

May 2, 2006



**TRANSCRIPT  
May 2, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

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



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1 [MUSIC]

2  
3 Council President Leventhal,  
4 Good morning, the County Council is in session. We welcome Reverend Dr. Roy  
5 Howard of Saint Mark Presbyterian Church for our invocation.

6  
7 Reverend Dr. Roy Howard,  
8 Let us pray. Merciful God in this broken world in which we perceive more darkness than  
9 anything else, your radiant light is shattered into fragments of the one light and so on  
10 this bright morning, we ask that you would give us the capacity of heart and mind to  
11 perceive the light in many small public gestures. Splinters of goodness that bring life out  
12 of death. We commend to you our state and our nation to your merciful care that all may  
13 live in peace and be guided by you're inscrutable providence. We ask that you to give all  
14 of those in authority, those persons who have chosen the honorable path of public  
15 service, the wisdom to know the way of mercy and justice and love embodied in laws  
16 that knowing the way they may also have the courage to follow it. Help them remember  
17 that they're called to serve the people as lovers of truth and makers of peace. And so  
18 great God on this day, we ask to you bless those who hold office here, the government  
19 of this County that they may do their work in a spirit of wisdom, good humor, kindness  
20 and justice. Help them use their authority that has been granted to them to serve  
21 faithfully and to provide for the well-being of all. By the grace of the holy one who  
22 sustains all creation in mercy and in compassion for all people, amen.

23  
24 Council President Leventhal,  
25 Amen. Dr. Howard, thank you for being with us.

26  
27 Reverend Dr. Roy Howard,  
28 Thank you.

29  
30 Council President Leventhal,  
31 Okay, I want to commend to my colleague's attention the report of the Grants Advisory  
32 Group that we received yesterday. It should be available to Councilmembers in their  
33 offices. We have a group of very dedicated community volunteers who spent a great  
34 deal of time reviewing the couple hundred applications, 211 grant applications and a lot  
35 of work has gone into this document. I certainly will refer heavily to it as I make my own  
36 recommendations for grants that should be fined, and I just commended to my  
37 colleague's attention, and thank the Grant Advisory Group for its efforts on our behalf.  
38 Do we have any agenda or calendar changes, Ms. Lauer?

39  
40 Linda Lauer,  
41 There is an announcement that the report and recommendations of the Charter Review  
42 Commission will be presented to the Council on June 13th, and we have set a public  
43 hearing on these recommendations and other proposed charter amendments for June  
44 27th at 1:30. In addition to today's consent calendar is introduction of amend to WSSC's  
45 CIP and a budget supplement pertaining to the McGowen Company claim and then one

2

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1 other announcement is the Thursday's 10:00 a.m. Education Committee meeting is  
2 cancelled, and we do have two petitions, one is the supporting of the Gaithersburg High  
3 School replacement project and the school CIP, and then another petition from the  
4 Board of Directors and the staff of the Imagination Stage supporting funding for arts and  
5 humanities.

6  
7 Council President Leventhal,  
8 Yeah, thank you. On Saturday I was presented with a petition organized by the High  
9 School Student Environmental Activists supporting a 20% purchase of wind power, and  
10 I thought that had also been received but I don't see it on the list. Without objection, I  
11 would like the Council to deem that received. I think it's possible that Patrick Lacefield  
12 may have that.

13  
14 Linda Lauer,  
15 Okay, we'll make sure it gets logged in. Thank you.

16  
17 Council President Leventhal,  
18 Okay, and do we have minutes for approval?

19  
20 Council Clerk,  
21 Minutes of April 17th and 18th for approval.

22  
23 Councilmember Andrews,  
24 So moved.

25  
26 Councilmember Praisner,  
27 Second.

28  
29 Council President Leventhal,  
30 Okay, Mr. Andrews has moved and Ms. Praisner has seconded approval of the minutes  
31 of April 17th and 18th. Those in favor of approving will signify by raising the happens,  
32 it's unanimous among those present. Turn now to the Consent Calendar. We need a  
33 motion for approval.

34  
35 Councilmember Praisner,  
36 So moved.

37  
38 Councilmember Floreen,  
39 Second

40 Council President Leventhal,  
41 Ms. Praisner has moved and Ms. Floreen seconded approval of the Consent Calendar.  
42 There are no comments on the Consent Calendar. Those in favor of its approval will  
43 signify by raising their hands. It's unanimous among those present. We have no issues  
44 before us as the Board of Health. We will receive an update from the County Health  
45 Officer on June 20th. We now turn to District Council session. We have before us



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1 agenda item 4, amendment to the Master Plan for historic preservation on Higgins  
2 Tavern. The Chairman of the PHED Committee is not present at the moment. Can  
3 someone else from the PHED Committee...

4  
5 Councilmember Praisner,  
6 Yeah, sure.

7  
8 Council President Leventhal,  
9 Ms. Praisner maybe, tell us...

10  
11 Councilmember Praisner,  
12 Yeah, sure. We had a discussion, as you recall, from the public hearing that we had.  
13 There were some questions or concerns initially about whether the alignment, whether  
14 the future alignments for Georgia Avenue would be accommodated within the context of  
15 the view shed and the historic preservation designation for the parcel. In the context of  
16 our conversations within the Committee, I believe we resolved the issue that, one: there  
17 was adequate space either on the other side of the Georgia Avenue or in that  
18 immediate area to accommodate what might need to be done in the future by DPWT or  
19 State Highway. And still retain the historic designation on the parcel. Jean, if you want  
20 to read the language. The Committee recommends approval with the additional  
21 language that Ms. Floreen and I modified in the committee meeting. Jean.

22  
23 Jean Arthur,  
24 What we did was added language to the amend that would say unless the right-of-way  
25 must be adjusted to accommodate the Georgia Avenue busway and the Master Plan  
26 Maryland 97, which is Georgia Avenue, four-lane divided highway right-of-way. It's  
27 anticipated the right-of-way needs may be accommodated without removal of that line,  
28 as shown on the attached map. The attached map is the map we had at the work  
29 session and it shows there is enough room with the environmental setting as  
30 recommended.

31  
32 Councilmember Praisner,  
33 So, the committee recommends approval with that additional language, which makes  
34 clear that the original issue is not an issue.

35  
36 Council President Leventhal,  
37 Okay, the PHED committee's recommendation on Higgins Tavern designating it as a  
38 historic resource on the Master Plan For Historic Preservation with language relating to  
39 the right-of-way is now before the Council. Those in favor of the PHED Committee's  
40 recommendation will signify by raising their hands. It's unanimous among those present.  
41 And we next take up Bill 3-06. Consumer Protection Revisions, Chairman Andrews. I'm  
42 sorry, you know, it's early in the morning and I...

43  
44 Multiple Speakers,  
45 [INAUDIBLE]



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1  
2 Council President Leventhal,  
3 I got ahead of myself. I got ahead of myself. We're now on zoning, we're still on District  
4 Council Session and we're on Zoning Text Amendment 06-06 Off-street Parking in the  
5 RE-200 and RE 1 zones. The PHED committee decided what, Ms. Praisner?

6  
7 Councilmember Praisner,  
8 We recommend approval. We love it. Mr. Silverman is here.

9  
10 Council President Leventhal,  
11 The Chairman arrived.

12  
13 Councilmember Silverman,  
14 Oh, Ms. Praisner.

15  
16 Councilmember Praisner,  
17 We're fine.

18  
19 Councilmember Silverman,  
20 Go right ahead.

21  
22 Councilmember Praisner,  
23 What it does is accommodate the situation that occurs, sometimes in Master Plans.  
24 Years ago we changed the zoning such that in this in this area, an assumption is made  
25 in that zoning there are larger lots which would accommodate the off-street parking that  
26 is a problem for the community, and that the Department of Permitting Services and  
27 folks indicate can not be regulated at this point because according to the zone, it's a  
28 permitted use, but the lots are much smaller than they would be in the normal context.  
29 Something we have to look at when we look at these issues through Master Plan  
30 processes. The committee recommends approval with a one-year period during which  
31 folks need, have latitude to move towards regulation. As Mr. Wilson indicated, in most  
32 cases, this is a parking situation, not anything that would have any long-term major  
33 implications as far as the County Attorney's question. So the committee recommends  
34 approval.

35  
36 Council President Leventhal,  
37 Very good. Those in favor of the PHED committee's recommendation...

38  
39 Multiple Speakers,  
40 Roll call.

41  
42 Council President Leventhal,  
43 Oh yeah, roll call vote on the ZTA 06-06.

44  
45 Council Clerk,



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1 Mr. Denis.  
2  
3 Councilmember Denis,  
4 Yes.  
5  
6 Council Clerk,  
7 Ms. Floreen.  
8  
9 Councilmember Floreen,  
10 Yes.  
11  
12 Council Clerk,  
13 Mr. Subin.  
14  
15 Councilmember Subin,  
16 Yes.  
17  
18 Council Clerk,  
19 Mr. Silverman.  
20  
21 Councilmember Silverman,  
22 Yes.  
23  
24 Council Clerk,  
25 Mr. Knapp.  
26  
27 Councilmember Knapp,  
28 Yes.  
29  
30 Council Clerk,  
31 Mr. Andrews.  
32  
33 Councilmember Andrews,  
34 Yes.  
35  
36 Council Clerk,  
37 Ms. Praisner.  
38  
39 Councilmember Praisner,  
40 Yes.  
41  
42 Council Clerk,  
43 Mr. Leventhal.  
44  
45 Council President Leventhal,



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1 Yes. The ZTA is adopted on a vote of 8-0. Okay we're in Legislative Session. Is there's  
2 Legislative Journal for approval?

3  
4 Council Clerk,  
5 The Legislative Journal of April 18.

6  
7 Councilmember Knapp,  
8 Move approval.

9  
10 Councilmember Praisner,  
11 Second.

12  
13 Council President Leventhal,  
14 Those in favor of approving the legislative journal.

15  
16 Councilmember Praisner,  
17 Mr. Knapp.

18  
19 Council President Leventhal,  
20 Mr. Knapp moved and Ms. Praisner in seconded the Legislative Journal. Those in favor  
21 of its approval will signify by raising their hands. It's unanimous among those present.  
22 Okay, we had nothing on the agenda for introduction of bills but if I appeared distracted  
23 it's because I have been reading a resolution from Councilmember Subin that my  
24 colleagues have not had the benefit of reading. It's a proposed resolution just handed to  
25 me now by Councilmember Subin. Did you want to speak to this Mr. Subin?

26  
27 Councilmember Subin,  
28 It wasn't, I mean the Council President is acting as if this is a surprise. The Council  
29 President knew about this prior to this moment. The resolution simply says that there  
30 was a committee appointed by the Council last Tuesday to look at issues in the  
31 Agricultural Preserve. Folks were told that the submission time was at 5:00 p.m. on  
32 Friday and apparently the Committee to consider the request to be apart of that was  
33 held at 11:00. Therefore, there were certain people who, in good faith, turned their  
34 applications in after 11 and before 5 and the resolution simply requested that the  
35 Committee reconvene to consider those folks, who in good faith, submitted their  
36 applications prior to 5 p.m. And we don't indicate to the public that we're going to meet,  
37 ask people to submit applications, do whatever work is required, and then have the  
38 meeting to put these Committees together procedure to the applications coming in. It  
39 doesn't ask that anybody be named. It doesn't request any specific personnel. Just that  
40 we, we respect the work that other people do to try to help the public.

41  
42 Council President Leventhal,  
43 Okay, was it Mr. Subin's intent that his colleagues have copies of the resolution?  
44 Because I only have the one copy. It appears the other Councilmembers don't have a  
45 copy. I have one copy. Are copies available for other Councilmembers?



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1  
2 Unidentified Speaker,  
3 Yes.  
4  
5 Council President Leventhal,  
6 Okay, well, it's in order that Mr. Subin request that this be introduced at this time, I think  
7 it would be require a second.  
8  
9 Councilmember Knapp,  
10 I just need to read it.  
11  
12 Council President Leventhal,  
13 Uh-huh. Mr. Subin has requested that a resolution be introduced, I think it requires a  
14 second.  
15  
16 Councilmember Silverman,  
17 Point of order, Mr. Chair.  
18  
19 Council President Leventhal,  
20 Uh-huh.  
21  
22 Councilmember Andrews,  
23 Is, you know, is there something that precludes additional people being appointed to the  
24 working group without the formality of a resolution reopening the selection process?  
25  
26 Council President Leventhal,  
27 No, it's the Council's working group and the Council can... I believe the question was  
28 directed to the Council President and the answer to the question is that the Council  
29 created the working group and the Council can make any decisions it so chooses about  
30 the composition of the working group. The original resolution adopted by the Council  
31 stated that there would be 15 members on the working group, and 15 members were  
32 appointed by the Council to the working group. It's desirable in my judgment that there  
33 be an odd number of members on this or any similar body, and so if in the Council's  
34 judgment it wanted to add a member to the working group, my suggestion would be that  
35 it add two members to the working group. My thought here is if, if there is a second for  
36 the motion that this resolution be introduced at this time as is usual procedure with  
37 Council resolutions. It would be held over for a week and the Council could vote on it  
38 next week.  
39  
40 Councilmember Silverman,  
41 I guess my question, Mr. President, is whether, whether there would be an opportunity  
42 over the course of the next week. What I'm uncomfortable with is the, I'll just say  
43 candidly, the formality of a resolution, you know, when, I think, pardon the use of the  
44 term, when there is a resolution to the problem. If the problem is that there may have  
45 been somebody who came in late in the process, the question, frankly is is there an



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1 opportunity for one or two more people to be appointed to the working group. And I think  
2 that's something that we ought to entertain, whether we need to entertain it through a  
3 formal resolution or not, I don't know. I guess I'm asking the President whether he's  
4 amenable to considering that without the formality of having to go through the  
5 introduction and voting up or down on a resolution, which might have broader  
6 implications to the Council's [INAUDIBLE]

7

8 [BACKGROUND NOISE]

9

10 Councilmember Praisner,  
11 All blackberries will be...

12

13 Councilmember Silverman,  
14 Will they?

15

16 [LAUGHTER]

17

18 Council President Leventhal,  
19 Right. Well, first of all, I thank Mr. Silverman for his question and I have been extremely  
20 amenable to suggestions from all Councilmembers. The process for appointing, well  
21 first of all, let me state that I had no idea until just a few minutes ago that a resolution  
22 was going to be introduced on this matter today. I had a conversation with Mr. Subin's  
23 confidential aid about 20 minutes ago who indicated to me there was a candidate that  
24 Mr. Subin was interested in putting on the working group and I said I would consider  
25 that. I had been in close communication with many Councilmembers with respect to the  
26 composition of the working group.

27

28 Councilmember Subin,  
29 [INAUDIBLE]

30

31 Council President Leventhal,  
32 Let's have one speaker at a time and the Council President has the floor. The Council  
33 President has the floor any other speakers are out of order. The Council President has  
34 the floor. Do you want to repeat that with your microphone on, Mr. Subin?

35

36 Councilmember Subin,  
37 Put the floor...

38

39 Council President Leventhal,  
40 I received a, I received many suggestions from many Councilmembers, those  
41 Councilmembers who had indicated the most interest to me were appointed, their staff  
42 was appointed to an informal selection committee. Which included staff for myself, Ms.  
43 Praisner, Vice President Praisner, Ms. Floreen, Chair of the T&E committee which has  
44 been working on the issues, and Mr. Knapp, the Councilman from District 2, which  
45 comprises the Agriculture Reserve, Includes the Agricultural Reserve. Those



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1 Councilmembers made a number of suggestions and agreed on a proposed  
2 composition for the working group which was circulated to Councilmembers Friday night  
3 after the 5:00 p.m. Deadline a week ago. Over the weekend, I received one suggestion  
4 from a Councilmember who read his had a packet and a suggestion and that suggestion  
5 was accommodated. We had discussions a week ago among Councilmembers who  
6 were present during the consent calendar discussion and at that time, any  
7 Councilmember who was present could have raised concerns. However, subsequent to  
8 the passage of this working group by the Council, I received a memo from Mr. Subin  
9 asking me whether the process should be reopened. No names were suggested to me,  
10 no one asked me. No one asked me whether an additional person could be added, no  
11 specific candidate was mentioned to me. I responded in a memo, which is available  
12 upon request, anyone who wants to see it, that I didn't think the process should be  
13 reopened and I reiterated what we had done to identify the membership of the working  
14 group. I didn't know the resolution was going to come before us until it was handed to  
15 me a few minutes ago. But it is in order and requires a second. Mr. Silverman.

16  
17 Councilmember Silverman,

18 If I may, I would ask the sponsor of the resolution whether he would consider holding off  
19 until later this afternoon when we have to come back for public hearings. To determine  
20 whether a resolution, a formal introduction of a resolution is necessary. That would go of  
21 us an opportunity on over the next few hours to see whether there are some other folks  
22 that are interested in joining the task force subject to the discretion and the decision of  
23 the Council President. Would you consider that, Mr. Subin?

24  
25 Councilmember Subin,

26 My request is, yes, Mr. Silverman, I would. My request and let me try to do this in  
27 simpler English. I am not requesting any specific people be placed on the task force. I'm  
28 not requesting that any specific number of additional people be placed on the task force.  
29 I wasn't even going to suggest any changes to the task force after the committee put the  
30 names in. Subsequent to the passage by the Council of that task force, I learned that  
31 was at least one resume that came in after the committee met but before the deadline  
32 for submission. And that that resume and others that came in between the meeting of  
33 the subcommittee and the submission time be considered. It's that simple. If every, if  
34 none of the folks qualify, they don't qualify. It's simply in fairness to those folks that they  
35 be considered to be added to the task force. I'm not suggesting they be added to it.  
36 Simply that in fairness when we ask people to comply by the rules and they comply,  
37 that, that we honor their compliance. That has been the issue all along. And if we need  
38 simpler language to explain it, that's fine. I'll try it again.

39  
40 Council President Leventhal,

41 Okay, I am not clear on the status of this motion but it doesn't appear to have a second.

42  
43 Councilmember Subin,



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1 I said I would withdraw even if there is a second, if what Mr. Silverman is suggesting is  
2 done and that is that those folks who submitted prior to 5:00 and after 11 a.m. be  
3 considered.

4  
5 Council President Leventhal,  
6 Vice President Praisner.

7  
8 Councilmember Praisner,  
9 I think that's a reasonable way to look at the issue and to see if there are interests. I did  
10 not, I don't think my staff's participation in the morning in a conversation about the  
11 working group was a final membership of the working group and as I recall, I thought on  
12 Monday and after the deadline all Councilmembers had a chance to know other  
13 candidates and, in fact, folks did suggest other names of folks who got their names in a  
14 timely fashion. But if we can have staff recollect the number of individuals whose  
15 applications may have come in in that time period, I'll be happy to look at it and see if I  
16 think I, as I understand Mr. Subin's perspective, if anyone, if there is a group of  
17 individuals on the Council who would like to add to the list from that group. I don't know,  
18 I think that's all Mr. Subin is asking and I think that can be done without a resolution.

19  
20 Councilmember Subin,  
21 I'll withdraw the resolution based on what Mr. Silverman and Ms. Praisner have said.

22  
23 Council President Leventhal,  
24 Mr. Perez.

25  
26 Councilmember Perez,  
27 Thank you. I think Ms. Praisner has said it correctly. I will note parenthetically one of the  
28 people I recommended who was placed on the committee, Tom Hoffman, he actually  
29 was part of that cohort that applied, I believe he applied Friday afternoon and he was  
30 placed on the committee. So I do appreciate the work of the committee and I do recall  
31 looking at all of the names. I don't frankly know who may have applied between 11 and  
32 5 but I do happen to know that Mr. Hoffman applied that Friday. Because I spoke to him  
33 shortly after he had submitted his application and I was very pleased that he did, and I  
34 am very pleased that he was selected. And if there is anyone else in that category, I  
35 think we can certainly take a careful look. So, thank you for bringing it to our attention  
36 and think this is a good resolution.

37  
38 Council President Leventhal,  
39 You think this is a good settlement to the issue.

40  
41 Multiple Speakers,  
42 Yes.

43  
44 Council President Leventhal,  
45 Right.



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1  
2 Councilmember Perez,  
3 This is a... [LAUGHTER] A poor choice of words. I believe this is a good end point of an  
4 issue and I am, I do appreciate the suggestion that Mr. Silverman made, and I do  
5 appreciate the, when I contacted the Council President over the weekend to say that I  
6 think Tom Hoffman would make a great candidate, what do you think? His response  
7 was immediately that sounds like a good idea. And I got nothing but support. I  
8 appreciate your support, Mr. President, for that selection.

9  
10 Council President Leventhal,  
11 Thank you very much, Mr. Perez. I appreciated the input of all members who  
12 communicated with me before the Council acted. Ms. Floreen.

13  
14 Councilmember Floreen,  
15 I just wanted to comment that this is an important group. It's certainly, whoever serves  
16 on it or certainly attends its meetings will be welcome. The whole idea here is simply to  
17 create a group where all the interests on these kinds of issues are adequately  
18 represented at the table and, frankly, I suspect, I had nothing to do with the numbers  
19 that were identified as the size of the group, but really the issue is how big of a room do  
20 you need for the table? So that people can actually communicate. So I don't think there  
21 is any particular art to the numbers. The real question is the substance and utility of the  
22 conversation and I am sure that will be achieved with a most representative group that  
23 we can assemble. The more the merrier is fine with me. I think it's important that all  
24 interests be reflected in this group.

25  
26 Council President Leventhal,  
27 Mr. Subin.

28  
29 Councilmember Subin,  
30 I'm not asking for a big table, I'm not asking for a small table. I'm not asking for a  
31 medium-sized table. I'm not asking for person A, B, C, or D. I'm not asking for any mix  
32 of people. Rural farmers, urbanites, ex-urbanites, whatever. My request is simply that  
33 we ensure that our citizens are treated fairly when they apply and that there is the  
34 appearance of that. There was an appearance or a sense on the part of some that they  
35 were excluded because the list was made up at point A and they were told to submit  
36 after that and complied with that. It's simply that. Make the tables big or small, as  
37 inclusive or exclusive. I'm just asking for fairness to people when we ask them to apply  
38 to boards, committees, commissions, working groups or anything else. It's that simple.

39  
40 Council President Leventhal,  
41 Okay, we're in legislative session and we have the call of bills for final reading. We have  
42 Bill 5-06, Elected Officials Compensation. This was introduced by the Council President  
43 at the request of the committee to study compensation of the County Executive, County  
44 Council Sheriff and the State's Attorney. The Bill before us is consistent with the  
45 recommendations of the committee to study compensation of the County Executive,

12

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1 County Council Sheriff, and the State's Attorney. Kathleen, if you could give us a short  
2 description of the Bill. Very short, please.

3  
4 Kathleen Boucher,  
5 Pardon me. I'm standing in for Attorney Mike Faden. Probably best if Mr. Freedman give  
6 you a summary.

7  
8 Council President Leventhal,  
9 This is Bill 5-06 related to compensation of elected officials.

10  
11 Kathleen Boucher,  
12 Sorry, I'm total spacing out. I can absolutely summarize that Bill for you.

13  
14 Council President Leventhal,  
15 Glad to see I'm not the only one.

16  
17 Kathleen Boucher,  
18 All right. Thank you very much. Yes, this...

19  
20 Councilmember Perez,  
21 Can you peel Eric off the floor, though?

22  
23 [LAUGHTER]

24  
25 Councilmember Perez,  
26 just wondering if you were going to do that one.

27  
28 Councilmember Praisner,  
29 It's consumer protection, all right.

30  
31 Kathleen Boucher,  
32 Okay, this Bill was intended to implement the recommendations as of the Compensation  
33 Advisory Committee and it does so except with, in one respect and I want to bring that  
34 to the Council's attention. The Compensation Committee actually recommended for the  
35 County Executive that there be four increments, four fixed increments starting in  
36 December of this year and ending in December of '09 and then there after that there  
37 would be no cost of living increase each year. They felt strongly the figure out ought to  
38 be \$175,000 at the end.

39  
40 Council President Leventhal,  
41 For the County Executive.

42  
43 Kathleen Boucher,  
44 For the County Executive at the end with no COLA increments thereafter. In practicality,  
45 that would leave it up to the next Compensation Committee to make the decision as to



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1 how to adjust the County Executive's salary in the next term. So, in order to address  
2 that issue, if you agree with the Compensation Committee, we would need to delete  
3 lines, we would need to delete lines 35 through 41 on page, on circle 3. The other issue  
4 that was raised by Councilmember Praisner was she noted the current law in terms of  
5 the cost-of-living adjustments each year for the Councilmembers, Sheriff's and State's  
6 Attorney calls for adjusting the salaries based on a September to September change in  
7 the annual percentage increase in the CPI and Councilmember Praisner, I think you  
8 noted that that September-to-September measurement was inconsistent with other  
9 places in our code and practice where we use CPI adjustments and ask Council staff to  
10 review that. What I found and on circles 40 to 45, you have a list of different places,  
11 some of the places where the code uses the CPI to make annual adjustments. There  
12 are differences in the year-over-year dates that are used. I think people primarily they  
13 can be explained by the purpose for which the CPI adjustment is being used. For  
14 example, our charter calls for using the 12 months proceeding December 1. In terms of  
15 calculating the charter limit for property tax revenues. So, Councilmember Praisner, you  
16 may want to comment on this. But the recommendation the Council staff has is actually  
17 that we maintain that intent of the September-to-September date, but actually change  
18 the language so that we're more consistent with the languages in the charter. The  
19 charter refers to the 12 months preceding December 1 and Council staff would  
20 recommend we amend current law to refer to the 12 months preceding September 1,  
21 and that's works because...

22  
23 Councilmember Praisner,  
24 October 1.

25  
26 Kathleen Boucher,  
27 October 1, I'm sorry. And that works because under current law, each of the salaries are  
28 adjusted in the first Monday in December.

29  
30 Council President Leventhal,  
31 Vice President Praisner.

32  
33 Councilmember Praisner,  
34 Yes, this is an issue that obviously how you calculate CPI and when it's used is an issue  
35 that comes periodically before the MFP Committee, and that's why was curious trying to  
36 amen it so that we don't have to calculate a variety of them, but I'm fine with change  
37 from a technicality. I think the issue of maybe not using November 1 or whatever in the  
38 path might be more reasonable because of, might be less reasonable, because it's so  
39 close to the December 1 time period and would not allow proper notice or the input of  
40 information. So, I am okay with the new language. I do think that if we're going to adopt  
41 this legislation, we should adopt it exactly as the commission recommended it to us. We  
42 have differences between Council and County Executive salary now with one adjusted  
43 via CPI, and one being a flat salary, and I think that that should continue. I want to thank  
44 members of the committee that we appointed for bringing it to my attention. For in  
45 reason, the way the packet and the information from the commission was conveyed to



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1 us was not accurate. The commission did not recommend a CPI for the County  
2 Executive, so I would recommend that we follow the commission, Compensation  
3 Committee's recommendation on that and make the staff change within the legislation.

4  
5 Council President Leventhal,

6 Okay, thank you. So Ms. Praisner, are you moving the deletion of lines 35 through 41?

7  
8 Councilmember Praisner,

9 Yes.

10  
11 Council President Leventhal,  
12 On page circle 3?

13  
14 Councilmember Praisner,

15 Yes.

16  
17 Council President Leventhal,

18 Is there a second? I will Second it. The motion is made and seconded. And those in  
19 favor of the motion deleting the CPI adjustment for the County Executive whose salary  
20 would go to 175,000 in 2010 and then would stay at that level consistent with past  
21 practice.

22  
23 Councilmember Praisner,

24 Current practice.

25  
26 Council President Leventhal,

27 And with past practices, this is a cyclical process every four years this commission  
28 reappointed the commission assesses an appropriate salary for the County Executive  
29 and pegs it there and doesn't provide an automatic CPI increase until such time as in  
30 the future, a future committee meets again, and assesses an appropriate salary. This is  
31 exactly as the practice has been in the past. Those in favor of the motion will signify by  
32 raising their hands. Is there a question before we vote? I'm sorry, Mr. Perez had a  
33 question before we vote, you need to turn your light on.

34  
35 Councilmember Perez,

36 I apologize. I'm a little slow here. Why is the County Executive treated differently? What is  
37 the logic of that?

38  
39 Kathleen Boucher,

40 I can tell you the report itself literally refers to, and if you wanted to see the report on  
41 page 23, Circle 23. What it refers to is simply, the Committee states it doesn't believe  
42 the County Executive's salary should be subject to the vagaries of cost-of-living  
43 increases and that, of course, explains why they want fixed, they want fixed increments  
44 in '06, '07, '08, and '09. To Council staff, yet couldn't it doesn't explain necessarily why  
45 they wouldn't want to have cost-of-living adjustments there after if no action is taken in



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1 the future to adjust the County Executive salary. But, I mean current law pegs the  
2 County Executive salary to the CPI. It does. That's the language we're deleting.

3  
4 Councilmember Praisner,  
5 The modification did, not the increase.

6  
7 Kathleen Boucher,  
8 No, actually current law. That's what we're deleting. The Bill amended current law which  
9 included cost-of-living increases for the County Executive's salary beginning on  
10 December 4, 2006. The Bill amended that for the cost-of-living incomes on '010 after the  
11 salary reaches 175 and the amendment here is striking the current law and the  
12 amendment.

13  
14 Councilmember Perez,  
15 So barring action of a future commission and Council, the County Executive salary in  
16 '010 would remain the same.

17  
18 Kathleen Boucher,  
19 That's correct.

20  
21 Councilmember Perez,  
22 In '11, '12 and beyond.

23  
24 Kathleen Boucher,  
25 That's correct. I can tell you I had a conversation with the Chairman of the  
26 Compensation Committee just to make sure that I was understanding the issue, and he  
27 was just very adamant that, and his reasoning was Executives ought to have fixed  
28 salaries. That was his reasoning.

29  
30 Councilmember Perez,  
31 I'm just, I guess I'm, that's where I'm having trouble.

32  
33 Kathleen Boucher,  
34 Yeah.

35  
36 Councilmember Perez,  
37 We talk about... [INAUDIBLE] I am just, I have always been an advocate of the notion of  
38 indexing, whether it's the minimum wage or whether it's, I don't see a distinction  
39 between the minimum wage and the wage that the Chief Executive makes. That's why  
40 I'm having a little bit of difficulty. But this was the, what again was the recommendation  
41 of the Commission?

42  
43 Kathleen Boucher,  
44 The recommendation of the commission is to increase the County Executive's salary in  
45 four increments.



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1  
2 Councilmember Perez,  
3 Increments.

4  
5 Kathleen Boucher,  
6 Beginning in '06, and ending in '09 and then thereafter, that there be no cost of living  
7 increase and to do that, we need to repeal the current law that currently provides cost-  
8 of-living increases and a provision of the Bill that would have started the cost-of-living  
9 increase in '010 after the salary reached \$175,000.

10  
11 Steve Farber,  
12 Mr. President, if I may add one point I think this assumes that there will in fact four years  
13 from now, be another Compensation Commission. My recollection is in the '90s, there is  
14 at least one quandary in which a commission was not appointed and, therefore, the  
15 provisions of current law or current law calling for CPI increases for all elected officials  
16 remained in force. I think it's likely in four years that there will be a Compensation  
17 Commission, but if in four years the Council were to decide for some reason not to have  
18 a commission, Then I think it's worth thinking about what the implications of the  
19 suggested change would be in that event.

20  
21 Council President Leventhal,  
22 Okay, the motion before us would limit, would provide a CPI for the County Council, for  
23 the Sheriff, for the State's Attorney, but for the County Executive, there would not be the  
24 CPI adjustment. That would be the effect of the motion before us now.

25  
26 Kathleen Boucher,  
27 That's correct.

28  
29 Council President Leventhal,  
30 Mr. Knapp.

31  
32 Councilmember Knapp,  
33 And it would only, I mean, effectively it's going to be a moot point anyway. We can put it  
34 in and presumably it would never take effect, because we would have a commission in  
35 four years, which still gets you back to the same point. So effectively all your doing is a  
36 potential safety net in the event you don't have the commission meet in four years.

37  
38 Kathleen Boucher,  
39 That's correct.

40  
41 Councilmember Perez,  
42 Yeah, that's right, but...

43  
44 Council President Leventhal,  
45 Mr. Perez.



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41  
42  
43  
44  
45

Councilmember Perez,  
A vote for the motion would be a vote not to have that safety net.

Councilmember Knapp,  
Right.

Council President Leventhal,  
Okay, the motion is before the Council. Those in favor of the motion will signify by raising your hand. It is Mr. Andrews, Ms. Praisner and myself. Those opposed to the motion will signify by raising their hands. Mr. Knapp, Mr. Perez, are you voting, Mr. Silverman?

Councilmember Silverman,  
I'm abstaining.

Council President Leventhal,  
Abstaining? Mr. Subin and Ms. Floreen. Okay, so that is, long morning here. 5-3- 1.

[LAUGHTER]

Council President Leventhal,  
and the motion is defeat, 3-5-1 and the motion is defeated. Was that an abstention for Mr. Denis? Are you declaring your candidacy for County Executive? [LAUGHTER] so the motion is defeated 3-4-2 and now, we have the Bill before us and it requires a roll call vote.

Kathleen Boucher,  
May I ask Mr. President for clarification as to the Council's decision on the prior, substituting language for the 12 months prior to October 1.

Councilmember Praisner,  
Yes, I would do that. I would use a language consistent with the charter as far as how you phrase it. It doesn't...

Multiple Speakers,  
[INAUDIBLE]

Councilmember Praisner,  
Just uses the same language.

Kathleen Boucher,  
It's intended to clarify the current calculations.

Councilmember Praisner,



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1 You want me to move that?

2

3 Council President Leventhal,

4 Yeah, let's state it so we know what we're voting on.

5

6 Councilmember Praisner,

7 I will move that the term for September increased from the previous September or that  
8 kind of language, however the language is as far as calculation of CPI be changed to for  
9 the 12 months preceding October 1st.

10

11 Kathleen Boucher,

12 And if you'd like to refer to the Bill, the changes you can actually see on Council staff  
13 amendment, Circle 49 through 51.

14

15 Council President Leventhal,

16 I will second Ms. Praisner's motion. Ms. Floreen.

17

18 Councilmember Floreen,

19 I just wanted to clarify. It seems to me we would want to be consistent. At least my  
20 objective would be to be consistent. This is language that is different from what applies  
21 to everyone else, isn't it?

22

23 Kathleen Boucher,

24 What do you mean, applies to who, which category?

25

26 Councilmember Floreen,

27 I'm looking at circle 3, which is the legislation.

28

29 Kathleen Boucher,

30 Correct.

31

32 Councilmember Floreen,

33 And -- .

34

35 Councilmember Praisner,

36 It makes yet consistent.

37

38 Councilmember Floreen,

39 Does it?

40

41 Councilmember Praisner,

42 Yes.

43

44 Councilmember Floreen,

45 Well, I didn't.



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1  
2 Kathleen Boucher,  
3 Right...  
4  
5 Councilmember Floreen,  
6 What is the language that, is it on another circle, the language that you proposed is?  
7  
8 Kathleen Boucher,  
9 The language in current law and the bill, requires a CPI adjustment from September  
10 through September. That's somewhat confusing because right now, the CPI is only  
11 calculated for the Washington/Baltimore Metropolitan area on a bi-monthly basis, and  
12 September is one of them. So, what you'll see in Council's amendment circles 47  
13 through 51 is a simple, really technical amendment to substitute language receiving to  
14 the 12 months preceding October 1. And that language is consistent with the language  
15 in the charter which refers to the 12 months preceding December, again consistent with  
16 the current language the CPI is calculated right now.  
17  
18 Councilmember Floreen,  
19 Okay, you're proposing what we're working from is the staff amendment pages on circle  
20 48 through 51 then.  
21  
22 Kathleen Boucher,  
23 That's correct, you can see the language that will be substituted. I have highlighted the  
24 amendment, the places where the bill would be amended, it's lines 33 through 35 on  
25 circle 49.  
26  
27 Councilmember Floreen,  
28 Okay. I see it, I'm catching up.  
29  
30 Council President Leventhal,  
31 Okay we have the motion regarding the timing of the CPI calculation before us. Those in  
32 favor will signify by raising their hands. That is seven in favor and two abstentions, I  
33 believe. Those opposed.  
34  
35 Councilmember Silverman,  
36 Abstain.  
37  
38 Council President Leventhal,  
39 Are you abstaining or opposed?  
40  
41 Unidentified Speaker,  
42 [INAUDIBLE]  
43  
44 [LAUGHTER]  
45



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1 Council President Leventhal,  
2 Okay. All right. Howard for Howard. Okay. We now have before us Bill 5-06, roll call  
3 vote. The clerk will call the roll.

4  
5 Council Clerk,  
6 Mr. Denis.

7  
8 Councilmember Denis,  
9 No.

10  
11 Council Clerk,  
12 Ms. Floreen.

13  
14 Councilmember Floreen,  
15 Yes.

16  
17 Council Clerk,  
18 Mr. Subin.

19  
20 Councilmember Subin,  
21 Yes.

22  
23 Council Clerk,  
24 Mr. Silverman.

25  
26 Councilmember Silverman,  
27 Abstain.

28  
29 Council Clerk,  
30 Mr. Knapp.

31  
32 Councilmember Knapp,  
33 Yes.

34  
35 Council Clerk,  
36 Mr. Andrews.

37  
38 Councilmember Andrews,  
39 Yes.

40  
41 Council Clerk,  
42 Mr. Perez.

43  
44 Councilmember Perez,  
45 Yes.



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1  
2 Council Clerk,  
3 Ms. Praisner.

4  
5 Councilmember Praisner,  
6 Yes.

7  
8 Council Clerk,  
9 Mr. Leventhal.

10  
11 Council President Leventhal,  
12 Yes. The Bill is passed on a vote of 7-1-1. Okay, we now are on -- yes, Mr. Perez.

13  
14 Councilmember Perez,  
15 One, there were two votes in District Council session I mentioned privately that I, to  
16 record me in the affirmative. I just wanted to state that for the record if I could and I also  
17 do want to reiterate my thanks to the commission for their hard work.

18  
19 Council President Leventhal,  
20 Very good. We are now on Bill 3-06. Consumer protection revisions. This Bill has been  
21 considered by the Public Safety Committee which recommends its approval.

22  
23 Councilmember Praisner,  
24 Oh, the smile.

25  
26 Council President Leventhal,  
27 Chairman Andrews.

28  
29 Councilmember Andrews,  
30 Thank you. I just want to ask Mr. Freeman, you're not planning to read the phone books,  
31 right? Senators used to bring them to filibusters to literally read the phone book. I don't  
32 think you need to do that. This is a Bill to really clarify primarily what is the procedure  
33 under the Consumer Protection law. Last year, the Council passed a Bill to establish the  
34 Office of Consumer Protections, a stand alone agency. Our office and following up on  
35 35th year, really, of its enactment back in '71. And we're pleased to have a strong Office  
36 of Consumer Protection in Montgomery County that has literally helped thousands of  
37 people over the years and in response to many inquiries and does a very good job, I  
38 believe. This clarifies really what some of the procedures are in the office. It Creates a  
39 Process To Conduct Administrative Hearings Under the County Administrator's  
40 Procedure Act, for violations of Consumer Protect Law, it clarifies the office can issue a  
41 civil citation to seek legal action without first convening a conciliation conference when  
42 that is not really appropriate and there are some instances when it's not. It specifies  
43 what our deceptive trade practices that are commonly understood that way already. It  
44 repeals some invalid provisions listed on page two of the packet and it corrects some  
45 outdated or incorrect references. This was sponsored by the Council President at the



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1 request of the County Executive and Councilmember Perez who was the lead sponsor  
2 of the Bill last year that established the office and pleased to support this, the Public  
3 Safety Committee recommends its adoption. We had a work session on this with Mr.  
4 Friedman and his staff and there was no opposition to the Bill at the public hearing, and  
5 I think this will help the office to continue to be one of the best of its kind in the area and  
6 in the country. So, the Public Safety Committee recommends approval.

7  
8 Council President Leventhal,  
9 Mr. Perez.

10  
11 Councilmember Perez,  
12 Thank you, Mr. President, and thank you Mr. Chairman for your hard work on this. I  
13 want to thank the County Executive and his staff for their hard work in putting this  
14 together. This is a work in progress for roughly 18 months. It's been a long road and  
15 having separate office is one part of the challenge of making sure that we're as, in the  
16 best position possible to do the job of protecting consumers. Making sure the laws  
17 empower you to do the best you can was the next step in that process. We've  
18 completed that step and I am very excited to be part of that and I'm very bullish on the  
19 future of the Office of Consumer Protection. I want to thank you, Eric, for your  
20 leadership and vigilance in shepherding this process, and again I want to thank the  
21 County Executive, this is another good day for consumers here in Montgomery County  
22 as we continue the reforms that will enable consumers to receive the protections they  
23 so well need and deserve.

24  
25 Council President Leventhal,  
26 All right, thank you to all members, Mr. Andrews, did you have anything further you want  
27 to say?

28  
29 Councilmember Andrews,  
30 No.

31  
32 Council President Leventhal,  
33 Okay your light is still on.

34  
35 Councilmember Andrews,  
36 Oh, sorry.

37  
38 Council President Leventhal,  
39 Mr. Friedman, was there a comment you wanted to make before we vote?

40  
41 Eric Friedman,  
42 I just wanted to say Mr. President and Mr. Chairman, that we're very excited about...

43  
44 Councilmember Praisner,  
45 It's on.



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1  
2 Council President Leventhal,  
3 It's on, it's not lit, but it's on.

4  
5 Eric Friedman,  
6 We're very excited about embarking on the challenges of being a newly-created Office  
7 of Consumer Protection and just quickly to say that I had brought the most current  
8 version of the Verizon Yellow pages here to illustrate a point. If you go to the Consumer  
9 Education/Consumer Information section of this Yellow Pages, it lists the consumer  
10 affairs office and gives the phone number as (301) 217-7373. I just wanted to illustrate...

11  
12 Councilmember Praisner,  
13 Tell Patrick that's part of the public information needs.

14  
15 Eric Friedman,  
16 Our staff is anxious to do what we need to do. A lot of us, the staff members are in the  
17 audience today, and that's one of the first things that we're going to change to make  
18 sure that the correct phone number is in the Yellow Pages.

19  
20 Councilmember Perez,  
21 That would be a good start.

22  
23 Councilmember Andrews,  
24 Why don't you list it, what is it?

25  
26 Eric Friedman,  
27 Our correct number is (240) 777-3636, and we have a web page that's interactive, the  
28 complaint form is available, the complaint form's also been translated into Spanish. You  
29 can you look up merchant disclosure information to know how many complaints we  
30 have against different merchants on line and we have a long laundry list of I.T.  
31 improvements that we want to make to enhance our web page.

32  
33 Council President Leventhal,  
34 Okay, thank you very much. Did you want to saying something else Mr. Perez? Okay,  
35 before the Council is Bill 3-06. The clerk will call the roll.

36  
37 Council Clerk,  
38 Mr. Denis.

39  
40 Councilmember Denis,  
41 Yes.

42  
43 Council Clerk,  
44 Ms. Floreen.

45



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1 Councilmember Floreen,  
2 Yes.

3  
4 Council Clerk,  
5 Mr. Subin.

6  
7 Councilmember Subin,  
8 Yes.

9  
10 Council Clerk,  
11 Mr. Silverman.

12  
13 Councilmember Silverman,  
14 Yes.

15  
16 Council Clerk,  
17 Mr. Knapp.

18  
19 Councilmember Knapp,  
20 Yes.

21  
22 Council Clerk,  
23 Mr. Andrews.

24  
25 Councilmember Andrews,  
26 Yes.

27  
28 Council Clerk,  
29 Mr. Perez.

30  
31 Councilmember Perez,  
32 Yes.

33  
34 Council Clerk,  
35 Ms. Praisner.

36  
37 Councilmember Praisner,  
38 Yes.

39  
40 Council Clerk,  
41 Mr. Leventhal.

42  
43 Council President Leventhal,  
44 Yes. The Bill passes unanimously. Okay, our next item is a briefing from, I'm not sure  
45 who is giving the briefing. Marlene, who is giving the briefing? And I don't think we had



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1 an item in the packet describing this briefing. Before, let me just, I'm going to have a  
2 point of personal privilege here before we get to the briefing. I want to express how  
3 strongly I appreciate the service of Derick Berlage as Chairman of the Planning Board  
4 for the last four years. He has announced this morning that he will not be applying for  
5 reappointment to the Planning Board. He's an outstanding public servant and the  
6 residents of Montgomery County owe him thanks for his tireless work, first as a member  
7 of the County Council for 12 years and since 2002 as Chair of the Planning Board.  
8 Derick Berlage cares deeply about this County and its future, and I know he will  
9 continue to contribute to the public discourse. We wish him well. He has a bright future.  
10 I want to reiterate the County Council's deadline for applications for Planning Board  
11 Chair is May 31st. Anyone who is interested is strongly encouraged to apply.  
12 Personally, I will make no commitment to any candidate of Planning Board Chairman  
13 until the close of application deadline to ensure that at least by me, all candidates are  
14 fully and fairly considered. This process is wide open and the decision will be made in  
15 public. Vice President Praisner.

16  
17 Councilmember Praisner,  
18 Thank you, Mr. President. I appreciate the opportunity for a point of personal privilege  
19 as well. Mr. Berlage called me just before I came in to session to inform me of his plans  
20 to announce today to the Planning Board's family and the Commission family that he  
21 was withdrawing his name from consideration for appointment to a second term on the  
22 Planning Board. I have known Mr. Berlage for a long time. I have known him here as a  
23 colleague, and across the table in his work as Chair of the Planning Board. I respect  
24 Derick Berlage. I will continue to respect Derick Berlage and I appreciate the difficult  
25 decision he has just made. I know that he has and in the matter of making this decision,  
26 that he had the best interest of Montgomery County and the Commission in mind. He is  
27 an outstanding public servant and an outstanding member of this community. I wish him  
28 well and I hope that our paths will continue to cross. I know that in the weeks ahead as  
29 he continues to function as Planning Board Chair until a successor is appointed, that he  
30 will continue to focus on issue and not politics.

31  
32 Council President Leventhal,  
33 Mr. Perez.

34  
35 Councilmember Perez,  
36 Thank you, Mr. President. I was late this morning because I was talking at some length  
37 with Derick, and so I apologize for being late. Although, I'm frankly don't apologize for  
38 being late, I'm happy that I was doing that. He has been a very good friend. And he has  
39 been a real advocate of smart growth. We tend to focus on things that went wrong and  
40 we ignore the many things that went right. I share his vision with smarting growth, I  
41 share his vision that smart growth involves the courage to say yes and the courage to  
42 say no. And he has helped give me the courage to say yes often in the face of some  
43 opposition. And the courage to say no often in the face of significant opposition. He has  
44 always been an honest broker for me when here he's given me his opinion, he's always  
45 given me the counterargument so I can weigh the pros and cons of each process, and I



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1 hope that as the dust settles that people will reflect on the fact that we've passed a  
2 number of Master Plans that were all very important. Some exceedingly  
3 transformational. I don't believe there were ever more than two votes against the Master  
4 Plans, somewhere unanimous and they reflect a shared vision, a vision that emanated  
5 from the leadership of the Planning Board. I applaud the Council President who has  
6 been relentless in his efforts to insure the public that we are having an arm's-length  
7 process. A process where no prejudgments have been made, no wiring has been taking  
8 place. And that everybody who believes they're qualified should apply. I hope that we  
9 can continue that because, you know, frankly there continues to be a concern, and I  
10 suspect even with Derick's departure, there might be a concern in some corners that the  
11 position might be wired. As the Council President has correctly pointed out, he's made  
12 no decision. I've certainly made no decision and I hope that we can send a clear  
13 message, a unified message that everybody should apply if you think you're qualified  
14 and that no prejudgments have been made. Because unless and until it's clear that  
15 we're going to have a transparent process, we will have the same challenge that we  
16 have often had in the past where many qualified candidates do not apply. That would be  
17 unfortunate. And as we turn this chapter, I hope we can recognize that the ball is now in  
18 our court. In the Council's court. Derick has done a number of remarkable things on the  
19 Council and a number of remarkable things as Planning Board Chair, and now the ball  
20 is truly in our court to make sure the process is fair, transparent, and open and that  
21 nobody receives any guarantees other than it will be a fair and open process. Thank  
22 you.

23  
24 Council President Leventhal,  
25 Ms. Floreen.

26  
27 Councilmember Floreen,  
28 Thank you. I just learned about this from the press release we were handed earlier, and  
29 I want to convey my personal appreciation to Derick, what he's done today, I think,  
30 shows tremendous grace under pressure and real leadership and commitment to the  
31 future of the Commission in the long term. I absolutely agree that this will enable us to  
32 have an open process that is fully understood by all the players, and allow the  
33 commission to move forward without the baggage of the first of the past year, which I  
34 think is in the best interest of everyone involved. So I wanted to thank Mr. Berlage, for  
35 his tremendous public service over the years and wish him the best, thank you.

36  
37 Council President Leventhal,  
38 Okay, thank you very much to all Councilmembers and deep thanks to Chairman  
39 Berlage, and we, as other Councilmembers says they look forward to working with him  
40 the next few months and well into his future after his Chairmanship. And so now we  
41 have the briefing, and who is going to give us this briefing on Reality Check Plus.

42  
43 Marlene Michaelson,  
44 A staff from the Reality Check Plus exercise, I'll invite them up to introduce themselves.

45



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1 Council President Leventhal,  
2 There was, unless I missed it, I didn't see anything in the packet from Reality Check  
3 Plus.

4  
5 Marlene Michaelson,  
6 It's arriving at your desk now, we apologize.

7  
8 Council President Leventhal,  
9 Okay, okay, we've, I had stated we would have 15 minutes for this item. I see that the  
10 agenda puts 20, I had been very clear, that I thought we could devote 15 minutes to  
11 this.

12  
13 Marlene Michaelson,  
14 We'll be very brief.

15  
16 Jason Sartor,  
17 We thought it was 10, Mr. Chairman.

18  
19 Council President Leventhal,  
20 10 would be better.

21  
22 Jason Sartor,  
23 Mr. President and County Councilmembers, my name is Jason Sartor, I am a Silver  
24 Spring resident and I'm with Integrated Planning Consultants, and I've been serving as  
25 the Project Manager for the state-wide effort of Reality Check Plus for the past year or  
26 so With me today is Dru Schmidt-Perkins, Dru is the Executive Director of 1,000 Friends  
27 in Maryland and is one of the three co-chairs of our statewide effort. I also have, also  
28 joining us is John Frece and Laura Cole. John is the Associate Director of the National  
29 Center for Smart Growth Research and Education at the University of Maryland and  
30 Laura is the Executive Director of ULI Washington, of the Urban Land Institute. Laura  
31 actually served as the Project Manager for the Washington Reality Check Exercise that  
32 took place in February of 2005, which I think several of you participated in. So, Laura  
33 and John and I are here primarily to help answer any questions you might have. But at  
34 this point, I'll turn it over to Dru to tell you about Reality Check Plus.

35  
36 Dru Schmidt-Perkins,  
37 Thank you very much for this opportunity. We will be brief. We know you have had a  
38 long day and a long schedule. As Jason said, many of you all participated in something  
39 called Reality Check last February 2005. That looked at how growth and development  
40 would be occurring and options to focus that development in the greater D.C.  
41 Washington area. A number of us were very enamored with that process, and thought  
42 that we really needed to do this for the whole state of Maryland. To come up with one  
43 vision for the state to tackle whether unprecedented level of development coming our  
44 way in the next 30 years. About 1.5 new Marylanders that need somewhere to live,  
45 work, play, and some ways to get around. So we gathered together, I think it was last



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1 June, in 10 short months have formed statewide leadership team for local leadership  
2 teams to do Reality Check Plus throughout the state of Maryland coming soon. You all  
3 should have gotten an invitation to the June 9th event for Reality Check Plus and I  
4 encourage you all to accept the invitation. There are only 300 slots in the central  
5 Maryland region and the public sector is very, very critical to us, and to make sure that  
6 we have that works effectively. At each event, we're going to have something similar to  
7 what happened in the Washington area. 1/3 Public Sector; 1/3 Business Sector; 1/3 City  
8 Sector, sitting around tables, groups, [INAUDIBLE] tables of 10 to play with Legos  
9 representing housing and jobs to determine where the 1.5 million people should go in  
10 Maryland. Now, we're adding one other element to this and that's the very important  
11 issue of affordable housing. So, we'll have an additional Lego for people to place that  
12 will help decide where affordable housing should be handled. Once all the Legos have  
13 been placed to determine where the growth and development should happen, then  
14 we're asking them, okay, you have created this vision, but how do we achieve it? So  
15 having these great minds around the table of diverse types from all over the region, we  
16 want the best ideas for how to actually implement this, and that's going to be very  
17 important. There are four events, one in Western Maryland, one on the lower, Southern  
18 Maryland, one on the Eastern Shore and Central Maryland. Over the summer, we're  
19 going to be knitting the four results together and the results from that into one document  
20 tentatively called "The Blueprint For Maryland's Future." And that will help state what  
21 division is for Maryland and what we should look like in 2030, and what are the tools  
22 we're going to need to have in place to achieve those. To give a good blueprint for all of  
23 us in the sectors, whether you in the public sector or us in the civic center, or those in  
24 the business sector. The idea of diversity, what I always refer to as our unholy alliance,  
25 will help us then continue to work together to achieve these changes in policies and  
26 these improvements, rather than what we're having to spend so much time doing, which  
27 is fighting the little small battles, rather than moving the bigger agendas forward. That  
28 will be released in September next year after the primary and then we're going to kick  
29 off a very, we know how many people are running. We want the numbers a little bit  
30 smaller. We will then be kicking off a very active...

31  
32 [LAUGHTER]

33  
34 Dru Schmidt-Perkins,  
35 ...and may the best people win. We'll be kicking off a very aggressive education effort  
36 that we focus on those running for office on the issues here in this implementation plan  
37 as well as technical assistance and sort of the nitty-gritty kinds of ideas on what will  
38 actually work and technical aspects. Because of our tri-chair situation we're uniquely  
39 able to do that. We have the research components at the National Center For Smart  
40 Growth. We have the Urban Land Institute and their long history of providing excellent  
41 education and we have the advocacy component, a Thousand Friends provides, and so  
42 we'll be using the strength starting from the top of our tri-chairs and building from there  
43 on out from there keeping everyone involved to really bring forward new improvements,  
44 to growth and development issues in Maryland. It happens to be in 2007, so, of course,  
45 the 10th anniversary of the Smart Growth Law. This is a great time to move things



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1 forward, yet again, in a way that has everybody at the table helping to come up with the  
2 best, the brightest ways that we can working it for real solutions. And with that, I would  
3 like to turn it over for any questions. Thank you.

4  
5 Council President Leventhal,  
6 Mr. Knapp.

7  
8 Councilmember Knapp,  
9 Thank you, Mr. President. I appreciate the presentation this morning and as one of the  
10 participants in the Washington Reality Check Exercise and the Potomac Conference the  
11 last month, I think this is clearly the kind of conversation we need to be having. The  
12 question is how do those two efforts overlap or interrelate or do they?

13  
14 Dru Schmidt-Perkins,  
15 They do. First we learned a lot from the Reality Check in Washington and the staff and  
16 Laura have been wonderful in helping us not have to start from ground zero but really  
17 moving forward and able to do things very easily and then we, I also participated in that  
18 and were able to get a good sense on how the game works and what are some of the  
19 outcomes. And so we've already been able to look and start working towards those and  
20 this, we see, as building on that very much. Not in competition, not in addition, but very  
21 much a building, and Laura, you have been very involved in both.

22  
23 Councilmember Knapp,  
24 I guess my question is, and Ms. Floreen can speak this more because I think she's in  
25 the current group trying to take this to the next level is there, I see them as potentially  
26 complimentary efforts. But how do they dove tail? If the D.C. Regional piece moves  
27 forward, you will have a regional vision from that. And then you will have a statewide  
28 vision from this.

29  
30 Dru Schmidt-Perkins,  
31 Right.

32  
33 Councilmember Knapp,  
34 How do those visions end up dovetailing where they're supposed to or not.

35  
36 Dru Schmidt-Perkins,  
37 We do suspect they'll be very complementary. Not very, particularly divergent but Laura  
38 can speak to that.

39  
40 Laura Cole,  
41 Part of that is leadership on both sides of the equation. I think coming out of reality  
42 check, the idea was we were going to pursue multiple strategies and our hope was the  
43 Potomac conference would focus on this issue. It did and now there is a group and  
44 Councilmember Floreen is on that.



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1 Councilmember Knapp,  
2 Right.

3  
4 Laura Cole,  
5 To help move the ball particularly with the business community and get them engaged.  
6 My sense is that will continue to push the "Envision Washington" which is a regal  
7 visioning exercise, you know, multimillion dollar, we're going to get deeper into the  
8 grassroots. I think the interesting opportunity we have with the statewide initiative is that  
9 as ULI worked with Florida, California and some of the other states that have done  
10 statewide regional visioning, you actually have the ability to do policy changes at the  
11 state level, which we're going to be struggling with in the region implementation plan.  
12 So, the quick answer is that there is leadership working on the Reality Check Plus as  
13 there is Envision Washington.

14  
15 Councilmember Knapp,  
16 Okay. Well, I guess -- pushed a button.

17  
18 [LAUGHTER]

19  
20 Laura Cole,  
21 I'm usually told I'm loud.

22  
23 Councilmember Knapp,  
24 My, again, conceptually, I think it's a good idea. I would, I guess I'm very mindful and  
25 Ms. Praisner and others can speak to this better, Mr. Denis and I. We have clearly  
26 within the state and our region, very difficult perceptions to overcome, as to who works  
27 with whom, what do we think is a region and feel within a state. My concern would be if  
28 we don't have structural pieces in place, and I don't know if that's people participating in  
29 both things or somehow there is a similar mandate. That all we do is further exacerbate  
30 what we're doing is potentially a good visioning process, we only take kind of those  
31 current perceptions and make them a whole bunch bigger and a whole bunch worse.  
32 And we pass up the opportunities for synergy. I think we need to sit down and have a  
33 clear, concise discussion about how we do that and what those steps will be and what  
34 the concrete steps will be. Not get too far ahead on this one relative to the other one.  
35 Make sure we're working them closely and even in doing that, the likelihood for success  
36 in getting those two to come together as they should and it's going to be pretty darn  
37 tough. So, but I mean, without that, I know we won't get there. I don't know what the  
38 steps are. I think at the front end of this, we need to put it concretely about how you get  
39 there and make the two pieces be very much in sync with each other.

40  
41 Dru Schmidt-Perkins,  
42 We would like to pick your brains more where you see the opportunities can be.

43  
44 Councilmember Knapp,  
45 Okay.



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1  
2 Dru Schmidt-Perkins,  
3 And other stumbling blocks that you see. Because we have been very cognizant of that  
4 from the very beginning. It came up at the first meeting and we want to make sure we're  
5 not overlooking anything so we really would appreciate your thoughts on that and we  
6 thank you.

7  
8 Councilmember Knapp,  
9 Okay. I'm happy to follow up at any time.

10  
11 Dru Schmidt-Perkins,  
12 Right, thank you Mr. Knapp.

13  
14 Council President Leventhal,  
15 Mr. Denis.

16  
17 Councilmember Denis,  
18 Thank you for your great work. I just want to especially welcome my own old friend John  
19 Frece to County Council. This mean the first time you've [INAUDIBLE]

20  
21 [LAUGHTER]

22  
23 Councilmember Denis,  
24 John is a dear friend of longstanding. I don't say old friend anymore and a former, just  
25 great reporter with the "Baltimore Sun" and the "Associated Press" and did fantastic  
26 work with Governor Glendenning and Smart Growth and had an occasion to chat in this  
27 capacity working for Governor Glendenning on a few matters of interest in Montgomery  
28 County. It's good to see you back, John. You're involved in a great project there.

29  
30 John Frece,  
31 Thank you very much, I want to say, Senator...

32  
33 [LAUGHTER]

34  
35 Councilmember Floreen,  
36 [INAUDIBLE]

37  
38 Council President Leventhal,  
39 He's running for Howard County Executive, did you hear that?

40  
41 Councilmember Praisner,  
42 Jim Robbe hasn't left yet.

43  
44 Council President Leventhal,  
45 Ms. Floreen.



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1  
2 Councilmember Floreen,  
3 Thank you.

4  
5 Councilmember Denis,  
6 One other thing before I -- John and I both survived eruptions of Mount [Schaefer].

7  
8 John Frece,  
9 A lot of scars.

10  
11 Councilmember Denis,  
12 Yeah, right. Sorry.

13  
14 Multiple Speakers,  
15 [INAUDIBLE]

16  
17 Councilmember Floreen,  
18 Thank you, I wanted to comment on when I heard about the Envision Washington effort,  
19 when we heard about it down at the Council of Governments. I was very concerned,  
20 and I think Ms. Praisner -- I won't speak for her, but we as elected folks who have been  
21 engaged in planning from one perspective for another for a number of years are very  
22 concerned about the number of plans on the shelf after a lot of public hoo-ha and I am  
23 now a member of the Envision Washington effort because I want to go and tell them  
24 that. And I attended their first meeting and to a person, everyone who is in the room,  
25 who is an elected person, said that. We do not need more than plans that say the same  
26 thing. And, frankly, our problem is not with the business community. The challenge is  
27 getting other folks into the room and helping them appreciate the big picture. That's  
28 always a challenge and frankly it's not going to go away because it's fine to have plans,  
29 but we're the ones who have to make decisions based on the details of the plans. Which  
30 you -- which we know and frankly the Planning Board knows more than anyone, how  
31 difficult it is to address some of the very site-specific issues of any effort. So I wanted to  
32 caution you about grand efforts that are not completely inclusive and that where you  
33 expect to reinvent the wheel. Because there are a number of groups underway. There's  
34 the Maryland Citizen Planners Association that exists. They need support, I think. They  
35 used to. I was President of that years ago. And there are -- the people on your list are  
36 the usual suspects and that is very troubling to me. You need churches, you need the  
37 community, and not just the building folks, but the regular folks. You need folks who are  
38 not usually at the table. And those people are busy. That is your challenge, that's our  
39 challenge. So I would urge you to take that into account as you move forward. We don't  
40 need to go put blocks on a table again. That was a nice effort. But the real issue, I think,  
41 is communication and information. Which is rarely available to folks who get engaged in  
42 development issues and land-use issues at the end of often a long process. So, I ask  
43 you to take that into account as you move forward. We don't need another plan. We  
44 have plans. But if we can help regular folks appreciate some of the facts of life, that's  
45 useful and that's productive. But -- and also, there are just a number of regional efforts

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1 underway. That exists currently and we can probably do a better job on some of those.  
2 But look, you're looking at a region that can't agree on how to fund Metro. Gosh! That's  
3 kind of basic, wouldn't you think? And these are people meeting for years in the same  
4 room and they still can't do that. And we shall see how that goes. But we need to  
5 recognize the reality that elected people place and that planning officials face and try to  
6 address that. I don't think anyone knows the answer at this stage of the game. But what  
7 I do know is we don't need another planning document to tell us what we already know.  
8 I wish you well and I know I am sure that is not your intent, but I am concerned that  
9 when the dust settles there will be very little that is helpful for decision-making and for  
10 community participation in all of this. And I urge you to attend any committee meeting  
11 any of us has to management to observe the details of that. Or the details what have  
12 goes on in our Park and Planning commission or frankly what goes on at the Council of  
13 Governments, or in any other municipal chamber where there is a growth argument  
14 going on. They're all the same and they're all very legitimate. That's the challenge and I  
15 urge you to take that in, and I urge you to -- you need different people on this list. These  
16 people are on every list. We need some of the other folks in the room.

17  
18 John Frece,

19 If I may quickly respond. A couple of points, one is I think we all believe the fundamental  
20 goal of this effort is to raise awareness in the public at large about the level of growth  
21 that is coming to the state and the fact that what happens in one jurisdiction actually  
22 effects the neighboring jurisdiction. I think if we achieve that, that will be a step forward  
23 and it will give you some of the support. I know Councilman Perez was saying earlier  
24 the difficulty of saying yes and no in these tough decisions you have to make. If the  
25 public understands the pressure you're facing, it might give you more support to make  
26 the tough decisions. The second point I would make, I understand what you're saying  
27 about the list that is before you But that list is a group that is trying to invite 400, 4 450  
28 people to get down to the 300, and we hope that that invitation list represents the kind of  
29 everyday person you talking about.

30  
31 Councilmember Floreen,

32 I hope it does. I wish you well, but please, let's think differently about how we proceed.

33  
34 Dru Schmidt-Perkins,

35 We would like the opportunity to keep picking your brains on this. This is an ongoing  
36 process. We by no means think we have all the answers but really who are the right  
37 people? Who else do we need to reach out to as we go forward? It's a multiyear effort  
38 and we take that seriously and we have been working very, very hard to make sure we  
39 reach the equity groups and all the other non-usual suspects. The usual suspects are  
40 easy to round up and get on the list. We have worked very, very hard to have people  
41 you that won't recognize at your tables. We hope.

42  
43 Councilmember Floreen,  
44 I think that's very important.

45



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1 Dru Schmidt-Perkins,  
2 Thank you, I appreciate that.

3  
4 Council President Leventhal,  
5 Clearly, we need to pass legislation to make it's mandatory condition that if you're going  
6 to reside in the state of Maryland you must participate in a visioning exercise.

7  
8 Dru Schmidt-Perkins,  
9 There you go! Several times.

10  
11 Council President Leventhal,  
12 Ms. Praisner.

13  
14 Councilmember Praisner,  
15 I think it's a question of how many visioning exercises you're going participate in or  
16 receive invitations to. I sit on the COG Planning Committee and have been involved with  
17 our smart growth, our activity center discussions, wasn't able to attend but sent staff to  
18 the Reality Check in Washington and I guess I'm even more dubious than Ms. Floreen  
19 about the need for this even more. Or the energy that is going to be focused on this  
20 over multiyears with more visioning associated with it. And I can tell you from the last  
21 COG Planning Committee meeting that I attended with elected officials. I don't know  
22 which ones were able then to go to the Board of Directors meeting or the follow-up  
23 meetings, but there is significant skepticism about more planning exercises. And sitting  
24 on the Chesapeake Bay Local Government Advisory Committee, Penny Gross will be  
25 testifying on Capitol Hill on Friday, enough with planning, enough with study, let's stop  
26 this. I take exception to the statement in your invitations that the Reality Check  
27 Initiatives in Los Angeles and Washington, D.C. were exciting and effective. They may  
28 have been exciting. I don't believe that were effective. They may have been a good  
29 activity for the people who were there. I don't think the outcome from them are any  
30 different from the study nauseum that we seem to be about in these area and this issue.  
31 I really think -- and it's a function of who is at the table when and what they're being  
32 asked to do. I don't see the Maryland Association of Counties or the Maryland Municipal  
33 League on this list.

34  
35 Dru Schmidt-Perkins,  
36 They're both been participating.

37  
38 Councilmember Praisner,  
39 I know they're participating, but it you know what happened in Annapolis this past  
40 session...

41  
42 Dru Schmidt-Perkins,  
43 Oh, very well.

44  
45 Councilmember Praisner,



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1 ...it's not -- and I do as well -- it is not a happy camp right now.

2

3 Dru Schmidt-Perkins,  
4 Right.

5

6 Councilmember Praisner,

7 And having worked, as Melissa and I have, on trying to bring the Baltimore/Washington  
8 Corridor of I-95 together as elected officials, working with [Guy Gazon] and Tom  
9 [Durnoga] and others, I think you need to think smaller to be more effective and not  
10 think about the state as a whole. And start looking at regions and only at regions and  
11 bringing the newly-elected officials because you start with the new election after the  
12 election. Not before. When they have more, some time in that transition, together with  
13 community leaders and their planners to talk about the status of planning and land-use  
14 decisions and then talk about what might need to be done including funding for  
15 transportation and including looking at environmental issues. I really don't think that  
16 starting big is the way to get this done, and I am telling you that the pushback from  
17 elected officials who are part of the Planning Committee is growing.

18

19 Dru Schmidt-Perkins,  
20 Okay.

21

22 Councilmember Praisner,

23 That no more think sessions and no more moving Legos around. We really don't need  
24 that. So, I would urge you to look more practically and more narrowly in the process.

25

26 Council President Leventhal,  
27 Mr. Andrews.

28

29 Councilmember Andrews,  
30 I think there is still cold water left.

31

32 [LAUGHTER]

33

34 Multiple Speakers,  
35 [INAUDIBLE]

36

37 Councilmember Andrews,  
38 It's a reality check.

39

40 [LAUGHTER]

41

42 Councilmember Praisner,  
43 It's reality.

44

45 Councilmember Andrews,



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1 Well, well...

2

3 Dru Schmidt-Perkins,  
4 That's why we have come here.

5

6 Councilmember Andrews,

7 I mean the assumption behind it all is there will be a large increase in population and  
8 that's inevitable. And I do question -- at what point do you foresee a leveling off of the  
9 population, a stable state population, as is the case in many places where can you still  
10 have a thriving economy and so on. Is that really something that is out of the question?  
11 And should we base our planning on the assumption that there will be millions more  
12 people in the coming decades in this region or not? It does have somewhat of a self-  
13 fulfilling prophecy. If you assume that and build for it, no doubt they will come. What if  
14 you don't assume that?

15

16 Dru Schmidt-Perkins,

17 We actually struggled with this hours and hours spent on just this issue. In the end, we  
18 decided we had to do was go with the predicted numbers and we're asking the people  
19 around the table to sea what about these numbers? Are they sustainable? Are they the  
20 right numbers? Are they too high? Too low? And what should we do about them and  
21 what are the issues behind them? What are the transportation costs to meet this? What  
22 is the drinking water implications? What are the environmental implications? What are  
23 the social implications? Because we agree that this is not something we can either just  
24 accept blindly, nor are these numbers always right. We had "BRAC" that just blew a  
25 hole in the projections numbers. So we understand that and that's one of the reasons  
26 that, at the table, the people are being asked their opinion of that so we can begin to get  
27 a sense of where we need to go on those and begin to answer what is a very, very  
28 difficult question.

29

30 Councilmember Andrews,  
31 What is sustainable.

32

33 Dru Schmidt-Perkins,  
34 Yes.

35

36 Councilmember Andrews,

37 And I appreciate you're asking the question. You really have to get what the  
38 assumptions are. Because the -- what you're postulating follows from what you're you  
39 assumptions are. That's the big assumption.

40

41 Dru Schmidt-Perkins,  
42 Yeah.

43

44 Councilmember Andrews,  
45 Okay. Thanks.



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1  
2 Dru Schmidt-Perkins,  
3 Thank you.

4  
5 Council President Leventhal,  
6 Mr. Perez, share your vision with us.

7  
8 [LAUGHTER]

9  
10 Councilmember Perez,  
11 My vision is that I'm hungry, Mr. Leventhal. And we're all hungry. I may be the last person  
12 separating us from satisfying that hunger. And the mind can only absorb as much as the  
13 seat of the pants can endure. I recognize -- that is my vision. I went to the D.C. thing  
14 and I may be an outlier, but I actually did learn something. And what I did learn was that  
15 there is remarkable capacity along a number of Metro stations. I live at the Prince  
16 George's/Montgomery line. I go to the Prince George's Plaza stop, I look around there, I  
17 see remarkable capacity for development and smart growth. We still go to church in the  
18 District and we spend a lot of time there. Frankly what I would like to see is what is the  
19 follow-up from that where we identified, you know, concrete opportunities in the here  
20 and now. And while I certainly have an interest in the State of Maryland, I have been  
21 spending a lot of time around the State of Maryland for some reason, but I would be  
22 very interested...

23  
24 Councilmember Silverman,  
25 He has his own vision.

26  
27 Councilmember Perez,  
28 It is. It is. I didn't think that was your question, though, Mr. Leventhal.

29  
30 Multiple Speakers,  
31 Thank you.

32  
33 [LAUGHTER]

34  
35 Councilmember Perez,  
36 I am not asking for an answer today, but I would be very interested to learn more about  
37 what was the follow-up from what I think was fairly significant consensus that there are  
38 opportunity points right in our own backyard here in the National Capitol Region along a  
39 number of Metro Stations. So...

40  
41 Dru Schmidt-Perkins,  
42 If I may briefly respond. There has been a number of different things I'm aware of. One  
43 is the Potomac meeting resulting in the certain -- but more importantly almost than that  
44 has been where the number of the participants at the meeting what they have done.  
45 Groups have taken that vision and what came out of it and gone to different places and



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1 said, for example, in Prince George's County, look at this opportunity and have gone  
2 group by group by group educating about what came out of Reality Check in  
3 Washington, what are opportunities, and sort of brought a whole lot of other people into  
4 understanding the capacity just at the Metro stops. And are moving that agenda through  
5 the other, very important, very local processes of education. And that has been going on  
6 group-by-group, individual-by-individual to quite a large extent that I am aware of. That's  
7 what gives me hope it's not just another plan. That's why we called ourselves Reality  
8 Check "Plus," heavy on the implementation and moving forward, and not just on the  
9 Lego games. We had to do the Lego games in order to move to the next step.

10  
11 Councilmember Perez,  
12 To get people there you told them there were Legos.

13  
14 Dru Schmidt-Perkins,  
15 Yeah, the Legos...

16  
17 Councilmember Perez,  
18 Come on, I would have shown up. I mean, Ed McMahon, I love Ed McMahon, I love  
19 Johnny Carson, for that matter, but, you know, it's not enough.

20  
21 Dru Schmidt-Perkins,  
22 We sympathize with that and appreciate your ideas and how we can move forward  
23 because we do not want to plan on the shelf. We want real changes, we do want to  
24 encourage regionalism. All these thing you're talking about. We don't have the perfect  
25 tool here but we want to keep talking with you all and getting your ideas as we move  
26 forward is going to be very important to us.

27  
28 Laura Cole,  
29 If I may take one minute because I think Montgomery County has actually been the  
30 most exemplary in terms of follow-up to Reality Check. And we've been working with  
31 Melissa here pretty closely. We did a Technical Systems panel looking at maturing  
32 shopping centers. I know you're looking at how to redevelop them so you don't have  
33 to...

34  
35 Unidentified Speaker,  
36 [INAUDIBLE]

37  
38 Laura Cole,  
39 Okay, but it's a step. I think what you were saying is let's look at alternatives and some  
40 of the counties unfortunately are not at that point where they're looking at alternative  
41 scenarios just yet. But Melissa and her group, I think, have come up with a pretty  
42 interesting -- a new planning framework, they're working with the communities to bring  
43 to the community at the local level. And since Reality Check we have done a lot of work  
44 in Prince George's County and developers who said they would never go there are not  
45 only looking but they're investing there. The Metro Stations and the corridors. I think if



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1 that's not a positive step in terms of investment opportunities going to the eastern side, I  
2 am not sure what is.

3  
4 Council President Leventhal,  
5 Okay.

6  
7 Councilmember Perez,  
8 Thank you for your time.

9  
10 Council President Leventhal,  
11 Thank you very much for your good work and for the briefing.

12  
13 Dru Schmidt-Perkins,  
14 Thank you, Mr. Chairman. We appreciated the time.

15  
16 Council President Leventhal,  
17 Glad you could come. We have a public hearing at 1:30 p.m. It will begin at 1:30 p.m.  
18 Committees meet at 2:00 p.m. And there is a public hearing tonight downstairs on the  
19 third floor...7:30 p.m.

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**TRANSCRIPT  
MAY 2, 2006**

**MONTGOMERY COUNTY COUNCIL**

George Leventhal, President  
Phil Andrews  
Nancy Floreen  
Thomas Perez  
Michael Subin

Marilyn J. Praisner, Vice President  
Howard Denis  
Michael Knapp  
Steven A. Silverman



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1 Council President Leventhal,  
2 Good afternoon, ladies and gentlemen, this is a public hearing on Zoning Text  
3 Amendment 06-09, Corrective Map Amendment, Split-Zone Property, which would  
4 amend the ordinance for the purpose of providing a process for reclassification of a  
5 split-zone property to a single zone classification. And generally amending provisions  
6 related to a corrective map amendment. Anyone who wants to submit additional  
7 material for the Council's consideration should do so before the close of business on  
8 May 16. The PHED committee is tentatively scheduled to take this up on June 21st at  
9 8:30 a.m. They start early at the PHED committee! Please call 240-777-7910 to confirm.  
10 We have one witness, Mr. Steve Orens. Steve, come on up, press the button in front of  
11 your microphone and proceed.

12  
13 Steve Orens,

14 Good afternoon, President Leventhal, Mr. Denis, and everybody who is stuck in the  
15 elevators. I appreciate this opportunity to appear before the Council today in support of  
16 the enactment of Zoning Text Amendment 06-09. I first testified regarding the need for  
17 this ordinance when the County Council considered Zoning Text Amendment 004-21.  
18 That was a Text Amendment to provide -- hello, Ms. Praisner, how are you? That was a  
19 Text Amendment to provide a remedial process for properties classified in the country  
20 in-zone. And I testified at that hearing to point out that there were other occasions in the  
21 zoning ordinance and on the zoning maps that required from time to time that the  
22 Council have a procedure to correct apparent site-specific errors. Both the 04-21  
23 amendment and the 06-09 amendment before you today are intended to empower the  
24 District Council to make appropriate adjustments to Euclidean-zoned properties, without  
25 having to respond to the burden of establishing that there has been a change in the  
26 character of the neighborhood under Maryland's somewhat antiquated change mistake  
27 rule. 06-08 provides a tool to the Council. The proposed Corrective Map Amendment  
28 process allows, but does not compel, the Council to rezone property. And since, as they  
29 say, a picture is worth a thousand words, I thought I would show to the Council, the  
30 unintended consequences of split-zone property and what brought me to the Council  
31 today. This is an industrial warehouse site on Southlawn Lane. And the I-2/I-4 zoning  
32 goes right through the middle of both buildings. And when this was under construction,  
33 we asked the Department of Permitting Services whether there was a remedy that they  
34 had that would say, "All right, the buildings are I-2" or "the buildings are I-4," and they  
35 said, "No, we have to follow the zoning line." So, several of the units really become  
36 unusable, because you may be able to conduct an I-4 activity in the bathroom, but not in  
37 the showroom. And therefore we felt it was appropriate to provide a tool to the Council  
38 to look at these on a case-by-case basis and do the right thing. And not have to worry  
39 about change mistake and that is the sum and substance of my testimony. I will be glad  
40 to participate with you at the work session and look forward to that. I will leave this with  
41 you for your record, along with my written statement, which I've already given to Mr.  
42 Wilson.

43  
44 Council President Leventhal,  
45 Thank you, Mr. Orens. Vice President Praisner?



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1  
2 Councilmember Praisner,  
3 Steve, thank you very much. Just keep looking through the zoning ordinance and  
4 finding issues like that, that we need to correct. But I had a question and now would be  
5 the best time to ask it. I could see someone accumulating property and then arguing  
6 that it's split-zoned by virtue of the fact that you've accumulated the parcels and put  
7 them together. And they are not, they were not intended -- there is a deliberate reason  
8 why they're zoned differently for transition or whatever. So, how do you make sure it's  
9 not used unintentionally?

10  
11 Steve Orens,  
12 I think the way you do that, Ms. Praisner, is that this is intended to deal with a site, a  
13 specific parcel of land. And you go back to the master plan, was it a specific parcel of  
14 land at the time of master plan? Take your example, someone assembles parcels of  
15 land and goes through the subdivision, creates a single lot. Well to apply a variance  
16 standard, they've created that problem.

17  
18 Councilmember Praisner,  
19 Okay.

20  
21 Steve Orens,  
22 That's not one -- unless you found a compelling reason to say, well, now we should  
23 change this, I would believe you would not change that because those were separate  
24 parcels. The zoning line followed the parcels as they existed when the line was put in  
25 place, and to me, that's the key test. If the applicant's done something to change that,  
26 that's not your problem, that's their problem.

27  
28 Councilmember Praisner,  
29 Okay, thank you, Steve.

30  
31 Steve Orens,  
32 Thank you... thank you.

33  
34 Council President Leventhal,  
35 We're not done. Ms. Floreen You can't leave until Ms. Floreen and Ms. Praisner have  
36 asked you their questions, those are the rules!

37  
38 Steve Orens,  
39 I don't have their lights here, you do!

40  
41 Councilmember Floreen,  
42 That's, that's a nice posse to Paul. Mr. Orens -- thank you Mr. President. Mr. Orens, I  
43 am, indeed looking forward to the inevitable treatise and the change of mistake doctrine  
44 that this ZTA will require, but let me ask you, isn't this a mistake case? How is this not a  
45 mistake case?



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1  
2 Steve Orens,  
3 Well...

4  
5 Councilmember Floreen,  
6 Is it the only mistake in the eye of the beholder problem?

7  
8 Steve Orens,  
9 No. No. Where you have imposed a zoning line under the court definition of mistake, I  
10 would have to prove that something that the Council intended to occur -- or believed  
11 would occur -- at the time the zoning line was put in place, did not occur. So, you are  
12 relying on an improper premise in applying that line. It may seem ridiculous looking back  
13 on it that the line is there, but that does not satisfy the judicially-defined test for mistake.  
14 The courts have said that the burden to prove mistake is onerous. And it is almost a  
15 requirement that you show a taking of property. I could not show a taking, in a  
16 constitutional sense, in this property. I could not compel the Council under these  
17 circumstances to rezone. And that's the difference between the mistake -- following the  
18 mistake rule, and following the rule in this text amendment. This text amendment allows  
19 you to rezone. Does not compel you to rezone. I do not think this is a good mistake  
20 case. I think that the courts would not sustain a mistake finding in this case.

21  
22 Councilmember Floreen,  
23 In that particular case, what about the next case?

24  
25 Steve Orens,  
26 In any case in which there...

27  
28 Councilmember Floreen,  
29 Well, where there is a split-zoning situation.

30  
31 Steve Orens,  
32 Split-zoning is not by -- in and of itself, a mistake. For example, I have a subdivision in  
33 Potomac on Bells Mill Road that is split-zone. It's R-200 along the street frontage and  
34 RE-1 on the back part. It was all one parcel when it was zoned, but there was a very,  
35 very specific reason for the placement of that zoning line where you did. And that was to  
36 create compatibility along Bells Mill Road with the R-200 zoning on the opposite side of  
37 the street. So, when we came in to the Planning Board for a preliminary plan cluster  
38 based on the split-zoning, we were required to follow the R-200 zoning standards along  
39 Bells Mill Road. That was perfectly proper, there was nothing, no mistake made in that  
40 case, and there would be no basis under that case to -- for the Council to use this  
41 process to rezone that property, because from a planning basis and a use basis there's  
42 nothing improper with it. Here on a use basis, and in cases similar to this, you have a  
43 difficulty that you have to overcome.

44  
45 Councilmember Floreen,

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1 I, yeah, let me just say that I would like staff to examine this issue further as we work  
2 through this. It seems to me that the situation that, you know, that there are cases when  
3 there's been a great deal of thought and some policy rationale for those decisions. And  
4 other cases where no one raised their hand. No one said, "Whoa, this is an issue." And  
5 it's a question of -- I just don't want us to amend the change or mistake rules by the  
6 Zoning Text Amendment in a way that is unnecessary under the circumstances. And  
7 maybe it is necessary. This is a shortcut to a zoning case. And I, again, and the  
8 challenge is, of course, how you fix problems on our current zoning ordinance. But I  
9 think it's -- I'd like a staff analysis, Ralph and Jeff, if you're doing this, Greg, to look at  
10 the implications of this. So, again, your client may not have been in the room or been  
11 aware of whatever the decision was made, whenever it was, or whenever the  
12 conversation was being had. And I think it's the kind of situation where we want to look  
13 at that and how we rezone properties generally. And identify those policy issues that are  
14 associated with creating problems. Sometimes there is a policy decision and sometimes  
15 not. It's just human, probably inattention to detail or assuming things that shouldn't have  
16 been assumed.

17  
18 Steve Orens,  
19 Assuming things on a macro scale when on a site-specific scale it might not work. You  
20 hit a key element, when you said "solving problems." All this Text Amendment does is to  
21 give you the tool to solve the problem, which right now you do not have.

22  
23 Councilmember Floreen,  
24 Right. Okay.

25  
26 Steve Orens,  
27 Anything else?

28  
29 Council President Leventhal,  
30 That's it, Mr. Orens, thank you very much for your testimony.

31  
32 Steve Orens,  
33 Thank you.

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1  
2 Council President Leventhal,  
3 Agenda item 10 is a public hearing on Zoning Text Amendment 06-10, Subordinate  
4 Structure Revisions, which would amend the zoning ordinance for the purpose of  
5 revising the definition of building accessory, limiting the size of an accessory building in  
6 relation to the size of the main building, requiring accessory buildings of a certain size to  
7 be approved by the Board of Appeals, and establishing standards for Board of Appeals  
8 review of an accessory building, and generally amending the definition and standards  
9 for an accessory building. Anyone who wants to submit additional material for the  
10 Council to consider should do so before the close of business on May 16. The PHED  
11 Committee is tentatively scheduled to take up ZTA 06-10 on June 21st at 8:30 a.m.  
12 Please call 240-777-7910 to confirm. We have four witnesses: Wayne Goldstein, Steve  
13 Kanstoroom, Susan "Maze," and Andrea Sutherland. Wayne, when you're ready, press  
14 the button and begin, please.

15  
16 Wayne Goldstein,  
17 I'm Wayne Goldstein speaking for the Montgomery County Civic Federation, Planning  
18 and Land Use Committee. Basically this ZTA is to make explicit what has been  
19 otherwise implicit, the idea that a subordinate structure would not be larger than the  
20 main structure. The idea that it can have up to 50% and then through the assistance of  
21 the Board of Appeals made to be equal the size seems very sensible. I understand that  
22 our good friends at Department Permitting Services, who are creative thinkers in all  
23 matters relating to zoning, have no objection to this, and it should help to clarify any  
24 misunderstandings and resulting problems from subordinate structures that were  
25 considerably larger than the main structures. Thank you.

26  
27 Council President Leventhal,  
28 Thank you, Steve Kanstoroom, Susan Maze, Andrea Sutherland, none are present?  
29 Oh, well please come up, we do it as a panel. Come up on together, please.

30  
31 Susan Mize,  
32 I'm not experienced.

33  
34 Council President Leventhal,  
35 That's all right.

36  
37 Councilmember Perez,  
38 We welcome that! We praise that!

39  
40 Sound Effects,  
41 [LAUGHTER]

42  
43 Council President Leventhal,  
44 Mr. Kanstoroom please begin.

45



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1 Steve Kanstoroom,  
2 Thank you. Excuse me, I'm a life-long County resident and I'm here today to ask your  
3 support for this Zoning Text Amendment. I currently reside with my wife and two small  
4 children in Ashton, and our completely forested property is zoned rural cluster 5-acre.  
5 We moved to Ashton to be in the woods with people that felt the same way. We value  
6 the forest; we chose to live not adjacent to any commercial endeavors. We mistakenly  
7 believed, as Park and Planning did, that the Department of Permitting Services  
8 interpreted the word "subordinate" to mean less than or junior to," similar to other  
9 jurisdictions across the country. We were mistaken. Unfortunately, my long time  
10 neighbor moved away, sold the residence to owners of a concrete construction  
11 company, and in this residential area, they proceeded to clear 22,000 feet of the forest  
12 and erect a warehouse-like structure large enough to hold 17 cars adjacent to their  
13 three-bedroom home. It has planned 10 by 12-foot doors, large enough for tractor-trailer  
14 deliveries. And my non-resident neighbor tells me, "Don't worry, there won't be that  
15 many tractor-trailer deliveries coming." Our view of the forest has changed to one of a  
16 rubble pile. And DPS was good enough to make clear to my non-resident neighbors that  
17 it's against the law to use the building for commercial purposes, but that hasn't stopped  
18 them. What I've come to learn in the process is it's a well-known factor of the County  
19 that DPS has very limited enforcement rights, or capabilities in regards to these actions.  
20 And people that use the residential-like -- residential properties for commercial  
21 endeavors find it merely the cost of doing business. What I've learned it takes years to  
22 get the people out once they're in. And I have several pictures attached in the back of  
23 my testimony that shows you what we're seeing in Ashton. I took a picture on Sunday; I  
24 think it had 12 vehicles in front of it. I took another picture yesterday, and it looks like  
25 Hooterville. You can see the pictures in there. So, to sum up, I suppose the biggest  
26 issue here is the financial incentive for these businesses to move into the residential  
27 properties and ask for permits. And right now anything goes. DPS will let them build the  
28 size of any structure. They don't view the word "subordinate" to mean "less than" with  
29 regard to size. I'm asking for your support and help to get this passed as soon as  
30 possible with a couple of minor text changes that I made that I think will further clarify it.  
31 Thank you.

32  
33 Council President Leventhal,  
34 Thank you. Susan "Maze"?

35  
36 Susan Mize,  
37 Thank you very much for the opportunity to allow us to address you today. In case my  
38 story sounds familiar to his story, it's because I'm his wife, but I kept my maiden name  
39 and actually it's Mize, M-I-Z-E for the record. As [Steven] was saying, we live on a five-  
40 acre fully wooded lot in Ashton, Maryland. And our elderly neighbor sold her property --  
41 which is next door to ours -- recently, after living next to her 15 years. And the men who  
42 bought it quickly put a renter in the home and proceeded to clear the forested lot and  
43 secure a permit to build a garage. The proposed garage turned out to be really more of  
44 a warehouse which the new owner told us he wanted to use it to store his business  
45 assets. Well, he owns a concrete construction company and his commercial assets

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1 include trucks and masonry supplies. The size of the structure is larger than the home  
2 itself, and includes several 10 by 12 doors, with a height of 50 feet. The proposed  
3 overall size was 2,400 square feet and, by contrast, I said to Steven, "How big is our  
4 garage?" Our typical two-car garage is about 500 square feet. It has a standard double-  
5 garage door, which is seven feet tall. Clearly these men intend to use the building for  
6 their business, though they continue to tell Permitting Services it is for their personal  
7 use. We brought this "subordinate" issue to the attention of Permitting Services. And  
8 they told us they interpreted "subordinate" only in regard to use and had always allowed  
9 accessory structures of any size to be built. This was especially troubling to us since  
10 this huge building was planned to be constructed next to our front yard. As citizens  
11 engaged in opposing the oversized structure trying to be built next door we really  
12 appreciate how much time, energy, and money it has cost us and the County to try and  
13 enforce the regulations. Adopting the proposed definition would help cut these  
14 enforcement costs dramatically. Finally, you can imagine how unpleasant it is to have a  
15 concrete construction company operating next door to one's front yard. Instead of a  
16 forest, we would have commercial-size structures and construction equipment as our  
17 view. We would be plagued by frequent commercial deliveries, complete with backup  
18 horns beeping as large trucks attempt to navigate the residence and associated sounds,  
19 skip loaders, trash trucks, air compressors. Needless to say our quality of life would be  
20 dramatically altered. The adoption of this amendment would appropriately limit the size  
21 of the accessory buildings in proportion to the size of the primary structure... [BEEPING]  
22

23 Council President Leventhal,  
24 Finish your sentence.

25  
26 Susan Mize,  
27 Okay. I told you I'm not experienced!

28  
29 Sound Effects,  
30 [LAUGHTER]

31  
32 Susan Mize,  
33 I thought it was the fire alarm!

34  
35 Sound Effects,  
36 [LAUGHTER]

37  
38 Council President Leventhal,  
39 You're doing fine. You've got our attention, just finish the sentence.

40  
41 Susan Mize,  
42 All right. In other words, if you don't let them build it, they won't come. Now I'm blushing,  
43 I know. Please pass this amendment as quickly as possible as building season is upon  
44 us.  
45



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1 Council President Leventhal,  
2 Thank you very much, Ms. Mize. Andrea Sutherland?

3  
4 Andrea Sutherland,  
5 My name is Andrea Sutherland; I'm here in support of the Zoning Amendment Number  
6 06-10. We recently moved to Maryland and purchased our home at 1010 Ashton Road  
7 in December of 2005. In November, as was advised by our realtor, we went to the  
8 Office of Park and Planning in Silver Spring to ensure that there were no plans for  
9 construction in the area. We were assured that this property and the neighboring  
10 properties were well within the rural cluster zone and thus commercial development or  
11 building for commercial purposes was not going to be permitted. In addition, they stated  
12 there are no plans or permits for any building in our area. With the intent of moving our  
13 family to a peaceful, rural protected area we were happy with the report we received  
14 from Park and Planning and we went ahead with the purchase of our home. Much to our  
15 dismay, we've learned of the intended construction of the large garage on the  
16 neighboring property. We've heard and seen the clearing and chipping in January. And  
17 after a review of the plans, permits, history and evidence, it seems clear that this garage  
18 was intended to be quite large, even larger than the house, and quite likely for  
19 commercial use, given the dimensions, and disruptive to the forest and our neighboring  
20 properties. We perceive this to be a potential threat to our property value, surrounding  
21 forest, and more of our peaceful rural home. Had we known that such a structure would  
22 be permitted in this area and, in fact, was already granted a permit at the time we went  
23 to the Park and Planning office in Silver Spring we wouldn't have purchased the house.  
24 After meeting with Mr. Hubbard and his staff at DPS regarding the permit for the  
25 adjacent property, we were dismayed to hear that several members of DPS said that  
26 they had always interpreted that the regulation did not give any limitation to the size of  
27 an accessory structure. In addition, they admitted that often people falsify information on  
28 permit applications, particularly regarding the intended use, and yet permits are still  
29 granted. And I quote one member "There is nothing in the law that says we can't grant  
30 permits to frauds or felons." Many pieces of evidence suggest this falsification of  
31 information occurred on this disputed permit application. In addition, although DPS said  
32 they would fine the owner if used for commercial purposes, many, even those at DPS,  
33 have said that this could take years, and it is not a measure of effective control for  
34 commercial development in protected areas. Thus it seems inconceivable that DPS  
35 should allow -- continue to allow such large accessory structures to be built. We were  
36 disappointed, to say the least, after deciding to purchase our home in the rural cluster of  
37 Montgomery County, and that the County places no limits on the size of these  
38 accessory buildings, and that laws are not adequately constructed to protect residential  
39 rural areas, the forest, and property owners. We strongly are in support of this  
40 amendment and hope that it passes swiftly.

41  
42 Council President Leventhal,  
43 Thank you very much. Ms. Praisner?

44  
45 Councilmember Praisner,



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1 I want to thank folks for coming. I'm not sure whose phone that is -- but just want to  
2 reiterate or reaffirm what staff is saying. In a meeting, Mr. Wilson and my staff and I had  
3 with Permitting Services and with the County Attorney, what we were told is that there  
4 are two definitions that you will see on Circle 3 of your packet, I think. One is the  
5 accessory building and one is accessory use. And what they told me is that the word  
6 "subordinate," under accessory building, does not deal with size, it deals with the  
7 activity going on inside that space. So, an accessory building can be any size and it is  
8 the use of that building that they look at. Which, of course, means you have to catch it  
9 happening to be able to determine whether it's appropriate or not appropriate, and the  
10 term "subordinate" is inadequate. So, that's why we're proposing to use -- to make this  
11 Zoning Text Amendment change. And I thank folks for coming to testify. Thank you.

12  
13 Council President Leventhal,  
14 All right. Thanks to all witnesses, that's the end of questions, we appreciate your  
15 testimony, it was very helpful.

16  
17 Susan Mize,  
18 And thank you to all of you. We really, really appreciate that.

19  
20 Council President Leventhal,  
21 Thank you.

22  
23 Councilmember Knapp,  
24 Thanks for coming. Nice to see new people.

25  
26 Councilmember Floreen,  
27 You're welcome any time!

28  
29 Susan Mize,  
30 Thank you.

31  
32 Multiple Speakers,  
33 [INAUDIBLE]



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1  
2 Council President Leventhal,  
3 Agenda item 11 is a public hearing on a Supplemental Appropriation to the FY '06  
4 Operating Budget -- show Tom -- of the Department of Health and Human Services  
5 Public Health Services for the Housing Opportunities for Person Living with Aids  
6 Program Grant, in the amount of \$195,060. The Health and Human Services Committee  
7 didn't take this up because there were no County funds involved. It is, it -- and the  
8 Committee did not consider it controversial. There are no witnesses for this hearing, but  
9 we need to have a vote right now.

10  
11 Councilmember Praisner,  
12 I will second.

13  
14 Council President Leventhal,  
15 Okay. So, the motion is made by Mr. Perez and seconded by Ms. Praisner. Those in  
16 favor of the Special Appropriation for the Housing Opportunities for Person Living with  
17 Aids Program Grant will signify by raising their hands. It is unanimous among those  
18 present. And that concludes the public hearing. The MFP Committee is meeting here,  
19 the T&E Committee is meeting on the third floor. Are we going to do that right now,  
20 Madam Chair?

21  
22 Councilmember Floreen,  
23 We can have a little bathroom break.

24  
25 Council President Leventhal,  
26 Okay, what time would the T&E Committee begin, Madam Chair? T&E at 2:15 and...  
27 And the County Council will be back in session this evening at 7:30 in the third floor  
28 conference room.

29  
30 Councilmember Praisner,  
31 And MFP will meet in 10 minutes, okay?

32  
33 Council President Leventhal,  
34 The public hearing will be in the hearing room, third floor hearing room tonight at 7:30.  
35