


MEMORANDUM

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Administrator

SUBJECT: **Worksession:** Expedited Bill 43-14, Parking Lot Districts – Tax Exemption

Expedited Bill 43-14, Parking Lot Districts – Tax Exemption, sponsored by Councilmembers Floreen and Berliner, was introduced on September 23, 2014. A public hearing was held on October 14 (see testimony, ©9-20; also see Silver Spring Chamber of Commerce letter on ©21).

Summary Bill 43-14 would allow property owners in each County parking lot district (PLD) to apply for an exemption, to which they are entitled under current law, from applicable parking lot district taxes during a one-time window ending December 31, 2014, notwithstanding the current law's April 1 deadline to apply for the exemption.

Testimony Proponents of this Bill (see testimony on ©11-20) argued that they should have been informed that they needed to apply for the exemption, although County Code §60-14 plainly so requires (see ©2, lines 3-9). They pointed out that the County property tax bill (see example, ©16) does not highlight or separate the parking lot district tax or otherwise inform landowners that they are paying that tax and not receiving a credit for the parking they supply. Executive staff dispute the latter statement (see question 8 on ©24).

County Finance Director Beach, representing the County Executive (see testimony, ©9-10), asserted that reopening this application period would “unnecessarily create fiscal and credit market problems for the County”. He emphasized that “the PLD exemption process ... and the criteria for exemption (in the law) have been in place for several decades”, about 600 exemptions have already been granted, and the April 1 filing deadline is needed to calculate the PLD's budgets and tax rates. (Also see Executive staff's response to issues raised at the hearing on ©22-24.)

Fiscal impact The Office of Management and Budget's fiscal impact statement (see ©5-6) estimated that the revenue loss to the PLD's, particularly Bethesda, resulting from this reopening of the exemption application period “could be as high as 50% of the tax revenue estimated to be collected in each PLD” in FY15. Beyond this bare assumption, which apparently is not based on specific data (except as discussed below), Executive branch staff could not offer any more precise revenue loss estimate. Council staff sees this 50% guesstimate as a likely upper bound, with the

actual revenue loss probably somewhat lower. The fiscal impact statement noted on ©6 that the County does not have a current database of parking actually provided by private landowners in each PLD. The impact statement noted that in Bethesda only 20% of the tax accounts currently show that they are fully or partly exempt from the PLD tax, so the County's exposure there may be relatively high. By contrast, business sources in Silver Spring checked property tax data and concluded that most of the major eligible properties there have already received the exemption they are entitled to.

Assuming the estimated maximum foregone revenue (50% of projected tax revenue), the revenue loss for each PLD and the County-wide total for the next 6 fiscal years would be up to:

PLD	FY15	FY16	FY17	FY18	FY19	FY20
Bethesda	\$1,314,892	\$ 1,344,118	\$1,391,847	\$1,452,269	\$ 1,515,567	\$ 1,584,101
Mont. Hills	\$ 41,381	\$ 42,273	\$ 43,761	\$ 45,605	\$ 47,569	\$ 49,651
Silver Spring	\$3,904,198	\$ 4,014,043	\$4,181,743	\$4,389,608	\$ 4,606,592	\$ 4,840,867
Wheaton	\$ 240,398	\$ 247,092	\$ 257,417	\$ 270,302	\$ 283,662	\$ 298,094
Total	\$5,500,869	\$ 5,647,526	\$5,874,768	\$6,157,784	\$ 6,453,390	\$ 6,772,713

Issues

1) Who was at fault? Does it matter? At the hearing, several property owners vehemently insisted that the fault for not notifying them of the need to apply for this exemption lay with the County. County Finance Director Beach equally vehemently responded that the applicable law (see ©2, lines 3-9) is clear that applying for the exemption is the property owner's duty. (The property owners might also look to the lawyers and accountants who they pay, often handsomely, to look out for their interests in tax matters.)

In our view, the Council need not answer the "fault" question. The bottom line is that, for whatever reasons, *the process did not work and certain large taxpayers have been paying large amounts that they should not have.* By the same token, as a result other PLD taxpayers have benefitted over the years by paying less to the PLD's than they should have. Straightening this situation out will take time and potentially further legislation.¹ This Bill is intended to be a stopgap remedy to bring a measure of short-term fairness and justice to the current tax year. **Council staff recommendation:** enact the Bill.

2) Application period? If this Bill is enacted, should the 1-time window to apply for the exemption last longer than the Bill would allow? If this Bill is not enacted until November 25, as tentatively scheduled, would-be applicants will have about a month, during a holiday period, to research their eligibility and file an application. In Council staff's view, that seems unreasonably short; a 3-month window would be fairer. **Council staff recommendation:** on ©2, line 11, replace December 31, 2014 with February 28, 2015.

¹See, e.g., the legislative proposals discussed in the Silver Spring Chamber of Commerce letter on ©21. Councilmember Berliner has directed staff to draft a bill revising the PLD exemption process.

3) How should any PLD funding shortfall be made up? Parking lot districts are enterprise funds, and as such must be self-supporting. Any shortfall of revenue in a PLD must ultimately be paid by that PLD. The reason that each PLD has a reserve is to cover such a circumstance. For example, the Silver Spring PLD currently projects an available end-of-FY15 fund balance of about \$13.4 million, and so can absorb a hit of up to \$3.9 million. The projected available end-of-year reserves for the Wheaton and Montgomery Hills PLD's are about \$800,000 and \$80,000, respectively, so they should be able to absorb the FY15 shortfall as well.

The Bethesda PLD may be another matter. Its projected available end-of-year reserve is only about \$1.2 million, so conceivably there may not be enough in that reserve to cover this shortfall in FY15. In this case, the General Fund could "loan" the Bethesda PLD funds for the balance of FY15, on the condition that the Bethesda PLD reimburse that amount to the General Fund in later fiscal years. Alternatively, the Council by resolution could transfer funds to Bethesda from another PLD under County Code §60-16(f), inserted by Bill 26-14 last spring. That law already allowed the Silver Spring PLD to transfer \$1.5 million to the Bethesda PLD in FY15 on the condition that the Silver Spring PLD be paid back in FY16.

The more fundamental issue is how each PLD will remain solvent, starting in FY16 and beyond, when not only revenue shortfalls from FY15 will have to be made up but similar shortfalls may apply in successive years. One possibility is to raise significantly the current PLD tax rates, starting in FY16. Another is to create an entirely different taxing regime for the PLD's; Council staff understands that the Executive Branch is considering such an approach. This fundamental issue need not, in our view, be decided in the context of this Bill.

Council staff recommendation: see how much revenue is actually lost, and bring the resulting data and any proposed adjustments back to the Council in the context of the next annual operating budget.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 43-14
Concerning: Parking Lot Districts – Tax
Exemption
Revised: 9-11-14 Draft No. 2
Introduced: September 23, 2014
Expires: March 23, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: July 1, 2015
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen and Berliner

AN EXPEDITED ACT to:

- (1) allow certain property owners to apply for an exemption from certain parking lot district taxes during a certain time period, notwithstanding certain requirements of law; and
- (2) generally amend the law governing parking lot districts.

By amending

Montgomery County Code
Chapter 60, Silver Spring, Bethesda, Wheaton and Montgomery Hills Parking Lot Districts
Section 60-14, Application for exemption; determination

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>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 60-14 is amended as follows:**

2 **60-14. Application for exemption; determination.**

3 (a) Any property owner or lessee in any district may apply, in the
4 following manner, for an exemption from the special taxes prescribed
5 in this Chapter. On or before April 1 of the application year, the
6 owner or lessee must file with the Department of Transportation an
7 application in the form and containing information the Department
8 requires to determine whether the Department should grant an
9 exemption. Notwithstanding the preceding sentence, an owner or
10 lessee may file an application for an exemption under this Section no
11 later than December 31, 2014, for the tax year beginning on July 1,
12 2014, and, if the Department finds that the property is eligible for an
13 exemption, the Department must direct the Department of Finance to
14 refund any parking lot district tax paid for that property in tax year
15 2014. If the Department grants an exemption for a particular
16 property, the exemption continues for each successive year unless
17 there is a change in the number of parking spaces or in the floor area,
18 number of employees, or any other factor governing the number of
19 automobile parking spaces required to qualify for continued
20 exemption. The property owner or lessee promptly must notify the
21 Department of any change in qualifying factors. The Department
22 may, no more than once in any 12 month period, require any lessee or
23 owner of exempt property to file an information return to determine
24 whether the property meets the requirements for exemption. The
25 exemption ends if the lessee or owner does not file the information
26 return.

27 * * *

Sec. 2. Expedited Effective Date; Expiration. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect when it becomes law and expires on July 1, 2015.

Approved:

Craig L. Rice, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 43-14

Parking Lot Districts – Tax Exemption

DESCRIPTION:	Allows property owners in County parking lot districts to apply for an exemption from applicable parking lot district taxes during a one-time window ending December 31, 2014, notwithstanding the current law's April 1 deadline to file applications.
PROBLEM:	Some property owners in County parking lot districts may have been unaware of the need for County Department of Transportation approval of applicable property tax exemptions, and the deadline to apply for those exemptions.
GOALS AND OBJECTIVES:	To open a one-time window for affected property owners in County parking lot districts to apply for applicable property tax exemptions.
COORDINATION:	Department of Transportation, Finance Department
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Administrator, 240-777-7936
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County parking lot districts.
PENALTIES:	Not applicable.

**Fiscal Impact Statement
Expedited Bill No. 43-14
Parking Lot Districts – Tax Exemption**

1. Legislative Summary:

Executive Regulation Summary: Sec 60-14 of the County code provides the opportunity for property owners in County Parking Lot Districts (PLDs) to apply for an exemption from the parking lot district ad valorem parking tax on or before April 1 of the application tax year. This bill amends that deadline to December 31, 2014, for the FY14 tax year. Proceeds from the FY14 tax year are received in FY15 and thus approval of this bill would reduce the estimated tax revenue in each PLD in the FY15 approved budget.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used:

The largest fiscal impact of the passage of this bill is estimated to be a loss of tax revenue in FY15 due to an anticipated increase in the filing of exemptions. We estimate this loss could be as high as 50% of the tax revenue estimated to be collected in each PLD in the approved FY15 budget. We also expect additional staff will be necessary to process the new filings.

This could present a fiscal challenge to each PLD, particularly in Bethesda. The anticipated revenue reduction in Bethesda would be \$1.315M and the planned available reserves in the approved FY15 budget are only \$1.243. The Bethesda PLD has outstanding revenue bonds and tax revenue is a significant asset pledged against the bond obligation. Bond Counsel has raised a number of concerns based on the passage of this bill and the anticipated revenue reduction.

In order to offset the lost revenue in Bethesda, ensure there is no technical breach of the bond covenants and reduce the chances of a downgrade of the bond rating as a result of the passage of this bill, fees or fines would have to be increased in FY15. We recommend the Bethesda rate resolution be amended to charge in all parking lots and garages on Saturdays, until 10:00 PM, effective January 1, 2015. The change in the hours requiring payment for parking would generate an additional \$814,100 in FY15 and \$1,628,200 in FY16 and beyond.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years (000's):

	FY15	FY16	FY17	FY18	FY19	FY20
Ad Valorem Tax:	-1,315	-1,344	-1,392	-1,452	-1,516	-1,584
Rate Increase:	814	1,628	1,628	1,628	1,628	1,628
Expenditures:	-48	-96	-100	-103	-107	-110

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs: N/A

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending: The code change does not authorize any additional spending.
6. An estimate of the staff time needed to implement the regulation:
Based on the increased number of exemption requests that we anticipate the passage of this bill will generate Parking will have to add, at a minimum, a Planning Specialist III, Grade 23, to process the applications. Based on a hire date of January 1, 2015, at midpoint of the grade, this position will cost an additional \$48,250 in FY15.
7. An explanation of how the addition of new staff responsibilities would affect other duties: N/A
8. An estimate of costs when an additional appropriation is needed: See #6 above.
9. A description of any variable that could affect revenue and cost estimates:
DOT/Parking maintains a database of parking spaces for all private property that has applied for an exemption from the parking ad valorem tax. No agency has any database of either the specific actual land use or parking provided by private property within the County. This information is collected by M-NCPPC at site plan approval but is simply filed on paper and never assembled. Even if this information were assembled into a usable database, many private properties within the PLDs have not been through the site plan approval process for many years and may have changed their specific land use and added or reduced available parking since that approval. As a result, it is very difficult to predict the loss of tax revenue with a high degree of certainty. In the Bethesda PLD, there are 1,712 tax accounts. Of this number, there are currently only 352 (20%) properties that are fully or partially exempt from the tax. Thus, the possible exposure is very large.
10. Ranges of revenue or expenditures that are uncertain or difficult to project: See #2 and #9 above.
11. If a regulation is likely to have no fiscal impact, why that is the case: N/A
12. Other fiscal impacts or comments.
13. The following contributed to and concurred with this analysis (enter name and dept.)

**Economic Impact Statement
Council Bill 43-14
Parking Lot Districts – Tax Exemption**

Background:

This proposed legislation amends Section 1 of County Code Section 60-14 to allow certain owners to file an application for an exemption no later than December 31, 2014 for the tax year beginning in July 1, 2014. The property owner would receive an extension if that owner qualifies for the exemption. The Department of Finance (Finance) must refund the owner, who qualifies for the exemption, any property tax pertaining to the PLD exemption incurred during tax year 2014. Therefore, this legislation may reduce the estimated tax revenue from each PLD in the FY2015 approved budget.

1. The sources of information, assumptions, and methodologies used.

Source of information is the Office of Management and Budget (OMB) and the economic impact statement (EIS) assume that the largest economic impact is based on the largest fiscal impact statement provided by OMB. The EIS also assumes other revenue impacts estimated by OMB in order to offset the lost property tax to ensure there is no technical breach of the bond covenants.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact estimate is the number of PLDs eligible for the exemption, the current tax rate, the current exemption amount of taxable assessment, and the amount of an increase in fees or fines to ensure no technical breach of the bond covenants. Based on data provided by OMB and assuming the largest *fiscal impact*, the total amount of lost property tax revenues between FY2015 and FY2020 is nearly \$9.0 million. To ensure that there is no technical breach of the bond covenants, OMB estimates that the fees and fines collected from PLDs would have to increase by nearly \$9.0 million over that same period.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The legislation would have a positive impact on the incomes of property owners through reduced property taxes. However, overall the economic impact could have a very modest negative impact on incomes because of the increase in fees and fines paid by customers to ensure that there is no technical breach of bond covenants. There is an economic impact on property values to those property owners who receive an exemption. There is also no impact on employment, investment, spending, and savings in the County.

Economic Impact Statement

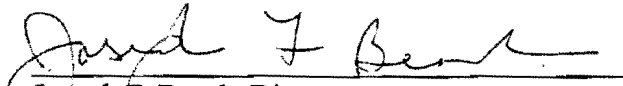
Council Bill 43-14

Parking Lot Districts – Tax Exemption

4. If a Bill is likely to have no economic impact, why is that the case?

There is an economic impact to property owners who receive an exemption through reduced property tax revenues. However, this positive impact is offset with an increase in fees and fines for customers.

5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Brady Goldsmith, OMB.



Joseph F. Beach, Director
Department of Finance

10/13/14

Date

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**Testimony on Behalf of County Executive Isiah Leggett on
Expedited Bill 43-14 Parking Lot Districts – Tax Exemption
October 14, 2014**

Good Afternoon my name is Joseph Beach, I am the Director of the Department of Finance and I am here this afternoon on behalf of County Executive Isiah Leggett to testify in opposition to Expedited Bill 43-14 Parking Lot Districts – Tax Exemption.

Permitting the retroactive exemptions authorized in the proposed legislation unnecessarily creates fiscal and credit market problems for the County. The Bethesda parking district has over \$47 million in outstanding revenue debt. The primary pledge for security of this debt is the ad valorem tax. The County made a number of covenants for the benefit of bondholders in Order No. B160-92 related to the issuance of parking revenue bonds, including covenants to prescribe parking meter and other fees and to levy special taxes at a rate and in an amount in each fiscal year to maintain Net Revenues (as defined in the Order) of not less than 1.25 times the maximum principal and interest due on the bonds in such fiscal year.

Taking an action that calls in to question the County's compliance with this covenant and that impedes this security for bond holders weakens market confidence in the existing debt and weakens the County's overall credit profile in the municipal market. I should also note in this context that the County has scheduled the sale of its GO Bonds for November 6 of this year. Any action that weakens the security of existing debt is not consistent with the financial management characteristics of a AAA jurisdiction.

It creates a fiscal problem because a mid-year unanticipated reduction of ad valorem tax revenues undermines the Parking District Budgets approved by the Council this past May. In the Bethesda District this problem is especially serious since the County authorized a transfer of \$1.5 million from the Silver Spring Parking District to the Bethesda Parking District in FY15 to avert the Bethesda Parking District from ending the year with a deficit in its general reserve. Depending on the number of retroactive exemptions granted under the proposed extended deadline it may be necessary to offset this reduction in revenues with reductions in planned expenditures or transfers. This reduction in revenue comes at a time when we have reduced flexibility and increased economic uncertainty and will redirect resources from other priorities.

We also believe that the extended deadline for claiming this exemption is unnecessary since the PLD exemption process established under Section 60-14 of the County Code and the criteria for exemption established in Chapter 59 have been in place for several decades. In fact there are approximately 600 exemptions already granted in the parking districts. The application form is available in County offices and on the County's website. Further the tax bills that include the PLD rate combined with the County's other property tax rates is essentially unchanged for many years.

The April 1st deadline for requests for the exemption is not an arbitrarily imposed date, but as with most exemption and credit programs, exists in law so that there is adequate time to review and verify the request and incorporate the impact of the exemptions awarded in the estimate of assessable base for the district so that the County Council can set fee, fine, and tax rates at a level sufficient to pay for the operations of the

district as well as any capital needs, and to comply with the bond covenants. An extension of the deadline to December, several months after passage of the budget and tax rates undermines this carefully thought out timeline.

The PLD tax exemption, as with any other tax exemption or credit, is not automatically awarded to the tax payer. The burden of affirmatively claiming and proving eligibility for the exemption is with the tax payer and not the tax collector.ⁱ Putting the burden on the tax collector is inefficient and costly and is not consistent with the general statutory scheme for tax exemptions or credits.

I urge the Council to not support this legislation.

ⁱ *Pittman v. Housing Auth.*, 180 Md. 457, 460, 25 A.2d 466 (1942). See also *Maryland-National Capital Park and Planning Commission v. State Dept.*, 110 Md. App. 677, 689, 678 A.2d 602, 607 (1996) for rules of interpretation of tax statutes that create an exemption.

LINOWES
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ATTORNEYS AT LAW

October 14, 2014

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The Honorable Craig Rice, President
and Members of the Montgomery County Council
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100 Maryland Avenue, Sixth Floor
Rockville, Maryland 20850

Hand Delivered

Re: Expedited Bill 43-14 – Parking Lot Districts – Tax Exemption

Dear Council President Rice and Members of the County Council:

On behalf of several clients¹ (the “Named Clients”) and their related entities doing business in Montgomery County, we urge the County Council (the “Council”) to approve Expedited Bill 43-14 –Parking Lot Districts (“PLDs”) - Tax Exemptions (the “PLD Bill”). As described in the October 14th Public Hearing Council Memorandum from Michael Faden, Senior Legislative Attorney, the PLD Bill will provide a limited one-time window (ending December 31, 2014) for PLD Property Owners to apply for an exemption from PLD taxes embedded in the property tax reflected in ad valorem tax bills issued on July 1, 2014. As explained in detail below, while the PLD Bill does not repair the flawed PLD tax exemption process as it exists today (and as it has existed in the past to the detriment of many), it will address the inequitable and unlawful levy and collection of PLD taxes for some PLD Property Owners for this current tax year.

The problem sought to be partially addressed with this PLD Bill stems from a recent chance discovery that the Named Clients were not receiving exemptions from the PLD taxes that they were each legally entitled. [The circuitous research that was required to make this fortuitous discovery is described in Attachment “A” hereto.] We quickly learned that not only were the Named Clients unaware that they were not receiving the lawfully entitled exemptions (which is

¹ Including StonebridgeCarras, Washington Property Company, Home Properties, and Southern Management Corporation; however, there are numerous other property owners in the County’s four (4) Parking Lot Districts (Bethesda, Silver Spring, Wheaton, and Montgomery Hills), ranging from large development companies to individual dwellers, that are not necessarily our clients but whom are impacted as described herein (collectively, the “PLD Property Owners”).

The Honorable Craig Rice
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especially alarming since they all routinely have in place a detailed review of all property tax invoices by in-house and outside tax advisors), but also that the manner in which the PLD tax is levied and collected, and the lack of any clear direction to property owners advising of the possibility that exemption from the PLD tax might be legally entitled, combine to make the PLD taxation system and process an unmitigated disaster.

To begin to understand the County's imposition and application of the PLD tax, some background is necessary. Currently, Section 60-6(a) of the Montgomery County Code (the "Code") provides that if a property owner in a PLD provides off-street parking facilities for a property and improvements thereon that comply with all of the requirements of Chapter 59-E ("Off-Street Parking and Loading") of the Code, the property "shall be exempt" from the PLD tax [emphasis added]. However, Section 60-14(a) of the Code then states that a property owner "may apply" for an exemption from PLD taxes through the submission of an application filed by April 1st of an application year [emphasis added]. The result of these two statutory provisions is that the County has inequitably and unlawfully created a burden on a property owner to apply for a tax exemption that exists as a matter of law upon meeting the terms of the exemption (*i.e.*, provision of code-required parking). Furthermore, the manner in which the PLD tax is levied (embedded in the property tax with no explanation or distinction) is such that a property owner has no reasonable opportunity to be aware that the PLD tax is being levied or that it might be legally exempt. To add to the gross injustice of this, the Code requires that application for the exemption be by April 1 notwithstanding that notice of the property tax (including, but without mention of the embedded PLD tax) isn't issued until some 3 months after the application deadline.

The reason that the Named Clients and their respective tax experts were unable to detect that they were unlawfully and inequitably paying PLD taxes for which they were entitled to an exemption is that the PLD tax is embedded in the ad valorem property tax that appears in a lump sum on the annual tax bill, with no distinction or notice to property owners of its existence within the County Property Tax Rate or any reasonable means of detecting the possibility of an exemption to the tax or that a process is required even if there was knowledge of the possible existence of an exemption.² The Named Clients are all very sophisticated property owners developing complex projects in the PLDs of this County, including public/private projects that involve the PLDs, with the entitlement of PLD tax exemption being a critical strategic component in the design, entitlement, and construction of a project and in factoring the economic feasibility of a project. Notwithstanding the sophistication of the Named Clients and their tax advisors, and their routine annual review of the ad valorem property tax bills to ensure that

² Again, Section 60-6(a) of the Code states that the PLD tax exemption "shall" be applied if the criteria for the exemption is satisfied. As such, requiring an application to receive this statutorily mandated exemption should not be required.

The Honorable Craig Rice

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proper taxation is occurring, these Named Clients have been unable to determine that they are not receiving the exemption from the PLD tax that they are absolutely entitled to pursuant to the Code. This result in and of itself screams that a significant problem with the PLD taxation system exists, compounded exponentially when applied to PLD Property Owners who are not savvy and sophisticated real estate professionals. The Named Clients reasonably thought that the exemption from the PLD tax was applied by virtue of the numerous County and M-NCPPC reviews of plans for entitlement of their projects, including project (sketch) plans, site plans, subdivision plans, and the detailed County permit reviews, use and occupancy reviews and regular inspections which all indicate that parking is provided in compliance with Chapter 59-E of the Code.³

As will be explained in our oral testimony and as spelled out in Attachment "A" hereto (with appropriate illustrative exhibits), there is a very twisted, convoluted and disconnected path that goes beyond the ad valorem property tax bill issued by the County to be able to determine that the PLD Property Owners are not getting the tax relief to which they are entitled. Simply put, the PLD tax is embedded in the property tax imposed by the County in the tax bill without any fair, equitable, or reliable way to determine that the PLD tax is included or that there is an opportunity for, and in fact a misplaced burden on, the PLD Property Owner to apply for the entitled tax exemption.


While the PLD Bill before you today does not remedy all of the issues with the inconsistent Code provisions in Chapter 60, the lack of County notice or the lack of Constitutional due process with the PLD tax exemption process, we appreciate the efforts of the Sponsors of the PLD Bill to quickly act to partially remedy the situation and provide an opportunity for some relief from the illegally collected PLD taxes for the July 2014 taxation year. The Named Clients have all made significant investments in the County and generate substantial revenue for the County, and the County owes them this basic legislative adjustment to a clearly flawed taxation process and system. Furthermore, approving this PLD Bill will provide a mechanism for other PLD Property Owners who may not even be aware of the deficient process to cure the deficiency for this tax year, and we encourage the County Council to enact further legislation to correct the inequities and legal flaws that have now been surfaced for future years to come.

³ The Code, Section 60-6(a) ("shall be exempt"), supports that the exemption is entitled and the Code (Section 60-14[a]) is legally flawed in requiring an application process to secure the tax exemption.

The Honorable Craig Rice
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Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



Anne M. Mead

cc: ✓ Michael Faden, Esquire
Dr. Glenn Orlin
Mr. Doug Firstenberg
Mr. Donald Hague
Mr. David Hillman
Mr. Charles Nulsen
Mr. Brian Morrison
Heather Dlhopsky, Esquire

Attachment A

Expedited Bill 43-14, Parking Lot Districts –Tax Exemptions

This attachment is limited to address the common question of how the Parking Lot District (PLD) tax could go unnoticed upon a reasonable review of a tax bill (putting aside the misplaced burden of an exemption application due 3 months prior to its receipt), and to take one through the steps we took to figure out the PLD tax was even being incorrectly included in a Tax Bill.

1) If you review the attached Real Property Tax Bill (annotated example of Silver Spring PLD Property) - you will note there is NO breakdown of the County Property Tax and County rate of 1.3490 of the assessed property value. There is NO reference or notice to the property being in a PLD, being assessed a PLD tax (or exemption), and/or potentially being eligible for an exemption from a PLD tax. There is NO reference to a County Tax Rate Schedule to assess what is included in the rate or where such schedule can be found (only how to pay the tax bill).

2) After going online to track down the Tax Rate Schedule (see attached) to break down the "County Property Tax" rate on the Bill, one must match the "tax class" on the tax bill with the "tax class" on the Schedule and go across the row (Row 48 in our example). One may note the PLD special service tax area footnote in the row, but it is not clear whether the PLD tax is included in the total rate and/or whether there is a row for exempt properties (we know now there is not). The PLD tax is the ONLY tax listed on the Schedule that allows for exemptions (and again, there is no reference on Tax Bill to potential exemption and/or reference to an application requirement).

3) Next one must go to the "Total Tax Rate" column, and somehow know to subtract the state tax rate which is included in the rate and on the chart - even though the tax bill breaks down State and County taxes separately. Once that figure is obtained, one *may* realize then the County tax rate on the tax bill does include the PLD tax.

Please note that we did this evaluation of the Tax Bill originally to review PLD tax impacts, so we were *actively* and *specifically* looking into the PLD tax component. For anyone else, including individual condominium owners in the PLDs, they would not undergo such analysis, reasonably assuming that if their property provided parking in accordance with the County Code that it was exempt from PLD taxes. They would further reasonably assume the County would not knowingly bill property owners providing Code parking for the PLD tax in hopes that property owners would not bother to go through this maze to figure out if PLD taxes were embedded in the County Tax Rate and just pay the PLD tax for that year (or if they did realize, pay the PLD tax and then apply for an exemption to which they are automatically entitled the following April).

Attachments



REAL PROPERTY CONSOLIDATED TAX BILL

ANNUAL BILL
TAX PERIOD 07/01/2014-06/30/2015
FULL LEVY YEAR
LEVY YEAR 2014

Department of Finance
Division of Treasury
255 Rockville Pike, L-15
(Monroe Street Entrance)
Rockville, MD 20850

Hours: 8:00 a.m. - 4:30 p.m.
Mon. - Fri.

HOME PROPERTIES RIPLEY STREET LLC
850 CLINTON SQ
ROCHESTER, NY 14604-1730

NOT A PRINCIPAL RESIDENCE

BILL DATE	
07/07/2014	
PROPERTY DESCRIPTION	
PAR A E BROOKE LEES SILVER SPRING	
BILL #	ACCOUNT #
34328490	03688410
REFUSE AREA	REFUSE UNITS
R32	351

LOT	BLOCK	DISTRICT	SUB	TAX CLASS
	3	13	022	R048
MORTGAGE INFORMATION		PROPERTY ADDRESS		
UNKNOWN SEE REVERSE		1155 RIPLEY ST		
TAX DESCRIPTION	ASSESSMENT	RATE	TAX/CHARGE	
STATE PROPERTY TAX	78,789,800	.1120	88,244.58	
COUNTY PROPERTY TAX	78,789,800	1.3490	1,062,874.41	
SOLID WASTE CHARGE		16.7300	5,872.23	
WATER QUAL PROTECT CHG (NR)			478.07	
TOTAL			1,157,469.29	
PRIOR PAYMENTS ****			0	
INTEREST			0	
Total Annual Amount Due:				1,157,469.29

*PER \$100 OF ASSESSMENT
CURRENT YEAR FULL CASH VALUE TAXABLE ASSESSMENT
78,789,800
CONSTANT YIELD RATE INFORMATION
COUNTY RATE OF 0.732 IS LESS THAN THE CONSTANT YIELD RATE OF 0.7475 BY 0.0155

YOU CAN VIEW AND PAY YOUR BILL ON THE INTERNET AT www.montgomerycountymd.gov/finance

PLEASE RETAIN THE TOP PORTION FOR YOUR RECORDS.



RETURN THIS PORTION WITH PAYMENT
REAL PROPERTY CONSOLIDATED TAX BILL
TAX PERIOD 07/01/2014 - 06/30/2015
FULL LEVY YEAR

BILL #
34328490

Check here if your address changed
& enter change on reverse side.

☐

**Make Check Payable to:
Montgomery County, MD**

ACCOUNT #	LEVY YEAR	AMOUNT DUE
03688410	2014	1,157,469.29

AMOUNT PAID

DUE SEP 30 2014
PLEASE INDICATE AMOUNT BEING PAID

HOME PROPERTIES RIPLEY STREET LLC
850 CLINTON SQ
ROCHESTER, NY 14604-1730

20820149343284907011574692950000000000

Key to Symbols Used in Schedule

		TAX CLASS *	GENERAL COUNTY TAX	STATE TAX	MUNICIPAL DISTRICT TAX	TRANSIT TAX	FIRE DISTRICT TAX	MNCPPC TAXES		
								ADVANCED LAND ACQUISITION TAX	METRO-POLITAN TAX	REGIONAL TAX
Municipal District										
M1	Friendship Heights	1	0.732	0.112	0.6220 ^{M12}	0.040	0.136	0.001		
M2	Drummond	2	0.732	0.112		0.040	0.136	0.001	0.056	0.017
M3	Oakmont	4	0.732	0.112	0.0430 ^{M12}	0.040	0.136	0.001		
M4	Chevy Chase Village	5	0.732	0.112	0.2920 ^{M12}	0.040	0.136	0.001		
M5	Section #3, Village of Chevy Chase	9	0.732	0.112	0.0800 ^{M19}	0.040	0.136	0.001	0.056	0.017
M6	Town of Chevy Chase	14	0.732	0.112	0.0400 ^{M1}	0.040	0.136	0.001	0.056	0.017
M7	Section #5, Village of Chevy Chase	15	0.732	0.112	0.0480 ^{M2}	0.040	0.136	0.001	0.056	0.017
M8	Village of Martin's Additions	16	0.732	0.112	0.2620 ^{M13}	0.040	0.136	0.001		
M9	North Chevy Chase	17	0.732	0.112	0.0400 ^{M3}	0.040	0.136	0.001	0.056	0.017
M10	Chevy Chase View	19	0.732	0.112	0.0850 ^{M4}	0.040	0.136	0.001	0.056	0.017
M11	Battery Park	20	0.732	0.112	0.0200 ^{M5}	0.040	0.136	0.001	0.056	0.017
M12	City of Rockville	21	0.732	0.112	0.0000 ^{M6}	0.040	0.136	0.001	0.056	0.017
M13	City of Gaithersburg	22	0.732	0.112	0.0000 ^{M7}	0.040	0.136	0.001	0.056	0.017
M14	Town of Barnesville	23	0.732	0.112	0.0472 ^{M8}	0.040	0.136	0.001	0.056	0.017
M15	Town of Laytonsville	24	0.732	0.112	0.0520 ^{M9}	0.040	0.136	0.001	0.056	0.017
M16	Town of Poolesville	25	0.732	0.112		0.040	0.136	0.001	0.056	0.017
M17	Town of Garrett Park	26	0.732	0.112	0.2100 ^{M17}	0.040	0.136	0.001	0.056	0.017
M18	Town of Glen Echo	27	0.732	0.112	0.1360 ^{M22}	0.040	0.136	0.001	0.056	0.017
M19	Town of Somerset	28	0.732	0.112	0.0220 ^{M10}	0.040	0.136	0.001	0.056	0.017
M20	Town of Brookeville	30	0.732	0.112	0.1400 ^{M18}	0.040	0.136	0.001	0.056	0.017
M21	Town of Washington Grove	32	0.732	0.112		0.040	0.136	0.001	0.056	0.017
M22	Town of Kensington	33	0.732	0.112		0.040	0.136	0.001	0.056	0.017
M23	City of Takoma Park	35	0.732	0.112	0.0500 ^{M11}	0.040	0.136	0.001	0.056	0.017
		38	0.732	0.112		0.040	0.136	0.001	0.056	0.017
Parking Lot District										
P1	Silver Spring (non-commercial)	41	0.732	0.112		0.040	0.136	0.001	0.056	0.017
P2	Silver Spring (commercial)	42	0.732	0.112		0.040	0.136	0.001	0.056	0.017
P3	Bethesda (non-commercial)	44	0.732	0.112	D.3000 ^{M21}	0.040	0.136	0.001		
P4	Bethesda (commercial)	45	0.732	0.112	D.0514 ^{M14}	0.040	0.136	0.001		
P5	Wheaton (non-commercial)	47	0.732	0.112		0.040	0.136	0.001	0.056	0.017
P6	Wheaton (commercial)	48	0.732	0.112		0.040	0.136	0.001	0.056	0.017
P7	Montgomery Hills (non-commercial)	49	0.732	0.112	D.2620 ^{M13}	0.040	0.136	0.001		
P8	Montgomery Hills (commercial)	50	0.732	0.112	D.2920 ^{M12}	0.040	0.136	0.001		
P9	Bethesda-BP (non-commercial)	53	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		57	0.732	0.112	D.1672 ^{M16}	0.040	0.136	0.001		
		58	0.732	0.112	D.0900 ^{M15}	0.040	0.136	0.001		
Urban District										
U1	Silver Spring	51	0.732	0.112		0.040	0.136	0.001	0.056	0.017
U3	Bethesda	54	0.732	0.112		0.040	0.136	0.001	0.056	0.017
U5	Wheaton	55	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		57	0.732	0.112	0.0500 ^{M11}	0.040	0.136	0.001	0.056	0.017
		58	0.732	0.112	0.1500 ^{M20}	0.040	0.136	0.001		
Noise Abatement District										
N1	Cabin John	74	0.732	0.112	0.5700 ^{M23}	0.040	0.136	0.001	0.056	0.017
N2	Bradley	76	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		78	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		79	0.732	0.112		0.040	0.136	0.001	0.056	0.017
Development District										
D1	Kingsview Village	80	0.732	0.112	0.0500 ^{M11}	0.040	0.136	0.001	0.056	0.017
D2	West Germantown	81	0.732	0.112		0.040	0.136	0.001	0.056	0.017
D3	White Flint	82	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		83	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		84	0.732	0.112		0.040	0.136	0.001	0.056	0.017
		85	0.732	0.112		0.040	0.136	0.001	0.056	0.017

* There is no real property tax for tax class 29

Key to Symbols Used in Schedule

MUNICIPAL REAL PROPERTY TAX RATE SCHEDULE

TAX RATE SCHEDULE ON 1-1-2014

15

SPECIAL SERVICE AREA TAXES

Municipal District		RECREATION TAX	STORM DRAINAGE TAX	PARKING LOT DISTRICT TAX	URBAN DISTRICT TAX	NOISE ABATEMENT DISTRICT TAX	DEVELOPMENT DISTRICT TAX	TOTAL SPECIAL SERVICE AREA TAX	TOTAL TAX RATE	TAX CLASS
41	Friendship Heights							0.177	1.6430	1
42	Drummond	0.023	0.003			0.000 ^{N1}		0.276	1.1200	2
43	Oakmont							0.177	1.0640	4
44	Chevy Chase Village							0.177	1.3130	5
45	Section #3, Village of Chevy Chase	0.023	0.003					0.276	1.2000	9
46	Town of Chevy Chase	0.023						0.273	1.1570	14
47	Section #5, Village of Chevy Chase	0.023	0.003					0.276	1.1680	15
48	Village of Martin's Additions							0.177	1.2830	16
49	North Chevy Chase	0.023	0.003					0.276	1.1600	17
410	Chevy Chase View	0.023	0.003					0.276	1.2050	19
411	Battery Park	0.023	0.003					0.276	1.1400	20
412	City of Rockville	0.023	0.003					0.276	1.1200	21
413	City of Gaithersburg	0.023	0.003					0.276	1.1200	22
414	Town of Barnesville	0.023	0.003					0.276	1.1672	23
415	Town of Laytonsville	0.023	0.003					0.276	1.1720	24
416	Town of Poolesville	0.023	0.003					0.276	1.1200	25
417	Town of Garrett Park	0.023						0.273	1.3270	26
418	Town of Glen Echo	0.023						0.273	1.2530	27
419	Town of Somerset	0.023	0.003					0.276	1.1420	28
420	Town of Brookeville	0.023	0.003					0.276	1.2600	30
421	Town of Washington Grove	0.023	0.003			0.000 ^{N2}		0.276	1.1200	32
422	Town of Kensington	0.023	0.003			0.000 ^{N2}		0.276	1.1200	33
423	City of Takoma Park	0.023	0.003					0.276	1.1700	35
		0.023	0.003					0.276	1.1200	38
	Parking Lot District	0.023	0.003		0.024 ^{U1}			0.300	1.1440	41
41	Silver Spring (non-commercial)	0.023	0.003					0.276	1.1200	42
42	Silver Spring (commercial)							0.177	1.3210	44
43	Bethesda (non-commercial)	0.023						0.200	1.0954	45
44	Bethesda (commercial)	0.023	0.003	0.158 ^{P1}	0.024 ^{U1}			0.458	1.3020	47
45	Wheaton (non-commercial)	0.023	0.003	0.317 ^{P2}	0.024 ^{U1}			0.617	1.4610	48
46	Wheaton (commercial)							0.177	1.2830	49
47	Montgomery Hills (non-commercial)							0.177	1.3130	50
48	Montgomery Hills (commercial)	0.023	0.003					0.276	1.1200	53
49	Bethesda-BP (non-commercial)	0.023						0.200	1.2112	57
		0.023						0.200	1.1340	58
	Urban District	0.023	0.003				0.081 ^{D1}	0.357	1.2010	61
41	Silver Spring	0.023	0.003				0.182 ^{D2}	0.458	1.3020	64
43	Bethesda	0.023	0.003				0.112 ^{D3}	0.388	1.2320	65
45	Wheaton	0.023	0.003	0.062 ^{P3}	0.012 ^{U3}			0.350	1.2440	67
		0.023						0.200	1.1940	68
	Noise Abatement District	0.023						0.273	1.6870	74
N1	Cabin John	0.023	0.003	0.124 ^{P4}	0.012 ^{U3}			0.412	1.2560	76
N2	Bradley	0.023	0.003		0.012 ^{U3}			0.288	1.1320	78
		0.023	0.003	0.062 ^{P3}	0.012 ^{U3}			0.350	1.1940	79
	Development District	0.023	0.003	0.124 ^{P4}	0.012 ^{U3}			0.412	1.3060	80
D1	Kingsview Village	0.023	0.003		0.030 ^{U5}			0.306	1.1500	81
D2	West Germantown	0.023	0.003	0.240 ^{P5}	0.030 ^{U5}			0.546	1.3900	82
D3	White Flint	0.023	0.003	0.120 ^{P5}	0.030 ^{U5}			0.426	1.2700	83
		0.023	0.003	0.240 ^{P6}				0.516	1.3600	84
		0.023	0.003	0.120 ^{P7}				0.396	1.2400	85

* There is no real property tax for tax class 29

MONTGOMERY COUNTY COUNCIL
Expedited Bill 43-14, Parking Lot Districts –Tax Exemptions

October 14, 2014

Good afternoon. For the record, my name is Anne Mead with the law firm of Linowes and Blocher LLP. As noted by my partner, Mr. Dalrymple, we are here today representing affiliate entities of StonebridgeCarras, Washington Property Companies, Southern Management and Home Properties for their properties in various County Parking Lot Districts (PLDs) in support of Expedited Bill 43-14 - PLD Tax Exemptions.

So as not to repeat the comments of others as to the inequitable and egregious nature of the PLD tax situation, my comments are limited to address the common question of how the PLD tax could go unnoticed upon a reasonable review of a tax bill (putting aside the misplaced burden of an exemption application due 3 months prior to its receipt), and to take you through the steps we took to figure out the PLD tax was even being incorrectly included in a Tax Bill.

1) If you review the attached Real Property Tax Bill (annotated example of Silver Spring PLD Property) - you will note there is NO breakdown of the County Property Tax and County rate of 1.3490 of the assessed property value. There is NO reference or notice to the property being in a PLD, being assessed a PLD tax (or exemption), and/or potentially being eligible for an exemption from a PLD tax. There is NO reference to a County Tax Rate Schedule to assess what is included in the rate or where such schedule can be found (only how to pay the tax bill).

2) After we went online to track down the Tax Rate Schedule (see attached) to break down the "County Rate" on the Bill, we matched the "tax class" on the tax bill with the "tax class" on the Schedule and went across the row (Row 48 in our example). You may note the PLD special service tax area footnote in the row, but it is not clear whether the PLD tax is included in the total rate and/or whether there is a row for exempt properties (We know now there is not). The PLD tax is the ONLY tax listed on the Schedule that allows for exemptions (and again, there is no reference on Tax Bill to potential exemption and/or reference to an application requirement).

3) Next one must go to the "Total Tax Rate" column, and you somehow have to know to subtract the state tax rate which is included in the rate and on the chart - even though the tax bill breaks down State and County taxes separately. Once you obtain that figure, you *may* realize then the County tax rate does include the PLD tax.

Please note that we did this evaluation of the Tax Bill originally to review PLD tax impacts, so we were *actively* and *specifically* looking into the PLD tax component. For anyone else, they would not undergo such analysis, reasonably assuming that if their property provided parking in accordance with the County Code that was exempt from PLD taxes, the County would not just bill them for the PLD tax and wait and see if property owners bothered to go through this maze to figure out if PLD taxes were embedded in the County Tax Rate.

Please support Expedited Bill 43-14. Thank you for your consideration of our comments.

**Testimony for 10/14 Hearing
PLD Tax Bill 43-14**

- Charles K. Nulsen, III, President and Owner of Washington Property Company specifically here for two projects Solaire Bethesda (Bethesda PLD) and Solaire Silver Spring (Silver Spring PLD).
- I would like to thank Councilmembers Berliner and Floreen for sponsoring this Bill.
- I would like to highlight my Silver Spring project in particular. Solaire Silver Spring is an optional method high-rise residential community containing 300 units.
 - I spent over \$4 million constructing parking above market need to comply and avoid PLD parking tax regulations.
 - The County acknowledged this project's PLD compliance in writing at both preliminary plan and site plan approvals and then confirmed in writing our parking compliance before issuing a C of O.
 - The County taxed me for non-compliance for two years at approximately \$240,000/year without my knowledge or the knowledge of my real estate tax consultant – Wilkes Artis. (There is no doubt PLD condo owners incorrectly paying this tax aren't able to hire tax consultants)
 - This inaccurate tax cost me not only \$480,000 in cash, but impacted my permanent financing by millions of dollars.
- I have been asked why I didn't catch this when others receive their PLD credit. It is impossible to see that you are being charged a PLD tax. This fact is highlighted by a thorough survey of tax payers in the PLD districts. The same taxpayers receive PLD credits on some properties, but incorrectly pay PLD taxes on other properties. It is simply not a conscious decision.
- We have a major problem in the current PLD tax process and implementation. In it's worst light, it can be described as bureaucratic theft. Thank you for introducing Bill 43-14 to deal with the 2014 tax year. I hope you all support it. We have much more work to do to right this fundamental wrong, bond rating or not!



October 23, 2014

The Honorable Craig Rice, President
and Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Expedited Bill No. 43-14 – Parking Lot Districts-Tax Exemption

Dear Council President Rice and Members of the Council:

On behalf of the Board of the Greater Silver Spring Chamber of Commerce, I am writing to express the Chamber's views on Expedited Bill No. 43-14 – Parking Lot Districts-Tax Exemption.

This Chamber has been a consistent advocate for sustaining and protecting the Silver Spring Parking Lot District (PLD) and for assuring that the taxes and other monies collected in the Silver Spring PLD remain in Silver Spring to support the needs of the PLD and the Urban District.

At the same time, we recognize the need to address a lack of transparency in the PLD exemption process. We understand that Bill 43-14 attempts to address this problem by allowing property owners an extension of time to file for the exemption during this calendar year only. The Chamber supports this effort, with the condition that all monies that may be refunded to property owners as a result of the Bill be returned from the County's General Fund, and not from the individual PLDs. Given the cumulative health and financial resources all PLDs require, it would not be prudent or fiscally responsible to source any approved refunds from the PLD's budgets.

Further, in order to streamline the PLD exemption process and avoid this problem in the future, the Board suggests that Council amend the law to remove the need for property owners to apply for the exemption. Instead the exemption should be granted automatically where the property provides the requisite parking spaces. Once the Department of Permitting Services (DPS) determines that a plan has been completed in accordance with its regulatory approval that includes providing code-required parking, DPS should notify the Department of Finance, copying the property owner, that the exemption should be granted.

Finally, the Chamber is concerned some of its members and other property owners and developers may not know whether they are receiving their lawfully entitled exemptions. Accordingly, the Chamber urges the Council to consider adding language to the Bill directing the County's Department of Finance to update the County's real property consolidated tax bill form to better identify for property owners their eligibility for the PLD exemption and whether or not they are receiving the exemption.

As so modified, the Chamber believes this Bill is a strong first step in making the County's PLD taxation process more straightforward and fair. The Chamber looks forward to continuing to work with the Montgomery County Council in these efforts and will be happy to respond to any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Redicker".

Jane Redicker
President



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 27, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Joseph F. Beach, Director
Department of Finance

Arthur Holmes, Jr., Director
Department of Transportation

SUBJECT: Expedited Bill 43-14, Parking Lot Districts - Tax Exemption

In preparation for this Thursday's hearing at the Transportation and Environment Committee on the subject legislation we are submitting the foregoing to clarify certain issues related to the exemption process and the subject legislation. We look forward to participating in the Council's deliberations on this important bill.

- Comment:** Property owners should not have to go through this cumbersome process every year.

Response: An approved exemption from the parking ad valorem tax is permanent. If a property changes land use or available parking, on which an exemption is predicated, it is incumbent on the property owner to inform the County but that has never happened over the last 15 years.
- Comment:** One property owner suggested his property was inspected by the County for parking requirement and it was deemed satisfactory.

Response: His property may have been inspected by DPS for use and occupancy, but no agency of the County has ever inspected the property to verify it has the code required parking for its land use. Any property within a PLD is exempted from the parking requirements for its land use for the purposes of obtaining a use and occupancy permit. It should be noted that these property owners represented by Linowes and Blocher have not yet applied for an exemption for the current tax year.

3. **Comment:** It was suggested that the fiscal impact of granting a retroactive tax exemption to the individual properties represented is only approximately \$600K and that in an overall County budget of over \$5B, the approval of this bill could not affect the County bond rating.

Response: The Bethesda revenue bonds are not backed by the full faith and credit of the County's General Fund and, within the budget of the Bethesda PLD, the approval of this bill could have a major fiscal impact. FY14 actual tax revenue for Bethesda was \$2,553,832 and Silver Spring was \$7,155,730. Therefore, \$600,000 represents over 6% of total taxes collected in both PLDs.

4. **Comment:** There was a suggestion that it should be the responsibility of the County government to determine if a property could be exempted from the tax before it is accessed rather than the property owner's responsibility to file for an exemption.

Response: In order to do this the County would have to inspect all private property located in the taxing areas to determine its land use and available parking before the tax bills are sent out each year. DOT currently spends an average of 16 hours of staff time to process a simple exemption request. Since there are currently approximately 3,664 tax accounts in Silver Spring and Bethesda alone, it would require at least 30 full time staff to annually inspect the properties and determine which of these properties should be required to pay the tax. This is, of course, provided the property owners will provide the inspecting staff access to their property and their tenants to determine the specific number of square feet of each land use and the adequacy of the parking provided that the any exemption determination must be based upon. Frequently, staffs spend much more time than this on individual exemption requests that may involve multiple meetings with property owners and repeated inspections with parking modified to meet the code requirements.

5. **Comment:** The property owners through their attorney contacted Executive Branch regarding this issue in May and the Executive Branch staff refused to help solve the problem.

Response: Actually it was June 18 that for the first time we were notified about this case and it should be noted that the deadline for exemption request can only be changed through Council action. The Executive Branch has no authority to extend the deadline.

6. **Comment:** Section 60-6 of the County Code permits an absolute exemption if the Code level parking is provided:

Response: This is misleading. Section 60-6 authorizes the exemption and Section 60-14 specifies the process for obtaining the exemption. They are not in conflict. They are in fact complementary parts of Chapter 60.

7. **Comment:** If property owners missed the deadline this year (and this bill is not enacted), property owners will be forever barred from applying for a waiver.

Response: This is not accurate. Under current law, the property owners can apply next year (also see the answer to #1 above).

8. **Comment:** If the property is granted an exemption it does not appear on the bill:

Response: This is incorrect. If a property has been granted the exemption appear as a credit on the bill (see example below).

1. ACCOUNT NUMBER	BILL NO.	PROPERTY ADDRESS	MORTGAGE	OCCUPANCY
			UNKNOWN	NOT A PRINCIPAL RESIDENCE

PROPERTY DESCRIPTION PARCEL A9	
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LOT		TAX DESCRIPTION	ASSESSMENT	RATE	TAX/CHARGE
BLOCK		STATE PROPERTY TAX	10,349,800	0.112	11,591.78
DISTRICT	13	COUNTY PROPERTY TAX	10,349,800	1.349	139,618.81
SUB	001	SOLID WASTE CHARGE		124.24	4,596.88
CLASS	R048	WATER QUAL PROTECT CHG			464.70
REFUSE AREA	R34	TOTAL			156,272.17
REFUSE UNIT	37	CREDIT DESCRIPTION	ASSESSMENT	RATE	AMOUNT
		FULL PARKING LOT CREDIT	-10,349,800	.317*	-32,808.87
		TOTAL CREDITS			-32,808.87
		PRIOR PAYMENTS ****			\$123,463.3
		INTEREST			
		TOTAL AMOUNT			\$0.00
		Amount Due by 10/31/2014			\$0.00

cc: Isiah Leggett, County Executive
 Montgomery County Council
 Timothy L. Firestine, Chief Administrative Officer
 Jennifer Hughes, Director, Office of Management and Budget
 Marc P. Hansen, County Attorney
 Glenn Orlin, Deputy Council Administrator
 Bonnie Kirkland, Assistant Chief Administrative Officer
 Michael Faden, Senior Legislative Attorney