

MEMORANDUM

TO: Planning, Housing, and Economic Development Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** SRA 13-01, Adequate Public Facilities – Preliminary Subdivision Plans – Validity Period

SRA 13-01, Adequate Public Facilities – Preliminary Subdivision Plans – Validity Period, sponsored by Councilmembers Floreen and Ervin, Council President Navarro, Council Vice President Rice, and Councilmembers Berliner, Leventhal, and Reimer, was introduced on February 5, 2013. A public hearing is scheduled for March 12 at 1:30 p.m.

SRA 13-01 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. 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), and SRA 11-01(enacted as Ordinance 17-04 on March 15, 2011), which expire on April 1.

Issues/Council staff recommendation

The following analysis is adapted from the Council staff's analysis of the 2011 version of this SRA. At that time a majority of this Committee and the Council declined to follow staff's recommendations. Despite the arguments for this SRA being, if anything, less persuasive now, we harbor no illusions that this year's result will be any different.

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?

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 13-01 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, 2013, no matter how old or inactive the development is, and would add to the 2 year extensions that were granted in 2009 and 2011. 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 law¹). The first category – **projects close to expiring** -- has the best argument for a blanket extension. They have been most impacted by the 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.

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), each one 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 those granted in 2009 and 2011, the functional effect is to increase the APF validity period, for most affected projects, from the nominal 5-10 years to an actual 11-16 years. This runs counter to the Council's policy decisions, up to 2009, to shorten the validity periods in order to shrink the pipeline of approved development.

As the 2011 Planning staff report 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 allowed in the 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 policies were expected to benefit both the public and the development community.

¹County Code §50-20(c)(5)-(12); §50-35(h)(3).

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 2011 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.²

A longer pipeline, containing 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.

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, certainly for residential development³, a case can be made to amend this SRA to automatically 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 a better middle ground, Council staff suggests a less generous blanket extension, giving 2 more years to each development that would expire during the next 2 years but allowing no extension for new developments.

Council staff recommendation: delete the amendments on ©2, line 1, through ©5, line 83. Amend the temporary provisions on ©5-6 so they only apply to approvals scheduled to expire between April 1, 2013, and March 31, 2015.

<u>This packet contains</u>	<u>Circle</u>
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²In assessing the viability of a project that seeks an extension, the Board is governed by Code §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.

³Attorney Bill Kominers submitted recent office vacancy rate data that shows a still high vacancy rate among all types of offices. See ©7. Also see the letter from Associated Builders and Contractors (ABC) on ©8, which is the only correspondence received to date on this SRA.

Subdivision Regulation Amendment No.: 13-01
Concerning: Adequate Public Facilities –
Preliminary Subdivision Plans –
Validity Period
Draft No. & Date: 1 – 1/29/13
Introduced: February 5, 2013
Public Hearing:
Adopted:
Effective:
Ordinance No:

**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: Councilmembers Floreen and Ervin, Council President Navarro, Council Vice President Rice, and Councilmembers Berliner, Leventhal, and Reimer

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:

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 does not
33 exceed:

34 (A) for a preliminary plan approved before April 1, 2009, or
35 on or after April 1, [2013] 2015:

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, [2013] 2015:

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 plan-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, [2013] 2015, and for 36 months after its
56 Initiation Date for any preliminary plan approved on or
57 after April 1, [2013] 2015. 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. The Planning
65 Board must assign each phase a validity period on a case-
66 by-case basis, the duration of which the applicant must
67 propose as part of an application for preliminary plan
68 approval, revision, or amendment, after considering such
69 factors as the size, type, and location of the project. The
70 time allocated to any phase must not exceed 60 months
71 after the initiation date for that particular phase for any
72 preliminary plan approved on or after April 1, 2009, but
73 before April 1, [2013] 2015, and 36 months after the
74 initiation date for that particular phase for any preliminary
75 plan approved on or after April 1, [2013] 2015. The
76 cumulative validity period of all phases must not exceed
77 the APFO validity period which begins on the date of the
78 initial preliminary plan approval, including any extension

79 granted under Section 50-20(c)(5). A preliminary plan for
80 a phase is validated when a final record plat for all
81 property delineated in that phase of the approved
82 preliminary plan is recorded in the County land records.

83 * * *

84 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2013.

85 **Sec. 3. Automatic Extensions.**

86 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
87 validity period of any determination of adequate public facilities that
88 was valid on March 31, 2009, or for which a timely application for an
89 extension of the validity period was pending on March 31, 2009, is
90 automatically extended for 6 years after the date when the validity
91 period would otherwise have expired. This 6-year extension includes
92 any extension granted automatically by any previous subdivision
93 amendment and must be treated for all purposes as part of the validity
94 period that was extended.

95 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
96 validity period of any preliminary subdivision plan that was valid on
97 March 31, 2009, or for which a timely application for an extension of
98 the validity period was pending on March 31, 2009, including any
99 separate phase of a multi-phase plan, is automatically extended for 6
100 years after the date when the validity period would otherwise have
101 expired. This 6-year extension includes any extension granted
102 automatically by any previous subdivision amendment and must be
103 treated for all purposes as part of the validity period that was extended.

104 (c) Notwithstanding any provision of Section 50-20(c) to the contrary, the

105 validity period of any determination of adequate public facilities that
106 was valid on March 31, 2013, or for which a timely application for an
107 extension of the validity period was pending on March 31, 2013, is
108 automatically extended for 2 years after the date when the validity
109 period would otherwise have expired. This 2-year extension must be
110 treated for all purposes as part of the validity period that was extended.

111 (d) Notwithstanding any provision of Section 50-35(h) to the contrary, the
112 validity period of any preliminary subdivision plan that was valid on
113 March 31, 2013, or for which a timely application for an extension of
114 the validity period was pending on March 31, 2013, including any
115 separate phase of a multi-phase plan, is automatically extended for 2
116 years after the date when the validity period would otherwise have
117 expired. This 2-year extension must be treated for all purposes as part
118 of the validity period that was extended.

119 *Approved:*

120

121 _____
Isiah Leggett, County Executive Date

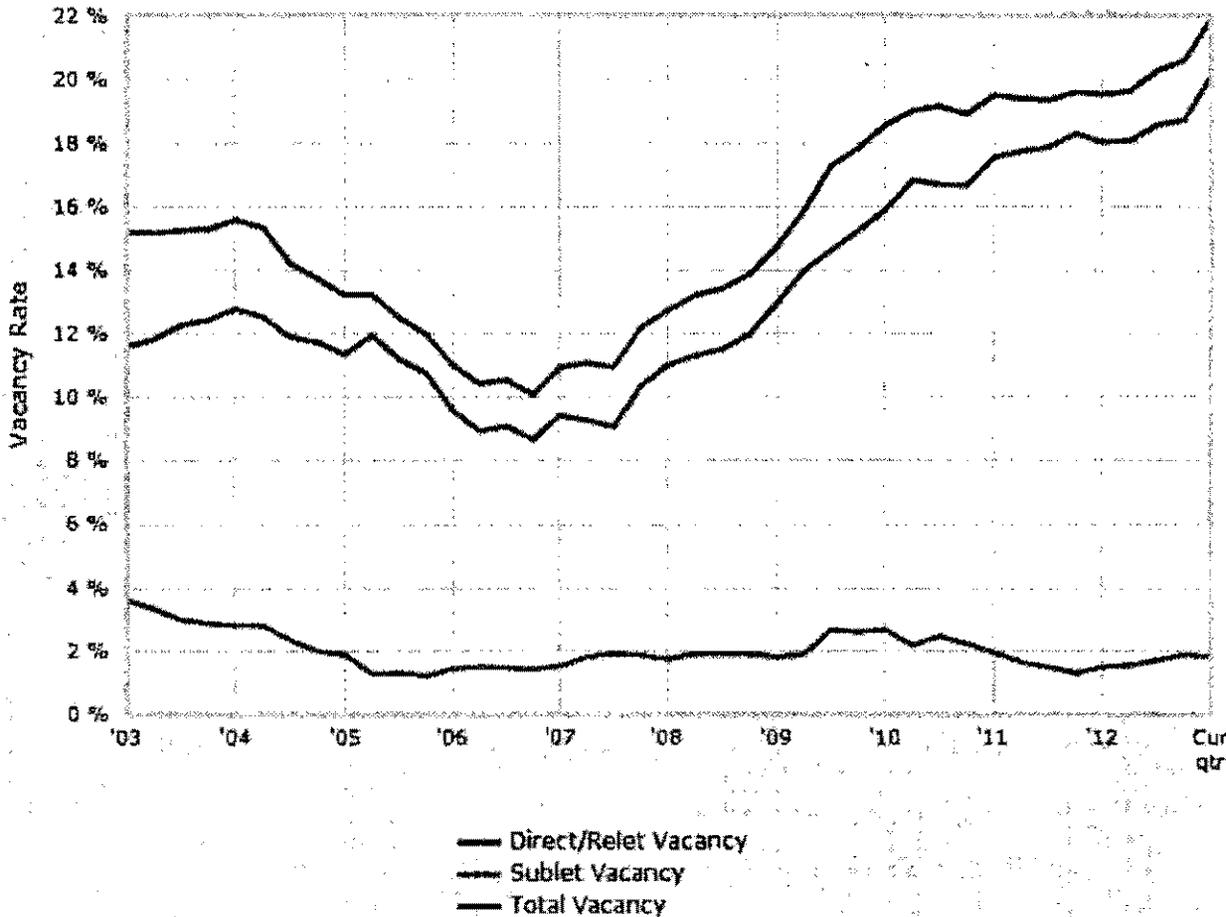
122 *This is a correct copy of Council action.*

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124 _____
Linda M. Lauer, Clerk of the Council Date

Montgomery Sample Office Vacancy Graph

Vacancy Rates



occupancy		
Existing Bldgs:	564	
# Spaces:	2016	
Existing RBA:	39,900,985	
Vacant:	<8,736,398>	22%
Occupied:	31,164,587	78%
Leased:	32,183,724	81%
availability		
Vacant Avail:	8,455,614	21%
Total Avail:	11,851,103	30%
Direct Avail:	10,045,877	25%
Sublet Avail:	1,797,629	5%
Average Time:	25.1 Months	
leasing activity		
Leasing YTD:	165,055	0%
Net Absorp YTD:	(523,133)	(1%)
Direct Gross Rent		
Office range:	\$10.00-\$55.00/yr	
Office Avg:	\$27.86/yr	

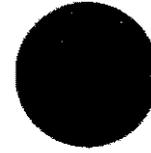
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Marin, Sandra

From: Bob Zinsmeister [bzinsmeister@abcmetrowashington.org]
Sent: Thursday, February 28, 2013 10:50 AM
To: Montgomery County Council
Subject: SRA No: 13-01- Preliminary Subdivision Plans- Validity Period

071732



Dear Montgomery Council Members:

Associated Builders and Contractors (ABC) of Metro Washington supports SRA No: 13-01 which is before you for consideration. The proposal would extend the validity period for certain preliminary subdivision plans. This proposal recognizes the reality that economic recovery continues to be a slow process and that it make good business sense to extend the validity period for these plans. A great deal of time and money have gone into the development of these plans and therefore warrants the extension so that these projects can stay on track.

We respectfully request you vote to support the proposal when it comes before you. Thank you.

Sincerely,

Bob Zinsmeister, Director
Government Affairs
ABC of Metro Washington

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MONTGOMERY COUNTY

2013 MAR -1 AM 8:33

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3/1/2013