TRANSCRIPT
September 27, 2005

MONTGOMERY COUNTY COUNCIL

PRESENT

Thomas Perez, President	George Leventhal, Vice President
Phil Andrews	Michael Knapp
Howard Denis	Nancy Floreen
Marilyn J. Praisner	Steven A. Silverma

ABSENT

Michael Subin

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Council President PEREZ,
Good morning.

Reverend Hattie Jackson,
Good morning. Let us pray. Almighty and ever lasting God from whom there is no changing or turning away, we open our hearts to you this morning, and we praise you for this beautiful day which you have given us. We will rejoice and be glad in it. We praise you merciful God that you're blessing these members of this Council with wisdom and intelligence that they need for each day. We thank you all powerful God for a Council that has chosen not to begin their work for others until they have petitioned your guidance and direction for the lives, plans and concerns of the people of Montgomery County. We thank you, Lord God, for the recognition of the children, the school, Viers Mill Elementary School, in being named a National No Child Left Behind Blue Ribbon School for 2005 by the U.S. Department of Education. Thank you for the support this Council has for its teachers and administrators. We thank you that you're richly blessing the people of Montgomery County and we praise you, Lord God, for the Council's leadership. We thank you that Wheaton Regional Library has been renovated with an $11,000 grant from K-Mart and 40,000 children for whom English is not their first language are now being served. We praise you for the finest dancing schools and companies in Montgomery County that they are recognized by the arts and humanities as finalists for the Metropolitan District of Columbia Dance award. Thank you, Lord God, for the $90 million expansion renovation of Holy Cross. We are blessed with 200,000 patients and out-patients that are now being served each year. We pray for the children, those who are victims of the recent hurricanes, and for those who suffer abuse, neglect, and other tragedies in life. Thank you for watching over them and keeping them and we pray that you will guide our young children, Lord God. They need your guidance in their homes, in the schools, wherever they are, teach them, God, to look up to the high standard and not to take the low road, to be counterculture, Lord God, not to do what is easy but to go against the grain, to swim upstream. Lord God, help our young people that they may be a blessing for themselves and for the life which they will be responsible for within a few years. We praise you, lord God, for the oversight of the Council in taking care of all of your people in Montgomery County, their growth, the growth of the County, the management of its resources. We give you honor, glory and praise for all that you do through them, and finally, Lord God, we pray that you will strengthen each member in their sense of responsibility to all persons, guide them as they labor to shape policy, develop programs and manage resources, encourage them when they are faint hearted, and as the County grows increasingly multi-cultural, be their compass and guide as they wrestle with issues of justice and equity. Keep each member in the best possible health and state of mind. Help each member to be intentional about taking time away from their work to rest and be refreshed. Help them to spend time with family and friends, and be renewed. Bless them with boldness and courage in making the hard decisions and the difficult choices. Help each member of this body to so live and work as legislatures for whom nothing is impossible that you will look upon them and find favor. Be with them as they legislate

the affairs of all of your children, protect them as they go to serve and grant them grace, peace and mercy, amen.

Councilmember PRAISNER,
Amen.

Councilmember LEVENTHAL,
Mr. President.

Council President PEREZ,
Yes, sir.

Councilmember LEVENTHAL,
I just wanted, before Pastor Jackson leaves, I just wanted to thank her for those very topical and thoughtful remarks and I just wanted to thank her also for welcoming me twice to worship at the Glenmont United Methodist Church. I enjoyed both visits very much and look forward to returning in the future. I want to share with my colleagues very briefly, I know you've always heard, you've all heard the cliche that the most segregated time in America is Sunday morning. That is not the case at Glenmont United Methodist Church. I have rarely seen a congregation that looks like Montgomery County and that so well reflects the broad diversity of this County as Pastor Jackson's congregation and I appreciate her leadership and the prayerful and mighty way that she brings people to find comfort and strength at the Glenmont United Methodist Church.

Council President PEREZ,
Okay. Ms. Praisner and Councilmember Floreen.

Councilmember PRAISNER,
Gene, you want to come up?

Well we have many presentations here at the Council every Tuesday, but none I think with as poignant and as graphic a description and a presentation of the issues that we're going to discuss this morning. This is the "Empty Place at the Table" display which represents and will help us as it travels around the County to remember to honor and to reflect on the victims of domestic violence within Montgomery County. The "Empty Place at the Table" exhibit is a dinner table setting for the victims in our County who were murdered, or those murdered outside the County who left surviving family members in Montgomery County. It is also a special opportunity to emphasize that domestic violence can be prevented. The names of the victims we're honoring at the table today are Donna Lynn Martin, killed by her husband on July 20, 2002 in Gaithersburg. Sheila Menafee, killed by her boyfriend on September 6, 2004 in White Oak. Lydia Medina and her brother Ely Medina, killed by her boyfriend on August 7, 2002 in Germantown. Elise Martin Crosby, killed by her husband on May 14, 1996, and her family resides in Montgomery Village. There is also a place setting that represents

all of the unnamed victims who have died at the hands of their abusers. And if you count, you'll note that unfortunately our table here at the Council has only four place settings. Unfortunately the U.S. Postal Service hasn't delivered on the others. But that is just, this is adequate, I think, to highlight the issues. This exhibit will travel throughout Montgomery County during the month of October. On October 1st and 2nd, the table will be at County's Housing Fair at Bohrer Park Activity Center in Gaithersburg. On October 8th and 9th it will be at Westfield Shopping Center in Bethesda, and October 15th and 16th it will be in Westfield Shopping Center in Wheaton and I want to thank Gene Morris who's the Manager of the Abused Persons Program in Montgomery County for being with us this morning. And I'm going to give the proclamation to my colleague, Nancy Floreen, and ask her to read it and then ask Gene to make a few comments.

Councilmember FLOREEN,
Montgomery County Maryland, the County Council, proclamation states, "Whereas domestic violence is a serious crime that affects people of all races, ages, income levels and gender, and whereas the crime of domestic violence violates an individual's privacy, dignity, security and humanity due to the systematic use of physical, emotional, sexual, psychological and economic control or abuse, and whereas all people have the right to be safe in their homes, and whereas domestic violence does not stay in the home, nationally the health-related cost of rape, physical assault, stalking and homicide committed by intimate partners exceed $5.8 billion each year. Of that amount, nearly 4.1 billion are for direct mental and mental healthcare services, and nearly 1.8 billion are for the indirect costs, lost productivity or wages according to a 2003 report by the Center for Disease Control and Prevention. And whereas approximately one in five high school students reports being physically and/or sexually abused by a dating partner, and whereas domestic violence, child abuse and youth violence are inextricably connected, studies suggest that between 3.3 and 10 million children witness some form of domestic violence annually. And whereas last year Montgomery County 1,578 incidents of domestic violence were reported to the Police, the Abused Persons Program in the County's Department of Health and Human Services received 2700 requests from victims and offenders seeking assistance, and 2,082 protective orders were filed against family members and dating partners. Now be it resolved that the Montgomery County Council proclaims the month of October 2005 as Domestic Violence Prevention Month in Montgomery County. And be it further resolved the Montgomery County Council urges all our residents to work to stop this tragedy from occurring in Montgomery County and encourages residents, employers, and others in our community to be aware that this is a problem that must be addressed by everyone." Presented this 27th day of September, year 2005, signed by our honorable Council President, Tom Perez. Just says it all.

Councilmember PRAISNER,
It sure does. Gene, do you want to say something?

Gene Morris,

Thank you very much. On behalf of our Department Director, Carolyn Colvin, but really everyone across the community that's working against domestic violence, really want to thank the Council for this support. As a Council and individually, I think all of us feel greatly supported and really always have. It's really a hallmark of Montgomery County the way our community collaborates to really address this problem that is so deeply entrenched in the way our families and our communities sometimes look at marriage and look at the family. We were one of the first programs in the state in 1977 to begin to address domestic violence, and the County has really been a part of this being an ongoing effort that has led to really now folks from across the government and across the community being very active in working together to deal with urgent issues and deal with the deep-seeded issues that have to change for everyone to be sure that their families are places of peace and respect and equality. So I hope that this month for all of us will be sort of a rededication to that and will really be a step forward. Thank all those who participated in sort of setting up these events that are coming, and again, thank the Council and look forward to a month of really moving forward together. Thank you.

Councilmember PRAISNER,
Thank you very much. And hope that all of you will pay attention to the warning signals that we know are a part of that cycle of domestic violence starting with intimidation and control over that other individual, and I think it is important that in this month that comes that we recognize the warning signals and that we reach out to each other and share our concerns and our support.

Gene Morris,
Thank you.

Councilmember FLOREEN,
Absolutely. And thanks very much to Joy Nurmi in Ms. Praisner's office who I think organized all of this.

Councilmember PRAISNER,
Want to get the table and all this stuff. Thank you.

Councilmember FLOREEN,
Thank you.

Photographer,
Thank you.

Council President PEREZ,
I'm sorry, Councilmember Andrews.

Councilmember ANDREWS,

Good morning, everyone. One of the wonderful opportunities of being a Councilmember is to recognize some of the great work that's being done in our County and to encourage more of it. And I'm pleased this morning to be joined by nine members, nine students at Richard Montgomery High School. I think we've got nine. And John Smith who is the President of the Montgomery County Task Force on Mentoring, Fred Evans who is a Board member of the Task Force, Barbara Williams who is also a Board member, and Sally Rosner, who is working on the program as well. Mentoring is one of the most important things that people can do for each other, and the Task Force on Mentoring has established five mentoring programs in the County that are currently underway, some of which have been underway for several years. The one at Richard Montgomery is very well established, I think this is its third or fourth year. Fourth year. There is a program at Argyle Middle School, there's a program at Fred Evans' old school, Gaithersburg High School. Fred's served in a lot of different schools, so you have to specify which one it is. He's done well everywhere. They keep promoting him and sending him to do good work. Barbara Williams is a volunteer and member, works for the Nuclear Regulatory Commission, has served on the Board to help foster mentoring. There are also programs underway at the Montgomery County Correctional Facility in Clarksburg and at Walter Johnson with the National Naval Medical Center and at Argyle Middle School. So there a lot going on but there needs to be a lot more, and to encourage that the Council has designated October as Mentor Month in Montgomery County for the last several years and wants to encourage this month that is coming up to be an opportunity to recruit more people to help mentor. That's really what's needed. It's a big commitment, but it's one that's critical and one that helps both the mentor and the mentee, and so let me read this proclamation and present it to the Task Force and then I'll ask John Smith to make a few comments and ask each of the students to tell us their name and their grade at Richard Montgomery and really glad that you can join us this morning. The County Council of Montgomery County, Maryland proclamation, "Whereas conscious efforts must be made by concerned citizens to help young people develop the values and abilities necessary for positive and ethical decision-making and conduct and whereas students success in school, home and the community is largely determined by responsible and caring adult guidance, support and encouragement, and whereas the next up and coming generation will be the steward of our community, and nation, that's you guys, and mentoring is an excellent way to reach communities of children and youth who may need a helping hand to reach their full potential, and whereas the Task Force on Mentoring at Montgomery County provides mentoring support to our children, youth as well as technical assistance, program information and related services to persons and organizations interested in implementing mentoring programs in their communities. Now therefore be it resolved that the Montgomery County Council hereby proclaims October 2005 Mentor Month in Montgomery County, and be it further resolved that the County Council takes this opportunity to thank the Task Force on Mentoring, good work, for their dedication and hard work in sponsoring and hosting its 14th annual Conference on Mentoring with the theme "Saving Our Children, Compassionate Mentoring", presented on this day, the 27th of September, the year 2005, signed by Thomas Perez, Council President. Thank you for the good work.

John Smith,
Thank you.
Thank you, Phil.

Fred Evans,
I often think back to the time when Phil was 13 years old because when Phil was 13 years old, I was a Sunday school teacher and I always say he was the only one that listened. The rest of them were climbing walls, but Phil was a good student. I really want to thank Phil and certainly the members of the County Council for this honor because I think what it opitimizes is all the good work that all of us are doing in trying to help guide our young people to success in school and success in community and so forth and I'm proud of all the programs that we started. One I'm particularly proud of is the program that Phil mentioned, which is at the Montgomery County Correctional Facility up at Clarksburg, and in fact tonight, the first group of, I don't want call them mentee's, they're youth offenders, the first group of youth offenders that went through about three months of mentoring, we're going to have a ceremony, a graduation ceremony for them tonight. That program took two years to establish and with Phil's support, Lisa Mandel-Trupp, myself and Bobby Walton went up and spent a morning with Art Wallenstein and the Warden, Robert Green, to just say to them, is it possible that we might come up and, we might help organize a mentor program at the facility, and they said, yes, they were very enthusiastic about it. It took a lot to get it off the ground, and we're now moving, when this group graduates, we're moving to bring in about 12 more youth offenders that we're going to be mentoring. I want to also note that this is Mentor Month, the most difficult thing is trying to recruit mentors. And we're at the stage now where we're going to be training juniors and seniors at both Richard Montgomery High School and Gaithersburg High School to be mentors. Montgomery County needs to do a better job of stepping up to the plate, and don't get me started on that one, but I think that this effort that we're going to implement is going to prove to be very fruitful and on that basis, other than the fact that not this Thursday but the following Thursday, we're going to be celebrating our annual conference at Johns Hopkins University, the Rockville campus, and we're going to talk about mentoring and two keynote speakers I think you'd be interested in. One is the Warden from the Correctional Facility at Clarksburg, and the other is Candace Catar. Candace is President of a group called Identity and they work with Hispanic youngsters that are new to the community and new to the school system and they're doing a really commendable job. And on that basis I'll stop talking and the students will introduce themselves.

Councilmember ANDREWS,
Tell us who are you are and what year you are at Richard Montgomery.

Rosaline Lavender,
My name is Rosaline Lavender and I'm in the class of '06.

Eric Fisher,
My name is Eric Fisher and I'm in the class of '06.

Brandon Thomas,
My name is Brandon Thomas and I'm in the class of '07,and I'd just like to say thank you to the mentors to bring us up here and to show that the only thing that isn't looking at us to graduate is the teachers that we know we have the County Council behind us. Thank you.

Terrell Addison,
My name is Terrell Addison and I'm in the class of '06.

Shalahea Reed,
My name is Sharlahea Reed and I'm in the class of '06.

Cesar Martinez,
I'm Cesar Martinez, I'm in the class of '06.

Ali Kalain,
I'm Ali Kalain, I'm the class of '07.

Councilmember ANDREWS,
All right.

Ryan Sullivan,
Ryan Sullivan, class of '06.

Rob Benjamin,
Rob Benjamin, class of '06.

Councilmember ANDREWS,
So on that account we've got eight seniors and one junior in this group. That's great. So I hope that those seniors will encourage others and reach back as you go on to graduate this year, that you'll reach back and help others and pull them up as well as people are reaching out to you. Thank you, everybody, who's working to make this program a success and thank you, John, Fred, and Barbara for your good volunteer work and thank you, Sally, for helping to pull the program together. Have a good year.

Council President PEREZ,
Okay. I just want to note for the record, Mr. Subin is still in Texas with the Urban Search and Rescue team and we appreciate his public service. We are unclear when he will return and they are awaiting deployment to assist victims of Hurricane Rita. Let's turn to Ms. Lauer, Agenda and Calendar Changes and Mr. Silverman will be in shortly.

Ms. Lauer,

The Consent Calendar has two changes, we're deferring the introduction of the '07 Spending Control Limits for WSSC, that will be on your Agenda for your next session and we're adding action on a Resolution to Amend, Resolution 10-15 for Aunt Hattie's Place, and then at 9:40, the Item on the Budget Priorities and Performance Measures, it's just clarification that there is a resolution before you that will be as to waive the rules so we can go to action. And then the one change, next Monday, the PHED Committee meeting and the MFP and HHS, the times have changed, MFP HHS will be at 9:15 and the PHED meeting will be at 2:00.

Council President PEREZ,
Thank you. Very well. Okay. Madame Clerk, approval of minutes.

Clerk,
We have the minutes of September 8th, 12th and 13th for approval today.

Council President PEREZ,
All those in favor. Unanimous among those present. We had some petitions from residents of Montgomery County supporting ZTA 03-27 Building Height, five names all ending with Denis. Family members do not count, Mr. Denis with petitions but sometimes you got to do what you got to do. I appreciate that. That is not accurate for the record. Okay. Let's move to the Consent Calendar. Move and seconded. Ms. Praisner.

Councilmember PRAISNER,
I had just a comment or a question on the addition that's been added regarding Aunt Hattie's Place. Aunt Hattie runs an incredible program and I think it will be a welcome addition to Montgomery County. The only issue is a technicality, I guess. Aunt Hattie requires a special exception to open her facility, and the community was told that it would be at least a year before that facility would go through all of the processes. So I have a question as to the rationale for the expedited request for these funds at this point.

Linda McMillan,
Katherine Evans is here from DHHS. This was a request from Dr. Washington who had indicated that she did need funds at this time. I understand some of it is in preparation for getting the special exception so there was a request to DHHS to expedite this contract. As you know, they have many, many contracts that come with these non-competitive grants that we award, and this particular issue that's before you is that in order to really be able to expedite it, there is a 30-day requirement that the Council had placed on it. So I just did want to give you that as background, and Kathy, I don't know if you had something to add about the status of the special exception.

Councilmember PRAISNER,
Well, that answers my question as far as the construction costs. I guess two things. One, we had asked and the resolution speaks to the information that we would get a

copy of associated with the exposure, or the opportunity for the program to be available to Montgomery County youth, so that's a piece of that. The second thing that I want to make sure, and it doesn't have to be part of the resolution, it can be part of the record, I want to make sure that folks know that the Council's action on this grant does not prejudge or indicate any position relative to a special exception process. We have tended, when there is a process that requires the Board of Appeals or the Planning Board approval, not to take action where it would look like someone could use the Council support as a rationale for the process. I just want to make sure that everyone knows that I understand the need for the funds in order to pay, you know, design and architect work and filing forms and things, but that that this does not prejudge anything that the Board of Appeals would have to go through. And the Council's not taking a position on the Board of Appeals issue which is consistent with the policy we've had on everything else, housing requests for funds from the state, et cetera. We never try to get in the way of those decisions.

Linda McMillan,
Right. This resolution is specific to the Council's request that in the contract for the grant that there be a plan for priority to be given to Montgomery County children who are served by the child welfare system and so in the Amendment that's before you, instead of the original request, which would have been that that be submitted 30 days prior to any disbursement of funds, instead what would be required is that the Department of Health and Human Services would forward to the Council the contract which will require that there be a very specific plan for that. And then when that exact plan is executed we would also get a copy of that. So money actually cannot be disbursed until there's agreement that there will be an executed plan related to the idea then remove the 30-day requirement.

Councilmember LEVENTHAL,
If I could just comment, I want to thank Ms. Praisner for monitoring this so closely. I know she's been in contact with a number of community members and with Aunt Hattie, with Dr. Hattie Washington, and I concur with Ms. Praisner's point and would be amenable to including language in the resolution although if Ms. Praisner feels that we can send adequate guidance to the Board of Appeals or rather lack of guidance, in other words, this is without prejudice, we do not intend to prejudice any decision, any process underway before the Board of Appeals or any other body, and if the minutes could so reflect in some detail as the Council takes up this resolution. Let me just also state for the benefit of all my colleagues, we have some real issues with respect to the processing of some of these contracts in the Department of Health and Human Services and the need for this resolution arises from significant backlog of these types of directives that the County Council indicated back in the Spring that there are worthy non-profit organizations that we strongly support and many of these organizations are under a reasonable impression that funds will be expedited to assist them in their important work. The budget goes into effect July 1, we're now nearly at October 1, and Aunt Hattie's Place and many other organizations are wondering can they proceed with their work even though they were given every reason to believe that the County

Council supports it, that the budget contained the funds. Many organizations are left wondering where do they stand. And I hope that there will not be many more of these types of Amendments necessary, but I just want to bring to my colleagues' attention that there is a very serious issue with respect to the processing of these contracts in the HHS Department, and again, I want to thank Ms. Praisner for working with me so cooperatively to make sure that Aunt Hattie is able to draw down, Dr. Hattie Washington, is able to draw down the funds that this Council intended for her to receive.

Councilmember PRAISNER,
I had another item. It was the item on the categorical transfers for the MCPS FY '05 operating budget.

Council President PEREZ,
Don't go away Ms. McMillan, you're stuck there.

Councilmember PRAISNER,
Do you want to go into that one? On this one?

Council President PEREZ,
Did you have a --

Councilmember KNAPP,
I just had a quick question because I appreciate Mr. Leventhal's issue that the processing is taking longer. I guess the question I would ask is, as I understand as it's written here, there was a requirement for Aunt Hattie's Place to have provided the 30-day report, so has the report been submitted already?

Councilmember PRAISNER,
No.

Linda McMillan,
What will happen, what the Council had originally intended was that 30 days prior to DHHS actually disbursing any funds to Dr. Washington, we would have received a plan that would have specifically said how priority would be given to these children, whether we would get a certain amount of notice, however, it would be worked out. That has not been done yet because of the timing of working through these contracts. So what would be done now is that the contract that will be signed if this goes through, the contract that will signed will specify that Dr. Washington must agree to execute a plan regarding the priority placement of children served by Montgomery County child welfare. Once that's signed, the contract is signed, then funds could be disbursed to work on these architect issues. Then, and we would receive, the Council would receive a copy of that contract, then shortly, and I think that the Department is expecting this will happen in a week or so, that they would actually have the very specific plan of the numbers of days of notice or how contact will be made, those kinds of issues and they

would also forward that to us. But you would not then have the 30-day window to review all that before funds might be disbursed to Dr. Washington.

Councilmember LEVENTHAL,
In other words, we're still going to get the plan, she just doesn't have to wait another 30 days after the plan is presented. We still get the plan before the funds are disbursed, but what this resolution does is it deletes the additional 30-day lag time.

Linda McMillan,
That you would have had for review if for some reason you wished to--

Councilmember KNAPP,
I guess the reason I'm asking the question is I appreciate the notion of the backlog. I guess the one concern I would have is if, and believe me, Aunt Hattie's Place is as important program so this is in no way an issue there, I just wanted to, if we knew there was a 30-day requirement why they hadn't submitted that agreement or whatever they're going to write July 1 so that would expedite the process.

Linda McMillan,
I think the intent, as with all the contracts that they work on, was to fully comply, there just wasn't an understanding that there would be a need for the funds at this time. So as I have worked through --

Councilmember LEVENTHAL,
I'm sorry, Linda, I appreciate your good work on this. I think the problem lies within the HHS Department. I think they are having a serious problem moving contracts out the door. So I mean obviously, any group wants the money immediately, I don't think it's correct that the Department wasn't aware that there was a need for the funds , I think the problem is --

Linda McMillan,
The timing of when the contract had to be let given what her needs are I think is what the unknown was.

Councilmember KNAPP,
I guess my concern is that this establishes some notion of a precedence that if we want to actually receive something from the organizations that we're providing the grant funds to, that that's clear in the budget resolution that we pass at end of May so there's time frames for them to be able to generate that, whatever it is, a report, some documentation submitted to HHS so that as of July 1, if they're expecting the disbursement of funds at or near July 1, that they've kind of met their requirements as the organization receiving the funds. So that's the part I'm kind of unclear on. If they haven't met their requirement, that there's additional 30-day window out there but for that particular one but we could have already been passed that because they could have already submitted the report as of the first of the fiscal year.

Councilmember LEVENTHAL,
In other words, just to be clear, Mr. Knapp, what you're saying is, is that the Department should have taken the guidance when we passed the budget to work with the grantee and have the plan ready to roll on July 1.

Councilmember KNAPP,
Or Aunt Hattie's Place could have written their stuff so that it was ready to submit on July 1.

Councilmember LEVENTHAL,
Let me be very clear about this. I don't believe the delay was with the non-profit.

Councilmember KNAPP,
I don't know. It's just the concern I have is I don't want to send a message to folks that if we have put requirements in our budget resolution saying we expect the organizations we're providing the funds to do certain things, that if for whatever reason they get in a bind three months later that we then do Amendments that will waive those requirements because presumably when we've put those out there, there were good reasons for us doing that. And so I just want to make sure we have an understanding of what we're doing in not setting the wrong precedent.

Councilmember LEVENTHAL,
I have no disagreement with what you're saying at all and the value of what you're pointing out is that once the Council passes the budget at end of May, departments should get to work in order to execute the Council's requirements as rapidly as possible beginning July 1 and in fact, that is not occurred with many.

Councilmember KNAPP,
And the grantees.

Councilmember LEVENTHAL,
Aunt Hattie's Place is by no means unique. I'm hearing every week from grantees, who are wondering, wait a minute, I thought the budget went in to effect July 1, what's going on, and many of them are being told there are additional months and months of delay, some are facing very, very serious cash flow problems although they were led to believe that the Council fully supported their work and the budget so states.

Councilmember KNAPP,
That's why I want to make sure that if there's an issue with HHS that we address that. If there's issue with the requirements of the grantees actually providing information to us and that provides some that we make sure we know which issue we're addressing.

Linda McMillan,

And I do think when the HHS Committee and the MFP Committee start their meeting on the FY '07 grant process this is one of the topics that Council Staff is going to have in the packet because, for example, in the information on the community development block grants, it's very clear to organizations applying that they probably won't actually see disbursement of their funds until the September-October time frame because of the time it takes to go from the July 1 date through all the contracting process and I think that that hasn't been, that's an issue we have to work through for these nonprofits.

Councilmember KNAPP,
And that's a problem that needs to get resolved undoubtedly but I also want to make sure that we get the requirements laid out that we've addressed in the budget resolution.

Councilmember PRAISNER,
I think there are two issues here, but I think both Mr. Knapp and Mr. Leventhal have highlighted issues that in HHS and MFP we need to talk through. And part of that is that it is called a grant, but it is a contract and there is an assumption with the contract that there will be some legal document that needs to be signed. It isn't like a foundation writing a check to some extent or an individual at home writing a check as a donation. This is a contractual relationship and it sometimes requires some things to be performed before the funds are expended including the program things, content. So it is, I think, speaks to some of the broader information we need to provide to grantees when they're going through the process so they understand it too, and the CDBG process as so formally structured may provide additional framework for us as we deal with this issue.

Councilmember KNAPP,
And I know that there is a funding forum in a week or two and this may be something to raise at that as a discussion point just so people have an awareness of the issues that we have in just disbursing those resources.

Councilmember PRAISNER,
My other item was on --

Council President PEREZ,
I think she --

Councilmember FLOREEN,
I just wanted to comment on this that I would urge my colleagues on this issue to think about how we phrase these budget resolutions as well so that it's very clear where the responsibility for compliance is be it the department or the applicant so that, and that people are informed early on of what their job is going to be if they are dependent on monies at a certain time or there is that potential for that because we do not want to set a precedent of revisiting this on a regular basis.

Councilmember PRAISNER,
I agree.

Councilmember FLOREEN,
And when we get a chance I'd also like to speak to item 2G.

Councilmember PRAISNER,
Why don't you go first since I've been talking. If you don't mind, Mr. Perez, you're losing control.

Council President PEREZ,
That implies I had control. I appreciate your confidence that I absolutely had control at one point. Ms. Floreen.

Councilmember FLOREEN,
Thank you. I just wanted to ask a question about Item 2G. This is the MCPS categorical transfer. When we did the budget, we, the school system basically agreed that it had "X" millions of dollars that it would be required to, however you characterize it, use as a reduction to this current year's budget request. In reading Mr. Weast's memo in here, of course, that's not alluded to, but that point to one side, the 5 million that is being proposed here seems to be the 5 million that were used as part of a budget reduction for this year.

Joan Planell,
I don't believe so. I think that the school system ended with unspent funds of about $12.6 million if I remember correctly, and that was used to help fund FY '06. This is just a transfer from one category to another with the $5 million which is not in the $12.6 million.

Councilmember FLOREEN,
It's an extra $5 million we didn't know about?

Joan Planell,
We knew that some categories may go over and some may go under, and it was going to be a zero sum game for this part and then in addition there was the 12.1, 12.6.

Councilmember FLOREEN,
So this number that's being transferred, was not assumed as part of this year's budget reduction.

Joan Planell,
Correct.

Councilmember FLOREEN,

Okay. That was my question. They do their assumptions here a little differently than the rest of the government, thanks.

Council President PEREZ,
Okay. Ms. Praisner, you had a second item.

Councilmember PRAISNER,
No, it's the same item, however, the point I want to make is that the reason that a 1.2 million had to be transferred from Category 4 where there were extra funds for textbooks to Category 5, other instructional costs, is because the school system mid-year without Council authorization decided to spend the money on the hand-held PDAs. If they had had approval, or if we had an opportunity to say no, there would have been 1.2 million more that would have been available to fund this coming budget. And the whole reason why you have so much money in instructional salaries and textbooks that is greater than what was needed, is because the school system's population projections on which we funded the budget was for about 1300 more students and the actual enrollment was only about 30 some students more. So the reality is that we funded a budget based on an assumption of enrollment, the enrollment didn't appear, and the school system used the money for other things.

Joan Planell,
Correct.

Councilmember PRAISNER,
Without Council's prior approval which is not consistent with state law.

Joan Planell,
Uh-huh.

Councilmember PRAISNER,
Now we had conversations about it in the budget, and we knew it was going to happen, but I believe we have to get our procedures back in order so that if it's something new that the school system wants to add mid-year, when there are these kinds of projections or we get information that enrollment is significantly less than what was projected, then we need to know that that money is available, not that it's going to be used elsewhere.

Council President PEREZ,
Is anyone here from the school system?

Councilmember PRAISNER,
I don't know to respond to those issues.

Council President PEREZ,
I saw Mr. Hawes here at one point.

Councilmember PRAISNER,
I think from a, yeah, from a broad perspective, these things were discussed during the operating budget review for this year because we looked at what dollar amount we would have available, we could reduce the budget in other words. But I think it raises a significant question of procedure and review and accountability and decision-making, and when those happen and how those happen that I think we need to talk about. Certainly if there was enrollment greater than what had been funded, we would have heard some conversation about that so --

Council President PEREZ,
Yes, we would.

Councilmember PRAISNER,
So I think we need to be tracking this on an ongoing basis and I think we need to remind the Board of Education, which is so interested in following the law and not getting into any legal troubles, as they indicated to us last night--

Council President PEREZ,
They took an oath to do that.

Councilmember PRAISNER,
As they indicated last night that the law requires them to come to us first.

Councilmember LEVENTHAL,
Mr. President.

Council President PEREZ,
Yes. Mr. Leventhal.

Councilmember LEVENTHAL,
I'm just trying to understand just so I'm clear, this matter is before the Council today to ratify.

Councilmember PRAISNER,
What we approved.

Councilmember LEVENTHAL,
What the School Board has already, what the MCPS has already done. In other words, it's after the fact. The money is gone, the money was transferred. The school system decided hey, we've got some extra money, they spent it and now in the next fiscal year we're going back to ratify something that already happened. Am I getting anything wrong here?

Councilmember PRAISNER,

It's a closing balancing of books action, George. We do this for the County and we'll do this in October for the County budget.

Joan Planell,
Because we appropriate by categories within the school system, than at the end of the year we have to sort of make amends and see what went over, what went under, and so this is how they do it, the year-end categorical transfer.

Council President PEREZ,
Do we have a sense of, now you reached July 1st, obviously, we reached that a few months ago, what was in the coffers on July 1st? I mean we all have an annual budget and you set a budget at home and at end of the year you hope that you have a little more money in your budget. Sometimes you don't and I'm curious. Do we know what was not spent from what was appropriated in those categories?

Joan Planell,
Yes. About, in total, about $12.6 million but we knew that when we went into the budget review and so we actually counted that.

Council President PEREZ,
No, I remember that, but I'm just curious, now once we hit July 1st was there additional money above and beyond?

Joan Planell,
No. I mean, I can go back and check with Dr.-- I'll go back and check with Dr. Spatz, but you know, their projection, we used that towards FY '06, and that's --

Council President PEREZ,
I would be curious because I know, for instance, there are a number of people who have advocated to have simultaneous translation equipment available for the most affected schools.

Joan Planell,
Right.

Council President PEREZ,
And I know last night, I witnessed, or my staff witnessed something that was rather unfortunate which is that they had a session on the need to provide bilingual services to the oil over port. Well, it actually gets worse, Mr. Knapp. Two MCPS parents came to testify about the need for bilingual services and the community was mobilized and guess what, when they came up to testify, there was no translation service, so they testified in Spanish in front of the School Board with no translation. And, you know, when you work as hard as all of us work to encourage community engagement, Mr. Weinman, when you testify this afternoon I'd like to you speak in Greek so --

Mr. Weinman
[Indiscernible]

Councilmember KNAPP,
We're still trying to figure out what Marvin said.

Council President PEREZ,
That's right. And so when you spend the amount of time that we spend attempting to encourage community engagement and telling everybody that we want to hear their voice and they walk in and they testify in Spanish and perhaps I'm under selling the Board, maybe they're all bilingual, but I don't think that's the case, and even if they were, it would seem that people in the audience may not be bilingual, and so the reason I asked the question is, I'm very interested in learning what is available, because obviously there is a hole here, and they did a very nice video presentation about all the services they provide for people with limited English proficiency but they overlooked the need to have a translator present for someone who was monolingual, a parent who I'm going to guess was working very hard during the day at their day job and then came to the School Board to testify. And, you know, frankly, aside from the fact that that's I think disrespectful to those parents, it's also illegal because as I'm sure the School Board knows having taken that oath that they referred to to uphold the law, Title XI of the Civil Rights Act of 1964 guarantees meaningful access to programs that receive federal financial assistance. So I'm very curious to learn from you, Ms. Planell, what money there is on July 1st. We estimated $12.6 million. Because if there is, indeed, another million dollars on the table, I want to look into whether that's going to be spent to provide the necessary services so that every person in this County regardless of their English language fluency can meaningfully access our school system.

Joan Planell,
I will get the answer for you.

Council President PEREZ,
Mr. Andrews.

Councilmember ANDREWS,
Thank you, Mr. President. I want to comment on the Item E on the Consent Calendar which is the supplement appropriation to approve a federal grant for the upgrading of the Regional Automated Fingerprint Identification System. In our area of the country, it's extremely critical that we have an interoperability. We are bordering two other states and the District of Columbia so when it comes to criminal intelligence, it's critical to have regional information that is shared, and the County has had a Regional Automated Fingerprint Identification System that's shared with Prince Georges County for some time. What this grant will do is provide the opportunity to upgrade that so that that information is also shared with the District of Columbia and with Northern Virginia. And it will allow for the comparison of palm prints through a computerized automated

system where now it can only be done manually. This is very important for identifying individuals who are committing crimes across the area, and it will help law enforcement greatly and help public safety. So I want to thank the good work of the departments, Sissy Niktuchi's here from the Police Department, and thank our congressional delegation for working hard to secure these funds over the last two and a half years. It's a significant amount of money, and it will provide real improvement in our ability to track criminals.

Council President PEREZ,
Okay. That concludes the Consent Calendar. All those in favor. Unanimous among those present. Let's turn to FY' 07 Budget Priorities Performance Measures and let me turn it to Councilmember Praisner, Chair of the MFP Committee.

Councilmember PRAISNER,
Thank you, Mr. President.

Council President PEREZ,
We want to thank Mr. Knapp as well, find out he was very involved in this.

Councilmember PRAISNER,
Yes and Mr. Knapp joined us at the Committee meeting and I want to thank my colleagues and the community. This is the first time we've gone through this process, adopted by the Council via resolution in the spring to identify and start the process very early in the fall of identifying budget priorities. And it is a learning experience as I indicated to everyone and I think my colleagues agree, a learning experience for all of us as we work through this first year of use of this tool and document. And the public testimony that we heard from the community and the written testimony that we received, the most recent comments from the Victims Services Board and the Commission on Aging and I noted the Commission on Aging discussion of strategic initiatives and looking at approach as much as in actual action priority or program priority. We received, as I said, significant input. Some of the folks chose to focus more like a reflective or similar to the comments we receive in the public hearing process in the spring when folks come in and advocate for specific programs. But, by and large, I think the community comments were an attempt to start to look at this in the big picture at this point rather than the individual budget, individual program item. The other point that was clearly noted is, I guess, as we drafted the resolution and the letter and the Council President sent out the letter, it was clear that we probably should have made more specific reference to the fact that we're talking about the operating budget and not the capital budget, especially given comments by the community about the absence of a specific reference to transportation when, although there are transportation elements within the operating budget, I guess one would acknowledge that is more significantly a priority along with education in the capital budget. And the other point that we made, well, and when we talked about transportation, the Committee saw that reference more in keeping with the issue of infrastructure and mobility which you'll see referenced in the resolution. The other point that I would

make, and I've since received a memo from Mr. Leventhal that tries to respond to this issue, and I personally have no problem with his suggestion that we alphabetize the items rather than list them the way we have them in the resolution, which I don't know whether my colleagues on the MFP Committee have any problems with that. If they don't, then we can, by Committee recommendation, ask Staff to amend the resolution to list those items alphabetically. The point that we made, and it is in the resolution, but as Mr. Leventhal points out you have to look for it, and it may lead to some confusion, is that is not a top down in order issue, but this is a horizontal rather than a vertical list. In other words, they're all on the same level, the listing is not a prioritization of the priorities by listing the most important first. That is not the case. So, the other point I would make is that we have to look at the issues of sustainability rather than short-term issues, and the concern that the Committee made was that we don't see this as a process that would dramatically change from year-to-year -- what am I being given? Nothing for this Item, okay.

Council President PEREZ,
Correct.

Councilmember PRAISNER,
That we don't see the items changing dramatically in their topical perspective or in the categories that there might be modifications and adjustments within them. And certainly the capacities we look at issues to modify them annually, but that sustaining what exists is as important as adding new issues to the list each year and that folks need to be looking at this over a longer period of time than each budget in a, you know, each budget as a stand-alone item. And that, in fact, that is one of the problems with an operating budget perception and even our approach. We don't spend as much time on the PSP, the long-term program element issues because we adopt a budget annually, and we're not looking at more than one fiscal year as opposed to the capital budget where we look at six years at one time. Obviously with more attention on that first few years, but still we're looking at six years in the process. So in any case, what we have is the background material which lists much of what I was talking about now as far as the sequence of discussion and the rationale for the resolution. We also have the resolution for action at this point, and I know that Ms. Floreen is concerned about the issue of transportation. I would indicate that, as I said, we have reference to transportation in that maintenance and coordination with transportation in the second paragraph and mobility issues refers to transportation as well. One could, after the word "transportation" in that second paragraph, cite such as road resurfacing, tree pruning, traffic safety measures and vehicle replacement if we'd like and I have no problem with that, but that's the general consensus of where we are.

Councilmember FLOREEN,
If I could make that addition then.

Councilmember PRAISNER,
If that's okay. We could say.

Council President PEREZ,
No problem.

Councilmember PRAISNER,
With transportation such as road resurfacing, tree pruning, traffic safety measures and vehicle replacement in parenthesis, that would be okay with you, that's fine.

Councilmember FLOREEN,
Good.

Councilmember PRAISNER,
Right, okay. Okay. If no one has any objections, then that would be the Committee recommendation. I know Mr. Knapp also has something that he wanted to make reference to and it certainly is consistent with what we've talked about but I'll turn it over to him on that one if you want. Mr. Perez.

Council President PEREZ,
Mr. Knapp was next. Absolutely.

Councilmember KNAPP,
I want to thank Ms. Praisner and the Committee and my colleagues for their consideration of this resolution. This really I think is the first step to us trying to kind of look at a budget more throughout the year than just the three months or the two months that we typically do, and as Ms. Praisner already alluded looking at, you know, taking this first step and outlining kind of broader priorities and then working down through all of the various elements that are outlined here to looking at key departmental objectives and ultimately really establishing performance measures. The one thing that was not here as I looked at it and reflecting on this night, and it may have been just because we blocked it out because there was so much of the discussion in our last budget, was in the third paragraph it talks about the elements that we will take, that the Council will take into account including long-range strategic plans developed by departments based budget analysis on the County's six-year fiscal plan, but it also, it excludes any reference to the charter limit, or it just didn't include that in there, and we probably ought to take that into account at least as we refine our budgets. And so I would just add, you could put that at end of that sentence it says, "and the County's six-year fiscal plan", just take out that "and" make it "the County six-year fiscal plan and the Charter limit."

Councilmember PRAISNER,
Right. And that all that says is that that is an issue that is in front of the Council and we'll take into consideration. It does not take a position on that issue.

Councilmember KNAPP,
Exactly.

Councilmember PRAISNER,
And clearly we have taken it into consideration and will be taking that into consideration each time we look at the budget given its reference in our constitution the Charter. So I have no problem with that there. I assume my colleagues are okay with that. All right. Okay. That's it.

Council President PEREZ,
Okay. So we're ready to vote on this. This is the resolution from the MFP Committee as amended discussed this morning. All those in favor. Unanimous among those present. Okay. Let's turn to --

Councilmember PRAISNER,
Spending affordability.

Council President PEREZ,
I'm sorry, Mr. Silverman, I apologize.

Councilmember SILVERMAN,
Thank you, Mr. President. Point of personal privilege, I'd like to be recorded as in the affirmative for the Consent Calendar. I was at a housing meeting downtown and I apologize for not being able to be here.

Council President PEREZ,
I did note that you would be --

Councilmember SILVERMAN,
Apparently I do, I just got filled in.

Council President PEREZ,
Okay. Let's turn to another issue on your plate. Ms. Praisner.

Councilmember PRAISNER,
This is MFP morning, I think because we then move, oh no, that's this afternoon the Boards and Committees. This is MFP day I think. This is the fall action on the spending affordability guidelines for the FY '07-12, no more 7-11 capital improvements program and the fiscal assumptions for this year. I thought Mr. Firestine and folks were going to join us. I'm not sure where they are. No, that's Mr. Hawes. I know. I'm sorry, I'll keep going and assume that he will be here because I think he had indicated to me he would be. This is the process for review of the guidelines for the capital budget for six years with special attention for the first two years, and so we are taking action on the first two years and the total six-year amount. In the packet, you will see and I think the, what I have is the, oh, okay. Yeah. I love Mr. Orlin's paraphrasing comments. But in the first part of the packet, and I do want to spend some time on the packet before we get to the Committee recommendations, in the packet, Mr. Subin at our meeting after the

public hearing on this issue previously wanted to know specifically how much would be needed in addition to what is programmed or possible in the scenarios options. How much would be needed to reduce the number of relocatable classrooms by about two-thirds within the next three years. The school system staff, Mr. Hawes produced the information and provided for us three options. The current six-year CIP that was adopted, the five from ten version, has for MCPS about $934 million over the six years. And there are, as the system school system indicated to us a little over 700 relocatables in Montgomery County Public Schools, some of which for increased enrollment, some of which to reduce class size, and some of which I think to accommodate daycare facilities and other programs at buildings and full-day kindergarten. I forgot full-day kindergarten. How could I do that? Anyway, Option A would fund the projects in the CIP, so this is above the CIP on their current schedules, and that includes the projects in the CIP and assumes that they would be completed in the two years that we don't have right now in this 5-10, FY '05-10 CIP, that cost, and it also looks the dollar amounts based on construction cost inflation. That cost would reduce the number of relocatables by 287, or 40% by 2012, with the current assumptions of program. We don't know where kids will show up who might require a relocatable or what else the school system may want to do from a program perspective, but with what we know now it would cost another $226 million, or a 24% increase in the school system's piece of the capital budget and in addition to the capital budget. Option B adds to Option A and would reduce the number of relocatables by 315, or 44%. That would add 287 million, or 31% increase over the presumed capital budget that we have now. Option C adds to option B, so in other words, they're an add-on building block discussion, and that would reduce the number of relocatables by 65%, and the cost over the six-year program would be $408 million, or a 44% increase. The Committee, in essence, had this information in front of us and thanked Mr. Subin for asking the question so we had that kind of information, but noted that none of those options eliminates two-thirds of the relocatables in three years. And given the lead time, the planning needs and all of the capacity questions, MCPS staff thinks that the only one of those three that might be possible is the lengthening of that, the six-year scenario. The Committee believes that this is useful information, but from a spending affordability process and the capacity process to fund, it is the kind of information we can look at but not from a standpoint is it doable at this point unless we want to eliminate everything, and question, as Mr. Denis said, significantly the bond rating impacts of doing that. I think that was his point. So that brings us with this useful information to the actual CIP process. Mr. Subin asked for a scenario that would be consistent with a 20% cost inflation reported by MCPS and a scenario that would double the increase to about 40% and those scenarios are Scenarios 4 and 5 which 4 is 244 million every year, and 1.464 million for the six years, or a 22% increase over the current CIP, six-year CIP. Scenario 5 is that doubling and is 284 million each year and 1.704 for the six years, or 39.940% increase. Mr. Silverman asked for a scenario that would be the maximum amount that we could consider that would leave the debt service under the different debt indicators that we have, the five indicators, that would leave the indicator that would not have debt service plus leases being more than 10% of the general fund in any year of the six years, and that scenario is Scenario 6, 240

million. That is the scenario which Mr. Denis supported within Committee. The majority of the Committee in conversation with Mr. Firestine especially and Mr. Orlin, looked at not just the six years but the issue of what the implications are of ending with a number that is so close to getting to the, just under the 10% that the likelihood is as you project that that you will go over the 10% in subsequent years using those numbers. The point being that what that proposal does is continue to escalate the debt service obligations and the costs in out years so if you're not looking at 12, but you're looking at 13, you begin, if your nose is rubbing against the brick wall if not hitting it. The other point that we talked about, as Mr. Orlin indicated, is that some of the big capital budgets of previous six-year, the big items, had be phased out of the process and we now have some very big fiscal budgets, capital budgets that we are starting to look at that have long-term implications again for our spending affordability capacity. In the Committee, we also talked about the fact that these five indicators are important and useful, but that below the surface of them, they don't show some of the other issues that we need to grapple with and that is the concern about the impacts on debt over time. The concerns about reaching levels that are not sustainable over time, and the concerns of the bond rating agencies with the County pushing the envelope to the extent we appear to be doing. The other point I asked Mr. Firestine to share with us, since folks continue to raise the issue of low interest rates, is twofold issues. You know, folks make the comment that since they're low interest rates we should take advantage of it and borrow more because we can get more, or the high costs are such that we have to spend more to do the existing projects. And what I had asked Mr. Firestine to do, and I hope you will again today, is comment on the issues of what we see happening in the economy from a standpoint of interest rates. And that if you are saying that it is a period of low interest rates and therefore we should maximize that relationship, the first issue is the question of whether there really is a relationship between our debt capacity and issues of debt and the interest rates that we see in the open markets, so to speak, on mortgages and other things. The second is, is it really a low, if you have that advocacy for that relationship, is it really a low interest rate climate. And the concerns about the escalating interest over what appears to be happening in the instability that appears to be developing, that now would not be a good time to make assumptions about low interest because you're talking about six years, and beyond six years. You're talking about 30 years. 20 to 30 years. And you shouldn't be looking at this unstable period and making assumptions about low interest over the time period of the bonds and over the time period of our capacity to sustain this. Council Staff made a strong argument for going with the 215 that is an increase over the current numbers. The County Executive did not testify at the public hearing, but at the Committee discussions, Martha and Beverly and Tim, especially Martha, with the lead responsibilities for the capital budget within OMB, made the point that the Executive at this point is at the position that we should stay with the current numbers within the current CIP. I don't know what that meant as far as the last two years we're adding and I'm sure that Martha could comment on that, but the majority of the Committee is concerned with the issues that Mr. Firestine raised and does agree with our Council Staff that there are serious roads ahead related to bond issues and the economics and therefore, recommends the 215 with the numbers that are on the Addendum to the

Council's packet 215 for FY '08, '07 and '08, 215 for each of the years for a total of 1290 and that's the Committee's recommendations. I think Mr. Firestine had some charts that I don't know if you brought them, Tim.

Tim Firestine,
You're talking about the one we handed out yesterday?

Councilmember PRAISNER,
No, I'm talking about the graph.

Tim Firestine,
I do, yeah.

Councilmember PRAISNER,
If you could share the graph. I think the graph helps very much to point out to folks, a copy was given to me yesterday afternoon, if you have copies that Councilmembers can have, as folks talk about low interest rates or CPI and bond and also the interest rates related to construction, you can see that, I guess, the summary of the point from Mr. Firestine would be that you've got to be cautious about assuming there's a direct relationship that one can maximize some value from and go higher in these numbers because interest rates are low. And I don't know if you want to comment on the chart, Tim.

Tim Firestine,
Sure. First just on the subject of interest rates generally, we know we're in an environment where interest rates are rising, the Fed has made eight changes in increasing interest rates. They just did it at their most recent meeting and they're still, the market doesn't think they're finished so we're in a rising interest rate environment. What you're looking at is the forward six-year period, so, you know, to think about what happened yesterday or the past few years, and extrapolate that forward saying our next six-year program should include higher debt assumptions because interest rates are low, I think the trendline doesn't support that. The other thing I want to point out is that your spending affordability model has an assumption in there about interest rates, so it will have probably still a fairly low rate compared to some of the rates going back to the early '80s. And if you look at how much additional debt you have taken on in the capital program, there was an earlier chart in the packet, I don't think it's there any more, but it shows your total six-year debt assumption over the last 10 years and you've in effect doubled your assumption about how much that you can take on in the six-year period. 10 years ago it was around $600 million. I think, you know, the latest numbers are close to 1.3 billion. So you've more than doubled that in a 10-year time frame. What's allowed you to do that is the fact that interest rates have gone down so the model works in the sense that it does incorporate and allows you more debt because of lower interest rates. The chart that you have, and one of the reasons we prepared it was to try to show you try to show you some relationship between two indices, are referred to on both charts, there's a red line that looks exactly the same.

That's what's called the Bond Buyer 20-year General Obligation Bond Index, so over the period of time from 1987 to 2004, looking at that index which reflects interest rates on bonds, you can see clearly that interest rates have gone down during that period of time. And if you look at the chart with the green line, comparing it to the red line, that's USCPI for all items, not a regional index but just to show the correlation that clearly, as interest rates come down, the CPI follows the same downward trend because the two are correlated. The CPI is somewhat volatile but not as volatile as the Construction Cost Index, which is on other table there's a red line and a blue line. The purpose for showing you this it's the Construction Cost Index by McGraw Hill compared to the Bond Buyer Index, but you can see huge volatility so if you're reacting at any point in time between 1987 and 2004, to construction prices you might be picking the wrong time, because as you can see, there's huge volatility, I mean, it goes from 5% down to a decrease in construction costs. So even if you accept the argument that you want to issue more debt because interest rates are low, even though it's already calculated in the affordability model, I think there'd be a dramatic risk because you could get a potential change in those construction costs quite rapidly as I think the history shows.

Councilmember PRAISNER,
So anyway, that's the Committee's recommendation.

Council President PEREZ,
Maybe we'll stay in the Committee. Mr. Andrews' light is not on so Mr. Denis.

Councilmember DENIS,
Thank you, Mr. President, and thank you, Madame Chair for your leadership and for explaining the Committee recommendations and also for giving me such latitude to advocate a different scenario, which is seen here as Scenario 6 which gives us about $25 million more and I think is a good compromise between the Committee Staff recommendation and our old friend rosy scenario. And in reflecting on why my poor powers of persuasion were inadequate yesterday to get a majority on this, I looked at the packet again and I noticed our Deputy Council Staff Director's paraphrase of Shakespeare. At first I though it was about Barry Bonds, but it's General Obligation Bonds, and I think that perhaps that had a lot of influence with my colleagues perhaps, so I thought that I would.

Councilmember PRAISNER,
So you have another one.

Councilmember DENIS,
Pull out all the stops so, and to paraphrase Shakespeare for the Council as to why I'm supporting a different scenario, so if you'll bear with me for a minute. Friends, Councilmembers and County people, lend me your wallets. We come to sell bonds, not to buy them. The evil people do lives them in relocatable classrooms. The good is often tarred in the AGP, as we will discover this evening. So let it be with Montgomery County bonds. The noble bond houses are hinting that we are too ambitious. If so, it is

a grievous fault and grievously will Montgomery County answer it for spending affordability is honorable so are all our fiscal assumptions. Come I to speak of Glenn Orlin's bond scenarios. G.O. Bonds are our friends. Faithful and just to us. But the bond houses hint they are too ambitious and spending affordability is an honorable thing. G.O. Bonds have brought us many schools, parks and libraries to Montgomery County and the tax base which did the general coffers fill. Was this too ambitious? When the poor have cried, Montgomery County hath wept. Ambition should be made of sterner stuff yet the bond houses hint Montgomery County is too ambitious and spending affordability is an honorable thing. You all did see that on the fiscal year we oft presented many a school, library and park which was built. This was ambitious. I speak not to disprove what the bond houses hint but here I am to speak only what I do know. You all did love generous bonds once, not without cause. What cause withholds us now then to back them again? Oh, Moody and Fitch, thou art fled to brutish beasts and your gnomes have lost their reason. Bear with me. My heart is with G.O. Bonds and I must pause until they come back to me.

Councilmember LEVENTHAL,
Et tu Denis.

Councilmember DENIS,
Yesterday, let's hope not. Yesterday, our bonds built the world. Now lie they here with bond houses, pay-go and spending affordability and few so bold to do them reverence. Oh Councilmembers, if I were disposed to stir your hearts and minds to mutiny and rage against the bond houses, I should do spending affordability wrong, which you all know is an honorable thing. I will not do it wrong. I would rather choose to wrong Glenn Orlin then such an honorable thing as spending affordability. It is not meek Montgomery County know what our bonds have done. It might inflame them. Tis good the people know not that that they are its heirs, but I fear I wrong spending affordability. If you have tears prepare to shed them now for our needs but do not let me stir you to mutiny for spending affordability is honorable though I know not what made it so. I have neither wit nor words nor worth action or utterance nor the power of speech to change spending affordability. I only tell you that which you yourselves do know, Montgomery County bonds have left us, our libraries, walks, schools, arbories and common pleasures to walk around and recreate ourselves. These are what our bonds have done. How many others will come with spending affordability. That is why I voted for Scenario 6.

Council President PEREZ,
Wow! Well. Top that. That's right. Okay.

Councilmember LEVENTHAL,
Second the motion.

Council President PEREZ,

There once was a man from Nantucket. That's about as well as I can do. Okay. A number of lights on. Before I actually call someone, Tim, I keep looking at these numbers here on Page 4 of the packet which were the initial guidelines FY '01 to '06 and then actual levels '01 to '06. If I had gone like '96 to '01 would there have been a similar disparity in what we said and what we projected and what we did?

Tim Firestine,
Glenn can answer. I would say no. As a matter of fact, I think in the early '90s what happened is we actually lowered it and then we came back. We were up at 800 million and then we came back to like 600 million.

Council President PEREZ,
Right.

Dr. Glenn Orlin,
The left side of the chart like this was two years ago, and it was for '99 through '04. It also went up during that period but it wasn't as much as 65%, it was like a 40% increase. So the last six years it's the amount that we actually budgeted in bond funded projects was both percentage terms and in nominal terms higher than it was the previous six-year period of '99 through '04, but I can't say about '96 to '02.

Council President PEREZ,
Can I ask a second question of Tim, which is, I'm looking at the numbers on the out years there and I recognize that one could argue that they really don't mean a hill of beans because they're years 5 and 6, but I find it hard realistically in the numbers that Doug sent over, when I look at the unmet need here and I look at the hyper inflation that Mr. Hawes is discussing and school construction, I'm having difficulty figuring out how we would get to that level given what the need will be six years from now. I'm just wondering if you could walk me through how you got that number. I'm on a chart --

Glenn Orlin,
The Addendum.

Council President PEREZ,
I'm sorry. That's right. There's the Addendum, if you look at Page 1 of the Addendum, FY '11, 10, 11 and 12, we're currently at 213.

Dr. Glenn Orlin,
The numbers for '05 was 209, '06 is 213. 7 and 8 is 210 and '09 and 10 are 190 and 186 respectively.

Council President PEREZ,
Right. So six years from now, we have a projected need of, that's the six years from now the number is, whatever 26, $27 million less than what we have now. I'm just curious if you could walk me through whether you know something that I don't know.

Tim Firestine,
And I'll turn to Martha and Beverly because I think they can express the Executive position. But just, I think to keep in mind, his suggestion is that these are the numbers that you approved and he's saying let's start the process this year at that level. I think, you know, out of the box, let's stay at the levels that are currently approved rather than automatically start talking about an increase. The other thing you have to keep in mind is, you know, the numbers in the out years, you're right, have been, appear to be low relative to where you are today but you increased the early years and part of your logic then automatically becomes well now we have got to increase the outer years to make the earlier years look like. I mean last year I think you went up 24 million from what the approved amount was for last year. So while the out years look high historically, you know, they wouldn't be high. And the other factor, the affordability model also assumes with debt you retire debt. You do pay off some debt so depends on what happens in those years in terms of the amount of debt being paid off, that also frees up capacity and all that's worked into the model, so it shouldn't work like an operating budget where each year the amount of debt you issue goes up because there are other factors playing into it. The place you account for that is on your CIP side. You have assumptions on the expenditure side about inflation and things like that. So I don't think the logic should be it should automatically increase [inaudible].

Council President PEREZ,
I understand that.

Tim Firestine,
Martha or --

Martha Lamborn,
Actually, I think you covered it.

Council President PEREZ,
Okay. Great. A number of lights on. Before I do that, I want to welcome members of Senior Leadership Montgomery. They've apparently lowered the age of eligibility for Senior Leadership Montgomery but I wanted to welcome all of you here this morning.

Oh, yes, the other Committee member. Mr. Andrews.

Councilmember ANDREWS,
Thanks. I really think Councilmember Denis should apply for an Arts and Humanities grant and I think you'll have a good chance of getting one.

Councilmember PRAISNER,
Go to the writing center.

Councilmember ANDREWS,

I enjoyed that a lot and I think other people did as well. But still, you know, I think that the message of lending, having folks lend us their wallets is sort of akin to saying lend us your credit card and yes, debt financing is a critical part of what we do and we couldn't build or have the wonderful facilities that we have without having a, you know, a significant amount of debt financing. But the question is, what's reasonable, what's affordable, what is not, what is desirable, and that's the distinction between this process and some of the other things we go through. So my concern is that if we adopt a scenario like Scenario 6, which would be a very big increase, a 20% increase over roughly over the current levels, that what we're going to see is people grab their wallets and head for the hills. I think we need to show reasonable restraint and the scenario that the Committee is recommending is actually a modest increase in what is currently approved. It's fairly close to what the Consumer Price Index would be, certainly closer than the other scenarios. It allows us to add some capacity, but it doesn't add so much that I think it would raise questions as I think Scenario 6 would and some of the others about the direction the County's headed. We've heard from Tim Firestine and from the Chair of the Committee, Ms. Praisner, that we're getting some feedback from the bond rating agencies about being more careful about how we treat the capital budget. And I think we should heed those concerns, and I think if we were to adopt Scenario 6 which would increase it by 20% roughly, or some of the others that are close to it or some that are larger, if we went that way, I think that would be a mistake and so I think the Committee recommendation is a sound one. It allows for reasonable increase but it doesn't create a situation where we're heading into trouble and I think we need to be careful.

Council President PEREZ,
Ms. Floreen.

Councilmember FLOREEN,
Thank you. I had a couple of questions about construction costs and what the estimates are for current year increases. The school people told us that they expected a 20% increase in construction costs this year. I don't know if that was based on concerns about competition for goods that are going to deal with Katrina and Rita rebuilding in the South, but I'm wondering what the current thinking is for implications for County capital projects, across the board, not just the school system. Everyone has the same cost issues.

Martha Lamborn,
We had just received from departments newly estimated costs for existing projects, and we are seeing exactly the same thing.

Councilmember FLOREEN,
So 20%?

Martha Lamborn,
Yes.

Councilmember FLOREEN,
Across the board?

Martha Lamborn,
Pretty much.

Councilmember FLOREEN,
What does that mean to the, do we know what that means to the current CIP? According to the main memo for today, and this is in response to Mr. Subin's question about Option A for, I think, this says if we were just going to be, and I know we're not talking about need but just to get a sense of the situation. This seems to indicate that if we we're just to stick to the current MCPS program, capital program, that we are looking at a 24% increase in the MCPS program without doing anything.

Glenn Orlin,
That's basically right.

Councilmember FLOREEN,
And is that true across the board then? I mean, is that same analysis true across the board for every other element of our current CIP program?

Martha Lamborn,
I'm speaking off the top of my head here.

Councilmember FLOREEN,
I appreciate that generality.

Martha Lamborn,
Right. My observation from what we have just received seems to indicate that in the building, the vertical realm, we are seeing very similar trends. I wouldn't want to say it's 21% or 20, but it is very similar.

Councilmember FLOREEN,
We're going to be looking at a significant challenge in just keeping to the current CIP.

Martha Lamborn,
That would be true.

Councilmember FLOREEN,
Based on this current information.

Martha Lamborn,
Yes.

Councilmember FLOREEN,
And so if we were to go with a Committee recommendations on this, which is a modest increase, we would be in a position where we would certainly be looking at deferral or alterations to current capital programs? The stuff we've already approved, that are in the works.

Martha Lamborn,
I'm not far enough into the current to affirm that, but my sense is that we would be doing some amount of movement in the first several years, yes. Recall that the last two years which is where we put the majority of new things in any case --

Councilmember FLOREEN,
Yes.

Martha Lamborn,
-- have very large surpluses currently. Our tightness is in the '07, '08 time frame, and the increases that you're looking at here plus the inflation that we have built in already will help to keep most everything close, if not on, schedule.

Councilmember FLOREEN,
But for '07 and '08, we're going to, we're looking at a big squeeze?

Martha Lamborn,
There is inflation built in, I can't tell you that for sure.

Councilmember FLOREEN,
It's going to be tight but I don't know that it forces a whole lot of things to be pushed out. And Beverly, you agree with that?

Beverly Swaim-Staley,
Yes, we just received the information. We just started it less than a week ago, so I want to be really cautious but obviously we all know what we hear what's happening both in the construction industry and with fuel and utilities which will hamper transportation costs.

Councilmember FLOREEN,
Mr. Hawes, the school system, to keep to you're, will you be able to keep to your current capital program for next year?

Richard Hawes,
The only way we'll be able to keep to our current capital program is if we get somewhere in the range of $1.2 billion for the next six years which closely approximates Option A which Glenn has provided for you. We have, the number that I gave Glenn, the 1.160 billion, is basically taking the, all our projects that are in the approved program right now and inflating those based on current cost prices. So if we

are to remain where we are, we're going to need somewhere in that range over the next, for the six-year period between '07 and '12.

Councilmember FLOREEN,
And that, of course, presumes nothing new.

Richard Hawes,
And that presumes very little new or nothing new basically.

Councilmember FLOREEN,
Yeah, yeah. Well, folks, I think we have problems.

Councilmember PRAISNER,
If I may comment, we definitely have problems, but the problems are bigger than trying to respond at this point in time to what are inflation costs. The more, there are a variety of ways to respond when we actually get to the capital budget for specific bids and specific projects. If we have additional revenue, we can use that instead of bond debt for specific projects, we don't have to bond everything. Every time you increase bond debt, you increase more of your operating budget that's going to debt service. So increasing the capital budget at this point without acknowledging that we're going to have problems whatever we do, and the question of its relationship to the operating budget, the question of choices of projects, there were times in the early '90s when we had to change projects or change schedules. And we've had Committee meetings here and discussions here about the time of when we issue bids, the length of a project in order, the payment schedules. There are a whole variety of issues that are associated with that. This is how much we can afford, not what the needs will be. And there are a variety of ways of then responding when we get to the capital budget to deal with the prioritization of projects and when we fund them and how we fund them. But starting out with an assumption that this does what folks want to do by saying it keeps projects on schedule or it funds more projects or something is, I think, taking from the taxpayers' pocketbooks without understanding that there are consequences for that in both the operating budget and consequences with that over the long-term debt capacity, and there may be other solutions which we haven't explored as yet which we will do during the capital budget process.

Council President PEREZ,
Okay. Mr. Silverman.

Councilmember SILVERMAN,
Thank you, Mr. President. I love this time of year. The air is crisp, the Sox are in a pennant race, the leaves are changing, we'll see how that goes, Mr. Denis and Ms. Praisner.

Councilmember PRAISNER,
I'm still waiting for my lobster.

Councilmember SILVERMAN,
I think that's Perez's job. We had the dinner.

Councilmember PRAISNER,
I never had the dinner.

Councilmember SILVERMAN,
You couldn't make it. We did. We honored the bet. You couldn't make it. Perez owes a lobster dinner directly to you so work that out amongst yourselves.

Council President PEREZ,
We're going to take a 10-minute recess.

Councilmember SILVERMAN,
And here we are once again talking about a process that nobody in the public really understands but has this aura about it of debt affordability and spending affordability when, in fact, the history of this Council, in the seven years I've been on it, is that when seven or more people get together, whatever numbers we come up with today, and this will be true with the operating budget spending affordability guidelines that we do in December, when seven or more people get together, that goes out the window. And the history has been that sometimes the County Executive has wanted higher numbers, sometimes lower, but here we are because the law says we have to do it. I'm sort of taking on my traditional role and Mr. Subin's who's still in Dallas fighting Hurricane Rita on the USAR team. I could talk about the need that we have in our schools and our recreation centers, in our transportation systems and our libraries, and I could talk about the fact that as a result of tremendous recession in the early '90s, there was this extraordinary 25% reduction in bonds as a result of the fiscal crunch that this County found itself in the early '90s, and I could say that we have this incredible backlog of need that really goes back a decade both in terms of schools, in terms of transportation, in terms of our libraries, in terms of our recreation centers for people like Mr. Knapp who are fighting real hard to make sure the Germantown library gets built and there are fire stations done in the Up County for the growing population, or for those of us like Ms. Praisner and myself who have been trying to get a recreation center in White Oak for many, many, many years, those things always seem to get pushed back and they get pushed back because we're still digging out from the early '90 decisions that really the previous Councils had no choice but to do. But I won't talk about any of that.

Glenn Orlin,
You just did.

Councilmember SILVERMAN,
We can't.

Council President PEREZ,
Any more.

Councilmember SILVERMAN,
No, I could talk about that but I won't because that's not what we're here to talk about. We're here to talk about affordability. That's what we're here to talk about. So I want to talk about affordability. I have sat on this Council for seven years. I have heard comments for seven years about the bond houses, I even had the pleasure of joining Ms. Praisner and the County Executive, Mr. Firestine and others to go to the, you know, the Land of Oz in New York to meet with the bond houses and all I have actually heard for seven years is, gosh, wish there was a quadruple "A" bond rating that were issued by the bond houses because we would get it. And there is nothing that we have had presented to us in any of this discussion or any of these packets that suggests that our AAA bond rating is going to be at risk. What I'm looking at is the same criteria for affordability that I was told I'm supposed to look at for the last seven years, and that is the chart that is on, in the MFP packet, the chart that is on Circle, I don't even have to look at that, Glenn. It's Page 3 of the MFP packet which is, how do we stack up in terms of the criteria. And there are only two scenarios which exceed the test that this Council has had in place and that I was told seven years ago when I first got on the Council is the test of affordability, which is what we're here to talk about and that's this chart. And what this chart says is, that if you go with Scenario 4, then only five of the six years are you below 10% debt service ratio to the general fund budget, and if you actually were to go to Scenario 5, then it's only three of the six years. But Scenario 6, in fact, is, has the same overall total score as the scenario in front of it. So let's go to one of the comments that was made about pushing up to the limit that we might have in year six or actually, I guess this would be FY '12. There is no question about the fact that Scenario 6 comes in just under the wire, 9.98%. But I've been here long enough, and it's only seven years, to know that the out years in terms of the capital budget is not what we are focused on. We are really focused on the first two years. And the differential between Scenario 2 and Scenario 6 for debt service in FY '07 is exactly the same, it's 9.25%, and in FY '08 the difference is 9.48% and 9.58%. We will be back, another Council will be back in two years to adjust and make decisions about what happens in fiscal years 9, 10, 11 and 12. But if we were to go with the County Executive's recommendations, or even the Committee recommendations, then we will, in fact be, apart from the need, we will not be even close to what the analysis that Dr. Orlin has provided indicates that we can actually afford if we wanted to go to that level. Tim, I looked at the interest rate numbers that are on the back here, the chart that's been provided, not these charts that were handed out, but what's on Circle 7. And while there is no question about the fact that in the true interest cost column, interest rates have risen over, I guess, it would be the issuance that happened in May of '03, which was at obviously historic lows for this chart, we're not substantially talking about the kind of interest rates that were in place five years ago when the interest rates were over 5%. I mean, it's like looking at the mortgage situation and saying that interest rates have gone up for mortgages. Well, they have, compared, well, actually they haven't given what's out there now, but even at 6% you're still talking about

extraordinarily low interest rates, and that's why I'm guided by the principles that were taught me seven years ago when I got on this Council, which is, tell me how many years, you know, everything matches over the course of the six-year capital budget. To quote a colleague of mine who is not here, but we all know very well, I'll use the "F" word, setting spending affordability is all about flexibility. It is about providing an outer target which we do not have to meet. That's the reality of what we are in. And while my good friend, Mr. Knapp, is I'm sure going to say that we never exceeded, we never met a target we didn't exceed, the question really in terms of what --.

Councilmember KNAPP,
That's my second question.

Councilmember SILVERMAN,
Is going to be in the first two years, not the last two years. I think this is affordable. I think that all the indicators that we have used indicates that it's affordable. And I think the question, quite frankly, is how, what kind of parameters do we want to lay out for our capital budget over the next six years. I would also respectfully suggest that based on the County Executive's reaction to the Council's discussions during the operating budget, it's probably reasonable to assume that whatever spending affordability guidelines we set today are going to be guidelines that the County Executive is not going to exceed. And then we will be in the same position we're always in, in the Spring, which is we'll have a whole bunch of folks coming in for projects in the out years and then we're going to have to sit there and figure out how we're going to match that up. To me, this is all about affordability, it's all about what our debt service ratios are. They match for Scenario 6. And this provides us the most flexibility when we go in to the capital budget and I think that's going to be the most important thing when we actually will have the ability to see where we want to go. It doesn't mandate anything, just provides us the ability to do it in the Spring if we do so.

Council President PEREZ,
Mr. Knapp was next, actually.

Councilmember KNAPP,
Thank you. I appreciate Mr. Silverman's precursor to my remarks. I just have a couple of questions to start, I guess to Glenn. So, Glenn, two years ago when we went through this process, how much did we increase each year for the immediate past two years and what percentage was that?

Councilmember Praisner,
Do you have that, Glenn? I don't.

Dr. Glenn Orlin,
I do. It's in the earlier packet. The FY two years ago, the FY '05, to ten CIP, the six-year total was 1.140 billion.

Councilmember KNAPP,
And that was what, for FY '05 and 6. FY '05 was how much?

Dr. Glenn Orlin,
FY '05 was initially, I believe it was 190. I'll have to check that.

Councilmember KNAPP,
Okay.

Councilmember Praisner,
It says 129 in the book.

Glenn Orlin,
No, no, no, in terms of when '05 was for the '05?

Councilmember KNAPP,
Right.
For '05 was 190 and for '06--

Glenn Orlin,
It was also 190.

Councilmember KNAPP,
It was 190.
And when you say initially, what did it become?

Dr. Glenn Orlin,
Looking at several different things here, hold on.

Councilmember KNAPP,
You're talking about --
213.
Right.

Glenn Orlin
And '05 became 209.

Councilmember KNAPP,
And to get to the 190 was what percent increase? That was a big jump from-- So even when we got to 190, we then exceeded that by the requisite 10%?

Councilmember PRAISNER,
Right.

Councilmember KNAPP,
So whatever number, and so we didn't set any, we set a limit only to be able to exceed that limit by another 10%?

Councilmember PRAISNER,
Correct.

Councilmember KNAPP,
So has there ever been an instance where at least in the past 10 to 12 years that the Council has not exceeded its limit by the 10%?

Dr. Glenn Orlin,
Yes. Most of the, up until a few years ago we rarely --

Councilmember KNAPP,
No, no.
Those were your seven years. You set the precedent.

Councilmember SILVERMAN,
I'm sorry, you're right.
That was Blair.

Councilmember KNAPP,
So it's only been the last seven years, say, that we've increased by 10% each year.

Dr. Glenn Orlin,
It hasn't been every year.

Councilmember PRAISNER,
It's not every year.

Dr. Glenn Orlin,
Two years ago I think that the amount that you set in September was the same when you kept in February. You did a big jump all at once.

Councilmember KNAPP,
Okay. Does the, on the Chart Number 3 is debt service and we've talked about debt service. What do we use to calculate that? Is that based on fiscal projections, based on staying within a charter limit, based on just the fiscal revenue projections, what?

Dr. Glenn Orlin,
That's debt service and leases also. The debt service comes from the actual pay-outs from previous bond issues the last 20 years and then as you go on, it includes the debt on issues that, from the levels that you're setting in the out coming six years. So it's

always the case where the amount of debt service actually, the numerator of these ratios is dominated by past issues. So you could, in fact, set the guidelines probably even twice as much as this and not see much of a change in these percentages because it doesn't have that kind of an effect when you're looking at a 20-year period of debt service.

Councilmember KNAPP,
Well I guess the 10% is a percent of total operating budget?

Martha Lamborn,
Correct.

Glenn Orlin,
General fund revenue.

Councilmember KNAPP,
General fund revenue, okay. And so if you were to --

Glenn Orlin,
And it's debt service plus long and short-term leases.

Councilmember KNAPP,
Right, right. I didn't play that all out. If you were to stay within the charter limit for that same time period, would that have any impact as to that percentage, or is that factored in?

Martha Lamborn,
The numbers you have on the operating budget growth assumption line on each of these scenarios, that would be line 10 --

Councilmember KNAPP,
Okay.

Martha Lamborn,
-- are all calculated off the Council's most reason action.

Councilmember KNAPP,
Okay.
Okay.
Well, we get to an interesting point and we've now had the discussion between Ms. Praisner and Mr. Silverman, a little bit about the notion that it's what do you need versus what you can afford and what are we really talking about here. And clearly what we heard from folks who came and testified, everyone who comes in before us talks about what you need and the notion of, the discussion about what you can afford isn't really grasped by everybody. The challenge is to figure out how do we address what

we know is out there. Mr. Silverman aptly talked about the fact that we're still making up from shortfalls from 10 or so years ago and that's true. And I have a lot of those things, not necessarily making up from 10 years ago, but certainly based on projections of growth that are underway, and we're seeing it now. We've got fire stations, schools, all of which are hopefully in the process of being built. But we still have to take into account the affordability notion and I think that it's interesting that the document that Mr. Firestine presented us on the interest rate analysis because what this conversation's gotten back to is based on the notion of increased construction costs. Everybody is talking about we need to increase to the 240 over the next six years. If you look at the chart that he's provided us, it appears as though given the volatility, there's a modification roughly every two years. And so to go out on the basis of what we see as a very volatile market that generally tends to modify one direction or another every couple years, and say we need to then modify our spending affordability for CIP for six years doesn't seem to make a lot of sense, and as Mr. Silverman said, the out years are not what we're focused on, it's only the first two years. So to that end would seem to me to make a lot more sense that rather than kind of do an all or nothing strategy, which is what we've got in these analysis, which is either 215 or 240 or 284 for all six years, what if were we to propose for the next two years, an increase of 240, then coming back to the Committee's recommendation of 215 for the following four years so that we can then have a better understanding of what is it that we're addressing, while at the same time managing the level of expectation as to what everyone else is seeing is what we're putting out on the various lists. It's still going to be higher than what the County Executive has proposed but I think at least it provides a governor as to what the Committee was suggesting so that we're throwing everything on to, you know, we're not building up expectations falsely so that in three years we're trying to say, gee, we're going to change the schedule, we're going to cut things off the list, but it also gives us the capacity and the flexibility to address what we're talking about right now we're seeing with the short-term construction costs and then we can see what happens next. So to that end, I would propose, I guess it would be a second-degree amendment to Mr. Denis' amendment to increase the spending affordability guidelines to 240 for the first two years and have it for the 215 for the remaining four years. And I see no second out there at all. Look at me hanging here. I hate that. I hate that. Come up with a good rational argument.

Councilmember PRAISNER,
If your motion was to amend Mr. Denis' motion by reducing '09 through '12 to 215, I would second that motion.

Councilmember KNAPP,
Al right. I would make that modification.

Glenn Orlin,
It's the same time thing, isn't it?

Councilmember PRAISNER,

No it does not. His motion included the 240. He doesn't have to include the first two years at 240 because that was Mr. Denis' motion that's already on the table.

Councilmember KNAPP,
We'll amend the four years to 215.

Councilmember PRAISNER,
That's a big difference.

Councilmember KNAPP,
Fair enough.

Council President PEREZ,
Okay. So move and seconded. So Mr. Denis' Amendment is amended to reduce the four out years to 215, you're proposed amendment, and it's been moved and seconded. Before we go to a vote, let me go to Mr. Silverman.

Councilmember SILVERMAN,
Thank you, Mr. President. Just a couple quick follow-up questions. Martha or Beverly, in this line 10 which is the growth assumptions for FY '07, this is the where you get your 10% off of figure, correct? In other words, the 10% debt service is off of certain assumptions, I'm going back to Mr. Knapp's question to you, is based on line 10, is that what this is?

Martha Lamborn,
Line --

Beverly Swaim-Staley,
Revenue.

Councilmember SILVERMAN,
Am I looking at the wrong line?

Martha Lamborn,
No. 10.

Councilmember SILVERMAN,
Yes.

Martha Lamborn,
Speaks to you of expected growth in the operating budget.

Councilmember SILVERMAN,
That's what I mean. So, for example, the 10% is calculated off of an assumption in FY07 that you're going to have a budget that's 4.2% above last year?

Tim Firestine,
It's revenue growth at the Charter limit.

Beverly Swaim-Staley,
10% is off of the revenue side.

Councilmember SILVERMAN,
The revenue side. What was our actual revenues in FY '06?

Tim Firestine,
We don't have actual revenues for FY '06.

Councilmember SILVERMAN,
What I'm trying to understand is, I'm trying to understand it this way, okay, it's 10% off of our operating budget, is it not?

Martha Lamborn,
The debt service will be, this number contributes to the growth of, the denominator, sorry, it's budget geek terms.

Councilmember SILVERMAN,
What I'm trying to understand, what I'm trying to understand is this. We have a set of numbers and the line 3 which is this magic 10% guideline in all these scenarios is, it's under 10% in Scenario 6 or Scenario 2, and what I'm trying to understand is, what assumptions are there about the growth in the budget that you make to lead to that, so that we can figure out whether something comes in under the 10% or not. What assumptions did you make about FY '07's budget to use that year in figuring out where the debt service numbers come from?

Beverly Swaim-Staley,
Tim can address the revenue growth because they're based off the revenue which yes, obviously leads into the expenditure but neither of these sides have been re-estimated at this point.

Councilmember SILVERMAN,
I guess what I'm trying to understand is, I mean maybe I'm missing something. I'm looking at line 10, and all of these numbers, all of which are below 5%, am I misunderstanding this if I were to say that none of those come close to the increases that have been proposed and adopted by the Council in terms of the operating budgets for the last several years? Haven't we exceeded 4.8%, that's the maximum here in everyone --

Beverly Swaim-Staley,

In recent history the revenues have traditionally when they're re-estimated in the fall and Winter exceed the original estimate. But Tim's a better person, we did have two years, Tim, right, when it did not.

Tim Firestine,
I think your point, Steve, is you think the revenue growth will be greater than 4.2%.

Councilmember SILVERMAN,
No, I defer to you. You're the wizard on revenue growth. I'm just trying to understand that if --

Tim Firestine,
What we're saying is at the charter limit based on what we know now, our forecast for the general fund, general fund only.

Councilmember SILVERMAN,

Yes.

Tim Firestine,
-- is 4.2% growth. At the Charter limit.

Councilmember SILVERMAN<
Okay.
And so the so --

Tim Firestine,
Which has the property tax growing at 3%.

Councilmember SILVERMAN,
Whatever, okay. Fine. I just wanted to understand what line 10 means.

Tim Firestine,
To exceed the Charter limit then that will be a higher number.

Councilmember SILVERMAN,
Right. I have two other questions. One to Tim and actually one to Glenn, because I want to understand process-wise. If we were to adopt Mr. Knapp's Amendment and we come back in the spring and put together a capital budget which funds, oh, hypothetically a fire station somewhere in the Up County in FY '09 or '10 and that's going to put us above 215 in bonds, what is the vote requirement for the Council?

Dr. Glenn Orlin,
The way it works is first of all in February, you have this opportunity to do so all over again--

Councilmember SILVERMAN,
I know.

Dr. Glenn Orlin,
It's important to note for the six-year total you can go up and down as much as up. The restriction's only on the first two years in terms of going, you can't any more than 10%. The total, the six-year total can go up and down as much as you want. The number is the specific numbers for '09, '10, '11 and '12 we call them targets rather than guidelines for a reason. You don't have to meet those specific levels according to the law. You try to because if you don't, you're building yourself in --

Councilmember SILVERMAN,
Have we had, I'm just curious when we did this exercise two years ago, did we put out a six-year capital budget which in the out years, the last four years of the capital budget had targets that exceeded what we did during spending affordability?

Dr. Glenn Orlin,
Yeah, I think in the couple times in the past in one or two of those years, the numbers may have been incrementally higher than what those targets were and which meant that the other of those years in the last four years were actually lower.

Councilmember SILVERMAN,
So the seven vote bump-up only applies to the first two years.

Dr. Glenn Orlin,
And the six-year total as a total.

Councilmember SILVERMAN,
All right. Then it's the same thing. In other words, okay, I'll ask it a different way. If in FY '10 we're going to exceed the 215 number and that puts us over the six-year total that we have, does that require five votes or seven votes?

Dr. Glenn Orlin,
Seven, but typically what we've done in the past, is we've lowered another of the years.

Councilmember SILVERMAN,
I hear you. I hear you. I just want to know what you did last year. I just want to know what we're voting on in the spring because that's part of what we're voting on now. The last question that I had is to Mr. Firestine. Can we afford Scenario 6?

Tim Firestine,
Here's my concern is Scenario 6 will change dramatically in the future, and I think that's what the history has shown here. That little chart on Page 3 I think it is that Glenn has, when you compare the CIP when it's first approved to what actually happens, the out

year numbers are unrealistic in the sense that we have a six-year process here, six-year plan, but if somebody's auditing it and looking back they're going to say what's value of it because you really change it dramatically from where you were originally. So when you say it's affordable, my concern is you put 240 there, you build the CIP and the expectations to 240 and something happens, and all of a sudden we're at 280 the next year in all those six years and then we're dramatically ramping up our capital program. So from an affordability perspective, we've doubled the amount of debt that we're issuing, as I said earlier, from 600 million to 1.3 billion. From an affordability perspective we're one of the largest issuers in this country. I've mentioned that before there are 50,000 units of government that issue bonds. We're in the top 250. So, you know, and that includes New York City, the State of California, the State of New York, and some issuing authorities, so we're a pretty heavy issuer of debt, there's no question about that. We also have the facilities that attract the growth and I'm not suggesting that our rating is at risk if you go to 240, I'm just trying to throw caution to the wind and say that for the long-term we --

Councilmember SILVERMAN,
I think we're the ones throwing caution to the wind.

Council President PEREZ,
Used the wrong term.

Glenn Orlin,
You're suggesting this.

Tim Firestine,
Right.

Council President PEREZ,
We know what you're talking about.

Councilmember SILVERMAN,
But I hear you and I think what I'm hearing you say is it may be affordable. It is not your recommendation because your concern is that 240 in two years will become 280. And I hear you on that. I guess the question in terms of, to use a, steal an expression from Mr. Perez about sort of truth in advertising, if we were to adopt the County Executive's recommendations at, you know, at FY '11 and '12 at 186, and we come back and say, well, you know, two years from now we come back and say well really we want that to be 225 or 230 because, you know, that's where we're going, it seems like the same analysis would be done about well, what is the significance of the six-year CIP when you're just putting numbers down that you know at the end of the day are going to be exceeded? Because if I was looking at this chart on Page 4, the one that Mr. Perez referred to about what the initial G.O. Bond guidelines were and then what they ended up being, I would say that there is a like, if it happens that we go from 240 to 280 at some point in the future, that's actually going to be within spitting distance at least of

what was projected compared to, you know, 65% increases that are here. And that's at least, you know, fairer in saying here's what we think is going to happen over the next six years as opposed to, well, we're going to tamp it down right now and we're just going to come back and bust it later on.

Tim Firestine,
Again, two reactions, one on affordability. We're focused a lot on 10% which I think is important, but if you ask yourself '07 and '08, '07 is a known number now for debt service pretty much, it's going to be almost a 10% increase in the debt service requirement. That's going to take, you know, it's almost $17 million more to fund debt service in FY '07 so off the top you got to take that money and put it towards debt service. In '08, based on going to 240, it's another 10% increase. That's another 20 million. So it's not just the capital side, but look at the impact on the operating side to stay within the 10%.

Councilmember SILVERMAN,
But, you know, in fairness though, you have to look at the comparisons, don't you? Here's what the comparison is 215 million versus 240 million, right? That's 25 million. What is the differential, isn't it 2.5 million, isn't that the guideline we use? 10%, you know, it's 10% of the differential.

Tim Firestine,
It's not going to happen you a lot in '07 because of decisions you made last year.

Glenn Orlin,
The bond level in '07 really hit [inaudible] debt service to [inaudible].

Tim Firestine,
That's my point. You make these decisions to ramp things up.

Councilmember SILVERMAN,
But the difference in impact on the operating budget between 215 and 240, $25 million differential is how much in that next year? Isn't it $2.5 million. Yes, it is. So in a $4 billion budget.

Tim Firestine,
I'm thinking longer term.

Councilmember PRAISNER,
But, Steve, that takes each year in isolation and says, oh, this is only a million more so what's the problem? A million more here, a million more there.

Councilmember SILVERMAN,
Pretty soon --

Councilmember PRAISNER,
Pretty soon, we're adding up to it's a big problem. That's my point, that's Tim's point. It's not you take one year and everything looks fine. You take the next year and everything looks fine. Then all the sudden what you're floating is a problem.

Councilmember SILVERMAN,
The choices that we're making and we can't talk about need, but that's the choices that we make every time we look at the capital budget, which is, do you want to build things or not. I'm just here asking here asking about affordability and I'm asking about what the operating budget impact is of going to 240 million and the answer is $2.5 million. That's the difference, the choice we're making today. Nobody has suggested we go to 175. We're talking about this narrow difference which has a limited impact on an annual basis.

Tim Firestine,
You're focused, as Ms. Praisner's saying, on the short-term. What I'm saying is, if you go to 240 then you ought to figure out what's impact over the next six years of being at 240 every year, because I think that's where you're going to be, and you know it's a lot more than 2.5 million.

Councilmember SILVERMAN,
You're right so it will be 15 million or 20 million as our budget keeps going up as our operating budget keeps going up.

Councilmember PRAISNER,
And as our hand gets deeper and deeper into those taxpayers' pockets. That's the point I guess you're making and the question about the choices you're going to make, or the capacity to make them, is one that you've got to look at in the aggregate, not in isolation with one little piece, and the competing interests and the competing needs that we're going to debate in April, not here.

Tim Firestine,
My second point is the spending affordability is your process and I think the message from the Executive is let's start the process conservative this year, not start everything at a higher level.

Councilmember SILVERMAN,
Well, I just have to follow-up and say, so are you actually suggesting that the County Executive is going to put out a budget, capital budget in January that is going to show $1168 million?

Beverly Swaim-Staley,
We don't know that.

Councilmember SILVERMAN,

No, I know you don't know that but if we want to start out, you know, you can start out, the question is where you want to start from. And if the County Executive puts out a budget that doesn't meet 240 million a year, then that's because he's made a choice in his balancing ventures that we don't need to go there. And you know what? We may agree but we're actually not making that decision here. We're just putting a number out there that is a process that was adopted 15 years ago, whenever it was, which sets the outside parameters over six years. Doesn't require us to agree even next year that we're going to go to 240 million, much less what we want to do six years from now.

Council President PEREZ,
Mr. Knapp.

Councilmember KNAPP,
Thank you, Mr. President. First of all, let's not kid anybody because we're talking about 240, the reality is it's going to be 260 to 280, at least if I've understood the last seven years appropriately so we're already up in the 260 to 280 range if we go down the 240 road. All I'm proposing is that recognizing that rather than building up the expectation now of the additional four out years of going at least at those numbers or beyond, that we're at least managing the right level of expectation, we are taking a somewhat more modest approach, and only somewhat more, because we're still recognizing the notion of need versus what's affordable in the first two years, so I think it's important for everybody to know that, that if past, at least immediate past history is any indicator we will likely end up exceeding 240 by a substantial amount and that's not to say that there aren't real needs that need to get addressed. I've got many of them in my district right now, and I appreciate Mr. Silverman's concerns about my fire stations up there, that's a good thing. But that's what's going to happen and to just kind of blow off $2.5 million as though that's not a big deal, that was a little bit less in funded Montgomery Cares, our most significant healthcare initiative this past year, and so we don't have a lot of flexibility in our operating budget and so to have an additional 2.5 million to address short-term needs like funding primary care programs for the uninsured of Montgomery County, I think that's something we need to take into account as we start looking at affordability right now, and so I think those are important points. So I think again, what people have raised as concerns are, we need to address the notion of increased construction costs now to make sure that our current budget, our current CIP budget stay on track. The last 17 years of history indicate that changes roughly every two years, so let's make the modification as Mr. Silverman said, this is about the next two years, and only about the next two years because the four out years are basically up for grabs, and we'll come back and address the next two years when we have more information. So I would again propose 240 as Mr. Denis had suggested for the first two years and then modifying that back down to 215 for the four out years so we can make better decisions when we have better information.

Council President PEREZ,
I just want to make sure I understand this, okay and then we'll vote. I'd like to understand. Let's assume again that in what is it, FY '10 we decided that there is a

project that we want that's going to end up kicking up that number to 240 or whatever, say 240, okay? There are projects that we want that will kick that up. That would, unless we then say that the collective in the other three years, unless we reduce that by 25 million, then we have to have a seven vote budget next year. Is that correct?

Glenn Orlin,
Assuming that you go to the maximum of '07 and '08 as well. That's right.

Council President PEREZ,
Now I understand it. Okay. Yes?

Councilmember FLOREEN,
Just a point of order, Mr. President, do we have a motion on the table?

Council President PEREZ,
Yes.

Councilmember FLOREEN,
That was a motion.

Council President PEREZ,
It was meant to be a motion.

Councilmember Denis,
It will be taken as a motion, I didn't actually make a motion, I thought as a courtesy, the Committee recommendation might be before us, but if you want to consider my minority vote in the Committee as a motion, I was intending to move it in the event that the Committee recommendation was defeated, but if you wanted-- Yeah. I'd be happy to just for the sake of moving along to make a substitute motion and to have that as the main motion and then this Amendment--

Council President PEREZ,
I think what we have here is the procedural posture is your statement was the-- Scenario 6. Was Scenario 6, it was seconded by Mr. Leventhal, there was an Amendment, a second Amendment offered by Mr. Knapp, seconded by Ms. Praisner, so what we have before us now procedurally is the second degree Amendment of Mr. Knapp which, again, would have us at 240, 240 and then 215 for the four out years.

Councilmember PRAISNER,
Mr. President, given the hour and the fact the folks are waiting for us I'll accept that process but the reality is that the standard Council procedure is that the Committee's action recommendation is before the Council without having to go through that, but I'll be happy to let Mr. Denis' motion be the motion. I thought we always dealt with the Committee's recommendation as the primary motion.

Councilmember LEVENTHAL,
Mr. Denis' motion is an Amendment to the Committee's recommendation.

Councilmember PRAISNER,
How many amendments are we dealing with?

Councilmember LEVENTHAL,
Mike offered his Amendment as an Amendment in the second degree.

Councilmember PRAISNER,
I didn't hear any reference to the Committee's recommendation being a motion.

Council President PEREZ,
And then I was remiss and I apologize. We started out with the Committee recommendation.

Councilmember PRAISNER,
Right.

Council President PEREZ,
You made your presentation, Mr. Denis then moved the substitute and Mr. Knapp moved a second-degree Amendment so that's the tree that we have constructed this morning. So Mr. Knapp's motion is on the floor and those in favor? Mr. Knapp, Mr. Andrews, Ms. Praisner opposed, Mr. Denis, Ms. Floreen, Mr. Silverman and myself, Mr. Leventhal fails 3 to 5, Mr. Denis' substitute has been moved and seconded on the floor. All those in favor. Mr. Denis, Ms. Floreen, Mr. Silverman, Mr. Leventhal, myself, Mr. Knapp, opposed, Mr. Andrews, Ms. Praisner it passes 6 to 2.

Councilmember PRAISNER,
Okay. Can we go back to the rest of the Committee recommendations now?

Council President PEREZ,
Yes,

Councilmember PRAISNER,
The next item is the Park and Planning Commission recommendations they're the Executive comments, I'm not sure about as it relates to that but the Committee recommendations are before you and there is a unanimous recommendation including Staff that the amounts, the 3.5 for FY '07, 4 for '08 and 23.5 for '07 to 12. The points that we've discussed as relates to Park and Planning bonds related to [ALARF] issues that had led us last year to be concerned and to add additional revenue for Park and Planning bonds associated with [ALARF] needs. There is likely to be significant [ALARF] reimbursement coming from the state associated with the inner-county connector issues but they're, so that the bond targets that we're talking about now keep

pace with inflation but do not show any additional revenues associated with them. Unless there are any objections I'll go on to the next item and I'll assume that there's no objections. The next issue we discussed is impact taxes, and that is associated with both transportation in schools and the recordation tax for school projects. This really isn't a required piece of the spending affordability process formal action requirements as the bonds for Park and Planning and the County government G.O. Bonds are, but we always have looked at these issues in this time period, and the original packet to the Council includes the Committee packet discussion on Page 5 with projections and assumptions on transportation, impact school, impact and recordation. And the issues obviously with that are not only tracking what actually occurs and we had a spike of activity that occurred prior to the implementation of our impact taxes, the most recent changes in those, and so the question of projecting was extremely difficult in the beginning year, the question of how we will do in the future is a, the Committee is unanimous with the recommendations for assumptions but I would just alert you all that this is something that we need to continue to track and monitor from a standpoint of actual collections and projections.

Council President PEREZ,
There's a question there.

Councilmember PRAISNER,
Yeah, sure. Mr. Silverman.

Councilmember SILVERMAN,
Thank you, Mr. President. I heartIly concur with Council Staff's recommendation that everybody get together to investigate why the numbers are different. What I don't understand, and I'm certainly not asking for an explanation now because it obviously can't be provided, but I thought when we discussed the school and transportation impact taxes that the concern that many of us had in guesstimating, estimating, the transportation side, was the impact of credits. I'm not aware that there are any credits in connection with school impact taxes, and since you're talking about developer A pays "X" number of dollars on a house for transportation, and "Y" number of dollars for school impact, I for the life of me cannot understand, since there was that rush that occurred, they were either paying both or they were paying neither depending on when they filed. So I can't really understand how we could have such a differential and so I look forward to --

Councilmember PRAISNER,
Well, they were paying transportation impact before there was a school impact. It's just that it was smaller.

Councilmember SILVERMAN,
Right. But the assumptions that were built in were built in on a house being built and so it shouldn't, it seems like it shouldn't, it's almost like when you look at these numbers

it's like, well they paid the transportation tax but somehow didn't pay the school tax which-- So anyway, I'm sure we all look forward to that number.

Councilmember PRAISNER,
It's something we're going to continue to track. The other point, of course, is that with the transportation impact tax revenue there are geographic restrictions associated with that, and so there is information in response to my request that shows how much is associated with the general district, how much is associated with Clarksburg, and how much Gaithersburg and Rockville has that requirement of spending in those areas as well, so that's additional information that helps us as we go through the actual projects. Recordation tax, as you know, the question there is that's not just a new construction issue, so trying to track those revenues fortunately in the most recent past, the decreases, the lack of revenue generated from the school impact tax has been offset by increased revenue from the recordation tax, the extent to which that continues is an issue that we'll have to continue to track. It would be nice if both the recordation tax and the school impact tax came in on schedule or above, but that's not been the case in the past.

Council President PEREZ,
Can I ask one question? I don't know if it's you or Dr. Orlin. I'm looking at the transportation impact tax '07, '08, what percentage of that is going into the Montrose Parkway?

Dr. Glenn Orlin,
I think most of it in the next two years.

Council President PEREZ,
Is there going to come a point where our transportation impact tax funds anything other than the Montrose Parkway?

Dr. Glenn Orlin,
It is funding other things.

Councilmember PRAISNER,
In the general district.

Dr. Glenn Orlin,
Yeah, in the general district.

Council President PEREZ,
I mean you just said a minute ago that the majority of it is going to the Montrose Parkway and so I think the question that logically follows from that is, when will that no longer be the case?

Dr. Glenn Orlin,

By FY, let's see, FY '10 is the last year of construction I think, FY '09 or FY '10, so somewhere in there, there won't be any money to spend on Montrose Parkway. Montrose Parkway West because it wasn't as much as Parkway East.

Council President PEREZ,
Did they break ground?

Dr. Glenn Orlin,
Yeah, they started construction.

Council President PEREZ,
What date was it? Exactly.

Dr. Glenn Orlin,
I think you owe somebody a lunch.

Council President PEREZ,
Oh, okay, I just wanted to know.

Councilmember PRAISNER,
Anyway, the Committee recommends assuming the 8 million annually from transportation impact tax, 8 million annually from school impact, and 35 million annually from the increment on the recordation taxes and all the recordation tax revenue is that that we legislatively associated with schools. That's a total of 51 million annually, slightly lower than the amounts we originally assumed, but we will be continuing to track that and hopefully try to respond to Councilmember questions. The next issue is state school construction aid and we had a very healthy and lively conversation yesterday about how much money should we assume, and we asked Staff, let me make a couple of points. The assumption of school construction money and the request for school construction money to the state is a different, are two different things. The assumption of state school construction money is associated with what we have approval for, including planning approval, and what we have in essence is associated with our request. Obviously, we want that number to increase, but we also obviously want to reflect a number here that is consistent with those requests based on planning approvals received, et cetera. So we asked Staff to go back from the school system and to give us the number. The Committee unanimously wanted to use the most appropriate number here. We are making a concerted with our colleagues every jurisdiction in the state, every county, the city of Baltimore is unanimous in requesting significantly more school construction money from the state. Recognizing that the state pays one-third of school construction costs generally and the counties pay about two-thirds of those costs. When you count the costs that are not eligible for state aid, like land use acquisition, planning and engineering, and movable equipment for the most significant elements, and then it's weighted based on ability to pay so Montgomery County has the lowest amount of state contribution which says 50% but actually is in the 30% category, it's 30, 33%, 35% at it's most element. So we wanted to assume the

number but wanted a higher number, but we also wanted to, for this first year at least, but we wanted to also make sure that the public is clear that money not received from the state, it is again, given all these things that we're talking about, competing interest, competing needs and escalating costs, and affordability. It doesn't mean that the County can automatically go back in and forward fund a project that the state says no to. So if the money doesn't appear from the state, those projects are at risk. Those projects cannot be automatically funded by the County. And that is important for folks to understand as we put out numbers now of state assumptions within the capital budget, and again, these are not part of spending affordability but they are things that we look at, at this point in time. So what number are we plugging in there, Glenn?

Dr. Glenn Orlin,
31.5 million for FY '07. The other numbers FY '08 through '12 are the same as what's in the approved CIP.

Councilmember PRAISNER,
So that's the 31.5 and then, 25 for '08 and then 28, 30 and then 30 for the next two years after that. And that's consistent with how we try to approach this at this point.

Council President PEREZ,
I just wanted the staff from the schools. Mr. Hawes, is that number from the school system [inaudible].

Richard Hawes,
Well, Ms. Praisner I think rightfully so, recommended an increase in state aid assumptions for '07 to get us up to basically what the state has approved, and we'd be entitled to, if for the expenditures that are in the FY 2007 projections. We would argue that we should probably include in that '07 assumption $2 million in systemic projects, which we have historically been funded for to raise that number to 33.5, or somewhere in that range, and then we would also argue that in FY '08 we're going to be assuming that we only get 31.5 or 33.5 whatever you choose to assume, assuming we only get that, we're going to roll over enough eligible expenditures to be pretty close to $130 million in eligible expenditures in FY '08.

Councilmember PRAISNER,
They're eligible but they're not approved by the state and right now we plug.

Richard Hawes,
That's correct.

Councilmember PRAISNER,
We plug in only what the state has approved.

Richard Hawes,
We don't have planning approval for '08.

Councilmember PRAISNER,
Right. That's the point. That's the whole point is the state uses planning approval as a gate keeper so we're not eligible for that money until we get planning approval. So we need to argue not just for the revenue of the 31.5, but we need to be pushing the state IAC for planning approval for projects that they're not. But at this point in the budget we plug in only what we have planning approval for. I don't have any problem with the 33.5 if that's what includes systemic. I don't have problem with 33.5, but the reality is, and I'd say it again, this has got to be a full court press, and a full court press at the state, which is what we're all engaged in, but the reality also is these assumptions within here, if they're not funded by the state these projects are at risk. And last issue is--

Council President PEREZ,
Thank you, Mr. Hawes.

Councilmember PRAISNER,
I'm sorry,

Council President PEREZ,
Please stay though for a minute.

Councilmember PRAISNER,
The last issue is PAYGO. And this is a just, using the terms that we use without the public really understanding and, repeating again what pay-go is. PAYGO means we pay for it instead of bond funding or debt financing, but there are two kinds of PAYGO. One are the pay-go projects for which in our agreements and discussions and assumptions, those projects are not eligible for bond funding because they are of a short-term, shorter than the bonds, the length of the bonds, and we've had some discussion of that issue within the Committee and we'll probably be bringing you some modifications to policy on those issues. But there's a second piece of PAYGO which is the amount of debt eligible projects that we pay for with cash. In other words, instead of using your credit card you pay that good old fashioned cash at the store, which means you're credit card debt is reduced or doesn't increase. What we have been doing, both the Executive and the Council, this is an equal opportunity problem, is we've been dipping into the bucket of assumption of money that we will use to keep our debt in line by paying cash rather than pulling out our credit card out of the taxpayers' wallet to use Mr. Denis' analogy and poetry. We've been using that money to fund the operating budget. So we've increased the operating budget using the money that we should use to decrease the debt, use of debt, and we have also increased our capital budget, which is what we just did with the recommendation on the GO bonds, and that is where the bond rating agencies have raised some concerns and they've raised those concerns not only specifically by asking questions of the County, they raised those concerns nationally. And I have given each of my colleagues a copy of an article by Fitch that talks about that issue. And what we have done is basically disappearing, what is disappearing from our equation is the amount of money on a consistent level

that we use to reduce the debt obligations. The discussions that we've had with finance is about looking at formally adopting some policy that projects within our budget some element tied to the budget that would be a percentage that would be associated with pay-go for this debt reduction initiatives. The currency IP assumes 36 million in PAYGO in '07 rising to 38 in '08 and '09, and to 39.06 in '09 and 40 in '10. The Committee recommends retaining those amounts and assuming 40 million in FY '11 and '12, but we want to look at this preset formula recommendation and we'll bring you something prior to January hopefully. And the point is, this is an issue that gets tied with the issues of how much debt do you issue, about what do you issue it, or for what do you issue it, and what are you doing to reduce the pressures on that by using current revenue. Again likening to a individual with a credit card, how much are you carrying on your American Express or Discover or Visa card and how many times do you pay cash for that even though you have that option in your wallet? This is a issue that we've seen the bond rating agencies writing about and we are one of the targets as far as our behavior is the kind of behavior that they're writing about that is a concern. So the Committee is recommending retaining those levels and also suggesting that we need to create some kind of policy or formula that would relate this to our approach on the overall budget. It shows up obviously in the operating budget process as well. So that concludes our Committee comments. The two issues that we needed to take actions on are the operating budget which we, excuse me, the G.O. Bonds which we've already done, and I heard no objections to the Park and Planning bonds and no objections to this other directional kinds of things.

Council President PEREZ,
I think we have, without objection then, we'll move forward as we've discussed. Thank you for your thorough presentation, Ms. Praisner. And Mr. Hawes, you were gone this morning we had a discussion in the Consent Calendar regarding some items relating to the Montgomery County Public School System and I've asked Ms. Planell to work and I'd appreciate it if you could work together with her. We'd like to know, we had a placeholder figure of I think $12.6 million in the budget for what we expected the difference between the budgeted and the actual would be for the school system and what we'd like to know is what the actual was on July the 1st to see if there is still any difference. So Ms. Planell will be asking you to help on that or others at the school system, so if you could let them know and I also had asked them about to the extent there is money that is available I'd like to see what they're doing with respect to the needs of limited English proficient parents, and I sent a letter over to Dr. Weast to that effect this morning.

Richard Hawes,
I was listening to the conversation and took notes.

Council President PEREZ,
We'll make sure everybody has a copy of those.

Richard Hawes,

I was actually downstairs listening to your conversation so I took some notes.

Council President PEREZ,
Well good. I look forward to learning about those issues and thank you for your time as always.

Councilmember PRAISNER,
And I want to thank school staff for getting back so quickly with that information.

Council President PEREZ,
We appreciate your help. Thank you, Mr. Hawes, good to see you. Mr. Levorgna, are you a retiree or a--

Unidentified
We've got a name for him [inaudible].

Council President PEREZ,
Yes, yes, Mr. Levorgna, it's always good to see you around. It's nice to have that continuity. Okay, we are behind to state the obvious. We're on Legislative Session here, District 28. I guess let's look ahead here. We've got these two Bills, this is the Marilyn Praisner hour on the County Council as you correctly pointed out.

Councilmember PRAISNER,
I can make this fast because I don't think there are any motions other than the Committee recommendations.

Council President PEREZ,
Okay, well let's try to forge ahead because I know Mr. Kline is here and others are here on the District Council session and I don't want to force people to wait until after lunch to take this up. So let's move ahead. First of all, any journals for approval?

Clerk
Not today.

Council President PEREZ,
Okay good. It's always good to see your face, Ms.i Dodson. Introduction of Bills, no new Bills, calls of Bills for final reading. Bill 02-05 and Bill 03-05, do you want to discuss them together?

Councilmember PRAISNER,
I want to discuss them plus the Consent Calendar Item and the Zoning Text Amendment just so you know everything. This is the work of the Committee to evaluate and review our Boards and Committees. We go through this every ten years or so and the Committee, the Board, came forward with recommendations on all of our Advisory Committees and Boards, the Management and Fiscal Policy Committee went through

each one of those recommendations much of that does not have legislative requirements associated with it, and they appear on Bill 3-05 Circles 42 through the end, excuse me, 41 through the packet are the recommendations those that do not, are not associated with legislation are administrative and well as those that are Zoning Text Amendment require and other recommendations. Some of these recommendations, as I said, we've working with Debbie Goodwin in the Executive Office and others and had the benefit of the input from the community and those Boards about their comments and suggestions. A lot of this deals with administration and I want to thank Debbie for all the work they've done in the Executive branch to try to strengthen, streamline and bring into uniformity the way we approach our Boards and Committees. We have over 70 Boards and Committees in the County and while the managing that is onerous task for the Executive Branch, just in mentioning the appointments necessary process there are also lots of issues to make sure that these Committees operate appropriately within the framework of their charge, that they have procedures in place to manage their business and operations, that the Staff who support them know how to provide guidance and administration for those. And that we kind of get the benefit of the input but also try to deal with the administrative minutia. We are going to continue to work on the issue, especially as we uncovered that many of these Committees have by-laws and structures that look much more elaborate than they need to be. And in addition, there are some recommendations that we're waiting on related to mergers of Committees, and issues that may require state legislation because some of these are created legislatively and those relate to the Mental Health Advisory Committee, and some of those in the Health and Human Service area. I guess the major place where we had issues, and the majority of the Committee relates, took a position in opposition to the CERB Board on that issue, related to whether we should have Recreation Advisory Boards on a regional basis as well as at a county-wide basis. The majority of the Committee recommends staying with the process that we have now. I supported a modification to what the CERB Board had recommended which is to continue the county-wide advisory Board on recreation, but to add some additional members to the Regional Service Center Advisory Boards and to basically move that responsibility on recreation into that structure by having additional members. That was the one issue that we received the most testimony about, the strongest opposition to the CERB Board recommendations. There was some other recommendations on the amount of money and how we dealt with the dollar amounts, the Committee, where there are reimbursements beyond the support for travel and for care expenses. The Committee did not accept any of the recommendations associated with salary and felt that we should keep the processes that we have in place. The only other change that we made that really wasn't defined within the Committee structure dealt with the facilities group, which I think, I guess, I asked about because it always bothered me that the facilities group didn't really speak to the fact that they're focused on Dickerson, and so we're recommending that we add the Dickerson facilities implementation group rather than just having that group, not have Dickerson associated with it. And finally, Mr. Leventhal had asked that we look at the myriad of Boards and Committees that require a County Council participation, or a County Council representative, or a County Council Staff participation on those Boards. And what we are generally recommending is that we

allow the latitude of the Council to make that decision on Boards and Committees annually at our annual Council retreat as to which Boards where there is a flexibility of making that option, which Board either a Councilmember or Council Staff or a community person representing the Council will serve. We got responses from six Councilmembers, and we're recommending that the Councilmember and Staff service on those Committees be optional and those appear in the Commission on Common Ownership, the Commission on Health and the Community Action Board, and the resolution which we adopted this morning does the same thing for Pedestrian Safety Advisory Committee Air Park Liaison Committee and Strathmore Hall Foundation Board, then the others required by law will continue to have Council representatives either they'll still have them as required by law.

Council President PEREZ,
I continue to hear some concerns raised by the Croatian community in District 5 regarding the CERB Board.

Councilmember PRAISNER,
But the CERB Board goes away. Is that their concern? You can make it a permanent Board.

Council President PEREZ,
That's right. I just wanted to be responsive to every corner of the community. I had a couple of questions but let me, Mr. Leventhal had his light on first.

Councilmember LEVENTHAL,
Thank you Mr. President and thanks to the MFP Committee for its work on this. I do want to understand, I think I understand, and let me ask the question I guess of Mr. Faden. With respect to Councilmember participation on these multiplicity of advisory groups, et cetera, was it the view of yourself and the MFP Committee that to change County Code was outside of the scope of the notice for the CERB Committees recommendations? In other words, we made a number of changes to law and we made those that were recommended by the CERB Committee and the MFP Committee recommended a few others. If we were to go through Board by Board and Commission by Commission, and then propose statutory changes with respect to the issue of whether Council involvement is mandatory, each of those would require notice and no notice was given was that the thinking?

Councilmember PRAISNER,
No we made the changes.

Michael Faden,
The Committee did make certain changes. Declined to make a couple others.

Councilmember LEVENTHAL,

Okay. For example, to pick one that's very much on my mind, the Alcohol Abuse and other, I'm sorry, I've got the incorrect name, I'm a member of it but I don't even know the name of it, the AAODC, Alcohol and Other, it's a substance abuse awareness Committee. [multiple speakers] That one you decided not to deal with that one?

Michael Faden,
No that one actually, two points on that one. That is the subject of a pending Bill that the Executive branch is working on now which the Committee deferred action on two or three Boards to wait for that, as a courtesy to wait for that Bill, but the current law on the AODAAC says that the Council should designate one ex-officio member so that current law is sufficiently broad to give the Council the discretion that the Committee wanted.

Councilmember PRAISNER,
You have discretion we wanted to wait for the legislation to make sure that we reinforcement that we could change should do May.

Councilmember LEVENTHAL,
And another is the Board of Social Services which I understand is a creature of state law.

Michael Faden,
It is and the state law requires the elected governing body to have a representative on that Board so it would take a state law amendment.

Councilmember LEVENTHAL,
I think it's very appropriate that we take this up at the retreat and I appreciate Ms. Praisner's work on this issue and generally on this important legislation.

Council President PEREZ,
Mr. Silverman was next then Mr. Knapp.

Councilmember SILVERMAN,
Thank you, Mr. President. I just had a series of really quick questions. I'm going to, I'm in the back. I guess I'm on 3-05 the boxes in terms of track and what the Committee did. I'm just trying to find my notes. Okay. On Circle 53, Commission on Common Ownership Communities it says, MFP Committee did not recommend compensation. I do have some passing familiarity with this and I guess the question is, was the discussion about whether the Commission members themselves should get compensation, which I don't support, but what about those that end up serving on panels? How does that get handled if at all?

Councilmember PRAISNER,

The discussion from the CERB Board as I recall was on the Commissioners and having compensation for the Commissioners, members of the Common Ownership Committee and we chose not to go that route.

Councilmember SILVERMAN,
I'd share that view. I can't remember, did we have, is it somewhere floating out there a discussion about compensation for Boards that actually act in quasi-judicial manners like the CCOC and the landlord-tenant? Is that, I knew it was hanging around.

Councilmember PRAISNER,
CERB dealt with it individually and we just decided to punt on that at this point and we can go back and look at that in a more discreet manner.

Councilmember SILVERMAN,
Well, let me ask it this way, does the legislation in front of us either because there's no change or because we have this in front of us, does that preclude Commissioners who serve on these panels from getting compensation?

Michael Faden,
I believe they would be covered by the provision that essentially says that compensation is determined in the budget.

Councilmember SILVERMAN,
So it doesn't preclude it. All right.

Councilmember PRAISNER,
But we probably should look at it separately aside.

Councilmember SILVERMAN,
That probably covered, I think I might have one other, no I don't think so, I think that was it. Thank you.

Council President PEREZ,
Okay, just while you're on Circle 53 I did want to confirm the Advisory Committee on Consumer Affairs as I read this matrix, the MFP Committee majority did not agreed that the Committee should remain as is.

Councilmember PRAISNER,
Correct. Right.

Council President PEREZ,
And that's the resolution. Okay, great. Mr. Knapp.

Councilmember KNAPP,

I just had a quick question on the sunsetting provisions or not having that as a, I know it was recommended as I read through this and I just, as I understood in reading it there were reasons, compelling reasons as it relates to how the other Boards were structured but I just wanted to have a little more background information as to why that doesn't work.

Councilmember PRAISNER,
Well I think in our conversation we're talking about onerous process of going through legislation to reauthorize or recreate Boards and Committees and the length of time and the impacts of doing that that way and not wanting to, there's a capacity for us to eliminate a Board or Committee without having to sunset everything and re-evaluate whether we want to keep them I think. That was basically the thrust with the Executive Office of all of the paperwork associated we're keeping track of when these Boards would then sunset.

Councilmember KNAPP,

So you couldn't do a blanket provision that basically saying as of 1 January everything was in existance for five years and would sunset?

Justina Ferber,
That was the recommendation of CERB, but it just, we thought it was too onerous. In fact, I think there used to be a provision in the Code on that and Council took it out years ago because it just, it was just to, Committees were concentrating on surviving rather than doing what they were supposed to be doing and there are other ways for the Council to evaluate Committees and the Serve is one of them.

Councilmember KNAPP,
Okay. Thank you.

Council President PEREZ,
Okay. I think that was all the questions. That was a remarkable amount of work that the Committee--

Councilmember PRAISNER,
Well, it's actually the CERB Board that did a remarkable amount of work. Justina and Mike Faden and Debbie Goodwin and Staff over on the Executive Office have basically all of the management requirements associated with this and we'll continue to track some of these issues. I'll be glad to move this that long.

Council President PEREZ,
I guess my final question, and I've asked, had this conversation at times with Mr. Faden, it relates to a concern I have about service, Councilmember service on certain bodies, on the Boards of certain bodies when fiscal issues come before the Council and it puts us in a, let me just use an example that is most on my mind, Strathmore.

You know when we're sitting here debating the issue of millions of dollars for Strathmore and you have someone who, if I understand the by-laws is a voting member of the Strathmore Board, you put Councilmembers in an untenable position where the members of the public don't know which hat we're wearing. We're wearing two hats that are arguably inconsistent and I've been troubled by that and I don't mean, it puts all of us in a box, and I think that's, I don't know if that's something that is --

Councilmember PRAISNER,
The resolution we adopted in the Consent Calendar makes it an option not a requirement and we could in each retreat in December make a judgment as to how they should proceed.

Council President PEREZ,
I was looking at Item 3 on the Consent Calendar Item that we passed so I guess that's the resolution. But it is something that has been a concern to me and I don't mean, I'm certainly not meaning to suggest that anybody is [inaudible], but I am suggesting that we're all put into a bad position where somebody could question what hat we're wearing and that's not good for any of us so. Ms. Floreen.

Councilmember FLOREEN,
I want to speak to that point, and I certainly don't disagree with you as having been the Council's representative on the Strathmore Board. There's ex-officio kinds of appointments and in any event, certainly the practice is and should be that you don't get, Councilmembers don't vote on things that are coming to the Council period. That should be written in law if it's not understood complicity. I wanted to say, that, well not exactly on a point of the issue before us, I think it would behoove us to think about some of our public/private partnership arrangements that we engage in over time because at least my experience with Strathmore has been, I think, it's very beneficial from foundations, groups, non-profits, whatever who are benefiting from a relationship with the County, to be constantly apprised of their public responsibilities as well. So I would urge the Committee that we as a group, think about ways to insert that element in one way or another in our relationships with other organizations when we have at least some financial relationship with them because the issue of accountability and of transparency and all the things that we worry about here I think are equally appropriate to be considered when public funds are being used in different environments.

Council President PEREZ,
Okay. We have two roll call votes we have to do so I think we'll just do them separately. Well, why don't we combine them then and if people have a different vote for one or the other they should so express, otherwise the yes will be interpreted as yes for both.

Madame Clerk,
Mr. Denis.

Councilmember DENIS,

Yes.

Madame Clerk,
Ms. Floreen.

Councilmember FLOREEN,
Yes.

Madame Clerk,
Mr. Silverman.

Councilmember SILVERMAN,
Yes.

Madame Clerk,
Mr. Knapp.

Councilmember KNAPP,
Yes.

Madame Clerk,
Mr. Andrews.

Councilmember ANDREWS,
Yes.

Madame Clerk,
Ms. Praisner.

Councilmember PRAISNER,
Yes.

Madame Clerk,
Mr. Leventhal

Councilmember LEVENTHAL,
Yes.

Madame Clerk,
Mr. Perez.

Council President PEREZ,
Yes. Both bills pass unanimously and again, I want to thank all the people involved.
Let's turn to District Council Session Agenda Item A is Zoning Text Amendment 05-13,

Sign Review Fees, sponsored by Councilmember Leventhal. There's a resolution to establish a public hearing for November 1st at 1:30.

Councilmember Praisner,
I'd like to be listed as the co-sponsor.

Council President PEREZ,
Okay. So moved. Moved and seconded. Let me let Mr. Leventhal speak before we vote.

Councilmember LEVENTHAL,
Well we can go ahead and vote to establish a public hearing.

Council President PEREZ,
All in favor. Unanimous on those present and you wanted to speak.

Councilmember LEVENTHAL,
Just very quickly. This is a really nice little ZTA that everyone can feel good about supporting. It turns out, as Mr. Denis and I have both discovered that all of the rules regarding posting of signs are not in the County Code, well, of course they're in the County Code but they're in the Zoning Code, so if you want to address issues of signage as both Mr. Denis and I seek to do today you have to do it through a ZTA. So this is not your traditional land use type of ZTA that makes us all, so that we enjoy so much, but this is a different type of ZTA and it's one that I think we can all feel good about.

Council President PEREZ,
Then put me on.

Councilmember LEVENTHAL,
What this does in effect very quickly just so you understand it, it was brought up to me by the Lions Club of Olney, and they were hosting a dinner, I don't know if it was a spaghetti dinner or a chicken dinner or something of that nature on the grounds of property that they own, and the County charged them $250 for a permit in order to post that sign which could easily have been more than the profit, or not a profit, but easily been more than the support for the activities that they expected to get from the spaghetti dinner. So what this ZTA very simply does is it allows the Director of Permitting Services to waive the sign fee for a non-profit organization that seeks to hold activities on its own property.

Council President PEREZ,
Vegetarian and non-vegetarians alike so it could be spaghetti or chicken. Okay so we have the public hearing. There was an Addendum that I inadvertently omitted this morning and I apologize, which is A1, Introduction of a Zoning Text Amendment 05-14, people do have copies of it, it was distributed. The Sign Ordinance Limited Duration

signs sponsored by Councilmember Denis. There's a resolution to establish public hearing November 1 at 1:30. Moved.

Councilmember LEVENTHAL,
Second.

Council President PEREZ,
All those in favor. Okay. Mr. Denis let me turn to you.

Councilmember DENIS,
Thank you, Mr. President. This is Addendum to Item 7.1. I am introducing Zoning Text Amendment 05-14 today to address First Amendment issues raised by the American Civil Liberties Union and community concerns as reflected in a petition received by the County Council, documentary evidence and testimony. These concerns first came to light at the September 8 public hearing on another Zoning Text Amendment, the Zoning Text Amendment I sponsored dealing with building height to the very self same that will be going before the PHED Committee tomorrow for, may I dare say, the final work session. But it's that ZTA, but the testimony came up at the second public hearing we had. And the testimony was to the effect that over this past summer, residents of Overbrook Road in Bethesda posted signs protesting the construction of a large replacement house on their street. County Department of Permitting Services responded by issuing notices to the homeowners that directed them to remove the signs or apply for a permit or face fines. Following our public hearing the ACLU of Maryland sent a letter to the County Attorney on September 15, pointing out that our sign ordinance violates the First Amendment. Now we all know that we are saturated with nit picking laws in Montgomery County, this is more than nit picking this goes to the First Amendment. Thank God for the ACLU for raising it. The very next day after the letter was received, I drafted the ZTA which I'm introducing today. I love the letter that was sent by the ACLU to the County Attorney. And it's not only very persuasive but the way they describe the sequence of events in the second paragraph after the sign went up in the neighborhood protesting the what was said to be a McMansion. This is the ACLU letter. The neighborhood was visited by a so and so a gentlemen, an agent of the Montgomery County Department of Permitting Services on September 6th when he issued notices of violation. I mean it really, hobnailed boots of the government coming into the community to take a way a sign. They couldn't help themselves, they couldn't restrain themselves and that's the start of the sequence of events. This Zoning Text Amendment addresses the issue by exempting certain signs on private property from the permit requirements of the County Sign Ordinance. The County Attorney's Office has worked on this matter with the ACLU of Maryland and they have indicated that this ZTA fully addresses the constitutional concerns. I thank the County Executive for supporting the effort. Thank you, Mr. President.

Council President PEREZ,
Please list me as a co-sponsor as well, Mr. Denis. I appreciate your leadership on this issue. Once again, the Martians have landed, we have our, my good friend, our lone

Republican saying thank God for the ACLU. I'm still waiting to hear that on Capital Hill but, Mr. Leventhal.

Councilmember LEVENTHAL,
I want to ask both Mr. Royalty and Mr. Faden a question about this and the respect to the notice we give for the public hearing on this. I'm sympathetic to the neighbors in Somerset and I'm sympathetic to the point the ACLU is making, I would be sympathetic to anyone who wanted to put a sign in their yard that saying "Support our Troops" for more than 30 days, similarly I'd be sympathetic -- Well wait, I'm going to get to that. Stick with me. Similarly I would be sympathetic to someone who put up a sign saying "Stop the War in Iraq" for more than 30 days. The issue, advocacy I agree with the ACLU should not be limited by the government and it seem to me that's protected speech and so I intend to vote for Mr. Denis's ZTA when it comes before us. My question is this, as we post this could we include a potential amendment that would relate to political campaign signs and here's my suggestion if we could get some help from Staff on this. I understand anything we do here is subject to potential legal challenge and in the past sometimes we've had findings that we hope not but in fact they have to be interpreted in court make it very clear what the Council's intent was. And it seems to me that in the interest of a manageable campaign season, in the interest of a level playing field for all participants in a political campaign, and in the interest of what's already in the Code that is minimizing clutter in neighborhoods, it seems reasonable to me that advocacy for or against a political candidate, or advocacy for or against a ballot question, that is something specifically urging people to vote a particular way in a particular election, that it has assisted the community to keep those campaigns manageable by having lawn signs posted no more than 30 days before an election. And so my question would be whether we could consider an amendment of that nature that would provide findings and a reason for why we seek to have a manageable election campaign season that would not touch the kind of advocacy of the neighbors in Somerset or any other advocacy which is issue-based, not tied to urging people to vote on a specific election day. So I'd like Staff to look into that and I'd really be interested in a public hearing as to what the public's views are on that. I know from my standpoint as one who runs an election and has run election campaigns prior to being a candidate myself, I think the 30-day requirement is in the public interest because, as I say, gives all sides of a campaign a set of rules that they can go by, a date by which they know they can operate and so, I would hope that we might be able to sustain that 30-day requirement but not for general issue advocacy.

Council President PEREZ,
Mr. Silverman.

Councilmember SILVERMAN,
Thank you, Mr. President. I would at the same time we would be considering something like that, request that we get a County Attorney's opinion on the constitutionality of that. My understanding of what sign ordinances are all about is that they cannot be content-based and that, I don't know how we would distinguish between

one type of speech and another unless it is commercial speech, which we do and which I understand is permissible to draw distinctions, but I'll defer to Mr. Royalty at the time when this issue comes up. I share Mr. Leventhal's concerns about the clutter out there, I've just never quite understood how this law has ever been constitutional for what amounts to political speech.

Council President PEREZ,
Okay.

Michael Faden,
May I confirm on the Council's in accord with Mr. Leventhal that you wanted us to advertise this ZTA broadly enough to consider the topic of political signs?

Council President PEREZ,
Right. Sure.

Cliff Royalty,
I would not do that.
I mean if you want it, the suggestion is very problematic. A few years ago I know of a case in U.S. District Court and greenbelt where the Judge Messitt struck down durational limits for political signs because part of the reasoning was it was a content-based type restriction. In 2000 we substantially rewrote our sign ordinance in order to remove all of the content-based type restrictions that were in our sign ordinance excepting billboards, and we were successful in doing that. We have a content neutral zoning ordinance and I would suggest that we should keep it that way.

Councilmember LEVENTHAL,
Okay just to be clear if-- So --

Council President PEREZ,
That doesn't preclude him from offering what he's trying to offer after the public hearing. Is that a fair statement?

Michael Faden,
The question right now I think is the scope of the public hearing.

Council President PEREZ,
I understand that but I would think that if Mr. Leventhal wants to offer that, that the notice, what he's attempting to do would still be contained within the scope of this notice. This notice isn't just people on East-West Highway or in Bethesda who want to have signs up for more than 30 days.

Councilmember PRAISNER,
The question is what is what the notice says.

Michael Faden,
Right. The title of the Bill which is always the basis for the notice is generally amend provisions relating to limited duration signs, so any issue related to any kind of limited duration signs would be within the scope of that. If you also want to look at unlimited duration signs you then get into the questions that Mr. Royalty is raising, but at this point we just need to clarify what you intend the scope of the notice to be.

Council President PEREZ,
Let me ask you this then. Is a Leventhal for District Council sign a limited duration sign?

Cliff Royalty,
The content's irrelevant. A limited duration sign is a sign that is intended to be put up for more than 30 days and that is not a permanent sign. A permanent sign being one that requires a building permit and is more structurally sound and is-- Well, that's the difference. So you wouldn't determine the type of sign based on the content, it's the amount of time you expect to have the sign up. If it's less than 30 days it's temporary, if it's more than 30, it's limited duration. If it's made of steel and intended to remain for a long time, it's permanent.

Councilmember LEVENTHAL,
Look, I've heard what you said, Cliff, let me, if I could. It sounds, based on what Mike Faden said that the notice that we intend to put out in the community for Mr. Denis' ZTA would encompass an amendment of the nature that I've described. I understand also that you're going to advise that an amendment of the nature I've described probably doesn't pass muster and I've heard what you've said. It wouldn't preclude, the notice would not preclude some discussion of a potential amendment relating to political campaigns.

Cliff Royalty,
I would add to the notice more than what's here, though. This ZTA just specifically addresses limited duration in the permitting environment. I would add another line to the notice if you intend to address something like political signs.

Councilmember LEVENTHAL,
But you just said you wouldn't do that.

Cliff Royalty,
I would broaden it. Well no, I'm saying legally, I wouldn't go there, but if you're going to do an advertisement, if you want to address that in a public hearing I think you need to expand this advertisement.

Councilmember LEVENTHAL,

Fine. I mean I would like guidance from the public as to what are their views as to whether they want signs advertising the candidate to go up now for an election that will be next November.

Councilmember SILVERMAN,
I think we know the answer. The question is it constitutional? [multiple speakers]

Cliff Royalty,
Unless it's made of, like I said, it's made of steel, it's intended to remain for an indefinite period of time, it'd be limited duration.

Councilmember FLOREEN,
But you could put it up now if you pay your $39 or whatever it is.

Councilmember LEVENTHAL,
But once Mr. Denis' ZTA passes there would be no, you put it up anytime all the time essentially.

Councilmember FLOREEN,
The point is, right now you can put up a sign you just have to pay a fee for it to stay up longer. So Leventhal for County Council can go up now and in a month from now you'll have to pay your $39, whatever the fee is.

Councilmember LEVENTHAL,
I follow your point. I'll be delivering my sign to your home soon, Nancy.

Councilmember PRAISNER,
There's also a limit on the quantity as I recall, too.

Cliff Royalty,
Well it's not so much the quantity. The total sign area can't exceed a certain amount. You can have an unlimited amount of signs but you can't have, depending on the zone, you can't have more than a certain square footage of signage. The real issue that the ACLU has is with the permitting requirement not the limitations on size and location and the like.

Michael Faden,
Let me just get, a direction here. Do you want us to add the kind of broader notice that Mr. Royalty was referring to? No. I heard several nos.

Councilmember LEVENTHAL,
I mean, that would then preclude the offering an amendment like the one I talked about so it'd have to be a different piece of legislation.

Michael Faden,

That's right.

Council President PEREZ,
Okay we're having fun here. And you know what though, you were worried, Mr. Royalty, that you were going to get out of here without getting to do anything today so I'm glad we've satisfied you. Okay. Do you have sufficient direction Mr. Faden? Okay. That makes one of us. Where are we? ZTA 05-13. There's a lot of sign stuff today. Signs, signs everywhere signs.

Councilmember PRAISNER,
This Zoning Text Amendment deals with both the membership of the Sign Review Board and also the authority of the Board. The Board would be increased from 3 to 5 members but the authority to approve sign variance would move from the Sign Review Board to the Director of Permitting Services as the Serve Board recommended, and as I recall we got no testimony in opposition to that.

Council President PEREZ,
There are no questions. Madam Clerk, call the role.

Madame Clerk,
Mr. Denis.

Councilmember DENIS,
Yes.

Madame Clerk,
Ms. Floreen.

Councilmember FLOREEN,
Yes.

Madame Clerk,
Mr. Silverman.

Councilmember SILVERMAN,
Yes.

Madame Clerk,
Mr. Knapp.

Councilmember KNAPP,
Yes.

Madame Clerk,
Mr. Andrews.

Councilmember ANDREWS,
Yes

Madame Clerk,
Ms. Praisner.

Councilmember PRAISNER,
Yes.

Madame Clerk,
Mr. Leventhal.

Councilmember LEVENTHAL,
Yes.

Madame Clerk,
Mr. Perez.

Council President PEREZ,
Yes. Passes 9 to 0. Let's turn to Agenda Item-- 8 to 0, sorry. I stand corrected. Agenda Item C, Consideration of Hearing of Examiner's Report and Application G-833. Mr. Grossman it's always a pleasure to have you. Good afternoon. I apologize. It should have been good morning when we got to you but we were enmeshed in a number of interesting items so I apologize for the delay. Apologize for the delay to others who have come for this. Did you want to make any initial remarks? You're report as always is thorough and very clear.

Marty Grossman,
Thank you, sir. A couple of things. Of course this applicant seeks to rezone 4.5668 acres from the current I-3 and R-200 zones to RT-8, a residential townhouse update units per acre to construct up to 29 townhouses to be located in Germantown just South of the CSX right-of-way and north of Lullaby Road and West of Father Hurley Boulevard. Two things I should mention, one is as it has been pointed out to me that there's a typographical error in the proposed resolution, CSX has been misspelled as CXS. I have trouble with those three-letter words apparently. And I would like to submit a corrected proposed resolution to correct that typo. And the second thing I want to point out is substantive in that is that this of course is not consistent with the master plan recommendation, the 1989 master plan recommendation, and I think that's because the 1989 master plan in this area has been passed by, by developments that is now this area is now surrounded with residential developments and it is no longer appropriate, or as appropriate for the I-3 zone that is proposed in the master plan as it is for the suggested RT-8 zone here. So I recommend, as did the Planning Board and the technical staff, that the rezoning be approved.

Council President PEREZ,
Mr. Knapp.

Councilmember KNAPP,
Thank you Mr. President. Just a comment. I agree with the statement that's just been made that this isn't consistent with the master plan and the Chamber of Commerce the Gaithersburg Germantown Chamber wrote a note to that effect although I don't believe they were in opposition. The concern that was raised is one that will likely come up more as Germantown continues to move toward a more built-up capacity, and that is that there is a significant amount of residential development that has moved faster than the commercial or industrial zones that have developed, and as a result there is a notion out there that many of the land holders in the industrial and commercial zones are looking at potential rezonings away from the industrial zone originally [captured] in the master plan to look at more mixed use or residential development, and I think there's a concern on the part of the community that while in this instance it may make a lot of sense because it is ringed with residential and then it's got the CSX tracks on the other side, that this shouldn't necessarily be taken as precedent for looking at other zones within the master plan in particular in a town center. And so I think that's the concern that needs to be raised and I just want to make sure that that gets on the record. I'm in support of this, I think this makes sense, but this is an isolated property that both because of the way it's cut off as a result of the CSX and immediately adjacent community may make a lot of sense but shouldn't be used to correlate to any other commercial or industrially zoned properties in Germantown.

Marty Grossman,
And that was specifically raised by the Planning Board in its recommendation of approval. They had a caveat to that effect that this should not be taken as a precedent given that for using otherwise an area that's otherwise for job creation for residential. The technical staff noted that actually this would represent a very small loss in potential job production in any event here so in this case it was appropriate. Thank you.

Council President PEREZ,
Ms. Floreen.

Councilmember FLOREEN,
Thank you. I support the Hearing Examiner's recommendation and I'm happy to move approval of it but I have a big problem with the comment that you've made, Mr. Grossman, that the growth in the area warrants the rezoning. I think there are good planning reasons for the rezoning, but to suggest that oh, this community has developed the way it was planned to develop is not a good rationale for changing the zoning. I think if anything you have to look harder for the justification and I think it's consistent with the land uses around it, it adds good affordable housing, it's at the right place for it. Those are the reasons why we should approve this but not because the surrounding community has developed according to how it was intended to develop. Under that theory we would approve rezonings routinely or send the message that we

would and I think the issue here is the uniqueness of this particular application, but the fact that other areas have been approved and were intended to be approved that way are not good reasons for justifying rezoning. But in any event I'll move approval of the Hearing Examiner's report.

Council President PEREZ,
Been moved and seconded. Ms. Praisner.

Councilmember PRAISNER,
I had a couple of questions and the first one relates to the first point that was made by the Planning Board. I am concerned about our, well, it appears to me, and of course this is just my personal opinion, appears to me that this request is because we're riding a wave of residential development and not necessarily riding a wave of commercial and other development, and that therefore the applicant given activity in the area is request the rezoning because it came in originally with the rezoning the other way, and I'm not in the mood to change zoning based on market forces every few years based on activity and market forces, so it causes me a concern to, and I think that's what the Chamber is talking about as well, is to see us when it's a hot housing market changing our industrial properties to residential if there's residential nearby, and then changing it back the other way or changing it originally to a non-residential and then making it residential when it's a hot residential market. Especially if you argue that there's housing nearby because you can always find some housing nearby to make that justification so I'm a little troubled by this application because it seems to be more market driven than, and I know markets make changes but we've already had a rezoning on this and we appear to be looking at climate more than reality. I think you're references to CSX nearby and the language about how we'll deal with the noise in the area, there are some rezonings or proposals that we're going through in other situations where we're making great changes in order to accommodate noise issues that are of a shorter duration than the likelihood of the CSX impacts on residential and a buffer from that. I'm also concerned by the parking comments about the MPDUs and the fact that the rezoning shouldn't be denied on the basis of our requirements for MPDUs and I know that that would be reviewed again in the future when it gets to the Planning Board, but I must say, I'm not happy to see all non-MPDU market rate units get to go in a garage but the MPDUs are surface parking and that's the language we find on Page 5. I don't like those kinds of distinctions and visitors in the MPDUs get surface parking and the market rate ones get the garages, and I don't find that acceptable. And I don't find that kind of approach to parking requirements acceptable. And I know that that's probably a specificity that isn't appropriately here, but if you're meeting the kinds of standards and requirements, that becomes an issue for me. So I'm going to vote no on this one because I don't think they've made a compelling enough case from my perspective. Thank you.

Council President PEREZ,
Okay. Mr. Silverman.

Councilmember SILVERMAN,
Two things, one of them is I appreciate the Hearing Examiner's changing of trapezoidal to dagger shaped. I found that particularly interesting, and the second thing is there is one other typo which raises a question which I have always wanted to ask and never, which is, I believe it is Father Hurley Boulevard as opposed to Farther Hurley Boulevard, and so the question is, who is Father Hurley and why does he have a boulevard named after him?

Councilmember KNAPP,
Father Hurley was the Pastor at Mother Seton, which is right on Father Hurley Boulevard and was there for about 25 years I believe.

Councilmember FLOREEN,
He was there when the road was opened.

Council President PEREZ,
He was. He showed up and I remember that story. Father Hurley.

Councilmember KNAPP,
It's his road.

Council President PEREZ,
It's a true story. Mr. Knapp.

Councilmember KNAPP,
My question is always, what would Father Hurley do?

Councilmember SILVERMAN,
I do want to comment though on the point that Ms. Praisner raised. The Planning Board and DHCA make these decisions about what the deal is on these MPDUs and I believe, because I think this is exactly what's happened on Lockwood Drive as well. I think the answer that I'm getting about this issue is that the choice is you could have the parking contained within the "MPDU" and then it is going to be traded off against the housing space that the MPDU resident will end up having and so because in order to keep the cost of the MPDU at a price level. I mean that is essentially what the tradeoff is that we're getting. It is not being driven by the developers of the project, it's being driven by a price of $170,000 as a cap for MPDUs, and the only question is how do you meet that price level and this ends up unfortunately being part of the tradeoff.

Councilmember KNAPP,
Let me just comment. Mr. President. We've actually seen this amazingly enough in Clarksburg where that's been a problem because what happened was there were covenants that the HOA had approved that required that garbage, certain other things be kept indoors. The MPDUs didn't have any place to put them into and didn't have fences nor did they have garages so as a result, the MPDUs were out of compliance

with the covenants for the HOA. And so what ended up having to happen was the builders went back and constructed garages and so there are real practical implications for these distinctions which we need to be very mindful of, and so I appreciate Ms. Praisner raising that point and it's something that I think we need to take into consideration because you're point is well taken as it relates to the numbers, but if we end up with that distinction that the community that further segregates, yeah, it's a permanent distinction within that community so it's something we need to look at.

Marty Grossman,
I should point out that of course this is done under the optional method which produces a schematic development plan. With the schematic development plan, the illustrative portion of, the diagrammatic portion is illustrative. The number of parking spaces as a binding element is a minimum number of parking places but at site plan review this can be adjusted depending on all these factors. It's not really a consideration that can be effectively dealt with at the zoning stage.

Councilmember KNAPP,
But I wanted to raise that for everyone because that's something that we've actually seen as the practical implications of that which isn't what we really want to see, I think in our MPDU program. To Mrs. Praisner's point I, generally had the same reaction that you just did at the outset and I've responded inappropriately at a meeting because I said that's exactly what we don't want to do and then I actually went and visited the parcel and looked at, and so I agree with you, we don't want to go back and forth, this is actually one of those instances where it probably makes sense to do, I'm not sure how it ended up being zoned I-3 in the first place because that didn't make a lot of sense other than people hadn't looked us up on the ground. I agree with you at least preliminary but I think upon further looking at the site and where things lay out, I think it makes sense for this parcel I'm looking at, having gone back looked at the master plan I couldn't find any other parcel I think this would make any sense to do or make that kind of modification to.

Councilmember PRAISNER,
I just don't want it to be a precedent anywhere else either and that's not exclusively Germantown.

Council President PEREZ,
Mr., I'm sorry, Ms. Floreen.

Councilmember FLOREEN,
I really do feel compelled to chime in on the MPDU issue. It's the design issues and the site plan issues are the reasons that we're driving the cost up. So, we have to have all of these conversations in the same environment. We talked about the MPDU guidelines the other day in Committee and I think we've adopted them. I think we did that last week. If you read them, they allow additional cost increases to those units for these extra elements. They look nice and they're certainly lovely. But I think we also

have to remember that we have to have a good hard look at whether these units will actually be affordable to the kinds of folks we want in there. So this is part of the tradeoff things and I say this because this is our big challenge, we're getting the Planning Board to get more MPDUs in projects, to approve projects that include these. When you keep, if you insist upon special elements that are certainly desirable, and I don't mean to criticize HOA objectives of this nature, but it's one big tradeoff and I think we always need to keep that at the forefront when we worry about whether these units can actually be produced and purchased and lived in by people who are otherwise priced out of the market. So let's just remembers it is a ball of wax that includes all of these points. It's nice to have a garage, it's better perhaps to have an extra bedroom.

Council President PEREZ,
Madam Clerk, please call the role.

Madame Clerk,
Mr. Denis.

Councilmember DENIS,
Yes.

Madame Clerk,
Ms. Floreen.

Councilmember FLOREEN,
Yes.

Madame Clerk,
Mr. Silverman.

Councilmember SILVERMAN,
Yes.

Madame Clerk,
Mr. Knapp.

Councilmember KNAPP,
Yes.

Madame Clerk,
Mr. Andrews.

Councilmember ANDREWS,
Yes.

Madame Clerk,

Ms. Praisner.

Councilmember Praisner,
No.

Madame Clerk,
Mr. Leventhal.

Councilmember LEVENTHAL,
Yes.

Madame Clerk,
Mr. Perez.

Council President PEREZ,
Yes. Passes 7 to 1. We'll reconvene at 1:45. We have so many people waiting for the Board of Appeals interviews that if we get too far behind then we're going to be putting a number of people in a jam.

Council President PEREZ,
Good afternoon. This is a public hearing on Bill 26-05, Stormwater Drainage and Runoff, which would require builders of certain residential or accessory structures to submit a plan showing the location of drainage facilities, require a stormwater plan to minimize stormwater runoff onto adjacent properties, and generally amend the laws governing water drainage and runoff. A T&E Committee work session is set for October 27th at 9:30 a.m. Persons wishing to submit additional information for the Council's consideration should do so by the close of business, Friday, October 14th. We have Ed Norton, Ralph Cramden and others who are the first witnesses and they have submitted their testimony in writing so we can turn to Linna Barnes of Chevy Chase. Yes.

Councilmember PRAISNER,
You can tell them to stifle.

Council President PEREZ,
Yes.

Councilmember PRAISNER,
Archie Bunker answer.

En Norton,
She has technology now.

Council President PEREZ,
That's right. It's great to see you again. Welcome back.

Linna Barnes,
Thank you, Tom, thanks for having me. Good afternoon, I'm Linna Barnes, and I'm the Councilmember of the Town of Chevy Chase, and currently the Vice Mayor of the town. As you know, the town enacted in August a six-month moratorium on residential building. During this time, Committees made up of resident volunteers are examining many aspects of redevelopment in the town, including our setback requirements, our tree canopy, our permitting processes, and indeed our water management in the town, and I'm here to relay the views of the town's Water Subcommittee on Bill 26-05. And I know members of the Committee have already talked with Nancy about it. The Water Subcommittee of the town's Environmental Committee applaudes the proposed legislation, however, we would like to tighten up the language in two ways. First, we believe that a stormwater management design plan, and that is an SMDP, I'm never good with initials, rather than a mere drainage plan, should be filed with the County. And this is a detailed plan that is currently required as part of the sediment control process on larger projects, and we think the SMPD should also be needed on these smaller projects. This plan must meet the construction requirements and the design manual and applicable regulations and would most likely be prepared by a professional engineer or other qualified individual. A drainage plan, as is stated in the current

language, is in comparison vague and not supported by any criteria. We also suggest adding to the list of actions that would trigger the obligations to submit a plan and minimize water runoff. As currently written, the Bill requires a drainage plan if there are any changes in an existing drain or an increase in impervious surface. We would require an SMDP in these cases, but also if the construction involves clearing or excavation. We would exempt additions to existing residences that don't increase the building footprint by more than 500 feet. We believe that this requirement would be more easily enforced than the current legislation. Attached to the testimony is the Bill that's been marked up by the Subcommittee, because we in Chevy Chase have experts in everything and so they certainly know how to mark up legislation. So, Nancy, you can look at this. As I look at it, on the markup that I gave you, our language is in larger and underlined, and we have struck out the language which has mostly been added by the sponsors of this Bill, the changes, and we've put in our own. So, that's just something for you to peruse. So, thank you for having me today and I appreciate your listening, even if you didn't listen.

Councilmember LEVENTHAL,
You're an elected official, you can multi-task, come on. We have two ears. Thank you.

Council President PEREZ,
Hold on one second. We have some questions. Ms. Floreen.

Councilmember FLOREEN,
No, I just wanted to thank you, LinNa, and the town because you guys have been all over this and this issue generally. And as based on my previous experience, I know that the drainage issue is a huge issue as between owner to owner in existing communities as much as new construction. And this is intended, as you know, to cover both situations in a way that's manageable. It's complicated, which is why it hasn't been done before. It's difficult to enforce and that's the challenge of all this. So we'll encourage, we hope you'll be at the work session.

LinNa Barnes,
Yes.

Councilmember FLOREEN,
Or someone from the Drainage Committee.

LinNa Barnes,
Right.

Councilmember FLOREEN,
Which is a stellar crowd, I must say.

LinNa Barnes,

I am very impressed by their work. And I certainly don't understand any of it, but whenever I talk to them, I go, "Oh wow." It's quite impressive. So I thank you for that and thank you for this Bill, because I do think it is a start and we are really pleased with that, because we really do need to start looking at individual properties and not just really large scale developments.

Council President PEREZ,
Describe the circumstances, I know, I remember reading about the moratorium, but how did that come about?

LinNa Barnes,
Well, I think there is considerable unhappiness in the town from numerous residents with, in part, drainage, water runoff, the changing of impervious surfaces and construction is the changing of the tree cover, is changing the water runoff. The trees are going, making a very different look to the town, the size is larger, so over Memorial Day weekend, a group had formed before that, but they spent Memorial Day weekend canvassing the community and they got over 500 signatures on a petition in a town that has about 2,000 adults, a little bit less than 2,000 adults. Yes. A quarter of the town's residents signed a petition asking for the town to do a one year moratorium on all building. And so we modified it to six months and we have these Committees working incredible amounts to come up with some solutions to how we can change our setbacks, permitting. We are hopeful that something will happen with the heights, with Councilmember Denis' Bill that we are certainly hopeful that will happen. And we will also, I mean, I think we're looking to change some state laws and County laws. We hope that we might be able to get an overlay zone such as Garrett Park has for the Town of Chevy Chase, perhaps change the regional district back to give municipalities, I know, change the Regional District Act to give the municipalities a few more powers if they want to use them. So those are some of the things that are happening right now.

Council President PEREZ,
Thank you. That's very helpful. I look forward to the results. Mr. Leventhal has a question for you.

Councilmember LEVENTHAL,
LinNa, how exactly does the moratorium work? My question is this, if you're building in the Town of Chevy Chase, do you need a building permit from the town and from County DPS as well? You need two permits?

LinNa Barnes,
Yes. We are dual permitting, as are most of the Down County municipalities, so they also issue their own permits. So we do not issue either demolition permits or building permits during this six months without a waiver. We've had one waiver hearing, well, I guess, six waiver hearings, one night of hearings, and we granted numerous waivers with conditions. And actually, this has also, it has been challenged in court. We should

have a decision from Judge Moore this afternoon, I believe. So, we'll see. I'll let you know.

Council President PEREZ,
Great. Thanks, thanks for all your advocacy. Did you have another question for her?

Councilmember FLOREEN,
No, I just wanted to comment on the moratorium thing. The Town of Garrett Park did that as well, as you may know, so, I wish you well, I think you'll get through it.

Linna Barnes,
Thank you, I hope so. I'm looking at this as only four and a half more months. Thanks a lot.

Council President PEREZ,
Yes.

Councilmember PRAISNER,
I just want to make a comment that the issue or the idea of using a moratorium for certain things in order to get legislation adopted and to freeze things while you go through the process is not unique to the towns, and the County government has used that in the past as well and it is something that I think we need to continue to look at.

Council President PEREZ,
Okay, Group B, James Solander, David Montgomery, Jim Humphrey, Judy Koenick, George Rudy, Jim Fary. Mr. Solander, when you are ready, you may begin. Is Mr. Solander here? James Solander? Okay, let's go to Mr. Montgomery then. Good afternoon.

David Montgomery,
Good afternoon. I am David Montgomery, I live at 4512 Courtland Road, Chevy Chase. Recently, two of my backyard neighbors built additions to their homes, and now when it rains, instead of the rain sinking into the property, it flows into my backyard. I am downhill and unfortunately my backyard is lower than my front yard, meaning that the water stays there. When we have a good rain, my backyard becomes a swamp. I have had an engineer come in to look at the situation, and the estimate that he has given in order to remedy the situation for me, which is to say to drain my backyard, is $1,200. $1,200. That is for me to solve the problem created by my neighbors, I will have to pay out of pocket. I have to pay for my neighbors' additions and this just does not seem fair. When I looked at the situation originally, I thought there must be something in the code that says this can't happen, but I cannot find anything that prevents it. In fact, one of the neighbors ran a corrugated pipe from his downspout to the edge of his lot, which is to say, into my backyard. So, I support the idea, but like several people, I think that there is an absence of some specificity here which has to be remedied. And so, I would prefer that we have the legislation if nothing else, but I would like to strengthen the

language and in particular to do something along the lines of replacing the term "minimize" that occurs several places with "avoid" making the Bill to read in Section 829, "require the applicant to avoid resulting water runoff that is likely to which adversely affect any adjacent property," and later in Section 1931, "submit a plan to avoid resulting water runoff." And the language could add a clarification to the effect of the means of avoiding adverse effects may include changes to the adjacent property with the agreement of that property's owner. That is to say I'm willing to look at situations where there is some sort of coordination in order to solve the problem, as long as the affected property owners are agreeable. Thank you.

Council President PEREZ,
Thank you. Thanks for coming in. That was very helpful. Jim, are you in long-term parking today? We've got the AGP hearing tonight, I thought you might get the long-term parking.

Jim Humphrey,
No, I was telling somebody I always park in the [inaudible] lot because I figure the money I give them I get a parking space [inaudible].

Council President PEREZ,
You're up.

Jim Humphrey,
My name is Jim Humphrey. I'm Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation, and as such, I'm testifying in support of the intent of this legislation, even if not the actual language of the introduced Bill. We appreciate the efforts of the Bill's initial sponsor, Councilmember Floreen, to bring this important issue before the Council for consideration. But the problems associated with drainage and stormwater runoff from sites affecting nearby properties exist county-wide in commercial as well as residential zones still, and we believe this Bill would best be considered in the context of a more comprehensive revision of the County's overall stormwater policy. To help explain concerns that I have about the language of the Bill, I'll described two drainage related problems I'm uncertain this Bill addresses associated with mansionization projects or bash and builds in existing neighborhoods. Many of these new McMansions are outfitted with automatic watering systems for their gardens or lawns, which if not properly regulated, result in water running off the property. In older neighborhoods like mine that have no storm sewers, this water can then collect in pools along the right-of-way and create mosquito breeding habitat that may add to the problems associated with West Nile virus. The language of the Bill refers to management of water runoff that may affect "one or more adjacent properties" which might not be interpreted to include the public right-of-way where the problem I mentioned occurs. In addition, many bash and builds in my neighborhood have garages on the lowest level of the new homes with below grade driveway accesses. These driveways customarily have drains to catch stormwater that flows down the paved drive and pump it out through discharge pipes. Again, many of these systems

just discharge water into the public right-of-way, creating the same mosquito breeding pools I just mentioned, a situation this Bill might not be addressing in specific enough a manner. Another concern which I must voice for the citizens as a representative of the Civic Federation, is that this legislation may place a burden on homeowners who wish to put an addition on their home in the most inexpensive manner possible, by doing some or most of the work themselves. As I understand it under the Bill, this homeowner would be required to submit a "plot diagram" showing the flow of water from a "drainage structure" or the gutter system, I'm guessing, of an existing home and the proposed new addition, as well as what appears in the Bill to be a second drainage plan with contour lines showing how the proposed addition would change the existing grade and increase impervious surface. We're concerned about the burden on the small individual homeowner. Finally, prompted by the site plan enforcement problems in Clarksburg, the Council is currently considering whether or not DPS Permitting Services is adequate to the task of enforcing the sections of the County Code that it is currently or may in future be required to administer. This might not be the best time to create an added workload for the Department in form of amendments to the Code that may require hiring additional inspectors and training them in interpretation and enforcement of new complicated standards. Council might first want to study how effectively DPS currently enforces the stormwater provisions already in the Code. But I'm not sure that the problems that could arise from implementation should ever be an overriding concern with this Council when addressing an important legislative fix to a problem. Neither the Civic Fed nor its Executive Committee has voted a position on this Bill, but I wanted to register our support for the intent of it, if not the specific language and we stand ready to work with you. I just wanted to comment, if I could, I had the great privilege of attending the Town of Chevy Chase hearing on the moratorium and I was surprised and amazed and pleased that every member of the City Council sat in rapt attention and listened to every person that testified and Mayor Hudnut stands at the podium and faces the persons testifying. I was pleased and amazed at the respect shown to the citizens of the Town of Chevy Chase in their hearing.

Councilmember LEVENTHAL,
Okay. Thank you Jim. Judy Koenick.

Judy Koenick,
Good afternoon. I'm Judy Koenick. My experience with this situation occurred about fifteen years ago. A house I owned that was very high up, assume this is the slope, the flat area above my house, my house is down there and there's a slope. The adjacent property owner went in and not only stripped all of the vegetation off of his lower third of the slope, but the owner who owned the upper two-thirds also, and so, each time it rained, all of the mud and the silt and debris and the rocks came crashing down on both the front and the side and the rear of my yard. Efforts to get the owner and the owner of both properties to do anything were a waste of time. Attempting to get the County to do anything was a waste of time. They said, "Well, you know, if he's stripped the vegetation, he'll plant in the meanwhile." Ultimately, it was necessary to go into court, which no homeowner should have to do in order to address these issues. Two

seconds before it was set to go to trial, one party, which is the school system, settled with me, the other party, it went to trial and got a judgment and then his attorney check bounced. Recently, the owner of the property now has also stripped some vegetation off and the water came down and went into my house. But there has to be something that says that exists if you build a house if you do the addition, it continues with whomever else ultimately owns the property. And without that, it's ridiculous, because with the turnover rate of houses around here, you have to address that issue. I agree with Mr. Montgomery they can't say try and fix the problem or consider the problem, you must avoid it. There's absolutely no reason for the downspouts of someone's house to be channeled to their yard and his cost of $1200 to fix it is actually quite cheap, because I've had to address the issue on other areas. We've got to be short-term and long-term and if it means hiring more people at DEP or finding some agency that has the ability to do it, and they know how, and is willing to stick to their guns, then you buy it you hire the people and not make the people end up having to bail out a basement. Thank you.

Councilmember LEVENTHAL,
Thank you. Mr. Rudy?

George Rudy,
My name is George Rudy. I am a resident of Walkersville, Maryland. You would say why am I here? I'm also the Project Manager, Technical Advisor to Draper Properties and we own a commercial property on New Hampshire Avenue known as Cloverleaf Citgo. What I wanted to do was relate our experience. We have reviewed your residential water Bill here. I think that our recommendations are going to be that it should be broader, it should be more intensified, and it should be more rigorous. Our experience, if you give me a couple minutes to just give you an overview. Our site was run by Shell for 40 years, we leased it to Shell. In 2002, they vacated the property and when a fuel company vacates a property, they smash the property, literally, and strip it, and their object is to make it as difficult as possible for anybody coming in to reestablish business, so what you end up with, all the tanks out, all the pipes out, all of the asphalt gone, all the concrete gone, you have a graveled lot and you end up, in our case, with a battleship gray cinderblock building. We immediately had it released to a petroleum broker, petroleum marketing group, who is operating the site now for us under the Citgo brand. What I'm about to say surprised me. I'm a professional engineer. I work in the nuke industry, and regulations are my life. They built, or we'll call it rebuilt the site and that meant new tanks, new concrete pad, nice new Citgo brand colors, and as they proceeded, having been on site now for probably the first time, I've been Project Manager for the family business since 1987, but you just visit the site, you really don't get a feely touchy on it. But when you're decommissioning a site and rebuilding a site, you live there. And as a result, I realized, my goodness, we have a major stormwater problem here.

Council President PEREZ,
Can you wrap up? The buzzer was your time was up.

George Rudy,
Oh, I'm sorry. Okay, yes. Basic is, when I asked them what about storm management, they said we didn't change the surface topography. As a result, no change. We have a major water problem. It interfaces five residential sites and we are required, well, we can get into a big legal battle, but we've elected to go and solve the problem ourselves. I've made six recommendations. They are documented for you. Thank you.

Council President PEREZ,
Thank you. Okay, Jim.

Jim Fary,
Good evening. My name is Jim Fary. I'm the Chair of the Conservation Committee, Montgomery Group Sierra Club. I also am a member of the Mid-Potomac Tributary Team and I've also been working with the Anacostia Watershed Society on urban stormwater issues. Thank you for acknowledging the problem of lot to lot stormwater pollution. It's been a problem for quite some time. It's been exacerbated recently by in fill development and the mansionization trend. Basically, technology does exist for urban stormwater management and low impact development technology. As part of the Mid-Potomac Tributary team, I worked with a Committee and we did make a recommendation to the Governor's Blue Ribbon Commission on funding the Chesapeake Bay cleanup for funding for urban stormwater management systems. The problem, again, is these older parts of the County do not have any stormwater management systems, so everything just flows right into the creek. The Anacostia Watershed Society has hired an engineer and he is documenting the horrific erosion that is occurring, exposing zer pipes, and then when it floods, the sewer pipes get broken. It's a real growing problem out there in urban stormwater pollution. So I just, again, I acknowledge this Council for recognizing this problem. I think you need to convene, really, a panel of experts. I don't think this Bill goes far enough. It only asks the builders to minimize. I don't think minimizing is an enforceable term. I think my friends at DPS would have a hard time enforcing a law that only directs the builder to minimize. Again, I would recommend a convening of a panel of experts. The experts are out there, the technology's available, it just needs to be applied. Other counties are doing it already. Stafford, Virginia, for example, requires low impact development technology as part of their building process. Thank you.

Council President PEREZ,
Thank you. Mr. Knapp.

Councilmember KNAPP,
Thank you, Mr. President. Actually, I think it's a question for Staff or even for the Committee to look at. We've had a couple of situations where that it hasn't been residential construction that has led to significant runoff, but actually County facilities that have had a detrimental impact. And so, to the extent that we can address that, or that this Bill will look at that as well, not just residential, I'd like to at least have that

taken up in Committee to come back to us, because that's, I know of at least two examples where there's been significant damage to immediately adjacent properties as a result of the construction of County activities.

Council President PEREZ,
Thank you. Ms. Praisner.

Councilmember PRAISNER,
I'm glad Mr. Knapp mentioned that and I think Judy's issue and concern back as she mentioned, related to an elementary school addition and construction, as I recall. But it was the combination of those I thought.

Judy Koenick,
The school site, of course [inaudible] elevated and when they came in and built the houses down on [inaudible], the upper two-thirds is owned by the school system and they couldn't care less what I said, it's his problem. And we said, "Hey, you know, you've got to deal with it," and then ultimately what happened is, I shouldn't have to go and to sue them to do it, but I did.

Councilmember PRAISNER,
No, but as I recall, sitting as a member of the Board of Education you brought to us an issue relative to activity at Rock Creek Forest that was having a drainage issue with your property.

Judy Koenick,
What they did is they eventually came in and had to put a swale in, in order to channel the water into a pipe. And it was working fine until my neighbor went in and stripped the vegetation.

Councilmember PRAISNER,
I want to thank everybody for testifying and thank Ms. Floreen as I am listed as a cosponsor on this legislation. It is grading or the absence of a grading ordinance in this County has been an issue for some time, and this is a step in the right direction, as you have all indicated. You've highlighted a point that was Mr. Montgomery has highlighted as others the point that Ms. Floreen and I have had a conversation about as to the issue of minimization or how far it should go, and I think Mr. Knapp is absolutely correct, we should be, we should as government entities and structures should function the same way that a private sector requirement should the same as if it were a private sector. I wanted to let folks know that I think what we're talking about is bigger than this issue, obviously, and it's the absence of a grading ordinance and the elements associated with it. I have been working, and Mr. Wilson is working on trying to respond to requests that I've had to both Mr. Hubbard and folks at Park and Planning to identify for me what they think are grading ordinances that exist in other jurisdictions that we should be looking at for the County. And Mr. Wilson's in the process of drafting something that I would then circulate to folks which I think expands on what we're

trying to do here, but this was a good first step and could be dealt with, I think, initially with the assumption that we have to look comprehensively at this issue. And I acknowledge and accept the points that you're making, and thank you all very much for your testimony.

Council President PEREZ,
Ms. Floreen.

Councilmember FLOREEN,
Yes, thank you folks, especially for bringing to our attention the commercial side of this which has not been advertised, but it's one I really hadn't considered. It's obviously a big issue. As everyone concludes from listening to each other, there are different levels of the situation. Going from the neighbor who puts in a fence and doesn't think about what that means for the next door person, to the person who revises a gas station and what the implications are. This, the neighbor to neighbor issue is the one that we probably receive the most complaints about. And I have to say it's been so frustrating not to be able to point to something that would allow DPS people who, when they go out in the field, can point to to get a conversation going to get the parties to own up, to recognize, to even think about the fact that what they're doing has an adverse impact on their neighbor. So, I think what we're hearing is a variety of solutions. I'm kind of a, let's fix what we think we can fix person before we get onto the big picture issues, but there clearly are a variety of concerns here that need to be addressed. I think I'm hopeful that we'll move along with something that's relatively understandable and enforceable and predictable so that the range of issues can start to be put on the table and resolved in a way that is not too burdensome, but at least gets the job done. And that's the object of this and that's why we'll be looking at this, the proposed language changes with great interest. So thank you Mr. Andrews?

Councilmember ANDREWS,
Thank you all for being here, and I want to say to Mr. Rudy thank you for your very specific testimony, even though the three minutes goes real fast. The written testimony will be very helpful and you were very specific in your recommendations. So, thank you.

Council President PEREZ,
Thank you. This is very useful, I appreciate your time. Okay, let's turn to the next hearing. If I can muddle through my paper, I will, here we go. It's a public hearing on Special Appropriation to the FY '06 Capital Budgets and Amendments to the FY '05-'10 Capital Improvements Program in Montgomery County Public Schools for Broad Acres Elementary School, current replacement and modernization, Gaithersburg High and Watkins Mill Elementary in the amount of $23,790,000. An Education Committee work session is tentatively set for September 29th. Persons wishing to submit additional information should do so by the close of this hearing. There are no witnesses for this small budget item. So, we'll turn to you, Mr. Denis for any comment. Okay, that brings us to the end of our session. We are a half an hour late for the Board of Appeals, so I

would recommend that we start immediately. We do have one less person going there, but I'm told that Mr. Robbins has put his name in, so he may fill in for that spot on the Board of Appeals. So, yes, very well. So, we will adjourn.

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