.1.6 (Contents of Staging Allocation Approval); 3.1.7 (Requirement to obtain timely acceptance of building permit applications); 3.1.8 (Reporting requirement); 3.1.9 (Effect of failure to obtain timely acceptance); and 3.1.10 (Validity).

**3.1.6. Contents of Staging Allocation Approval**

A Staging Allocation Approval must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify, as established in these guidelines, (1) the deadline for completion and acceptance of a building permit application under 3.1.7, and (2) the Staging Allocation Approval expiration date under 3.1.10.

**3.1.7. Requirement to obtain timely acceptance of building permit applications**

An applicant who has received a Staging Allocation Approval resolution from the Planning Board must present that Staging Allocation Approval to the Department of Permitting Services when applying for a building permit. The Staging Allocation Approval becomes void if a completed building permit application for at least core and shell is not accepted within 90 days from the date of the Planning Board's Resolution granting the Staging Allocation Approval. An applicant who has received a Staging Allocation Approval for multiple buildings has up to 180 days to have building permit applications accepted for at least the core and shell of all buildings.

**3.1.8. Reporting Requirement**

The applicant must present evidence of acceptance to the Planning Board within 15 business days after a building permit application is accepted.

**3.1.9. Effect of failure to obtain timely acceptance**

Any failure to obtain timely acceptance of a building permit application results in the loss of staging capacity allocated for which no building permit application has been accepted. The portion of the Staging Allocation Approval that is not perfected by obtaining timely acceptance by the Department of Permitting Services is void if the building permit is accepted by close of business on the 90<sup>th</sup> day as specified in 3.1.7

### **3.1.10. Validity**

A Staging Allocation Approval that has not become void due to failure to satisfy the requirement for timely acceptance of a building permit application remains valid for 2 years from the date of the Planning Board's Resolution granting the Staging Allocation Approval. All core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2-year validity period. An applicant who receives a Staging Allocation Approval for multiple buildings has a period of up to 3 years to have building permits issued for the core and shell of all buildings.

### **3.1. 11. Joint Staging Allocation Requests**

Multiple property owners may submit a Joint Staging Allocation Request if those property owners also submitted a joint sketch plan application, which was approved by the Planning Board, and which included conditions establishing a phasing schedule for demolition and construction on all subject properties.

### **3.2. Staging queue management**

The Planning Department will maintain a White Flint Sector Plan staging queue.

- Any Staging Allocation Request for which there is not sufficient capacity (see also 3.1.4) will be placed in the queue.
- The queue will track dates on each Staging Allocation Request submitted and accepted as complete.
- The queue will be managed based on the order in which projects are placed in the queue. The oldest eligible application(s) in the queue will be placed on the consent agenda calendar at such time as staging capacity exists for both the full residential and commercial development proposed in the application.
- Adjustments to queue position may be granted by the Planning Board, but only after receipt of a proposal jointly submitted by all applicants whose positions in the queue would be affected. The Planning Board would not be a party to any negotiations between applicants who agree to change queue positions.

### **3.3. Exemptions from Staging Allocation**

#### **3.3.1. Development approvals predating approval of the Sector Plan**

The Sector Plan states:

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

While the language in the Sector Plan refers specifically to the staging caps, the intent was that these projects would not be subject to the staging allocation process generally. Therefore, while staff approval of a Staging Allocation Request remains an option for such property owners (e.g. to prove to other agencies that they can move forward with their development), such approvals should not be subject to the other requirements or limitations set forth in these Implementation Guidelines (see 3.1.5.4).

On December 9, 2010 the Planning Board confirmed its intent that four specific projects should not be subject to the phasing caps up to the amount of development approval that predated the adoption of the Sector Plan.

- 1) North Bethesda Center (LCOR)  
1,350 dwelling units  
1.14 million square feet of office  
202,037 square feet of commercial  
Zone: TSM
- 2) North Bethesda Market (JBG)  
440 dwelling units  
223,000 square feet of non-residential  
Zone: TSM
- 3) White Flint View (Quantum/Noland Plumbing)  
183 dwelling units  
29,500 square feet of non-residential  
Zone: C-2
- 4) Metro Pike (BF Saul)  
247 dwelling units  
201,822 square feet of non-residential  
Zone: TSM

### **3.3.2. Affordable housing units**

Affordable housing units that are in addition to those required by Chapter 25A and which are provided under the CR Zone incentives are not to be counted against staging plan limits for residential development.

### **3.3.3 Public facilities and staging**

A public facility is a facility that is owned or operated by a governmental body or an instrumentality of a governmental body and which serves a public purpose.

*3.3.3.1 Public facilities subject to mandatory referral are exempt from staging*

A public facility that is subject to the mandatory referral provisions of Article 28, section 7-112 is not subject to staging.

*3.3.3.2 Public facilities provided as a proffer are exempt from staging*

A public facility that is to be owned or operated by a public entity and that is provided in a private project as a proffer (e.g. in exchange for a density award) is not subject to staging, if such public facility will be conveyed to the public entity in fee simple, by perpetual exclusive easement, or by a long-term lease in excess of fifty years. The terms and method of any such conveyance must be acceptable to the public entity that will own or lease the facility prior to the Planning Board's approval of the Staging Allocation Request for the private elements of the project. The private elements of a project that includes a public facility are subject to the staging allocation requirements.

*3.3.3.3 Effect on traffic analysis of development outside the special taxing district*

Traffic generated by public facilities must be included in any analysis of development that is proposed to occur outside the special taxing district, as described below.

**3.4. Relationship to other transportation related processes and requirements**

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of Local Area Transportation Review and Policy Area Mobility Review. The intent of this requirement is to remove the need for any individual applicant to prepare transportation studies for the purposes of determining APF validity.

**3.4.1. Development outside the special taxing district**

For the purpose of assessing the transportation impacts of new development, the White Flint Special Taxing District will be treated in a manner similar to the way a separate jurisdiction such as Rockville is treated. In general, applicants inside and outside of the Special Taxing District will be responsible only for improvements on their side of the Special Taxing District boundary. Applicants outside of the Special Taxing District will be tested for APF compliance and intersection improvements (if needed) outside of the Special Taxing District boundary.

Applications outside the White Flint Special Taxing District must submit LATR and PAMR transportation studies, if applicable, that reflect development within the Special Taxing District as part of their background traffic. Further, applicants outside the district may be required to submit additional information by amendments to the Subdivision Staging Policy. The Planning Board will provide guidance on trip generation and distribution assumptions as part of the biennial Comprehensive Local Area Transportation Review (CLATR)—it is expected that the first biennial CLATR will be completed prior to completion and application of these guidelines. Applicants outside the Special Taxing District who must submit transportation studies (e.g. to

satisfy the requirements of the LATR and PAMR Guidelines) will conduct traffic assignment consistent with the CLATR. Applicants outside the Special Taxing District will be responsible only for transportation improvements outside the Special Taxing District.

Within the White Flint Special Taxing District, an applicant will be responsible only for constructing improvements required by Section 50-24, such as streets interior or adjacent to the site, making any additional improvements necessary for safe access and circulation (other than those associated with APF) and providing the funds for shared projects identified through the taxing district mechanism.

### **3.4.2. Privatization of Traffic Carrying Streets**

Page 51 of the Plan identifies four specific business street segments that are required to be open to general vehicular use as part of the robust street grid needed to disperse traffic. Page 52 of the Plan identifies eight conditions for potential construction and operation of these streets as private streets. All eight conditions must be incorporated within the Planning Board's subdivision approval opinion for any project that proposes such a private street.

### **3.4.3. Transportation Information Required From Applicants**

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). The intent of this requirement is to remove the need for any individual applicant to prepare transportation information for the Planning Board whose sole purpose is to assess transportation system adequacy as required by the Subdivision Staging Policy.

Applicants will still be required to provide information to State or County agencies as needed to fulfill other requirements of the law. Such information may include, but not be limited to:

- Parking space requirements
- Sight distance evaluations

**Testimony of Francoise M. Carrier, Chair, Montgomery County Planning Board**

**Montgomery County Council Public Hearing June 14, 2011**

For the record I am Francoise Carrier, Chair of the Montgomery County Planning Board. On behalf of the Planning Board I am pleased to testify in support of our proposed amendments to the County's Subdivision Staging Policy.

The approved and adopted White Flint Sector Plan directs the Planning Board to establish a transportation approval mechanism and monitoring program within 12 months of the adoption of the Sectional Map Amendment. That deadline is coming up on July 13 of this year. These requirements must be met before the Planning Board can allow new development to move forward in White Flint. Council adoption of the proposed amendments to the Subdivision Staging Policy will allow the Planning Board to adopt implementation guidelines that we have reviewed in draft form, and to satisfy the approval and monitoring requirements in the Sector Plan.

The Planning Board has held more than a dozen work sessions over the past 8 months to develop a framework for implementing the Sector Plan's staging elements. The growth policy amendments before you today represent a key part of that effort, as they establish an alternative review procedure for new development in White Flint.

After receiving input from affected stakeholders including property owners, residents and government agencies, the Planning Board directed staff to create a transportation approval mechanism that prevents property owners from hoarding capacity that could instead be allocated to another property owner who is more ready to move forward. Doing so required that we establish a system in which capacity was not allocated at either preliminary plan or site plan, but at the building permit stage. Under this approach, capacity is not allocated to a project until the developer is ready to make the considerable investment in obtaining a building permit, and therefore can be expected to move forward within a short period of time.

Like the PAMR and LATR tests that apply everywhere outside of White Flint, the alternative review procedure proposed in these amendments would be administered by the Planning Board pursuant to Planning Board -approved guidelines. In the case of the White Flint alternative review procedure, the Planning Board is finalizing guidelines that establish the protocols for allocating capacity in a way that is consistent with the staging limits in the White Flint Sector Plan. As a result of staff's extensive engagement with affected stakeholders, there is broad consensus in support of those guidelines. We anticipate approving the guidelines in late June or early July.

The Planning Board urges the adoption of the Subdivision Staging Policy amendments as proposed, and looks forward to declaring White Flint open for business sometime in the coming weeks.

Thank you.

**TESTIMONY OF BARBARA SEARS  
ON BEHALF OF THE WHITE FLINT PARTNERSHIP  
ON RESOLUTION TO AMEND 2009-2011 SUBDIVISION  
STAGING POLICY: WHITE FLINT STAGING CAPACITY**

- Good afternoon. My name is Barbara Sears. I am speaking on behalf of the White Flint Partnership in support of the amendment to the 2009-2011 Subdivision Staging Policy to create an Alternate Review Procedure for allocation of staging capacity under the White Flint Sector Plan.
- As you may recall, the White Flint Partnership consists of six major owners of properties within the Sector Plan Boundaries – Federal Realty Investment Trust, Gables Residential, Saul Centers, Inc., The JBG Companies, Lerner Enterprises and the Tower Companies.
- The proposed amendment would (1) simplify the language of the White Flint Growth Policy Amendment approved by the Council last April, which exempted developments in the White Flint Metro Policy Area from PAMR and LATR if they were subject to payments under the White Flint Special Taxing District, which taxing district was also approved by the Council last year; and (2) authorize the Planning Board to adopt guidelines for the allocation of staging capacity made available under the White Flint Sector Plan.

- The current Planning Board draft of the allocation Guidelines is attached to your Staff Memorandum for today's hearing at pages circle 6 through circle 8.
- The Planning Staff and Board have diligently and effectively worked over the past year to create these Guidelines, the adoption and implementation of which would, as indicated, be authorized by approval of the amendment before you. The Staff and Board held numerous meetings and public sessions to discuss the Guidelines and receive input.
- The Partnership believes the allocation policy represented by the Guidelines is:
  - Fair and equitable to small and large property owners alike;
  - Prevents hoarding of staging capacity by fairly tying its allocation to building permits;
  - Promotes development in accordance with the Sector Plan that is ready to move forward and for which there is a market; and
  - Promotes timely construction of necessary infrastructure and achievement of sector plan mode-share goals by allowing development that is ready to proceed to go forward consistent with Sector Plan staging limitations.

- The Partnership wishes to express its thanks and appreciation to the Planning Board, Rollin Stanley, Jacob Sesker, David Lieb, and others who prepared the Amendment and Guidelines and to urge the Council to adopt the Amendment. Thank you for the opportunity to present our views.



ATTORNEYS

ROBERT G. BREWER, JR.  
RGBREWER@LERCHEARLY.COM

June 14, 2011

**By Hand Delivery**

Hon. Valerie Ervin, President  
Members of the Montgomery County Council  
100 Maryland Avenue, 6<sup>th</sup> floor  
Rockville, Maryland 20850

Re: 2009—2011 Subdivision Staging Policy Amendment

Dear Ms. Ervin and Members of the Council:

On behalf of our client, White Flint Mall, this letter urges the Council’s support for the Planning Board’s recommended amendments to the 2009—2011 Subdivision Staging Policy to create an Alternative Review Procedure for the White Flint Special Taxing District.

White Flint Mall has been working with Planning Board Staff and the Board itself, along with the Mall’s colleagues in the White Flint Partnership, to draft an effective and efficient Alternative Review Procedure. The Planning Board’s draft of TA 6 recognizes the implementation of the White Flint Special Taxing District as of July 1, 2011, notes the corresponding exemption of the affected properties from Policy Area Mobility Review and Local Area Transportation Review, and advises of the creation of guidelines for Staging Allocation Approvals. The draft makes clear to all stakeholders the context of adequate public facilities’ assessments in the White Flint Special Taxing District.

The Planning Board’s draft guidelines for Staging Allocation Approvals have been carefully reviewed by all stakeholders to assure fairness and transparency for new development in White Flint. They balance the need for developer certainty against the desire to keep delays in implementation of new projects to a minimum. The Planning Board’s discussions on these guidelines have been constructive, and we endorse the excellent work of the Staff to timely address this important issue.

Thank you very much for your consideration and support of the Alternative Review Procedure for White Flint. With regards,

Very truly yours,

Robert G. Brewer, Jr.

- cc: Glenn Orlin
- Michael Faden, Esq.
- Alan Gottlieb
- Arnold Kohn, Esq.
- Jim Policaro, PE
- Francine Waters
- White Flint Partnership

Resolution No. \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the request of the Planning Board

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**SUBJECT:** Amendment to County Subdivision Staging Policy regarding the White Flint Metro Station Policy Area

**BACKGROUND**

1. Under County Code §33A-15(h), the County Council may amend an adopted County Subdivision Staging Policy by resolution after notifying certain agencies and holding a public hearing.
2. A public hearing was held on this resolution on June 14, 2011.
3. This amendment is necessary to implement staging of the approved White Flint Sector Plan.

**ACTION**

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

The 2009-2011 County Subdivision Staging Policy, as adopted by Resolution 16-1187 and amended by Resolution 16-1324, is amended as follows:

\* \* \*

**Guidelines for Transportation Facilities**

\* \* \*

**TP2.2.1 Geographic Areas**

\* \* \*

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Policy Area Mobility Review if that development, as a condition of approval of a preliminary plan of subdivision, will be required to provide substantial funds to a new development district, new impact tax or special taxing district, or another comprehensive financing mechanism, to finance transportation improvements for that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Policy Area Mobility Review calculation for any development that is not exempt under this paragraph.]

## **TL 2 Metro Station Policy Area LATR Standards**

\* \* \*

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Local Area Transportation Review if the development will be required to provide substantial funds to new development district or new impact tax district to finance master-planned public improvements in that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Local Area Transportation Review calculation for any development elsewhere.]

### **[[TA 6 Alternative Review Procedure for the White Flint Policy Area**

#### **TA 6.1 Exemption from PAMR and LATR**

Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

#### **TA 6.2 Effect on development outside of the White Flint Special Taxing District**

The traffic impact of such development within the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development outside the White Flint Special Taxing District.

#### **TA 6.3 Planning Board to establish staging allocation guidelines**

The Planning Board will approve guidelines establishing the protocol for allocating staging capacity under the White Flint Sector Plan.

#### **TA 6.4 Staging Allocation Approval**

A Staging Allocation Approval is a resolution from the Planning Board granting an applicant staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Approval, the effect of a Staging Allocation Approval, and any associated protocols will be established in Planning Board guidelines.

#### **TA 6.5 Relationship to adequate public facilities in White Flint Policy Area**

An applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a footing to grade or core and shell

building permit. A Staging Allocation Approval and an APF approval have separate validity periods, and the expiration of one does not affect the validity of the other.

**TA 6.5.1 Relationship to adequate public facilities in White Flint Special Taxing District**

To the extent that the Department of Permitting Services is required under law to validate adequate public facilities for transportation, the Staging Allocation Approval shall satisfy this determination in the White Flint Special Taxing District.]]

**TP 2.2.1 Geographic Areas**

\* \* \*

Any proposed development that will be located in the White Flint Policy Area but not located in the White Flint Special Taxing District created under County Code Chapter 68C is subject to both TP Policy Area Mobility Review and TA 6 Alternative Review Procedure for the White Flint Policy Area. Any proposed development that will be located in the White Flint Special Taxing District is exempt from TP Policy Area Mobility Review and must proceed under TA 6 Alternative Review Procedure for the White Flint Policy Area. The traffic impact of any development that will be located in the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review calculation for any development that will be located outside the White Flint Special Taxing District.

**TL 2 Metro Station Policy Area LATR Standards**

\* \* \*

Any proposed development that will be located in the White Flint Policy Area but not located in the White Flint Special Taxing District created under County Code Chapter 68C is subject to both TL Local Area Transportation Review and TA 6 Alternative Review Procedure for the White Flint Policy Area. Any proposed development that will be located in the White Flint Special Taxing District is exempt from TL Local Area Transportation Review and must proceed under TA 6 Alternative Review Procedure for the White Flint Policy Area. The traffic impact of any development that will be located in the White Flint Special Taxing District must be considered in any TL Local Area Transportation Review calculation for any development that will be located outside the White Flint Special Taxing District.

**TA 6 Alternative Review Procedure for the White Flint Policy Area**

**TA 6.1 Staging Allocation Regulations**

The Planning Board must adopt regulations, subject to Council review as if they were adopted under method 2, to specify the criteria and procedures that the Planning Board must apply to allocate staging capacity under the White Flint Sector Plan.

**TA 6.2 Staging Allocation Approval**

A Staging Allocation Approval is a resolution adopted by the Planning Board granting an applicant a certain amount of staging capacity under the White Flint Sector Plan. The content and effect of a Staging Allocation Approval and any associated criteria and procedures must be specified in the regulation adopted under TA 6.1.

**TA 6.3 Relationship to adequate public facilities finding for schools**

A Staging Allocation Approval and a finding by the Planning Board that certain school facilities are adequate to serve a proposed development have separate validity periods, and the expiration of one does not affect the validity of the other.

**TA 6.4 Relationship to adequate public facilities for transportation**

For a development that will be located in the White Flint Special Taxing District, a Staging Allocation Approval is a finding that transportation facilities are adequate for purposes of issuing a building permit under County Code Chapter 8.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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