September 11, 2007

TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

Marilyn Praisner, President
Phil Andrews
Roger Berliner
Marc Elrich
Valerie Ervin
Nancy Floreen
Mike Knapp, Vice President
George Leventhal
Duchy Trachtenberg

September 11, 2007

Council President Praisner,
Good morning, ladies and gentlemen. The County Council is coming back into session after our summer recess. We will start this morning with invocation by Reverend Lookingbill from Emmanuel Lutheran Church in Bethesda; and while we rise for that, let us also after the invocation have a moment of silence. This is September 11th. I think all of us know and can recall where we were six years ago when those tragic incidents happened. The County Council was in session downstairs in the sixth-floor conference room when we got notice of the first attack on the World Trade Center; and as additional information came in, the horror of the day became more and more obvious to everyone in this country and across this world -- when good people think about the incidents that day, the lives that were lost, the heroes who stepped forward, and the fact that we will never be the same. Reverend.

Reverend Jan P. Lookingbill,
And I was with the County Council that day six years ago for prayer. So I was going to suggest we have a moment of silence before, and then you'll do it afterwards.

Council President Praisner,
Thank you.

Reverend Jan P. Lookingbill,
[Moment of silence] Eternal God, our Creator and our Lord, we give you thanks. Thanks for the memory that we have of those who so heroically helped in time of crisis. We give you thanks, Heavenly Father, for those who even today will never be able to forget what happened and how we all have indeed supported and sustained those who were in desperate need. We give you thanks, Heavenly Father, for the energy, for the enthusiasm, for the spirit of the Montgomery County. The residents here, those who have had family and friends involved in 9/11, and who continue to work for the health, the wealth, the safety, and the progress of this County and those who mean so much to us here. We give you thanks, Heavenly Father, for the resources of this County; both the personal resources and also the resources of wealth and beauty; resources of farm; resources of travel. We pray for this County Council this day especially, that as they continue their work to keep this place safe – safe for children to learn, safe for elderly to walk, safe for those who are going to be able to add of their significant interest and enthusiasm for the wellbeing of one another here. May we always give thanks. And may we always remember, with the enthusiasm and the spirit that you give to your people, that we are responsible to one another; that we may work together for health, for strength. We pray in a holy name. Amen.

[Moment of silence]

Council President Praisner,
Thank you. Announcements of Agenda and Calendar Changes, Madame Clerk? There are none. And Petitions? There are none. Okay. Then we would move to action on the Approval of Minutes. Madame Clerk?

Council Clerk,
We have the minutes of July 19th, 24th, and 26th, 2007, before us for approval.

Councilmember Leventhal,
Move approval.

Council President Praisner,
Motion made by Councilmember Leventhal; seconded by Councilmember Trachtenberg. All in favor of approval of the minutes? [Show of hands] Unanimous among those present. Okay. We now move to the Consent Calendar. Oh, we're all here. I couldn't see Councilmember Ervin. [Laughing] Go like this, Valerie. That way I can see you. Thank you. We have the Consent Calendar. Is there a motion? Council Vice President Knapp; second, Councilmember Andrews. Are there any items that Councilmembers would like to comment on or ask to be pulled? I would note that we have on the Consent Calendar the Office of Legislative Oversight Report on the Base Budget Review of School Plant Operations. As is our practice, this will be released at this point and referred to the Education Committee which has a worksession tentatively scheduled for September 24th. We also have the introduction of considerable movement within the Capital Budget of the School System related to project balances and funds for several projects within the School System for which, obviously, a public hearing will be held, then worksessions scheduled. If there are no motions, then all in favor of the resolution please indicate by raising your right hand. [Show of hands] That is unanimous. Thank you. We'll now move to Legislative Session. Is there a Legislative Journal, Madame Clerk?

Council Clerk,
Yes. We have the Legislative Journal of July 19th, 2007, before us for approval.

Council President Praisner,
Is there a motion?

Councilmember Ervin,
So moved.

Council President Praisner,
Councilmember Ervin. Is there a second?

Council Vice President Knapp,
So moved.

Council President Praisner,
Council Vice President Knapp. Moved and seconded for the approval of the minutes. All in favor, indicate by raising your hand. [Show of hands] That is unanimous. We are now moving to the Introduction of Legislation. The first bill is Bill 22-07, Potomac Horse Center - Lease Extension, sponsored by the Council President at the request of the Planning Board. The public hearing for this legislation is scheduled for October 2nd at 1:30 p.m. The second bill being introduced is Bill 23-07, Non-Discrimination - Gender Equity,

sponsored by Councilmembers Trachtenbeg, Ervin, and Elrich. The public hearing is scheduled as well for October 2nd at 1:30 p.m. I'll turn to Councilmember Trachtenberg.

Councilmember Trachtenberg,
Thank you, Madame President. Today I'm presenting for introduction a Bill to provide equality for members of the transgender community here in Montgomery County. Transgendered individuals face serious discrimination in the workplace and housing and in business and banking transactions, as well as public accommodations. And it is my belief that they deserve to live and work with equality and dignity. I would just like to take a moment to thank two colleagues for cosponsoring the legislation with me, Councilmember Ervin and Councilmember Elrich. And what I would just simply state for the record is that this is not radical legislation. It's actually something that over a hundred jurisdictions have already passed in a similar manner. Thirteen states in the District of Columbia are included in that mix. I am looking forward to the conversation on this in the public forum; and I, again, very much appreciate the support of my colleagues.

Council President Praisner,
Okay, so the Bill is introduced. The next bill is Bill 24-07, Real Property - Property Tax - Disclosure sponsored by Councilmembers Andrews, Praisner, Trachtenberg, Knapp and Elrich. Councilmember Andrews.

Councilmember Andrews,
Thank you, Madame President. Thank you for your support of the legislation. I want to just briefly summarize why this is needed and being introduced. Purchasing a home is usually the biggest financial investment that an individual makes; and it's critical that at the very beginning of the process, people understand what their ability is to afford the home that they're looking at. In Montgomery County, and really throughout Maryland, because there have been such high increases in assessments in recent years -- 44 percent, I believe, this last January for that three-year cycle, 70 percent the cycle before, and not much below that in the two years previous – and because of the presence of the Homestead Tax Credit, which is a State provision, there is a large gap almost in every situation now if an owner has been in a home for more than a year two between what the owner would pay if they stayed in the home and what the new person would pay if they buy the home. Just one example: For a home that is on the market now for $565,000 that was assessed the last time it was assessed at $459,000, if the owner stayed in that home in FY09, they would pay about $2,700 in property taxes -- just slightly under, $2,680. However, if someone bought the home, they would pay $4,728 in the same fiscal year, '09, in the first full year they were there for the tax year. And that's because of that combination of high assessments and the presence of the Homestead Tax Credit which helps cushion the increases for the folks that stay in the home -- which is a good thing. But when people are buying a home, they need to know this. They need to know that they're likely to face a big jump in their property tax bill. And this legislation will provide that information by requiring that sellers, when advertising a home, indicate what the property tax would be for someone buying the home in the first full year that they're in there in terms of the first real property tax year. People need to know this ahead of time. It can be a big difference of $2,000 or more -- a couple hundred dollars a month. In the times that we're in, where

people are having trouble making payments, that can make or break someone's ability to stay in the home. So that's the reason for the legislation. I look forward to the public hearing on October 2nd. I thank my colleagues for their support, and I look forward to this moving forward. I also want to thank County Executive Ike Leggett for his support of the legislation.

Council President Praisner,
Okay. Councilmember Berliner.

Councilmember Berliner,
I just want to commend my colleague for this consumer protection mechanism measure. And in light of the increasing number of foreclosures in Montgomery County and elsewhere, I think it is important that people know up front what their obligation is going to be. So I want to commend you for this, and I want to ask that I be added as a cosponsor. Thank you.

Council President Praisner,
Councilmember Leventhal.

Councilmember Leventhal,
Thank you. I'd also like to be added as a cosponsor of Bill 24-07. I just want to make a suggestion to the sponsor and to the MFP Committee that as it takes up this Bill, that we clarify the obligations of our Consumer Protection Office and our Finance Department in terms of making the tax liability information available, and clarify that there is no liability on the part of realtors or sellers that they may solely rely upon the information provided by County Government -- that if somehow that information proves wrong, that they're not liable in the future. But I like the proposal, and I'd like my name attached to it as well.

Councilmember Andrews,
Thank you for your suggestion. We want to make it easy as possible for people to calculate what that tax would be, and particularly for people who may be selling their own home. They can do it by looking at what the taxable assessable value is for that year and multiply it by the existing property tax rates. And I would hope the County could set up a page to help with that calculation.

Council President Praisner,
Okay, that legislation then is introduced. The next piece of legislation to be introduced is Bill 25-07, Criminal Justice Coordinating Commission – Amendments, sponsored by the Council President at the request of the County Executive. Public hearing for this legislation is also scheduled for October 2nd, 2007, at 1:30 p.m. This concludes the Legislative Session, and we would move into District Council Session. The first Zoning Test Amendment to be introduced is Zoning Test Amendment 07-13, Planned Development Zones – Requirements, sponsored by the Council President at the request of the County Executive. A Resolution to establish a public hearing for October 16th at 1:30 p.m. is before us; is there a motion?

Council Vice President Knapp,
Move approval.

Council President Praisner,
Council Vice President Knapp. Is there a second?

Councilmember Ervin,
Second. Councilmember Ervin. All in favor of introducing the resolution and scheduling the public hearing? [Show of hands] That is unanimous. Second is an introduction of a Resolution to approve the use of Advance Land Acquisition Fund (ALARF) for acquisition of real property for Upper Paint Branch Stream Valley Park - Sandy Spring Bank, Trustee for Evelyn Grauel and George Grauel Trusts. Action is tentatively scheduled for October 18th. There is no necessity for a vote on the resolution. I would assume we have to vote? Yeah. Is there a motion?

Councilmember Trachtenberg,
So moved.

Council President Praisner,
All right. Councilmember Trachtenberg; second by Councilmember Floreen. All in favor of adoption of the resolution? [Show of hands] That is unanimous. We are ten minutes early for Oral Argument. I'm not sure if everyone is here, so let's take a ten-minute break. We will be back at 10:30. [Recess] Okay, if I can call the Council back into session, please, and ask Councilmembers to take their seats. If Councilmembers could take their seats, please. We have – folks, if I could please have some order. Thank you. We now have Application G-858 in front of us. When we last left this rezoning application, the Council voted to consider oral arguments; and the oral arguments are limited to four items: conformity to the Master Plan, stormwater management and sewer system infrastructure, parks, and traffic. Only those issues are before us, and only as those items are incorporated within the record of this rezoning. So anything that is not in the record is not permissible to present to the Council during this process. I will use or ask the Hearing Examiner, Mr. Grossman, to be our watch on that point. And if anything is said that is not in the record, to interject immediately and make sure that we know that so that the comments can cease.

Marty Grossman,
I'll do my best, Madame President.

Council President Praisner,
Okay. Thank you. As to the substance again, conformity to those items are the only items within the hearing process. Oral argument is for 40 minutes, 20 minutes for each side. The parties who requested the oral argument would go first. They can reserve time, if they would like, to provide some time for rebuttal; but you have to do that as you begin the process. So I would ask the parties to join us at the table at this time. Excuse me? I'm sorry. You do need to come forward, and we do need to have everyone who is going to speak. Now, you all are presenting your arguments against the rezoning. So we need to

have you introduce yourselves and tell me -- who's the spokesperson for the group, first? Tell me your name, please -- push the button in front of you. Each of you when you speak needs to push the button in front of you so the microphone is on.

Beverly Sobel,
Beverly Sobel.

Council President Praisner,

Okay. And, Beverly, how are you going to use the 20 minutes? Do you have -- how have you arranged it, so that out Clerk can keep time on that?

Beverly Sobel,
Each of us has prepared five-minute speeches on each of the four topics that are approved.

Council President Praisner,
Five minutes. So do you not want to reserve any time?

Beverly Sobel,
We'll try to do it in four minutes, so we can have a five-minute rebuttal.

Council President Praisner,
Well, you're going to have to have keep it for four minutes if you want to reserve some extra time; is that what you're suggesting?

Beverly Sobel,
That's our intention.

Council President Praisner,
Okay. So if each of you speaks for four minutes, that's 16 minutes; that allows you four minutes for additional time for rebuttal after we've heard from the applicant. With that in mind, Madame Clerk is going to keep track as each of you begins to speak; and when the buzzer goes off or the bell goes off, you will have to cease your comments because if you continue to speak, you will eat into the next person's time. Okay? Does everybody understand that before we begin? I want to make sure there is no confusion. Are there any questions about the process for the oral argument? Okay, each of you, if you want, without using your time may introduce yourself now so we know who you are. You've said who you are, Beverly, so next person. No, you need to push the button in front of you.

Rita Ford,
Good morning. I am Rita Ford. I'm a seven-year resident and home owner of the Plyers Mill townhome community.

Council President Praisner,
Thank you.

Debbie van de Riet,
Good morning. I'm Debbie van de Riet, and I also live in the townhouse community adjacent to the land in question.

Council President Praisner,
Thank you.

Christina Ollo,
Hi. I'm Christine Ollo, and I live in the environment or the impacted areas defined in the application.

Council President Praisner,
Thank you. Okay. You may begin, and the Clerk will begin the time. When its four minutes are up, the bell will go off.

Beverly Sobel,
I come here today before you representing myself and members of the civic group, Green Space in Georgia.org. We thank you for allowing us to speak with you today in strong opposition to the proposed townhouse development in our communities. On page 23 of the Hearing Examiner's report, it states the Master Plan makes no site-specific recommendation for the site, other than to show it is quasi public or on its Land Use Plan. We strongly disagree with this statement. The Master Plan states clearly that not only is this land quasi public, but zoned as R-60. In fact, on page 74 of the Master Plan, the land is identified as having a special exemption in the single-family zone. The intention of the Master Plan is to keep this land zoned as R-60. In the Hearing Examiner’s report on page 23, it states in Mr. Foster's opinion, "Applicant's proposal is in general conformance with the goals and objectives of the Master Plan; and it will be compatible with the existing surrounding uses and the purpose clause of R-T zone." Again, we believe that this statement is inaccurate. This proposed townhouse development violates the spirit of the Master Plan which designates the land as R-60. R-60 zoning means low-density residential character, not medium density. Moreover, on page 75 of the Master Plan, it states visibility of buildings to residents of nearby communities should be taken into account. Any new construction or building that would indicate substantial expansion should be placed where it will add as little as possible to the visible size of the building and should be landscaped to provide as much as screening as possible. The proposed townhouse development will be the first of its kind in the Carroll Knolls community and would be highly visible to all nearby communities. The Carroll Knolls community, with the exception of MCAT, consists of detached single-family homes. A better solution to truly conform with the Master Plan objectives lies directly across the street, Evans Parkway Park. A park at MCAT can be seen as a natural extension of Evans Parkway Park. On page 72 of the Master Plan, one policy of Chapter 4 Land Use and Zoning Plan is to establish green corridor guidelines as an implementation mechanism to ameliorate the impact of residential areas abutting major highways and to strengthen community stability by creating attractive highway corridors. Preserving this land as parkland would strengthen and unify three communities: Carroll Knolls, McKenney Hills, and Plyers Mill instead of further dividing us with another unwanted townhouse development. We believe

that parkland would allow for true green corridor without changing the character of the immediately-impacted Carroll Knolls community and without further increasing density and burdening the surrounding communities. For these reasons, we ask you to vote “No” on this rezoning request. Thank you.

Council President Praisner,
I'm sure that that's under four minutes; so the question is, How much? Two additional minutes? Okay. Okay. You may go forward. Go ahead.

Rita Ford,
Thank you for the opportunity to appear before you today to address my concerns on behalf of green space on Georgia.org regarding the community residents’ lack of access to adequate parkland and green space. Three key points addressed in the report of the Hearing Examiner that I want to refute are: (1) that current community residents already have adequate access to parkland; (2) that the village green proposed for the 27 townhouses will serve as a green space alternative to current community residents; and, (3) that the rezoning of this land is in the public interest. The Hearing Examiner's report states in the footnote on page 40 that “Evans neighborhood park is directly across Georgia Avenue from the site and has recently been expanded. There are signalized crossings of Georgia Avenue to the north of Plyers Mill Road to the north and to the south at Dennis. Crossing Georgia may, nevertheless, be difficult; and Applicant has agreed to stripe the crosswalks and provide a pedestrian refuge on the median of Georgia Avenue.” I contend that crossing Georgia Avenue is difficult and dangerous. A strip crosswalk and pedestrian refuge are woefully inadequate protections for any adult, let alone a child attempting to cross a menacing six-lane highway that is not signalized at Georgia Avenue and Evans. Crossing Georgia Avenue is a major issue throughout the County. Crossinggeorgia.com has referenced on its website a 2006 police report that –

Marty Grossman,
Madame President –

Council President Praisner,
No. That’s not in the record, I’m pretty sure.

Rita Ford,
Okay. Well, walking to the two parks on the west side of Georgia Avenue at Capital View-Homewood and Kenney Hills at dusk or dawn is akin to trying to walk to Rock Creek Park.

Council President Praisner,
Is that in the record?

Marty Grossman
That’s not in the record either.

Council President Praisner,
No. That's not in the record either. You must keep your comments to items within the record.

Rita Ford,
Okay. Well, page 38 of the Hearing Examiner's report states that there would be a village green on the eastern part of the property surrounded on three sides by townhouses. Yet this environmental open space or village green space is in the domain of the new homeowners in the 27 planned townhouse community and, therefore, cannot be considered public space. It is freely open to current community residents.

Marty Grossman,
Madame President, the problem is that's in conflict with one of the Binding Elements that has been agreed to. The Binding Element indicates that the Applicant has agreed to make available –

Council President Praisner,
Well, that's something you can comment on later; but it is in the record, so I'm going let her continue.

Marty Grossman,
All right.

Rita Ford,
Finally, the Hearing Examiner's report states that this rezoning application is in the public interest. Using the Hearing Examiner's own criteria to meet the public interest definition as stated on page 68, a rezoning application must, among other things, "protect and promote the health, safety, comfort, and welfare of the inhabitants of the regional district." This application fails to meet this criteria by robbing residents of the remaining green space that we have; failing to provide a safe, accessible alternative to additional green space; and seeking to create more density and crowding in an area already saturated with houses by proposing the development of 27 more. For these reasons, I ask that the Council unanimously vote to deny this zoning application. Thank you.

Council President Praisner,
Thank you. One minute left? Okay. That means there are seven minutes left after they finish if they each use their four minutes. Correct.

Debbie van de Riet,
Good morning. I'm here to discuss the issue of transportation and traffic. The Hearing Examiner's report on page 27 cites a Traffic Study commissioned by the developer that is based on outdated information. The study utilizes the Trip Distribution assumptions and the 2004 Local Area Transportation Review commonly referred to as the LATR Guidelines. These guidelines are based on a journey to work information last updated in 1998. These numbers are no longer accurate as the census numbers and work employment totals have drastically changed in the last ten years.

Marty Grossman,
Once again, Madam President, there's nothing in the record that relates to the accuracy of the LATR Guidelines.

Councilmember Elrich,
Okay. Are the LATR Guidelines referenced at all?

Marty Grossman,
The LATR Guidelines are referenced.

Councilmember Elrich,
So how can they not talk about that?

Marty Grossman,
I'm not suggesting that you can't discuss what's in the record regarding the LATR Guidelines; but there is nothing in the record that suggests -- that evaluates the LATR Guidelines themselves. So she's bringing in some factual assertions regarding the LATR Guidelines and their basis, and that is beyond what's in the record. If that had been brought out at the hearing or somewhere in the record -- that there was a problem with the LATR Guidelines -- it would be fair game. The problem is here there's new factual assertions being made.

Council President Praisner,
Okay.

Marty Grossman,
A fairness issue to both sides to make sure that we stay within the record.

Council President Praisner,
You need to deal with what's in the record.

Debbie van de Riet,
All right. Let me go down – here we go. The Traffic Study underestimates the future traffic effect on Georgia Avenue because it is incorrect use of the art school traffic patterns as a comparison to what residential development would generate. For example, the study uses peak hours of an art school rather than peak hours of a residential development. The LATR defines the residential volume morning being between 7:30 and 8:30, but the art school peak hours were between 8:15 and 9:15. The proposed residential development would have a greater negative effect during the expected peak hours of the morning traffic. The Traffic Study fails to address the fact that Georgia Avenue is often regarded in many different traffic studies as dangerously congested. For example, Georgia Avenue is continually cited in the 2006 Mobility Report as experiencing significant –

Council President Praisner,
The Mobility Report is not part of the record.

Debbie van de Riet,
Thank you. The Traffic Study significantly underestimates how many peak-hour trips the proposed development would generate. The report states that 27 townhouses would project 13 morning peak-hour trips out of the new development as compared to 45 estimated by the art school. When the outdated guidelines that form the basis of the Traffic Study are applied to the townhouse development adjacent to the property, 22 percent of the cars in that development should be leaving during the morning peak hours. In actuality, I witnessed –

Marty Grossman,
And this is not –

Council President Praisner,
That's not part of the record.

Debbie van de Riet,
Okay. If the morning trips of the proposed new development follow the same patterns I observed, it would surely exceed the estimated morning 13 trips. It must also be noted there are 23 two-car garage townhouses and 14 one-car garage townhouses, so the chance of multiple-car homes is likely. In addition the author of the Traffic Study suggested that it would be possible to adjust the timing of the traffic lights at Dennis and Plyers Mill. This is unlikely. I've spoken with a representative of the State Transportation –

Council President Praisner,
You can't talk about speaking with someone outside unless that conversation was part of the record. And so the State Highway person's testimony –

Debbie van de Riet,
They did mention in there saying that would be a safe highway.

Council President Praisner,
Yes, but you can't talk to them and introduce his conversation because that's not part of the record.

Debbie van de Riet,
Okay. The Traffic Study further deals with a quick overview of the extra spillover traffic affected on the local streets.

Council President Praisner,
[Bell sounding] Do you want to proceed? Continue? Your four minutes are up, but others have used less than their four minutes. So –

Debbie van de Riet,
I've got 30 seconds left -- and without the discussion, I would have gone under hopefully. Gardener and Loma Avenue already have problems of people speeding because of their avoiding the congestion --

Council President Praisner,
That's not in the record either.

Debbie van de Riet,
Furthermore the reopening of the McKenney Hills Elementary School presents additional concerns of traffic and safety on the small streets. Thank you.

Council President Praisner,
Thank you. I expect that's about a half a minute of the extra time. Your turn.

Christina Ollo,
Okay. Can I ask for a couple of exhibits?

Council President Praisner,
To be posted?

Christina Ollo,
Exhibit 47, Hearing Examiner; and Exhibit 50, Hearing Examiner. Thank you. I hope that doesn't cut into my time.

Council President Praisner,
No, it doesn’t. If they have them -- otherwise you can refer to the pages where they may be in the Council’s packet.

Christina Ollo,
Exhibit 47 is an overview of the property which --

Council Presidnet Praisner
But, just wait. If it's in the packet, you can refer to the page; and that doesn't require our having a visual exhibit.

Christina Ollo
And then next would be – ooh, wow, that's not very good. Well, you know, there's the Applicant exhibit; and then there's the Hearing Examiner's exhibit. I just want the overview of the property.

Marty Grossman,
All right. Well, this is 47 in the record. Is there another number –

Christina Ollo,
Whichever one -- there were two references.

Council President Praisner,
Excuse me. On Circle 123, there is a layout. Is that adequate –

Christina Ollo,

There's one more, that's the aerial view of the property; that would be real helpful.

Council President Praisner,
Circle 124 also provides that, if that would help you.

Christina Ollo, 94
I'm sorry. I came with a little PowerPoint to make it quick.

Council President Praisner,
I know, but –

Christina Ollo,
This one? That's Hearing Examiner Exhibit 47.

Council President Praisner,
If you would like at Circle 124, I think it does show the property that you're referring to. It's the Council's packet for today. That may help.

Christina Ollo,
Can you holdup your picture, and then I'll know if it's the one?

Council President Praisner,
It shows the proposed development of the intersections –

Christina Ollo,
What page?

Council President Praisner,
Circle 124. Circle 124.

Christina Ollo,
It's not in your packet. It was the overview of the area. It's in the Hearing Examiner's report.

Council President Praisner,
Well, Circle 123 is an overview of – well, either one of them is -- there are several pictures: 127, 128, 129. Is 129 -- I think it's 129.

Christina Ollo,
Yeah. It would be 129.

Marty Grossman,
There's also on Circle –

Council President Praisner,

We've established that the Council should look at Circle 129. Is there another one that would you like us to look at?

Christina Ollo,
Then that one that's there. That would be useful, also.

Council President Praisner,
Okay. So those two: the one that's on the poster right here for us to look at, plus 129. Okay?

Christina Ollo,
All right. I'm Christina Ollo, a member of the neighborhood impacted. I'm going to read my beginning and closing statements because I'm sure I've got no time left. The MCAD is the area –

Council President Praisner,
You have all your time. We haven't taken any of your time.

Christina Ollo,
No, but it's going to take a while. The MCAD – oh, well -- look at 129 -- is the western edge of the Sligo Creek watershed. It's the lowest elevation point in the area. The western part of the property is described as a "small, forested wetland" and an "environmentally-sensitive area." And this is in the record. There is a wetland -- and you should look at 129, but I'll point it out here -- where Harmon Road and Lillian Drive dead end into this wetland area; and where Haywood Drive and Gardner dead end into this wetland area; and Douglas Avenue and Evans dead end into this wetland area. The community and Friends of Sligo Creek are very concerned about the planned development because of the great decrease in permeable land, trees, and groundwater recharge. Infiltration into the Sligo Creek watershed is already poor, and the creek can run dry easily.

Council President Praisner,
Is that part of the record?

Marty Grossman,
I think that's a little beyond what's in, actually, in the record on this. I'm not sure if there's something in the Master Plan which is automatically -- the entire Master Plan is part of the record. But I don't remember that specific language, and I just can't tell you. So I -- certainly it's a wetland.

Christina Ollo,
It's descriptive.

Council President Praisner,
Well, not that it runs dry. That's not what is in the record. That's the point he's making.

Christina Ollo,

Okay. The proposed development increases impermeable area dramatically, increases runoff, reduces groundwater recharge –

Marty Grossman,
There's nothing in the record that it increases permeable area, I don't believe.

Christina Ollo,
I think it's in the Technical Report by Marian Clark that is part of the record. She states this; this is her statement. "Increases impermeable area dramatically, runoff, and reduces groundwater recharge." "…comprises the quality in Sligo Creek. It will also remove about 40 trees so necessary for air quality in this highly-congested urban corridor." The wetland –

Marty Grossman,
Once again, Madame President, I don't think that that's -- can you show me where that is in the record?

Christina Ollo,
I don't have the Technical Report in front of me.

Marty Grossman
Here's the copy of Technical Staff Report, and it's Circle 103 to 157.

Council President Praisner,
Yeah, we have it.

Christina Ollo,
Well, let's move on; we'll just move on.

Council President Praisner,
Okay.

Christina Ollo,
So looking at figure 129 in front of you, I want to point out this. That right now, the pavement ends about right here at this townhouse going down here, and that all of this is green space. And that this Douglas Avenue extension greatly reduces the green space and trees that are present. These are three proposed single-family home lots. Do you see these trees? They're all gone.

Marty Grossman,
Those are not part of the application.

Christina Ollo,
They're not; but as Ms. Silber stated in the record, it's obviously a part of the application.

Council President Praisner,

No, it's not part of the application. I'm sorry. It’s not part of the application; we're talking about the application.

Christina Ollo,
Her statement in the transcript, page 20, says that –can I see that? -- it's obviously part of the development.
Council President Praisner,
No, I'm sorry; you're using terms that are not accurate. The development application in front of us is the matter that we're discussing. What may be zoned nearby is not part of the application.

Christina Ollo,
The transcript is not part of the application?

Marty Grossman,
The transcript is.

Council President Praisner,
The transcript is part of the record, but it's not part of the application. So you have to be careful about the difference between what may be in the area versus what the Applicant is requesting to do. They're not requesting to do single-family homes.

Christina Ollo,
It was with regard to abandoning the roadway, which you can undo. “Obviously, this is part of the overall development” was her statement.

Council President Praisner,
No. Again, it may be development in the area; but it's not a part of the application in front of us.

Christina Ollo,
I see that; but I want you to see what amount of green space is being lost here and why it's important. In fact –

Marty Grossman,
I should, just for the clarity of the record – Ms. Silber -- the reference in the transcript that’s being made is to the abandonment proceeding for the roadway.

Council President Praisner,
[Sound of bell] Okay.

Marty Grossman,
And that's what she's referring to -- the abandonment which was approved by the Council in three resolutions. Those were what she's referring to in that quote as obviously being part of the overall development.

Christina Ollo,
All right. I'm going skip to –

Council President Praisner,
All right. The four minutes that you have are up, but there is still time that's available. My track is it's about five and a half minutes, some of which you've reserved for rebuttal. So the question I have for you is how much you'd like to use now versus how much you'd like to reserve for rebuttal?

Councilmember Elrich,
May I ask the Chair a question?

Council President Praisner,
No. Oh, I'm sorry. Sure. On the process, yes; on the substance, no.

Councilmember Elrich,
Yes, a process question.

Council President Praisner,
Yes.

Councilmember Elrich,
In calculating her time, did the back and forth of trying to figure out what the citation was and where the page was count against her time?

Council President Praisner,
Her comments and what was ruled out of the record is part of her time because we have to, through her testimony; the back and forth to find the pages should not be part of the record. So, does she have any time left?

Council Clerk,
She doesn't have any time left, but I tried to hold the time back when you were conversing outside of her –

Council President Praisner,
All right. So it wasn't charged against her.

Christina Ollo,
Well, then I'm going to make –

Council President Praisner,
I'm sorry. Just to be clear, there's about five and a half minutes left. You wanted to reserve four for rebuttal. That would mean you have a minute and a half and still reserve the rebuttal time. Would you like to continue?

Christina Ollo,

Oh, yeah.

Council President Praisner,
Okay, then she needs to start the clock.

Christina Ollo,
Okay. This is part of the record. This is a proposed Binding Element, that there be a walkway built. Nobody in the community wants this walkway. There's no evidence that anybody –

Council President Praisner,
Again, that's not part of the record.

Marty Grossman,
The “nobody in the community” statement is clearly not in the record. There is evidence in the record that there is some concern in the community about it.; but not that nobody – no, no blanket statement.

Christina Ollo,
There is no evidence. I ask that this Binding Element be removed for the eight foot -- twice the size of a normal sidewalk walkway – and a twenty-foot easement. It impinges on the wetland buffer here and here. I ask that – there’s a requirement that stormwater recharge be maintained. This is on the County's website, and this has not been done in the stormwater –

Council President Praisner,
Wait a minute. You can’t use the County –

Christina Ollo,
It's an omission from the Stormwater Management Report.

Council President Praisner,
I'm sorry. You cannot raise something that’s on the County website. It’s the record that you have to deal with.

Christina Ollo,
I would like the Binding Element to be removed for this walkway. I would like to see that Lot 18, which was abandoned here, is made a Binding Element so that nothing will be built on this wetland. That's the heart of the wetland. I would like to know that we have assurances, not at site plan, that storm and sewer issues will be the liability of the developer because they greatly affect us to the north. This area is very wet. The engineer for the project says the water table is a little high. We don't have any specific knowledge of the exact nature of the flooding. One of the goals would be to maximize recharge; on a site this dense, it can be fairly difficult to do. I'll just read my closing statement, which is –

Council President Praisner,
[Sound of bell] Okay. That reserves four minutes for your rebuttal. If you'd like to continue to reserve four minutes, now would be -- if you'd like to use any of that.

Christina Ollo,
Yeah. My closing statement --
Council President Praisner,
Wait. I'm sorry. Go ahead. Can you start the clock? It will come from their four minutes.

Christina Ollo,
All right. Again, remove the Binding Elements for this walkway; add the Binding Element that this be preserved as wetland for Lot 18. The area should be preserved as a wetland tributary to Sligo Creek and green space. As noted in the Master Plan Environmental Section, there's a mandate to protect the water quality of the streams, to prevent erosion and flood damage in the Kensington-Wheaton area, and to promote the conservation of selected areas in the their natural state. We would like to see that this is implemented here on a rare remaining wetland in a busy urban corridor, and we ask that you do not rezone. Thank you.

Council President Praisner,
Thank you. Time left? That was about a minute. Okay. So you have three minutes left for your rebuttal. Okay. If you all could step aside, we'll ask the applicant to come forward. [Pause] Yes. You need your packet back, Roger. Before we begin, let Councilmember Berliner get his packet from the table here. Now, do you need an additional exhibit before you begin?

Stacy Silber,
Can I put a couple up?

Council President Praisner,
Yes, go right ahead. Okay. You have twenty minutes; and are both of you going to share the time, or are you going to use it –

Stacy Silber,
I'm going to use it. Mr. Foster may assess.

Council President Praisner,
Okay.

Stacy Silber,
Good morning, members of the Council. My name is Stacy Silber, a partner with the law firm of Holland & Knight. I'm here today on behalf of Kaz Development, the applicant in the proposed rezoning of the Montgomery College of Art and Design property. With me here today, a representative of the applicant as well as representatives of the College Foundation. I also have with me experts who testified as experts in this case. The appropriateness of townhouses on the College property cannot be more clear to me. It

was also clear to the Planning Staff, all of the Planning Board members, and the Hearing Examiner -- who all recommended approval. We have a case before you that is very straightforward; not only in its compliance with code requirements, but also because the redevelopment of this property presents a great deal of opportunities. The property is a true smart growth site. It's within walking distance between both the Forest Glen and the Wheaton Metro Stations. It's on a bus line, and it's served by adequate public facilities. The Staff, Planning Board, and the Hearing Examiner all found that it met all requirements of the code in that it meets the "purposes clause" – actually two parts of the "purposes clause" -- both being a proper transition as well as being appropriate, and also being compatible with existing and planned uses in the area and having sufficient relationship to the public interest. There were four issues that were raised today, and I will go back through each one in turn and address the issues that were raised by the speakers; but I first want to give you some background on this project. The project is located on the northwest corner of Georgia Avenue and Evans Drive. It's again between the two metro stations; and it's proposed for development of 27 dwelling units per acre, which resulted in effective density of 10.7 dwelling units per acre. The allowable density on the property is actually 15.25 dwelling units per acre, or 38. So we've actually proposed less density, so we can address some of the issues that have been raised by the community. In terms of some of the benefits, it's discussed in the record as one of the few remaining re-developable properties in the surrounding area where rezoning will implement the County's policies of development in compact urban areas rather than on the fringes.

Marty Grossman,
Madame President, I'm not sure that there's in the record anything about it being one of the few remaining in the area; I don't recall that from the record.

Stacy Silber,
Actually, it's in the Land Use Report.

Marty Grossman,
All right. I don't recall it in the record.

Stacy Silber,
Second, the project will have approximately 50% green area on the site, including the creation of forested area and also an enhanced wetland -- all within close proximity to Georgia Avenue. The provision and preservation of this wetland at no cost to the County is something that should not be understated or discounted. Third, with the redevelopment of the College property will come improved pedestrian and bike connectivity to both Forest Glen and Wheaton Metro Stations as well as the area of parks. Currently, there are no sidewalks on Evans Parkway or Douglas. We are proposing to add both sidewalks as well as street trees. On Georgia Avenue, there is a sidewalk; but it's directly adjacent to Georgia Avenue. We are proposing to move that sidewalk back, increase its size, and also add street trees. And all of the street trees that are being added, they all have a Binding Element indicates that's going to be larger than is required. We will also provide pedestrian/bike connection from Douglas Avenue to the communities to the north. Now, I know that some individuals had indicated they don't want that path. And actually, from

those comments, what we agreed to in a Binding Element -- because we had conflicting recommendations from Transportation and Planning, we wanted to retain connectivity to areas surrounding the property -- that we would not specify what the width of that path would be, but rather determine the path width as well as the location so we could have input of the community at later stages of review. We also will provide crosswalk and pedestrian refuge across Georgia Avenue to the area park, and I'll talk more about that as well. In terms of green areas, I mentioned before, we have not maximized the density on the property. In fact, our density at 10.7 dwelling units per the acre, is actually less than our neighbor's property of Plyers Mill Crossing; and a few of your speakers who were here today live in that community. They're developed at 12 units per acre; we're developed at 10.7 dwelling units per acre. The Georgia Square Community that's on the corner of Plyers Mill and Georgia is developed at over 15 dwelling units per the acre. In terms of some of the issues that were raised -- in terms of Master Plan issues -- as many of you know, Master Plan makes no specific recommendations with regards to this property. It does show it as "quasi public," but it's silent as to the property. In the RT zoning cases, there's no requirement that the Master Plan be specifically complied with; it doesn't need to be designated. That's unlike a PD zone where you specifically do need a designation. In an RT zone case, there are three different criteria. It can be designated; it can be appropriate; or it can serve as a proper transition. In this case, in the record it shows that we both are appropriate as well as serving as a proper transition. Although the compliance with the Master Plan is not a requirement in the RT zone, as discussed at length in Park and Planning's community-based planning report and the Hearing Examiner's report, the project conforms with and implements the general Master Plan recommendations, including maintaining and stabilizing the residential character of the area, enhancing connectivity, and redeveloping properties that are already served by existing infrastructure. Again, this is not a property that's on the fringe. It presents a good opportunity for both affordable and market-rate housing. In terms of stormwater management and storm drains, the Department of Permitting Services has issued a letter, dated August 10th, which specifically approves the stormwater management concept for the property. They found that this concept, as proposed, adequately serves this project. There have been questions that were raised in terms of impacts on adjacent properties. And one thing I wanted to point out is that we are actually downstream -- the grade is downstream from both Plyers Mill Crossing as well as Plyers Mill Estates. From a stormwater perspective, we're not going to have any impact on their development, as Mr. Seth Churchill indicated in the record. There was also a floodplain study that was submitted and also approved -- that's in the record -- that said that this proposed project will be able to accomplish storm events. Mr. Churchill also indicated that in terms of the storm drain relocation, that all of the work's going to be occurring on the subject property, not on adjacent land. So we are not going to impact the properties by our storm drain location. He indicated that the relocated pipe actually will have greater capacity than the existing pipe. So while he says it's not going to have any impact, the question was asked by the Hearing Examiner folks and the community, "What can we do?" Well, we actually are increasing the capacity of the pipe. In terms of the sewer system infrastructure, WSSC has indicated that a change of the property zoning category will not impact the existing water and sewer systems in the area. So again, there's adequacy to deal with this property from a water and sewer perspective – WSSC will continue to review this project

in further detail as the project proceeds. In terms of parks, in the RT zone, there's no requirement that parkland be provided on the site. There is a requirement for green area; there's a 45% requirement. We're providing 50% green area on-site. There's also a recreation requirement. With recreations dealing with the dwellings on the property, and we exceed the recreation requirement as shown in the schematic development plan. Recreation in the area can be both active and passive, and there are active recreational facilities already in this area. There's one park that's on the east side of Georgia Avenue, and I'll talk about the connectivity; and then there are actually two parks on the west side of Georgia Avenue, which I'll discuss as well.

Councilmember Elrich,
How was your 50% calculated?

Council President Praisner,
Marc, I'm sorry. Not until it's time for questions. This is their time.

Stacy Silber,
Evans Parkway, which is across Georgia Avenue, has playgrounds, softball fields, tennis courts, and picnic tables. It recently was expanded by Park and Planning –

Marty Grossman,
Once again, I'm not sure as to what's in the park. I don't recall -- I mean, there’s certainly testimony or evidence about the park being there –

Council President Praisner,
The park is there. The content is not part of the record.

Marty Grossman,
It may be, but I just can’t recall.

Stacy Silber,
It's the Staff Report on page 17.

Council President Praisner,
All right.

Stacy Silber,
Currently, individuals on the west side of Georgia can cross over to the park. I understand there's issues with regards to crossing over Georgia and the safety issues; but currently, individuals need only walk two blocks south to Dennis Avenue, where there is a signalized intersection, or two to three blocks north to Plyers Mill. Based on the community’s comments, though, we understand they want a more convenient location for crossing; and we suggested that we would provide, through a Binding Element, a pedestrian crosswalk along Georgia Avenue right at Evans Drive. We also are proposing a crosswalk against Evan's Drive. The crosswalk across Evans Drive will have a pedestrian refuge in the middle; we’ll be expanding the median. There’s also –

Marty Grossman,
The crosswalk across Georgia Avenue, not across Evans Drive.

Stacy Silber,
I'm sorry. Across Georgia Avenue. Homewood-Capital View Park, which is discussed in the record, is along Plyers Mill. There's also the school, which Mr. Foster is pointing to as well, that's open terrace. In addition to Homewood-Capital View Park, which also has tennis courts, basketball courts – which again is referenced in the Staff report -- there's also McKenney Hills Park, which is less than a mile away and also includes tennis courts and other recreational abilities. Although not required in the RT zone, the applicant has agreed to provide some access to the public to this private property; and they've agreed to do this through access to the forest conservation easement area. There's a twenty-foot public use easement from the end of Douglas. Again, as I discussed, we'll be working with the community to decide where that location should be and the width of it. In terms of the wetland, there was a discussion about the wetland. We actually are enhancing the wetland. In the record, there's discussion in the transcript that we're going to be cleaning up invasive species. We'll be protecting the wetland. It's going to be in the forest conservation easement and protected. We're going to be reforesting. There's no forest that's qualified as forest on the property. We're going to be planting trees where there are none right now, and all of this will enhance the recreational facilities for the public -- again, access to this private property. In terms of traffic, I think it's unrefuted in the record that the trips that are generated by this project will be less than what is currently produced by the school. One of the individuals had indicated the time frame within which the traffic was studied, and actually the traffic was studied within a three-hour time period; and the traffic engineer who was looking at it basically looked at the peak for the school and then looked at the peak for the townhouses. He used the most conservative day in which to study for the school. He chose a Tuesday, which actually has the lowest student generator so that he would have a conservative number. He also used a conservative number for the townhouses, which is Montgomery County's. It's actually more conservative than the national standard, and found out that we would be producing less trips than would the existing school. In addition, according to the AGP, because we produce less than 30 trips, we are not required to provide a Traffic Study although we did one in response to the community's concerns. We are also improving safety because we are relocating two of the access points. Currently there are two access points on Evans Drive that are close to Georgia Avenue. Those are going to be eliminated, and the access is going to be provided along Douglas. In terms of recharge – there was one question with regard to recharge -- and I would just point you to Exhibit 17, which is the Department of Permitting Services' approval of the Stormwater Management Concept Plan. And it basically says that recharge is not required for the property, although Mr. Seth Churchill in the record did indicate that they would be working to see whether some recharge could be accomplished; but it's not a requirement for this property. In conclusion, this is a project that deserves approval. Townhouses are the appropriate use on this property. It's a smart growth site, close to two metros, and we're providing services in terms of sidewalks,

access to wetland, preservation of a wetland, creation of forest where there was none, very close to Georgia Avenue. We thus ask you to support the strong recommendations of Park and Planning, the entire Planning Board, and the Hearing Examiner and vote to rezone the subject property. Thank you.

Council President Praisner,
Thank you. Now we'll turn to the rebuttal time that's left, which I believe is three-and-a-half minutes, for the community which has requested oral argument. You have three-and-a-half minutes left; and in this case, that is all that you have. So there is no capacity to reserve or use it in another way. Three-and-a-half minutes.

Beverly Sobel,
Thank you. First, I want to say that as far as smart growth is concerned, yes, it does appear that it looks like smart growth; but in fact, it's not. Smart growth is balance -- balance between growth and between open space. This map says it all. Look at the density. You want to increase density on this section of Georgia Avenue and leave us in a sea of density and tell people as if it’s realistic to cross Georgia Avenue in the year 2007? The reality is that street is extremely dangerous, whether or not there's a light or a crosswalk. Mrs. Silber mentioned that the community asked for a crosswalk or a striped crosswalk at Evans and Georgia. Where is that in the record? I, myself -- and I speak for several hundred people in the area -- never asked for that crosswalk. We don't want to cross Georgia Avenue. We think that is socially irresponsible, ludicrous, and an endangerment of young children, adults, and pedestrians at large. But, again, as far as smart growth is concerned, yes, it's in between two metro stations; but it's a distance question. When you go over 0.75 miles or 0.8 miles -- I believe that’s in the record -- people simply don't walk that distance. They keep saying, as justification, that Plyers Mill is to the north of the townhouses. Look at the radius of full circle; that's only one-fourth of this area. The entire area, if you look at the rest, is single-family homes and parkland. Please don't make us cross Georgia. And as far as parks are concerned -- again, it's over a mile to get to McKenney Hills Park, which a lot of people in my area didn’t even know where it was. And then you have school which has parkland – which has accessibility issues with using the schools. The other side -- east side of Georgia has four neighborhood parks. I believe that's mentioned in the record, that there's Evans Park, Forest Glen –

Council President Praisner,
I think the Hearing Examiner is –

Beverly Sobel
Oh, okay. Well fine.

Council President Praisner,
You need to push the button in front of you – make sure it’s on.

Christina Ollo,
Sorry. I just wanted to highlight a couple of things. As Beverly said, the transportation person says that this area is 0.8 miles from each metro; and that's outside of walking distance. I want to point out that the path impinges on the wetland buffer, and this requires review then by the Army Corps of Engineers and other agencies. And Ms. Silber says they're providing for us. You know, look -- look at your maps. You can see how much forest is going to be lost here; all of this will be gone. As far as the zoning is –

Marty Grossman,
That's -- once again, not in the record. It's an afforestation area that's going to be forested. It's currently not defined. In the record, it says it's not defined.

Council President Praisner,
Okay, but it's in the record; so she'll make her comment, and we'll have yours next.

Christina Ollo,
I want to point out to you this is the boundary between Plyers Mill Estates and Carroll Knolls. Plyers Mill Estates allows townhouses. Carroll Knolls does not; it's zoned as R-60. That is the dividing line, and that's why many of us up here were not consulted. I want to mention again that stormwater management and sewers are an important issue. It affects those of us upstream, not downstream. Those of us upstream already have a storm sewer coming through here and storm sewers in the neighborhood here, here, and here already trying to drain the neighborhood. Any loss of permeability down here affects the neighbors upstream. There is a 12-inch sewer pipe that comes through here and dumps into a 15-inch pipe down here. We had a backup in this 12 inch, which is the second largest pipe, that affected –

Council President Praisner,
I'm sorry. Is the backup part of the record?

Marty Grossman,
There is in the record that the neighbors to the north suffered some kind of a sewage backup. That's it. That's the only thing it says.

Christina Ollo,
[Sound of bell] That's right.

Council President Praisner,
Okay. All right. Thank you all very much. We will now turn to Councilmember questions; but before we do, we will have the Hearing Examiner just reiterate or recap from your perspective the recommendation you've made.

Marty Grossman,
Yeah. I think that first of all, the most important thing I want to say concerns the desire for some of the neighbors to have a park in this area. And the reason I mention this is I think it's very important that the Council be aware that the case law prohibits the Council from

considering -- whether it's under Legacy Open Space or any other acquisition method -- the possibility of this land being a park because this is privately-owned land. And if Ms. Sobel's neighbors, for example, were to get a petition and say that her land should be turned into a park, and she wanted to rezone it to something else, that wouldn't mean that the Council should consider that. And that's the same thing here. This is privately-owned land; and whether or not the government wants at some point -- for good reason or otherwise -- to acquire it for a park, does not mean it can be considered here for that purpose because that would acquaint to the case law being unfair taking to prevent a zoning or a rezoning based on some future possibility of land being used for some governmental purpose. So I think that's the upfront issue. So what we're presented here with is an application for townhouses that -- and that application satisfies the requirements for the rezoning that's requested. It is compatible with the surrounding area. There are townhouses to the north. In fact, although it's not specifically mentioned except under Land Use Plan as "quasi public" because it presently is an institutional use there -- although it's not specifically mentioned on this property -- to the north, there is an item that's mentioned which are currently townhouses just to the south of Plyers Mill Road. And the Master Plan does suggest that that would be an appropriate -- RT 12.5 would be appropriate zoning for that area. Based on the record here, it's clear that this proposed zoning satisfies the objectives of the Master Plan.

Council President Praisner,
When he's done -- just wait, you'll have time; but when he's done.

Marty Grossman,
So it's compatible. It satisfies the requirements and the goals of the RT 12.5 Zone. And I would suggest, based on the things we usually consider in terms of public policy, in terms of public interest -- that is, the recommendations of the Planning Board; Technical Staff; the questions of Master Plan compliance; and in this case, the addition of MPDUs, it is in the public interest for this to be approved. So I so recommend.

Council President Praisner,
Okay. Thank you. Mr. Elrich.

Councilmember Elrich,
Thank you. I have a lot of questions, so you're going to have to bear with me. I want to start with something you just said just then. You said there's a property north that's recommended. Where is that property north?

Marty Grossman
It's just to the south of Plyers Mill Road. I think it's dubbed Item 29 on the Master Plan.

Councilmember Elrich
There's Plyers Mill; it's just to the south. So it's somewhere around here, right?

Marty Grossman,
Yes. It's to the north of the site.

Councilmember Elrich,
Where's the recommendation that it be used for townhouses? Is it in the Master Plan?

Marty Grossman,
Yes, the Master Plan suggests that it would be appropriate for the RT 12.5 Zone.

Councilmember Elrich,
Okay. What's on the property now?

Marty Grossman,
Right now it's RT 12.5, I believe.

Councilmember Elrich,
Is it zoned RT 12.5, or does the Master Plan say it would be appropriate for RT 12?

Marty Grossman,
I think both, if I recollect. But the Master Plan is what I'm specifically referring to because there's no special reference to the specific property here -- the subject site in the Master Plan -- other than this one mentioned in their overall Land Use Plan that it currently is quasi public. I looked around to see whether the nearby properties had a specific discussion, and there was a specific discussion of this property to the north of the site along Georgia Avenue in which the Master Plan suggested it would be appropriate for an RT 12.5 -- as well as, they mentioned what other zoning could be appropriate –

Councilmember Elrich,
I think you're missing my point, and it gets to another point I want to make. There are references in master plans -- occasionally to properties, for example, that have an institutional or specific exception use where the underlying zone is R-60, and the Master Plan would say, “Should this site be redeveloped? We think it would be appropriate to be redeveloped as RT -- in this case, perhaps RT12.5.” I'm curious why the Master Plan says it would be appropriate for RT 12.5 because if they’re saying that, that to me would indicate that it's actually not zoned RT 12.5 now. It may well have another underlying zone on it. It might be a church sitting on R-60. He’s referring to the other site.

Marty Grossman,
Right. At the time, the Master Plan was made in 1989; and I think that the use of the property later was after that. That's why the Master Plan –

Councilmember Elrich,
But my point is this, that in other master plans with underlying R-60 zones, with uses on it that aren't R-60, the Master Plan at times references what might be done with the property should the existing use terminate. So I'm looking at this property here, and they did a Master Plan in 1989. They left the underlying R-60 in place; that's not just quasi public. They left the underlying R-60 zone in place, and they didn't make a recommendation about what should be done or could be done.

Marty Grossman,
That's correct.

Councilmember Elrich,
So rather than saying, as Ms. Silber did, that the Master Plan is silent, isn't the Master Plan in fact affirmative in saying this is R-60?

Council President Praisner,
No, it's silent.

Councilmember Elrich,
If the zone is R-60, isn't that an affirmation –

Council President Praisner,
No. I think what she was referring to is as you look through master plans, there's no specific reference beyond the zoning map that says something about parcels. And as you get experience looking at master plans, there's a lot of master plans where it's silent on more specificity than just the zoning page. That's, I think, what the reference is to, Marc.

Councilmember Elrich,
Okay. It seems to me that had the community and had the Planning Board been interested in rezoning this or looking at future uses, that there would have been references in the 1989 Master Plan to what other use – because I have seen this in other master plans.

Council President Praisner
Marc, I can just tell you, having gone through all the master plans, that there's lots of master plans for the last 16 years. There's lots of master plans where there's no conversation at all; and then two or three years later, you look and say, "Gee, why isn't there any even discussion of this parcel?" Master plans don't discuss every single parcel.

Councilmember Elrich
I agree they don't discuss every single – I have seen examples where they do; and I've seen examples where they don't. And I'll affirm that because I know that the Washington Adventist site has no discussion about future uses should the institution leave.

Council President Praisner,
Right.

Councilmember Elrich,
So I know there are examples of both. My concern is that -- how this comports with the R-60 with the delineation between the townhouse zone above it and the single-family zone below it, and how it comports with the Master Plan's suggestion that should anything be done on this site by the special exception, that it have a minimal visual inmassing impact on the neighborhood. And so if the Master Plan is also talking about what the site -- how

that site should impact on the neighborhood, why would we treat that change in mass or location of the institutional building differently than treating the bringing of townhouses right up to Evans Drive? In other words, if the Master Plan says whatever happens here in terms of density should be pulled back from Evans Drive, how does allowing this to go right up to Evans Drive comport with the Master Plan's view of how that parcel should relate to the neighborhood?

Marty Grossman,
Well, I think the answer is that the Master Plan seeks to continue the residential quality of the area. What this proposal does is it replaces an institutional use with a residential use. And that whole MCAD area, which is everything that faces Georgia Avenue, is either parking lot or a solid building. And this would be replacing that institutional use with townhouse development that is similar to the ones to the north. So it just continues that general visage of it. It also serves as a transition to some extent from the -- if you follow from well further north, from the Wheaton area down, a much larger development, down to as gradually it comes down to more single-family developments to the south. So that's part of it. It also is some buffer for the single-family residences to the west. And all of that is part of this concept in the Master Plan of maintaining this residential structure along the way. I did find the page I was looking for in the Master Plan on page 59 of the Master Plan, item number 29. And it says -- this is concerning Georgia Avenue and Plyers Mill Road where it talks about -- that the Plan had recommended against change from R-60 to the OM zone. But otherwise, it says "This site is appropriate for RT zoning in a way of extending the townhouse development which surrounds it to the corner of Plyers Mill Road and Georgia Avenue. The exact density of the RT zone should be determined based on the Development Plan which should show how the development of townhouses on this site can best relate to the surrounding RT 12.5 development…" and so on.

Councilmember Elrich,
So I will go back to my original point. You're talking about a parcel right around there, on the same side.

Marty Grossman,
On the same side.

Councilmember Elrich,
We're in the same Master Plan. We're in the same Master Plan. Okay. South of Plyers Mill?

Marty Grossman,
Right.

Councilmember Elrich,
So in the same Master Plan where they talk about this site, right up here -- a couple thousand feet above it -- they talk about future use of the site and what might be

appropriate in the future. In other words, they leave the R-60; but they say it might be appropriate for RT. And a couple thousand feet south –

Marty Grossman,
And they didn't mention that specific parcel.

Councilmember Elrich,
They don't say it's R-60, but it might be appropriate for –

Marty Grossman,
If I had to tease out a reason for that, I'd say it's because it had an institutional use at the time; and so it was designated as "quasi public."

Councilmember Elrich,
What's the use of this one over the site they're talking about?

Marty Grossman,
I don't recall.

Councilmember Elrich,
Well, I find that an interesting inconsistency between two parcels on the same street within a couple thousand feet of each other. One, they say clearly, R-60, suitable for something different; the site below it, they say R-60 and don't even discuss any other possible use of it.

Marty Grossman,
I understand.

Councilmember Elrich,
But I'll leave it at that.

Marty Grossman,
All right.

Councilmember Elrich,
The 50% open space requirement, is that met by -- is that being met by this part of the parcel over here?

Marty Grossman,
According to – by part of the parcel?

Councilmember Elrich,
This green space right here.

Marty Grossman,
Yeah. That green space is completely open space. That's the afforestation area.

Councilmember Elrich,
Right, but the Applicant says that we're exceeding the requirement because we're keeping 50% open space; right?

Marty Grossman,
As of the entire parcel.

Councilmember Elrich,
This is a wetland, right?

Marty Grossman,
That's correct.

Councilmember Elrich,
Did they do anything with it anyway?

Marty Grossman,
No. Well, what's happening is they have agreed to, in consultation with Technical Staff, agreed to make that an afforestation area where they will be adding trees; and it'll be protected by a conservation easement.

Councilmember Elrich,
But I'm thinking in terms of – they're not providing, it seems to me -- correct me if I'm wrong -- if this is a wetland and undevelopable, they're not providing anything that isn't on the site and couldn't be changed anyway.

Marty Grossman,
Oh, I don't know the answer to that. Whether or not they could have been done something else with it wasn't before me. The answer is that this is what is proposed, is what I evaluate. Often there are lots of things that an owner could propose for a property, and they don't. The only thing that we can evaluate is what they do propose; and that's what Technical Staff -- by the time it gets to the Hearing Examiner, Technical Staff has made whatever suggestions it has for the site. The Planning Board has opted in. So whatever else are possibilities don't come to me to evaluate.

Councilmember Elrich,
Okay. There's been reference to this as a smart growth site. And I accept the argument that beyond three-quarters of a mile, talking about smart growth and residential really doesn't make sense. That's not generally accepted as a smart growth area. But my question is, Is there any evidence from the neighborhood – is there any statistical evidence provided that people in this area use transit at the rate of 30%? That these people walk to either of the metros in numbers that are significantly different than people who live back here?

Marty Grossman,
No.

Councilmember Elrich,
Is there any evidence that this functions as a smart growth area in terms of ridership?

Council President Praisner,
That's not part of the record, I don't believe.

Marty Grossman,
There's nothing in the record that analyzes that –

Council President Praisner,
One way or the other.

Marty Grossman,
Right -- one way or the other.

Councilmember Elrich,
But the assertion that it's a smart growth area is in the record?

Marty Grossman,
I don't think I used the term "smart growth." I think it was a characterization. I don't think I used the term "smart growth."

Councilmember Elrich,
Okay.

Council President Praisner,
Further questions, Marc?

Councilmember Elrich,
Let's see. I'll stop there for now.

Council President Praisner,
Okay. Other questions from other Councilmembers? There are no other lights, so I would entertain any motions that Councilmembers may have. Ms. Floreen.

Councilmember Floreen,
Madame President, I will move approval of the application. I'm really sympathetic to the concerns of the neighbors here, and I think that they will have an opportunity apart from the fundamental principal development. But some of the details -- concerns about how the green space will be managed, accessibility, the issue of the trail, and so forth -- will be before the Planning Board when it goes through the implementation stages of this project. But it is hard to see, at least from my perspective, how the stormwater management concern that they addressed is not going to be addressed at that stage -- the green area

issues. The traffic issue will continue to be analyzed at the subdivision stage, and I think there will be ample opportunity for further community engagement.

Council President Praisner,
Okay, there's a motion in front of us. Second, Vice President Knapp. Councilmember Berliner.

Councilmember Berliner,
Before voting, I just wanted to observe to those who were testifying before us in oral argument just how difficult that process is; and that I'm very sympathetic to you. If you're not a lawyer, and to talk about what is in the hearing record is very confining. And I understand why you thought it important to bring to our attention things that weren't in the record; but we have to act as judges. The Council President is doing her duty in terms of ensuring that the information we take in is limited to that which was before the Hearing Examiner because we are reviewing his recommendation. So I wanted to thank you for your participation and recognize how difficult it is, and I thought you did a very good job given those difficulties. So I just want to thank you for your participation.

Council President Praisner,
Well said, Councilmember Berliner. I see no other lights. Councilmember Elrich?

Councilmember Elrich,
I just want to state for the record that I'm going to vote against this proposal primarily because it's clear to me that when they did the Master Plan, they examined the parcels; and in one very clear case, which much proximity, they made a future recommendation for use. In this case, they made no future recommendation for use; which tells me that the people who made these decisions on the Planning Board were thinking about this area and were thinking about future uses for the area, and they chose not to suggest a different future use then R-60. And I think that that ought to prevail here. I also don't agree with any argument that somehow the park on the other side of Georgia Avenue -- no parent in their right mind would send their kid across Georgia Avenue. Nor would you walk three blocks north to Plyers Mill, cross Plyers Mill -- light or otherwise -- and then walk three blocks south to get to Georgia. That road is a death trap. And the idea that you would send children across there and that it’s even plausible to service the children of a neighborhood, I think is ridiculous. Maybe an adult going to find a tennis court, yeah; but to suggest this is an adequate access for children who have to play, no.

Council President Praisner,
Councilmember Elrich, I want to restate from a Councilmember with the most seniority sitting up here who's gone through the most master plans as a Councilmember, that I couldn't disagree with you more that just because the Planning Board and the Council made a comment about one parcel and didn't about another means they consciously did not have the same view about that second parcel. It has been my experience that

Planning Boards, Planning Board Staff, Councilmembers, Councilmember Staff, community, often do not comment on parcels. We do not comment on every single parcel, let alone parcels next to each other. And I would cite specific parcels and other master plans as examples of that, but they are not part of this record. I just want to say that it is not consistent to say that just because someone commented on one parcel and they are silent on the other, it means they consciously do not support some suggestion. If that were the case, then the Planning Board itself, with its institutional record, would not have recommended approval here, which they did. And Council Staff, with their institutional record of the area and their review of the standards for rezoning, would have recommended denial. You have an institutional use here; and my assumption, not putting myself in their minds, but at this point, is that there was no discussion of that parcel because of a variety of reasons, including omission. And that happens often with master plans. And you will see when we get to a master plan that not every single parcel is discussed or made reference to. It is a failing of our review; but you can't make a judgment that because it's not there -- or I don't believe you can make a judgment that because it's not there, they consciously did not support a similar kind of use. They probably have no view -- had no view at that point. Councilmember Floreen.

Councilmember Floreen,
Thank you, Madame President. I don't want to prolong this except to say that since my name is on that Master Plan, because I was on the Planning Board at the time, I can second Mrs. Praisner's comments. We will all experience a master plan at some point -- Twinbrook, I guess -- and the plan is what the plan is. It says what the planners and community focused on; and that's what they focused on -- no more, no less. There's not a lot of mystery to it. And the challenge, of course, for community members is understanding the interrelationship between that silence and the large realm of regulatory opportunities or constraints – a long list of rules. And they really learned a lot, but I don't often hear community members just to use “LATR” easily in a sentence. But the challenge for communities is relating all the current rules and standards that guide a Hearing Examiner's analysis with master plan recommendations which are often out-of-date or not helpful or simply irrelevant. That's the challenge that we face in our master plan schedule and in our master plan analysis, and it just makes it more difficult for everyone I have to admit.

Council President Praisner,
Councilmember Ervin.

Councilmember Ervin,
I supported the community's request for oral argument this past July, and I really am happy that we did that. You got to make your case; I think you did it very well. But I'm still compelled by the fact that the Park and Planning Board, Park and Planning Staff, the Hearing Examiner, all agreed to support the application in this case. And I'm still a little torn by some of the things that you said to us that were not in the written record; and, hopefully, we'll be able to come back and mitigate for some of the concerns that you have. But I'm going to support the applicant on this one, and I have a couple of questions still before I give up my time. And one of them has to do with the green space. One of the

community residents stated that we would be robbing residents of green space. And my question is, “How accurate is that statement?”

Marty Grossman,
I don't think that that's accurate. I don't think there is going to be actually significantly, if any, less green space on the property than is now. Because if you look at the aerial photo now, you'll see that the MCAD building occupies a very large portion of the eastern portion of the site. There's a parking lot that occupies – that’s right next to it that occupies the rest, and a road right next to it. So the only real green space you see right now is in the area that's going to be afforested and preserved as a forest conservation easement to the west of the site. So I think that there will be very little difference in terms of the amount of green space. Also, on the plan for the townhouses, they plan to have a kind of village square green area in the middle of a part of it. So I don't believe that there is going to be a vastly different amount of green space. And one of the things that I asked at the hearing and that the applicant agreed to was specifically making this green space – the forest conservation area -- available to the public, not just to the members of that community, of the subject site’s community, but open to the public to the extent that it's permitted under whatever environmental laws or regulations govern the forest conservation easement. And so that became a binding element in the application.

Council President Praisner,
Thank you. Further questions, Councilmember Ervin? No. Thank you. Councilmember Leventhal.

Councilmember Leventhal,
Well, at the risk of piling on, I would like to address this suggestion that because the Planning Board and County Council in the late 1980s did not anticipate that MCAD would relocate and sell its land, that therefore, somehow, the expectation was that that would happen anyway and that single-family homes or another use would occur on that parcel. MCAD was a long-established institution in the community. It graduated many, many distinguished artists and sculptors and other practitioners; and had the Master Plan in the late 1980s suggested that that property was coveted for residential development of any type, there would have been an uproar in the community. And I would suggest that as we look at future master plans, that we not make a practice of speculating on development uses for parcels that are presently in institutional hands; because I think we will find that if we do that, we will encounter sharp opposition from the community. It isn't possible to know the future. And it wasn't possible for the Planning Board or the County Council in the late 1980s to know that MCAD would encounter significant financial difficulties and ultimately merge with Montgomery College. That plan did not develop until the mid 1990s, and it wasn't known in the late 1980s. So there are just some things that just are not known when master plans occur; and master plans seek to, as much as possible, respect existing uses and respect existing communities. And so by not speaking to a long-standing, beloved community use, that was very consistent with what master plans generally do -- because MCAD was there. The other point I want to make -- and it's a difficult point to make -- is that it is very understandable that communities would prefer single-family residential to townhouses. I fully understand that communities have that

view. It is also the case, though, that townhouses are available at a lower price than single-family homes; and that it is, unfortunately, not possible simultaneously to support affordable housing and oppose townhouses uniformly. There are going to be locations where townhouses make sense, and in fact, are in the public interest. That's a difficult statement to make. It's a difficult issue to contemplate for some communities; but it is, indeed, the fact. If we are going to increase the stock of affordable housing, there are many tools that we will use to that end -- very much including preservation of existing housing stock and preservation of existing rental stock. But also new construction will be one of the tools in our arsenal as we seek to increase the availability of affordable housing, and new construction of townhouses will have to be very much part of that public policy goal.

Council President Praisner,
Councilmember Berliner.

Councilmember Berliner,
Thank you, Council President. I just want to review the bidding, if I could, with the Hearing Examiner so I'm clear in my own mind as to some of the salient facts. One, I understand that this was approved by Park and Planning on a 5-0 vote; is that correct?

Marty Grossman
That's correct.

Councilmember Berliner,
Two, in the hearing before you, there was no opposition; is that correct? Was there opposition?

Marty Grossman,
No. There was testimony from Mr. Belcher on behalf of the local Civic Association. When I asked him, he said that the Civic Association had not voted up or down on it. So I asked him, “Should I characterize this as neither for nor opposed?” And he said, “Yes, that would be fair.” There was no other opposition testimony.

Councilmember Berliner,
In your view, do you accept the proposition that there'll be less traffic as opposed to more traffic as a result of this development?

Marty Grossman,
I don't have any evidence to differ from that, so I'm compelled by the evidence to accept that. Whether that is actually true, I can't speculate; I just have to go by the evidence.

Councilmember Berliner,
In your view, it will not be a diminution of green space as a result of this development?

Marty Grossman,

I didn't do a specific measurement of it ,and I don't recall that ever being specifically addressed in that way in the record. It is addressed in terms of whether or not the amount of green space would meet the amount that's required, and they more than meet the requirement in the code. It appears to me, from my own observation, looking at what is planned versus what is there now, that there would be a roughly equivalent amount of green space.

Councilmember Berliner,
And we are getting four MPDU's out of this if this were to go forward?

Marty Grossman,
That's correct.

Councilmember Berliner,
What is the status of the Habitat for Humanity?

Marty Grossman,
The Planning Board decided that it did not want to have a binding element in which Habitat for Humanity was a required participant in building the MPDUs. It felt it would unduly restrict their flexibility at site plan, if in fact -- in part because they might want to have the MPDUs not all in one row; and therefore, they might not want to have a single entity specified for that process -- and for other reasons, I believe. But in any event, they requested that that binding element be removed. It's possible that Habitat for Humanity may end up being the builder of the MPDUs; there's no way for me to tell at this point.

Councilmember Berliner,
And you are satisfied with respect to the stormwater management set of issues that this project will provide adequate stormwater management for the site?

Marty Grossman,
Well, the only evidence in that regard is the testimony of the civil engineer for the applicant and the approval of the Stormwater Management Concept Plan by the Department of Permitting Services. This is early in terms of stormwater management evaluation. Much is done after the zoning stage to make sure that there is adequate consideration of stormwater management. It appears in the record as I have it now, I have the testimony of Seth Churchill, the engineer, saying that this will – if anything in terms of stormwater management -- lessen the amount of stormwater problems on both sides because they will increase the size of the stormwater management pipe. And we have the approval of the Concept Plan by DPS. So based on that unrefuted evidence, I find that stormwater management at this stage -- at the zoning stage -- is adequate, yes.

Councilmember Berliner,
And as you observe, there will be future proceedings or future opportunities to explore this? Will citizens have an opportunity -- concerned citizens have an opportunity to participate in this process as you understand them?

Marty Grossman,
Yes, site plan review and subdivision review, and I believe that is open to the public before the Planning Board.

Councilmember Berliner,
And finally, with respect to the binding element of that 8-foot wide -- I'm sorry, perhaps you could describe it. I see Council shaking his head as though I've misconstrued it. It was a strip of access that you asked for, as I appreciated your conversation with us, in order to ensure that there would be a community access to the wetlands, etc., and that that –

Marty Grossman,
Well, actually, that predated my evaluation. That was a binding element, Number 4: "Construct a pedestrian connection from the end of Douglas Avenue to the community to the north with the width and location to be determined at site plan." Originally, I believe that binding element had specified a width; but it's my understanding from the record that because of community concerns about the nature of that path, it was decided to leave that -- the exact contours of that -- to site plan with community participation to be able to satisfy all concerns.

Councilmember Berliner,
So the applicant and those who are concerned about this will still have future opportunities to work those set of issues out; is that correct?

Marty Grossman,
Yes, sir.

Councilmember Berliner,
Thank you. Thank you, Madame President.

Council President Praisner,
Okay, I see no other lights; so we will call the roll, please.

Council Clerk,
Ms. Ervin?

Councilmember Ervin,
Yes.

Council Clerk,
Mr. Elrich?

Councilmember Elrich,
No.

Council Clerk,
Ms. Floreen?

Councilmember Floreen,
Yes.

Council Clerk,
Ms. Trachtenberg?

Councilmember Trachtenberg,
Yes.

Council Clerk,
Mr. Leventhal?

Councilmember Leventhal,
Yes.

Council Clerk,
Mr. Andrews?

Councilmember Andrews,
Yes.

Council Clerk,
Mr. Berliner?

Councilmember Berliner,
Yes.

Council Clerk,
Mr. Knapp?

Council Vice President Knapp,
Yes.

Council Clerk,
Ms. Praisner?

Council President Praisner,
Yes. The Rezoning Application is approved 8-1, and I want to thank everyone for their discussion on this issue. Let me remind Councilmembers that we have scheduled an opportunity for conversation and briefing by staff on a variety of issues that relate to rezoning issues from a standpoint of ex parte process and the process for Council consideration. Just to review them, they come out of the conversations last spring and summer before we went on recess. If there are specific questions related not to individuals' applications, but to that approach -- including the Planning Board's ex parte

piece which came out of our conversations with the Planning Board when we met with them for our informal meeting and discussion -- we have that scheduled. That's coming up later, I think -- this month or early next month -- so that you'll have that conversation next week. You'll have that conversation, and I think that will help. We're also reviewing the brochures of ex parte information and what's on the website -- both for the Planning Board and the Council -- in order to help and ask the People's Counsel to review that as well to help with the community's understanding of the structure for oral arguments, if they are reviewed, or if the Counsels determine that they would like to have that and the whole process of the Hearing Examiner. I think it's important for us to understand that. I think I will add to that piece some discussion before we have our first Master Plan review of the Master Plan process as well. Councilmember Leventhal?

Councilmember Leventhal,
Well, I just want to thank the Council President and staff very much for scheduling the briefing to which the Council President referred. And I just want to – just in a few seconds -- to just say to the community that the impetus for establishing this weird, cumbersome process that makes all of us frustrated originally -- years ago -- was to prevent developers from having special access to elected decision makers when it came to how these decisions were made. And furthermore that if the process were to be changed, it would require changes through the State legislature to the Regional District Act. So I know that many community members feel like they don't have enough chance to participate, and I can understand why community members would feel that way after this morning's session. But the original reason that this was set up the way it was not to squelch community input, but indeed to make sure there was a fair, objective, even-handed process that was depoliticized as much as possible. I don't like the process a whole lot either, and I think most of us find it very frustrating; but there are historical reasons why it is the way it is. And changes to it would have to go through the State legislature.

Council President Praisner,
And changes would have to be the same for all parties, and I think that's something we need to talk about and think about. Councilmember Elrich.

Councilmember Elrich,
I think there's another approach to this that may require less input from the State; and I think Roger raised the issue of the Council, the advocate, in the beginning. And it seems to me, a lot of what citizens are able to do in the process of what goes on the record has to do with their ability to get assistance during the initial stages of review. And we've talked about how we want to look at that process and whether the office has adequate tools to provide the level of assistance that citizens need. And perhaps a lot of the issues that were raised today that were off the record, off the record, might have been on the record if we could look at how we could revise that very process. And then this discussion could have been the fuller discussion. And we wouldn't need changes, perhaps, to the State law. Everybody could be sure that everything that needs to be on the table is on the table in the initial process. And I think that might be an easier fix to a lot of what we face today.

Councilmember Leventhal,
That would be a process before the Hearing Examiner, though, not the County Council.

Councilmember Elrich,
But we were affected by what went on before the Hearing Examiner.

Councilmember Leventhal,
I very much agree with that. But as I said earlier this year, today's session was not a public hearing; the hearing occurred before the Hearing Examiner. But I agree that it would appear to me that some community members felt that they weren't adequately informed of the process and able to participate timely before the Hearing Examiner, and I absolutely agree with that.

Council President Praisner,
And that is a discussion that we will continue to have, both with the Hearing Examiner and the People's Counsel as we go through the process. But I guess I would suggest that there are always going to be some elements that folks are going to think of at some point in the process that's going to be outside of an oral argument; and we're going to still have to keep to what's in the record and in front of us. I do agree, but the question is one of ensuring that the record and participation through the record process and through the hearing process with the Hearing Examiner and interactions with the People's Counsel is perhaps where we need to put our focus. But the reality is that in the end, what the Council can consider if it votes for oral argument, is only what's in the record. And there have been -- this is not the first time when folks may have strayed slightly and had to be reminded. That concludes this discussion; but obviously, we will have more conversation on the generic issue of the whole process for review of rezonings and of the community's participation in the rezoning process. We will now begin, half an hour late almost, a briefing by our staff on Implementation of the Development District Act - An Analysis of Legal Issues Raised by the Clarksburg Town Center Advisory Committee. And I just want to make a couple of brief comments before we begin. I would invite my colleagues to turn their attention at this point -- folks, can we keep the conversations -- well, let's just let folks shift as far as -- so let's take just a minute of pause while folks leave the room who would like to leave, and those who want to enter the room can enter. [Pause] Okay. We have before us Kathleen Boucher, Michael Faden, Sue Richards, and Glenn Orlin. They are the staff members who I asked -- or at least I asked Mr. Farber and Ms. Orlansky to identify staff and to ask staff to put together a Committee or a team that would review the concerns that were raised to us by the Clarksburg Town Center Community group of legal issues associated with development districts and the legislation which the Council enacted back in 1994, I believe, to create the ability for the Council to use the tool of development districts in financing infrastructure. As I said, legal questions were raised by the community. The staff had been asked to respond to those concerns that were raised and to prepare a report which has just been delivered to Councilmembers as well as being made public. What we will have this morning is, no matter what Evelyn Wood reading you may have done or training you may have had, there's no ability, obviously, to absorb either through the oral briefing or through the documents that we've been prepared, the substance of the report. The report took longer than we thought it would, as staff told me,

as they began to review the questions and explore the issues. But my intent at this point is to have staff provide a briefing for us of their findings and to see -- at this point, I'm sure that it's almost impossible for Councilmembers to have specific questions; or the questions will obviously relate to your review, which will follow, of the documents. We also have the benefit of a County Attorney opinion, which the County Executive requested, and a transmittal from the County Executive of that opinion to us, as well as his statements about how he would like to proceed. We also got -- as it relates to the specific Development Districts that are associated with Clarksburg, we have also received information from the Inspector General related to his review of capital budget projects, including those that carry Development District funding as a source of funding for those items related to the Clarksburg Town Center roads. Both as it is our practice with the IG report and is our normal practice with Office of Legislative Oversight reports, they are referred to the Committee of Record for deliberations and discussion to see what actions, if any, the Committee may recommend for the Council. Given the volume and the magnitude, I suspect that the Committee Chair for MFP -- that we've added to the work plan for the MFP Committee significantly. But I don't see anything happening quickly, but that there will be a review of the staff recommendations as well. I've ask Council Staff to provide for televising of any committee meetings, and I believe there'll be much more than one, and certainly try to accommodate other Councilmembers' schedules so that they may participate as well. With that, I know from the fact that staff told me they were continuing to work on this, that this took a lot of work through the summer. It may have affected summer vacations. Certainly it affected other work plan items for the individual staff members, and required conversations both with -- and review of documents that are not -- were not related to most immediate documents but beyond that, significant research. So I'm going to turn it over to Kathleen Boucher, Senior Legislative Attorney who took the lead on this, and let her and the staff members proceed with the briefing. Kathleen?

Kathleen Boucher,
Thank you, Council President Praisner. I just want you to know at the outset that my initial small contribution to your getting the most you can out of this briefing is the package of Post-Its that each of you has. You're looking at a 95-page report with 145 pages of fact finding, a document supplement that has about 400 pages; but perhaps that will have some small -- it will be of some small assistance today. Pardon me?

Unidentified Male Speaker,
Is this a book on tape?

Kathleen Boucher,
It's coming!

Council President Praisner,
The abridged version.

Kathleen Boucher,
I'd like to begin with a review of what the assignment was for Council Staff, and then discuss how this report relates to that assignment. The Council received a 98-page report

from the Clarksburg Town Center Advisory Committee in March of this year, alleging a number of illegalities in the process that was used to create the Clarksburg Town Center Development District. That report in some ways was not clear about which particular legal issues they were; but it did make it very clear that the allegations were of unlawful procedures and legal issues. And that report specifically indicated that it was not questioning the Council's underlying policy decision to use a development district to finance infrastructure items in the Clarksburg Town Center area. Council President Praisner directed Council Staff and the Office of Legislative Oversight to comprehensively analyze the issues that were in that CTAC Report, including an analysis of the history of development districts in the County. Council Vice President Knapp asked that the staff report include a summary of policy goals of development districts; a generic list of steps necessary to create and implement a development district -- including the roles of the Executive Council and Planning Board; a review of actions taken in the creation and implementation of the Germantown Development Districts; a review of the actions taken to date for any development district in Clarksburg; and a specific discussion of how the list of infrastructure items to be funded within a development district had been developed. Just again, back to the CTAC Report, the Council did initially receive a 98-page report from CTAC. That was supplemented over the last four or five months by a number of other documents that were submitted to the Council by CTAC's lawyers. Three different documents had been submitted before Friday of last week, and then there were additional documents that were provided on Friday. The seven legal issues that we believe those CTAC documents raise are outlined on page 2 of the report, and I'll discuss those in detail. Yeah, let me explain what you've got in front of you, thank you. You've got two blue volumes in front of you. One is the report. There's another one that's entitled, "Document Supplement." I'm going to be working from the report. The document supplement is literally a combination of all of the written materials that we've received from the private stakeholders in the course of this report; but I'll be working from the first volume. The other thing you have in front of you, just for reference, is a color map that Dr. Yung-Tsung Kang in the Department of Permitting Services prepared for us; and I want to thank him for that. He spent a lot of time preparing a map that would depict, in a clear way, the Clarksburg Town Center Development District and all of the infrastructure items that are funded by the Clarksburg Town Center Development District. So you should all have a one-page -- on one side, sort of a close-up look of the Clarksburg Town Center Development District and on the back, a look that would show you the surrounding areas as well. So those are what you have in front of you. So I'm on page 2 of the report. And as I said, I will be discussing each of those issues in a moment; but the Council President has directed me to address the assignment and explain how this report responds to that. So I'd like to walk through some important components of that. This report, in an attempt to respond to the requests of Council President Praisner and Council Vice President Knapp, discusses the origins and policy goals of development districts; reviews the state and local laws governing creation of development districts; reviews the facts relating to each step in the creation of the Clarksburg Town Center Development District; summarizes the status of the Clarksburg Skylark Development District and Clarksburg Village Development District; reviews relevant facts regarding the County's past practice with the West Germantown Development District, which are the West Germantown Development District -- which in the report is referred to as WGDD – the Kingsburg Development District, which in the

report is referred to as the KBCDD; and the report analyzes legal issues raised by CTAC. And at the very end of our report, we identify a number of other issues that although they don't directly relate to the legal issues raised by CTAC, Council Staff and OLO staff believe merit further discussion. In terms of methodology, I would like to explain to the Council that this has been, as Council President indicated, a collaborative effort between Council Staff and OLO staff with two exceptions. The body of the report was primarily written by me. Glenn Orlin primarily wrote a section in Chapter 9, and Mike Faden primarily wrote a section in Chapter 9. Sue Richards wrote all of the fact-finding appendices that are attached to this report. And all of us were aided by a number of other wonderful staff people here at the Council, including Steve Farber, Karen Orlansky, Jeff Zyontz, Amanda Mihill, Karen Percaro, and Teri Busch. In order to obtain the legal and factual background that we felt we needed to analyze the issues raised by CTAC, we reviewed State and County laws relating to development districts; the legislative history of those laws; the legislative history of each development district; and in addition, OLO staff conducted a document review of the Planning Board's regulatory records relating to development projects in the Clarksburg Town Center Development District and the two Germantown Development Districts. I should say in terms of OLO's fact finding, Sue did some extensive and wonderful fact finding to help us understand what types of infrastructure items had been funded in the Germantown Districts and exactly what types of infrastructure items were funded in the Clarksburg Town Center Development District. In particular, an initial question going in for us was, Which infrastructure items in those three Development Districts will require as a condition of subdivision or site plan approval by the Planning Board? And also, we wanted to find out what the legal basis for those conditions were -- those infrastructure items were, with the hope that that might help us understand the County's administrative practice in terms of what was the rationale behind including certain infrastructure items in development districts. We were unable to find any one or any combination of documents that easily provided that information to us; and as a result, OLO staff -- being Sue Richards -- undertook some fact finding that involved gathering and reviewing all of the regulatory records for the subdivision projects located in those three development districts and attempting to gather the information that we thought we needed for those baseline questions. Okay. Very quickly, I just want to perhaps address a basic question -- What is a development district? -- so we're all starting from the same place. And a development district is a special taxing district which was created to finance infrastructure items required to serve new developments. In terms of the goals of development districts, they're summarized in the executive summary; and I'll just read them here. Those goals include facilitating growth and development while assuring simultaneous availability of adequate public facilities; allocating infrastructure costs to the buyers of new commercial and residential property that benefit directly from growth; relieving developers of the demand for cash or a balance sheet liability that limits future borrowing; and reducing infrastructure costs that are passed on to property owners by financing those costs with tax exempt bonds that have a lower interest rates than mortgages and are repaid with taxes that are deductible for Federal Income Tax purposes. So how did we get to a point where the County -- to the point that the County enacted its own Development District law? And that is a law that's on the books now that we call the Development District Act. It's a law that creates procedures for creating a development district. Very briefly, and I address this point in terms of where did that law

come from because it's very relevant to the legal issues that are raised by CTAC. And that law was enacted in 1994. As you can recall, the early 90s were a time of economic recession for the country. At that time in particular in our County, developers in the Germantown area were having trouble developing areas of the County that were identified for development in the Master Plan. Germantown was in a development moratorium because of inadequate transportation facilities. The Germantown developers, some of them initially formed together as private road clubs. Glenn Orlin knows much more about these than I; but essentially, the developers formed together to pay for major infrastructure items, assessed a private fee on property owners in the Germantown area. It was about $300 for each property owner. But in 1991, the West Germantown Road Club came to the County and asked if the County would create a special taxing district to help finance major infrastructure improvements in the Germantown area that were required to meet adequate public facility requirements. And that effort, along with the fiscal situation that the County was dealing with, led to an exploration of a number of different ways -- very similar to what the County is doing now in terms of trying to ascertain how to finance the County's infrastructure needs -- and development districts were included in that discussion as to ways to finance infrastructure needs. After about two-and-a-half years of talking about development districts as one possible option and discussing two different legislative proposals, the Council enacted the Development District Law in 1994. That law creates a legal framework for creating Development Districts here in the County. And in terms of what that legal framework is, what our report does is outline the ten major steps involved in creating a development district. And, for example, if you go to Chapter 3 of our report -- I'm actually on page 25 – there is a table, Exhibit 3-1, which outlines the 10 major steps involved in creating a development district in the County. It has roles for the Council, the Planning Board, and the Executive. I'm going to walk through -- what our report does is actually not just walk through the legal framework generically as Council Vice President Knapp requested, but we have a whole Chapter that's dedicated to what happened in Clarksburg Town Center Development District -- the facts at each of these stages. And we walk through and talk about how each of the steps -- the facts that are relevant to the legal requirements at each stage. Moving to Clarksburg Town Center Development District in particular, if I could just show you Exhibit 4-1 on page 35. This is the chronology of the Clarksburg Town Center Development District's creation. It began with a petition by the developer filed on July 5th, 2000. The Council held a public hearing on that petition on August 1, 2000. The Council adopted a resolution on September 26th, 2000, declaring its intent to create the Clarksburg Town Center Development District. The developer submitted an application for provisional adequate public facilities of the Planning Board in November of 2000. The Planning Board approved that in March, 2001. Council received the Executive's recommendations in a fiscal report in October of 2002. Council held a public hearing on the resolution in December 2002 and adopted a resolution creating the district in March 2003. The next step for this development district would be a bond resolution and a resolution authorizing the issuance of bonds. That's a step that cannot be taken until the Executive makes recommendations as to how to structure those bonds. The Executive can't take that step to make recommendations until the Planning Board completes its review of amendments that have been proposed to the Clarksburg Town Center project's subdivision, and site plan, arising out of the controversies that folks are familiar with from last year. I just want to point out a couple of things as reference points in

terms of facts relating to Clarksburg Town Center Development District on page 45 of the report. Exhibit 4-2 is a table that shows the infrastructure items that are funded by the development district; and you'll see that there are nine items funded by the development district. The total projected cost at the time the Council adopted the resolution creating the district was $16.9 million. Also, directing your attention to Exhibit 4-3 in Chapter 4, again, it's on page 47. This shows the results of fact finding conducted by Sue Richards in terms of addressing the question of, Which of the infrastructure items that are listed in table 4-2 were required as conditions of subdivision or site plan approval? And what that fact finding revealed was that four of those infrastructure items were required as conditions of regulatory approval, and that chart shows you those four items and what we could ascertain in terms of the regulatory basis for requiring each of those four items as a condition of regulatory approval. And those -- by the way, those nine infrastructure items are what's shown on this color map. The only item that’s not shown on the color map is the Greenway Trails.

Councilmember Elrich,
What does it mean to say that they were conditions of subdivision or site plan approval? What are the implications? Any?

Council President Praisner,
Marc, can you wait and let them finish their briefing; and then you can ask any questions that you may have.

Kathleen Boucher,
Okay. Very briefly because our assignment was to do a review of the status of the other two Clarksburg development districts, those two development districts have paused at the Executive Fiscal Report stage. A petition was filed by the developers. The Council passed a resolution declaring its intent to create those two districts. The developers applied for and received approval of adequate public facilities for the district from the Planning Board. The next step is for the Executive to make recommendations to the Council as to the boundaries of the district; but if the district is a good idea, what items should be funded by the district and whether the cost that has been -- the cost estimates provided by the developers are good estimates. That's the next step for these development districts. In terms of the West Germantown and Kingsview Village Center Development Districts, we do have two Chapters in the report that talk about some of the basics of those development districts. But for the purpose of this discussion, I'll bring relevant facts into our discussion of the legal issues in terms of what we found when we looked at those Germantown districts. But there is information -- there's two chapters, one for each of those Germantown development districts in our report. I should say, going back to Councilmember Elrich's question, that there are some key concepts to keep in mind as I move into the legal issues; and it does relate directly to Councilmember Elrich's question. That is, it's important to understand that development districts came into play in a County that already had a number of other laws in place relating to required infrastructure to support development. In particular, for the purposes of this legal analysis, it's important to understand that the County, beginning in 1961, has required that subdivisions include certain types of facilities that are integral to a particular subdivision: roads; alleys; in later

years, street lights; and roads that front the particular subdivision. That law has existed since 1961, and sometimes folks refer to that as the provision that requires on-site infrastructure for a subdivision. In 1973, the County expanded its regulation of subdivisions by enacting an Adequate Public Facilities Ordinance. Again, sometimes folks refer to offsite requirements -- when they're talking about the Adequate Public Facilities Ordinance, they're thinking about offsite infrastructure requirements. The Adequate Public Facilities Ordinance is an ordinance that refers -- that relates really only to six types of public facilities. It's roads and transportation, schools, water and sewer, police, fire, and public health. There are other types of exactions that can occur – exactions being requirements that come out of the regulatory process when land is being developed. In particular, our zoning law authorizes the Planning Board in certain types of situations to require parks and open space and other amenities for public use and enjoyment. As we go along through this legal analysis, which I'll move to in a moment, I'd ask you just to keep in mind that there are differences between the traditional subdivision requirements-- requirements that are infrastructure requirements integral to a subdivision; the Adequate Public Facility Ordinance; and then the types of infrastructure that might be required under our zoning law as amenities. I will move to the legal issues; and I'm going to work from the Executive Summary and will be happy to go into as much detail as any of the Councilmembers wish on any of these particular legal issues. The first issue that we'll address that CTAC raised is the question of whether the Clarksburg Master Plan required the Clarksburg Town Center Development District to be created before the Planning Board approved the Clarksburg Town Center's subdivision plan. Our answer to that is "No," and it's a very confident "No." The Clarksburg Master Plan actually was the very first Master Plan to talk about development districts. For example, the Germantown Master Plan has no references whatsoever; and it expressly envisioned that development districts would or could be used in the Clarksburg area. That Master Plan included a fiscal analysis of the infrastructure that would be needed to build out the Clarksburg -- the infrastructure outlined in the Master Plan. And that fiscal analysis indicated that if after accounting for County funds and traditional developer contributions, there would be a shortfall of at least $100 million in terms of the cost of building out Master Plan infrastructure. And the report talked very openly about the need for finding alternative financing mechanisms beyond those public revenues, County revenues -- traditional County revenues, and traditional developer contributions. It talked about development districts and other alternative financing mechanisms -- different types of impact taxes, construction excise tax, et cetera. And it did contain a recommendation that enactment of a development district enabling legislation be in place at a certain time and that our law was in place at that time. And I guess, most importantly, CTAC reads the Master Plan somehow to mandate a sequence of events that the development district come before a subdivision plan. We don't see language in there that has that requirement; and more importantly, even if it did, the legal status of a Master Plan is that it's a recommendation and a guideline. Unless it is specifically changed, unless it's specifically boot-strapped in by a statute that says that it's something else -- in this case, we don't have that. So whatever was said in the Master Plan about development districts was a recommendation or a guideline. The second issue raised by the Clarksburg Town Center Development District was whether the Development District Act, which is our County Development District Law that was enacted in 1994, requires the Clarksburg Town Center Development District to be created before

the Planning Board approved the Clarksburg Town Center's subdivision plan. In this case, CTAC is arguing that the development district rather than the Master Plan required that sequence of events. And again, we have a confident "No"; we have a disagreement there. The Development District Act does not expressly require that that sequence of events happen, and our County's administrative practice is otherwise. In both of the two Germantown Districts, the subdivision approvals came first; the development district came second. In the case of the West Germantown Development District, the resolution creating that district came four years and two-and-a-half years after the subdivision approvals for the projects located in that district. And for the Kingsview Village Center Development District, the second resolution creating that district came two-and-a-half years after the subdivision approval for the single project subdivision located in that district. In terms of a third issue that was raised by CTAC, the question was, Is using the Clarksburg Town Center Development District to finance infrastructure items that the Planning Board requires a condition of subdivision or site plan approval consistent with the Regional District Act, the County Subdivision Law, and the County Zoning Law? And our answer is, “Yes, it's consistent.” And it was envisioned as being consistent from the very beginning. The Regional District Act, of course, is the State law that authorizes us to adopt subdivision regulations and to exercise our zoning authority. Chapter 50 of our County Code is our Subdivision Law, and it governs the rules relating to subdivision of land, including infrastructure that has to be provided when land is subdivided. Our Zoning Law governs the uses of property, and infrastructure then must be provided as conditions of site plan. And the development district is a law that creates a financing mechanism for infrastructure. They serve different purposes. They're not inconsistent and they're not in conflict. And again, sort of harking back to what I was mentioning about the Germantown road clubs in Germantown and the West Germantown Road Club particularly that requested that the County enact this law, it was for the purpose -- the development districts were for the purpose of funding items that were needed to meet adequate public facility requirements in our County's Subdivision Law. That's a continuous thread through the legislative history of the Development District Act -- very clear. And our County's administrative practice with again, both the Germantown Development Districts indicates that the Planning Board, the Executive, and the Council all understood that those districts would be funding infrastructure items that were required as conditions of subdivision or Site Plan approval. So again, we disagree with CTAC. There's no inconsistency we believe between our Subdivision Law, our Zoning Law, or our Development District Law. Are there policy questions? Absolutely. Very important policy questions. But we don't see a legal issue. The fourth issue raised by CTAC, Will the Clarksburg Town Center Development District finance any infrastructure item that is not an eligible infrastructure improvement under the Development District Act? And this issue goes specifically to one provision of our Development District Act, which you may want to open as I talk, and I’ll just refer you to. It's Appendix 5; it’s page 5.4. And what I'm referring to is Section 14.3(g) in our Development District Law. And that provision defines infrastructure improvement for the purposes of what types of infrastructure improvements can be funded by development districts. And it defines it very broadly initially to mean just about any infrastructure improvement you can imagine: schools, police stations, fire stations, libraries, civic or government centers, storm drainage systems, sewer, water systems, roads, bridge, culvert, tunnel, street, transit facility or system, sidewalk, lighting, park, recreational

facility, or any similar public facility in the land where it is or will be located. It then has some other language there which says, "An infrastructure improvement does not include an improvement which primarily serves the residents or occupants of only one development or subdivision or is the responsibility of a single developer under the Planning Board's Site Plan and adequate public facilities requirements." CTAC argues that the second exclusion for infrastructure improvements are the responsibility of a single developer under the Planning Board Site Plan and adequate public facilities requirement should be applied to exclude all of the infrastructure items that the Planning Board required to be provided in connection with the Clarksburg Town Center project. CTAC argues that those items are ineligible. For the purpose of this discussion, referencing back to one of the charts I showed you in Chapter 3, again what OLO found was that four items had been required as a condition of subdivision and Site Plan approval. So CTAC's argument would be those four items are ineligible for funding for the development district; and again, we disagree. I spent an inordinate amount of time with the legislative history of the Development District Act. It was an act that the Council spent a tremendous amount of time grappling with before it was enacted. There were six Management and Fiscal Policy Committee meetings before it went to the Council, and very thick packets connected to those meetings. I reviewed every document in the legislative history, and I can tell you exactly where this language came from; and it was never intended to be read in the way that CTAC reads it. It's very clear that it was intended that the language that you see in sections G-1 and 2 together were intended to cover such items as internal streets and abutting sidewalks; secondary streets that serve the interior of a subdivision; limited access; recreational facilities; a school that draws its student body only from a single development; and intersection improvements that are needed by only one land owner. None of the infrastructure items -- none of the infrastructure items -- not even the ones that weren't required by the Planning Board, fall into any of those categories. So again, we disagree with CTAC's argument. CTAC's fifth argument was – the question is, Was the Executive authorized to recommend the Clarksburg Town Center Development District finance additional infrastructure items beyond those that the Planning Board listed as necessary to comply with adequate public facilities and Growth Policy requirements? Well here, just very quickly again, the process is that after a developer submits a petition to create a development district and the Council adopts an initial resolution declaring its intent to do so, the next step is that the developer goes to the Planning Board and submits an application for what's called "provisional adequate public facilities approval." And what the Planning Board is tasked with doing at that stage is looking at all the proposed infrastructure items that the Development District will include and determining whether they include all of the adequate public facilities requirements that are needed to support the property located in that district, as well as any additional Growth Policy requirements that apply to that district. And that's the Planning Board's job. And the Planning Board sends a list to the Executive and says, "We approve the condition of this development district on the condition that it includes all the infrastructure items that we think are needed to meet adequate public facility requirements." The Executive then does an analysis of costs; it does an analysis of the fairness and reasonableness and affordability and boundaries of the development district and sends a report to the County Council. There's nothing in the Development District Act that precludes the Executive from recommending that a development district include additional infrastructure items that weren't included on

the Planning Board's list. Moreover, the Growth Policy itself expressly authorizes the Executive to do that. After the Development District Act was enacted in 1994, the County Council needed to amend its Growth Policy to provide some specific rules relating to development districts. And that was done for the Fiscal 1996 Growth Policy. That Growth Policy included language which expressly authorized actually the Planning Board itself and the Executive to recommend to the Council that additional infrastructure items such as libraries, health centers, local parks, social services, greenways, and major recreational facilities be funded by a development district. So we don't have -- again, we disagree with CTAC and feel very confident about that. I guess I would add that under our County Charter, the Executive can freely recommend to the Council whatever he feels is wise and in the best interests of the County. Moving on to issue number 6; the issue is, Is the Council resolution that created the Clarksburg Town Center Development District invalid because residents of Clarksburg Town Center were not properly notified of the Council hearing on that resolution? Here, if you care to look at the provision while we're talking, the notice requirement is in section 14.9(b) of our Development District Act. And at the second resolution stage, the Council is required to hold a public hearing and is required to give notice of the hearing by advertising in at least two newspapers of general circulation in the County at least 21 days before the hearing and notifying by mail the record owner of each property located in the proposed district at the address shown on the latest Tax Assessment Role. And that provision, if you care to look at it, is on page 5.8 and 5.9 of Appendix 5. What we do in the report is we review in great detail the factual record of the Council's hearing on that second resolution. It walked through all of the notices that were provided to the newspapers, including -- the Council's records, by the way, the files include -- we have copies of certifications from the Gazette newspaper and from the Montgomery County Journal, for all of the required newspaper advertisements. In terms of the “mail to the record owner,” our Council files include a list of property owners that were located in the Clarksburg Town Center Development District as of the end of September of 2002. The hearing was initially scheduled for December 3rd, 2002. The Council mailed notice to the 74 property owners that were included on that list. We do not have proof of mailing from the Post Office, but we have a copy of all of the mailing labels that were used to mail to those individuals. You know, we have e-mails going back and forth between the Council and the Executive Branch saying, you know, “We need to know for our Bond Council whether notice went out,” and e-mails indicating that, “Yes, they were sent out yesterday.” So the factual record -- and again, we outlined it in detail in Chapter 4 of the report -- indicates that all the notice requirements were complied with. And in terms of issue number 7, the issue is, Did the procedures used by the Council to obtain property owner approval of the Clarksburg Town Center Development District comply with State law governing development districts? This is actually a very interesting issue. We answer it in two parts. First of all, a very brief explanation of the State law. And let me bring you back very quickly to 1992. In 1992, the Council had legislative proposals pending before it to establish procedures to create development districts. And at that time, the County's Bond Council opined in writing that it was possible that the County -- well, actually not possible – in Bond Council’s opinion, the County didn't have authority under the Express Powers Act to enact that type of legislation. And the County, acting on Bond Council's advice, went to the General Assembly and said, “We have pending legislation to allow the creation of development districts, and we need enabling authority because our

Bond Council believes that we don't have it." The County worked with its County delegation, and the General Assembly enacted a State law that's now enacted -- now codified in our County Code – Chapter 20(A) of our County Code -- and it expressly authorizes the County to enact a law creating a development district. That State law includes a provision that I'll call, for the sake of simplicity, "the 80% approval requirement." And it's a requirement -- it's a part of the state law that prohibits the creation of a development district unless the proposed district is approved by at least 80% of the owners of the real property located in the proposed district and the owners of at least 80% of the assessed valuation of the real property located in a district. So it's a provision that's in that state law. CTAC argues that the Clarksburg Town Center Development District approval does not comply with that requirement, and CTAC's argument is essentially that that the 80% approval requirement has to be applied at the second resolution stage rather than the first resolution stage. In the chronology of the ten major steps that I pointed to earlier, the Council holds a first resolution after receiving a developer's petition to create a development district; and that first resolution is a resolution that declares an intent to create the development district. The second resolution occurs after the Planning Board has taken action it's required to take, after the Executive has submitted the report to the Council and the Council is actually creating a district. Our Development District Law -- our Development District Act applies the 80% approval requirement at the first resolution stage. Again, CTAC argues that that 80% approval requirement should be applied at the second resolution stage; and there are two reasons why we disagree with CTAC. The first reason -- and the County Attorney first pointed this out, and we support the County Attorney in reaching this conclusion -- the County Attorney believes that the State law, Chapter 20(A), is a legal nullity. And what that means is, in effect, that it's void -- that the 80% approval requirement, in a sense, doesn't exist and can't be applied. Okay, where does that come from? I mean, it's esoteric. It sounds outrageous you know when you first hear it. But here's what happened. You know, the County when it received its Bond Council opinion questioning whether it had authority under the Express Powers Act, was between a rock and a hard place. How do you issue bonds when your Bond Council is questioning your authority? The County went to the Maryland General Assembly to get Chapter 20(A). When it was passed, the Attorney General had the task of reviewing it to determine whether it was constitutional; and that's something the Attorney General does for every bill before the Governor signs a bill. And in the course of reviewing that bill, the Attorney General struggled with this question of whether -- the actual question that the Attorney General was struggling with – and, again, I apologize for being esoteric but -- is that under the Maryland Constitution, the General Assembly actually has no authority to enact a law relating to one county if it's within a subject matter that falls under the Express Powers Act. So if the County had authority under the Express Powers Act to enact a law establishing procedures for development district acts, then the General Assembly had no authority to enact Chapter 20(A). What the Attorney General did, and what's reflected in his written opinion, is that he construed the bill that became Chapter 20(A) in a way that allowed the County to issue bonds, and at the same time advising the County to also rely on its own rule powers for the authority to issue those bonds. Again, I could go into that whole legal analysis more if you'd like; but in essence, the County Attorney's conclusion is a reflection of -- is exactly the point that the Attorney General was making in 1994. But let's put aside, for the moment, the argument that the 80% approval doesn't apply and

assume that it does. Again, we don't see a problem. Chapter 20(A) does not specify when in the development district timeline that 80% approval requirement applies. It simply states that a district may not be created unless the 80% approval requirement is met. Our Development District Act which requires that that 80% approval requirement is met at the first resolution stage is consistent with the State law. And creation of the Clarksburg Town Center Development District complied with our law because we did get 80% approval at the first stage. So again, we disagree with CTAC's legal conclusions in that regard.

Council President Praisner,
[Inaudible question] Marc, I'm sorry. Please, we do need to finish the briefing.

Councilmember Elrich,
Well, she said, "if you wanted more detail."

Council President Praisner,
No, I'm sorry. It may be inviting questions, but we are very close to getting into time that was set aside for the staff to brief the press. We're getting into time where we'll bump against the 1:30 Hearing. We took more time with the oral argument than the hour that I thought, unfortunately incorrectly, would be adequate. So we do need to keep to the briefing; and Kathleen, I'm sorry, but –

Kathleen Boucher,
I'm actually done with the legal analysis.

Council President Praisner,
All right. We need to keep to the briefing. This is not the only time when councilmembers can ask questions. There'll be tons of time in the MFP Committee and in the privacy of your own home to draft those questions; but we do need to get finished with the briefing. Kathleen.

Kathleen Boucher,
Okay. That actually wraps up our conclusions on the seven legal issues. What I want to say at this point is that after having spent close to five months reviewing issues relating to the Development District Act, OLO Staff and Council Staff feel that they've learned some things that need to be shared with the Council in terms of both the Clarksburg Town Center Development District and our Development District Law in general. And so Chapter 9 of our report outlines some issues that we found that, again, don't directly relate to the legal issues raised by CTAC and outlines some initial staff recommendations. We could talk about those issues now -- although I think before that, I would turn the microphone over to Sue Richards who again, after having spent really an extraordinary amount of time trying -- not trying to, but developing the factual record for us in terms of understanding what happened in both Clarksburg Town Center Development District and the Germantown Development Districts. She would like to offer some observations that she thinks merit the Council's attention. And I would just like to say, this was an unusual project with Council Staff collaborating so closely with OLO Staff; and I would just like to say that I have learned so much about the way OLO works, and have just the greatest

respect and appreciation for Sue Richards and her intelligence and diligence and her professional ethics. And I appreciate the opportunity to have worked with her. So -- Sue?

Sue Richards,
Thank you, Kathleen, right back at you! OLO's role on the Council Staff team was to provide fact finding to support the Council Staff's legal analysis; and in the course of researching these facts, OLO identified issues related to the adoption and implementation of the CTC Development District that support six observations about the County's development approval process and the use of development district taxes. These are outside the scope of the Council's legal analysis. What I would like to do this morning is to point you to parts of OLO's fact-finding appendices that provide information that place development districts in the broader context of the County's developmental approval policies, and then show you information that specifically addresses the CTC Development District infrastructure list. If you have your Post-Its, this is a good time to pull them out. I want to begin with a brief introduction to the world of land use regulation and exactions and development charges. There is a book for every project. The book for this project is called "Regulation for Revenue." It's by one of Glenn's heroes, Alan Altshuler. We didn't give it to you, but we do have a summary of it in Appendix 4(a)(1); and, basically, what you need to know from that is that the authors use the term "exaction" to refer to a mandate that a government imposes on a real estate developer in exchange for receiving a permit. And they group exactions into two types. In-kind exactions would be a requirement to dedicate right-of-way or –

Councilmember Leventhal,
Madame President, I apologize; but I don't know what document she's reading from.

Sue Richards,
I'm just reading from my script.

Councilmember Leventhal,
Oh, okay.

Sue Richards,
No. You don't need to be looking at anything because I think the numbering for the Appendices – I mean if you turn to page 481, it comes after 3(c) something or other so –

Councilmember Leventhal,
Would that be in the second big book?

Sue Richards,
No. It's in the – actually OLO appendices are -- they follow Kathleen's legal analysis. They start in about the middle of the big, fat book.

Councilmember Leventhal,
Thank you.

Sue Richards,

When I get about halfway through the presentation, we can switch over to the four-page fact-finding summary; and then you can follow along. In-kind exactions are requirements to dedicate right-of-way or build a road or a water main. Financial exactions are things like impact taxes or other kinds of development charges. Some of the key points that the authors make that are relevant to Montgomery County are first, that governments typically codify mechanisms to impose exactions in subdivision or zoning ordinances which are administered by independent citizen commissions that have traditionally operated outside the mainstream of local decision-making. Second, that the costs of exactions are either passed back to the original landowner in the form of lower price for the land than the developer would have paid otherwise or forward to the home buyer or renter. So even though fees are collected from developers or home builders at permit during the process, the costs are borne by residents and businesses who occupy the buildings that are built. Third, exactions are useful because they offer a politically viable way to raise revenue as well as an effective method to resolve debates about growth and development. Fourth, developers are indifferent to exactions, as long as they are applied equally and they can move ahead with their projects. And fifth, the alternatives to exactions are to reject new development, to seek assistance from other levels of the government, to raise local taxes or user fees, or to accept a decline in services by accommodating growth without a parallel investment in infrastructure. So how does all that apply to Montgomery County? In Appendix 4(b), there's information that answers that question. It's basically a run-through of the County's exaction and financial charges history. The County has used in-kind exactions since Park and Planning first opened its doors for business in 1927. As Kathleen said earlier, subdivision regulations and road frontages and adequate public facilities, ordinances, and all of that are part of the Board's regulatory exactions authority. In 1986, the County enacted its original impact fee legislation for transportation; and over the next 20 years, the County has experimented with a variety of other development fees and charges -- mostly to pay for transportation facilities but more recently, to help pay for schools. In 1993, the General Assembly enacted the Systems Development Charge so that existing rate payers would not bear the cost of new water and sewer facilities that would be needed to serve new development. The Systems Development Charge, or SDC, is a development charge that WSSC collects at plumbing permit; it’s similar to our Transportation Impact Tax. It's administered by WSSC; and WSSC uses it to manage its capital programming and the water and sewer facilities that serve the two counties, Prince George's and Montgomery Counties. So when the Development District Act came along in 1994, the law was layered on top of County subdivision and zoning laws that set up procedures and the authority for identifying in-kind exaction practices which were administered by the Planning Board; a State law that authorized procedures and the authority for the collection of Assistant Development Charge, which administered by WSSC; and County laws that set up the authority and procedures for a Transportation Development Impact Tax which were administered by the Department of Public Works and Transportation. It's also important to understand, especially for Montgomery County, something about the institutional structure of the County's development and approval process. Basically, development districts were born into a large, extended family of agencies with responsibilities for different parts of the development approval process. And like any family, these entities are related; but they don't always want to admit it, and

they're not always necessarily working well together. Many of them believe today that they can perform perfectly well on their own, thank you very much. And in Montgomery County, the family consists of WSSC, Park and Planning, and several County government agencies. The bottom line is that the County's development approval process is administered by multiple agencies that operate in multiple venues. As someone said, it's a system of moveable parts. So now I'd like to turn to six observations about the list of CTC Development District infrastructure items. And as Kathleen said, the Council has approved Resolution Number 2, which is a list of these items. And if you look at the OLO handout – OLO four-pager -- the list of the items in Resolution 1587, it's kind of in the middle page; and the observations are on the front. So the first observation is that the Council's decision to use the CTC Development District bond proceeds to acquire certain infrastructure items duplicates agreements for six items that are addressed in other parts of the development approval process. And the cost of these items is approximately $10 million of the $17 million of infrastructure. So if you look at the list of infrastructure items on the handout, the first three items -- which are the Civic Center, Stringtown Road 800-Foot Gap, and the Stringtown Road Extended -- were not addressed during the development approval process; but everything below that was. And, specifically, you heard from Kathleen that four of the items that are on the list below that -- the two lanes for Stringtown Road, which is item number 4; Piedmont Road, which is item number 5; a portion of item number 7, Clarksburg Road; and the Greenway Trails -- were identified in the Planning Board's regulatory approval documents. The Planning Board conducted its initial CTC project reviews between 1996 and 1998, and it executed Site Plan enforcement agreements with the CTC developer in 1998 and 2004. But in addition to those four items, OLO's fact finding also shows in December 1996, WSSC approved the CTC developer's application to design and construct the CTC water main. Subsequently, WSSC and the developer executed a set of agreements that included a Memorandum of Understanding (MOU), 24 contracts, and various SDC Credit Agreements. So you could kind of check the water main off as something else that has been required as a condition of approval, but it wasn't within the Planning Board's regulatory documents; it was down at WSSC. In March 1999 and September 2001, the County Government and the developer signed two public improvement agreements for the developer to construct item 3, which is the two lanes of Stringtown Road, Piedmont Road, and actually the entire portion of item 7. So in that situation, there was a little bit of a disconnect between what was approved in the Board's regulatory approval records and the public improvement agreement that the County Government and the developer executed. And then finally, in 2001, as part of a review of a separate project, the Planning Board required a different developer to lower the over-vertical curve south of the intersection of Maryland 355 and Stringtown Road, which is item number 6 on the list. In August 2003, after the Council had approved the list of infrastructure items for CTCDD funding, the Clarksburg Town Center developer and the Highlands at Clarksburg developer signed an agreement that basically Centex, which was the developer of Highlands at Clarksburg, would be responsible for the improvement; and that the CTC developer would pay the Highlands developer for a share of the cost. So the bottom line is that approximately $10 million of the $17 million of improvements on the list is for items that the developers had otherwise agreed to provide. And then of the remaining $6.8 million, $4.6 million is for a portion of the library; $1.6 million would fund a portion of Stringtown Road extended – and that's a project that the County Government is

programming and constructing; and $550,000 would pay for half of an improvement that the two development districts would fund for the Stringtown Road 800-foot gap. The second observation is that the Council's decision to use the CTCDD for the CTC water main, duplicates an agreement that WSSC signed with the developer to construct the water main project; and it interferes with WSSC's administration of the System Development Charge. The fact finding that supports this observation is in Appendix 4(c), which looks at the relationship between the System Development charge and development district taxes. Basically, after the State instituted the System Development Charge in 1993, WSSC put in place a coherent system of procedures to administer its SDC collections and it's capital programming decisions. So when the CTC developer showed up and said, "I want to develop this property," they submitted various studies that WSSC reviewed; and then WSSC and the developer executed a set of agreements and contracts. One agreement was the MOU for turnkey projects that says the developer will build a project that complies with WSSC's specifications, and a second agreement is the SDC Credit Agreement that establishes how WSSC will reimburse the developer for his costs. A chart on page 4.c.11 shows the CTC water main contracts that have SDC Credit Agreements. Basically, WSSC's procedures provide that the developer can seek up to 50% of his cost in SDC credits or cash during construction. And after construction is complete, he submits documentation for the rest of his costs which WSSC audits and then authorizes reimbursement of the remaining project costs. WSSC does not undertake the audit until the project is officially accepted into service. There are 24 contracts for the CTC water main project; nine of them have SDC Credit Agreements, and one is expected to have an SDC Credit Agreement. So far, WSSC has reimbursed the developer $365,000 in eligible project costs; and they have an additional $381,000 budgeted for reimbursement, for a total project cost of slightly less than $779,000. And at the same time the Council has authorized $779,000 in bond proceeds to acquire the same project. The third observation is that the Council's decision to use the bond proceeds to pay 100% of the costs for the Maryland 355 lowering, was based on incomplete information about the Planning Board's regulatory approvals. And the fact finding for this information is imbedded in Appendix 1(c); the chronology begins on page 1.c.27. When we were conducting the fact finding to determine whether this item was a condition of approval, we met with the Planning Staff because it wasn't clear from the Planning Board opinion whether this item was or was not a condition of approval. What we learned was that this item had clearly been a condition of approval for a different project, which is the Highlands at Clarksburg Project. And if you look at your area map, you can see that Highlands at Clarksburg is the pink part below the CTC, which is in green. And for this particular item, OLO's fact finding shows this item was not technically a condition of approval for the CTC project; but it was closely related to a northbound right-turn lane from Maryland 355 to Stringtown Road, which was a requirement. It was clearly a requirement for Highlands at Clarksburg; and the Planning Board granted the initial approvals for this project in July of 1999, which was four years before the Council approved the development district. During the Executive's review of this item for the development district, the developer advocated to have the Clarksburg Town Center Development District pay a portion of the cost and have Highlands at Clarksburg pay a portion of the costs. But the Executive decided that the Clarksburg Town Center Development District should bear 100% of the costs, and the Council agreed with the Executive's recommendation. After the Executive submitted the Fiscal Report to the

Council, the developers met with Planning and Executive staff to resolve conflicting requirements in their preliminary plan approvals. And after the Council approved the Clarksburg Development District in March of 2003, the developer signed a private agreement that authorized Centex to be responsible for the improvement in exchange for Terrabrook paying a share of the cost. Terrabrook's contribution was capped at $905,000, which is the amount that's budgeted for the improvement in the development district. In October of 2003, Centex posted a $1.1 million bond with SHA for a package of improvements that included CTC's requirements to provide a northbound right-turn lane, and it also included the lowering of the vertical curve which was a Centex requirement. The bond amount was based on a project cost of $734,000, plus a 50% contingency factor. As of September 2007, according to SHA, the project is 95% complete. SHA has granted Centex a three-month extension on their permit, and they expect the project to be complete in November 2007; and they will release the bond after that. Observation number four: The Council's decision to use the Clarksburg Town Center Development District's bond proceeds to pay 100% of the Greenway Trails did not address information in the regulatory record that shows the developer agreed to provide this item as a part of the amenity package required for the higher density conferred through RMX zoning. OLO's fact finding for the Greenway Trails shows the developer agreed to provide this item as part of the amenity package that is required as part of the RMX Zone, but this information was not addressed when the decisions about the list of items to include on the development district were made. The fact finding for this item is on Appendix 1(c), beginning on page 1.c.39. Observation number five: Under the current County law, the establishment of the Clarksburg Town Center Development District will allows the Clarksburg Town Center developer and home owners to seek a $1.7 million refund of Impact Tax collections. This is an issue that was raised by other citizens in Clarksburg. And what we learned about the law and how the mechanics of it work is that basically there are four interrelated sections of County law that establish a relationship between Impact Tax collections and development district taxes. The bottom line is that under the current law, after the three development districts are established and the Director of Finance records the declaration in the County Land records, the development district developers and home builders will be eligible for a refund of the Clarksburg Transportation Impact Taxes they have paid up to that point; and DPS will not collect impact taxes for the remaining units. Because these refunds flow to the original payors -- the developer and the home builders -- but the taxes effectively have been paid by the home buyers, the citizens strenuously argued that the refunds would unfairly give the recipients a windfall. As of the end of FY07, the County has collected about $6.5 million in Transportation Impact Taxes from properties in the three proposed development districts, including $1.7 million from the Clarksburg Town Center projects. If the Clarksburg Town Center project were established as of the end of June of 2007, the CTC developer would be allowed to seek a refund of $1.7 million. And finally, observation number six: The Council's decision to authorize $4.6 million in Clarksburg Town Center Development District bond proceeds for the Clarksburg library would impose a disproportionate share of the library's costs on Clarksburg Town Center residents. When the decision was made to put the library on the infrastructure list, basically the costs were distributed among the three development districts. So although the site for the library is in Clarksburg Town Center, the Department of Libraries defines the primary service area to include households within a two- to three-

mile radius – which encompasses most of Clarksburg. Clarksburg is projected to grow to a population of 37,000 people; so CTC's share of Clarksburg population of build out will certainly be less than one-third of the cost that's allocated to the CTC residents.

Council President Praisner,
Thank you. Comments by Mr. Orlin or Mr. Faden? Any comments that you have?

Glenn Orlin,
Just very quickly, my section of it was Chapter 9, Part A, on pages 88 through 91. And I looked at this issue not from a legal standpoint but from the history of what exactions have been, what's typical, and what could be expected from what would be ascribed to an individual development versus basically shared by the general public. And the – just to make it very short because I know we're running very late – there were two projects specifically that I point out where if you want to revisit Resolution Number 2 you might want to look at. One is the lowering of 355 at Stringtown Road. The argument is that the reason why 355 had to be lowered there is because Stringtown Road is being relocated both from the east and from the west to that point, and it's the crown of the hill – the profile had to be reduced down. If 25% of the cost of Stringtown Road west of 355 over to 270 was going to be the responsibility of CTC, and if 50 to 75% was going to be the responsibility of CTC east of there, it would seem that the lowering would be somewhere in that range as well in terms of the contribution – not 100%. And, secondly, basically on the library at Civic Center -- the same conclusion that Sue just mentioned, that the service area for the library is likely to be all of Clarksburg; and that to the degree we would be ascribing the need for that library to CTC, it should be in proportion to the households that it represents vis-à-vis the entire build out of Clarksburg rather than strictly the proportion of the three development districts that are currently on board. What about Cabin Branch? What about other developments in Clarksburg? Do they pay nothing? Now, remember that when the development district was put together in the second resolution, there was a total dollar amount; and the idea was that if there was any savings or any differences, then it might be replaced by other infrastructures -- so not necessarily suggesting that the total amount to be gotten from the development district should be less than the $17 million, but it may be a different package of things. So while the Planning Board is essentially working on the denominator of the equation of, What should the rate be on individual households – the numerator being the total amount of revenue to be raised for infrastructure; the denominator being how much development reserve is for that across – you may want to look at the numerator again and what comprises the numerator.

Council President Praisner,
Mr. Faden? Any comments?

Michael Fadden,
Very quickly, my section of Chapter 9 is Part B on pages 91 and 92. It discusses in legislative terms the potential funding of overlaps that Sue discussed the specifics of

between the Development District Law, the WSSC System Development Charge, and the County Transportation Impact Tax and suggests a legislative review of those overlaps.

Council President Praisner,
Thank you. Let me make just a couple of comments because we are at 1:15, and we have a public hearing scheduled to begin at 1:30 for which I'm sure folks will be assembling soon. I do want to go a little longer and want to provide an opportunity for any initial questions that Councilmembers have, but I'm going to ask Councilmembers to just ask the questions to be put on a list – not to try to get folks to develop a lengthy set of answers because, of course, we will be here all afternoon if that's the case, I'm sure. And I want to provide a final opportunity for Councilmember Trachtenbeg as Chair of the Management and Fiscal Policy Committee to lay out her Committee's review of the issues. But let me just say a couple of things from my perspective. It seems to me that we have received from now both the County Attorney and our Council Staff a review of the legal questions associated with the issues that were raised by the community. And I want to thank the community for bringing to our attention concerns that they have. It also appears to me that we have answers to the legal questions. In the process of raising and reviewing those issues, staff has identified – it seems to me – a couple of things that require our review -- whether or not we had a specific development district in front of us -- that relate to tightening and strengthening and improving the use of that tool in the future should the Council decide it wants to -- also recognizing that we do have three development districts in front of the County in one stage or another. One for which the Clarksburg Town Center community is obviously most interested, which has been delayed in its implementation from a standpoint of now the discussions at the Planning Board -- if nothing else -- related to problems with the actual development of the town center. That development of the town center discussions at the Planning Board will in all likelihood require this Council to review that issue before bonds are issued and provides an opportunity for us to discuss within that context the comments made by Ms. Richards and others associated with that item. There are two other development districts which have yet to reach the level of review and action. And I think there are some ongoing procedural questions associated with initial assumptions of development districts being put in place in closer proximity to the actual occupancy of the land versus the timing that we're in now that require our staff to review and others to review this. And, finally, we have recommendations from our staff – those in front of us – to make modifications to the generic law which the County has as a tool for funding infrastructure that I would think the Committee and the Council will want to review and consider – just as we review and consider any staff recommendations related to modifications to legislation. So with all those in mind, I'm just trying to say to folks that this is many multiple parts. It was not a simple structure to begin with, but many multiple parts at this point as it relates to Clarksburg, but also as it relates to the legislation and refinement of the legislation. So with that in mind, the MFP Committee I suspect will have more than one meeting. And Councilmembers, as they have an opportunity to review the documents in front of us, will be able to review and ask staff questions about their conclusions – legal conclusions, but also the substantive materials that they have reviewed and the observations that have been made. So I know that we've received some correspondence that suggests that there will be a rush to some action. I just want to suggest to those who believe that that will occur that I don't see any rush happening at

this point in this discussion. So, Councilmember Knapp was first; then Councilmember Floreen; then Councilmember Berliner; Councilmember Trachtenbeg; and Councilmember Elrich for the purpose of asking questions. Councilmember Knapp.

Council Vice President Knapp,
Thank you, Madame President, and –

Council President Praisner,
I'm sorry. The question's just been asked how long I'm going to delay the public hearing. It depends upon how quickly Councilmembers get their questions on the table, but I'd like to start the public hearing in about a half hour.

Council Vice President Knapp,
Okay. I will have a list of questions coming forward I think. Given the way we've done this, it's very difficult to formulate a whole array of questions right now; and so I want to be careful. To some extent, it's kind of déjà vu all over again. I found myself yesterday as I was sprinting from an agricultural discussion in the PHED Committee down to have a briefing on the Clarksburg issue, it reminded me an awful lot of two years ago when we were doing the exact same things. So I appreciate all the folks in District 2. But I guess the one thing I would put out there, I appreciate the efforts of the staff in front of us. I appreciate the State – the County Attorney's efforts. And those folks who aren't sitting in front of us, I appreciate the efforts on the part of the community. And as I think we found two and a half years ago or three years ago, while perhaps the issues raised by the community aren't 100% right, the issues certainly are issues that need to be brought forward and need to be addressed. And so I appreciate their efforts in having done so, and I appreciate our staff in taking the time to compile as much work as you have. I actually have to read all of it, but it feels like an effort. I will be brief. What I would urge us to do is – if we've learned nothing in the last three years – is to not spend a lot of time trying to stake out a position that we have to defend; but to really figure out where are the issues that need to be addressed, and to come up with a real action plan in the short-term to figure out how to do it. I don't disagree with the Council President that there are some short-term and there are some longer-term things. There are many layers of this onion, and it's going to take us a while to get to all of them. But if we spend a lot of time trying to defend a position, that just adds one more layer that we have to get through. I would ask – and I guess the other reason I put that out there is, this is not a theoretical discussion. There are elements of it that are, but we have people who live in a community whose lives are being impacted right now as a result of us trying to figure out what we do next with development districts. And it's holding up various elements of development. And so I would urge us to put a plan together for that because it is affecting how that community comes together. I think it is important for us to look at this for two reasons: one, the direct impact in Clarksburg; and two, the effect of the discussion we're going to have in the next two months on the Annual Growth Policy (AGP). There are a number of issues here that as it relates to the funding of infrastructure and the interplay with impact taxes that I think

is very significant and very relevant; and we need to have that in front of us so we know exactly where we go next and some of the decisions we're going to make there. And to that end, I guess I would urge the Council President and the Chair of the MFP Committee for us to look at having the discussions that we need to within MFP – and I will participate in as many of those as my schedule will allow. But to also bring this discussion back to the full Council sometime in the next few weeks – I don't know what the right time frame is – four or six weeks -- but as we're beginning to address the AGP, so that we have the ability for the full Council to have the benefit of further discussion and further analysis of the work that staff has done so that we can really have a broader vetting. Because I think there are a lot of issues here that need to be addressed, and we all need to digest it first and come back. And so I think as we're starting the AGP process sometime between now and the latter part of October, that we need to bring this back to the full Council for a broader discussion so we can have an understanding of what the interplay is with those next policy decisions that we have to make. And so I'll be putting together a list of questions for both MFP and that broader discussion. So I thank you all for your efforts. And as I recall from before, this is certainly not the end of the discussion but just the beginning – and a continuation of a discussion that we started before. And so I thank you for your contribution to that. I thank the community for their efforts, and look forward to continuing the dialogue.

Council President Praisner,
Councilmember Floreen.

Councilmember Floreen,
Very interesting material and excellent review of our history in development districts and exactions. And I think that was very helpful for everyone. Thank you. Thank you. I just have one very specific question about this at this moment. I'm trying to understand, Sue, if you are agreeing or disagreeing -- with your observation number one -- whether you are disagreeing or agreeing with Kathleen about the ability of the development district to fund these specific items. I get the issue about WSSC. And I get the issue about the lowering of Maryland 355. At least that's clear to me. But I don't understand what you're saying otherwise with respect to observation one. My question is, "Are you saying that those should not be funded by the development district?"

Sue Richards,
I'm not saying – you know, I was doing fact finding in support of the legal analysis. I was somewhat frustrated with all the legal analysis, having to go through looking at what the conditions for approval were. The only point I think it's important to understand is that the Council legally has the ability to use the development district to pay for in-kind exactions. But there's an important policy question of whether that makes sense.

Councilmember Floreen,
Well, the policy question to one side, I just wanted to get clarification of that because it seems to be somewhat inconsistent with what everyone else from the government has said. You're just saying that these are things that were part of other approvals – that's your point?

Sue Richards,
Yes.

Councilmember Floreen,
Nothing more.

Sue Richards,
They were established. Yes.

Councilmember Floreen,
Okay. That's all. Thanks.

Council President Praisner,
Councilmember Elrich. Mic on, Marc.

Councilmember Elrich,
I need to understand a lot more than could possibly get out of this. My first question, as a follow-on to Nancy's, is I'd like to be clear about the nature of the duplicative agreements. And what is the legal weight of each agreement. Because it seems to me in the WSSC case, this is clear double-dipping. Does the developer know he's double-dipping? That's probably a rhetorical question. And I would like to know, What is the basis – what is the legal standing of the first agreements, and how could they be affected by any second agreements? I'd like to know, How many people owned property at the time of the second resolution versus how many people were notified? Is there a way of knowing the difference between the number of people who actually owned property in the development district versus the number of people that the County has on record as having notified? I'd like to understand more about 20(A). And if 20(A) is the basis for the first vote, and then you say 20 (A) doesn't matter, then what's the basis for the first vote on the development district if 20(A) isn't? It seems like you can't – I mean I'm confused –

Council President Praisner,
Marc, I'm sorry. I'm really – I hate to do that. But if you could just – we're going to have plenty of time. If you could do those questions later, I really would appreciate it because I have other Councilmembers who want to comment – folks who are here –

Councilmember Elrich,
I thought you didn't want us to comment; I thought you wanted to ask questions.

Council President Praisner,
Well, but I – Well, I'm going to tell you that you're done.

Councilmember Elrich,
Okay.

Council President Praisner,

I'm sorry. And I'm going to turn to Councilmember Berliner because we've got to conclude this.

Councilmember Berliner,
I want to add my congratulations to staff. I thought that this is an excellent report, and I know how hard you worked; and I appreciate the presentation today. I have a narrow legal question and a larger question that is sort of consistent with Nancy's. The legal question for you, Kathleen, is that you spoke of the intent of the Council with respect to what I believe to be G2?

Kathleen Boucher,
14.3.g. Yes.

Councilmember Berliner,
G2

Kathleen Boucher,
14.3.g.2 Yes

Councilmember Berliner,
And as a lawyer, my understanding is one does not get to intent unless there is ambiguity in the language. And I'll need further clarification from you as to why intent matters here; because when I read this language, it strikes me as fairly explicitly stating that if it was in the Site Plan, then it's not eligible. So I need to understand where the intent comes into your legal analysis with respect to –

Kathleen Boucher,
I can answer that now or later; I'm not sure what you –

Council President Praisner,
If you can do so quickly.

Kathleen Boucher,
I'll answer it briefly and then – you're absolutely right. You shouldn't get to or turn to legislative history unless there's ambiguity in the plain language section. What I outlined in Chapter 8 is what I believe – CTAC is arguing that there is only one absolute meaning that jumps out from that language. What I argue and outline in Chapter 28 is that there's actually at least three – probably four, and maybe more reasonable interpretations of what that means. And so when you've got three or four potential reasonable interpretations, how do you figure out what it means? That's where you've got to turn –

Councilmember Berliner,
That's fine.

Kathleen Boucher,
That was the reasoning.

Councilmember Berliner
So if there is ambiguity, clearly intent matters.

Kathleen Boucher,
That was the reasoning.

Councilmember Berliner,
In your judgment, there are three or four different interpretations which then allows you, if you will, to go to explore the intent to underscore one of your – okay. The larger issue for me – I, like my colleague Councilmember Floreen, struggled with what I perceived to a be slightly different conversations here. As I appreciate, Kathleen, what you were saying, as a matter of law, this Council is entitled to authorize the collection through the development district revenues for infrastructure that were required to be part of the Site Plan that Park and Planning specifically approved.

Kathleen Boucher,
Yes.

Councilmember Berliner,
That is our – we have the discretion to do that, in your judgment.

Kathleen Boucher,
Correct. It’s a policy decision.

Councilmember Berliner,
It is a policy decision. And what I inferred from your comments is that you believe that that is still a ripe policy discussion. Is that a fair characterization?

Kathleen Boucher,
I guess I wouldn't – I would have to think about that in terms of whether it’s ripe.

Councilmember Berliner,
Okay, because what I was struck by in OLO's observations is that the fact-finding handout refers to the Council’s “tentative decision.” So my question is, Was that intended to convey to us that you believe that we have the legal authority to revisit that “policy call” in the deliberations ahead? One, I wanted to know was I correct in interpreting the “tentative” as saying it’s still up in your judgment?

Sue Richards,
Well, the bonds haven’t been issued; so that part is still coming. And I think the other thing is – in terms of next steps, there is discussion about putting procedural changes in the law that would provide for amendments to the second resolution.

Kathleen Boucher,
Yeah. The reason I hesitate – under the Development District Act, I think that Council has discretion not to go further. You have to pass it – you know, you haven't passed a bond resolution; and you haven't passed a resolution that imposes taxes. And there's nothing in the law that mandates that you do that simply because you've already accomplished the first two steps. So in that sense, if that's what you meant – but there's a number of things, I think, even some fine-tuning of the Development District Act that would need to be done -- if you were going to revisit the policy questions -- whether you could implement any changes in your policy. The policy that's currently reflected in the second resolution for the Clarksburg Town Center Development District -- if you want to change I think also requires some changes to the Development District Act to give you procedures to do that.

Councilmember Berliner,
So, if you'll forgive me Madame President, my bottom line question to you is: Assume for the purpose of this conversation people are uneasy with the policy call that that which was required by Park and Planning as part of what the developer would do would be paid for by the development district. Okay? That if there was unease with respect to that, my question to you: Are we able to execute a change in "policy" between the second approval and the third stage of this process?

Kathleen Boucher,
With a couple of caveats, I think the answer is "Yes" – the couple of caveats being that if you wanted to make changes to the second resolution, I think we need to amend the Development District Act to create some procedures to allow you to do that. So if you wanted to amend that, if you wanted to modify infrastructure, if you didn't want to proceed further – that's within your discretion.

Councilmember Berliner,
Thank you, Madame President. I appreciate the opportunity to ask those questions. As a member of MFP, I obviously have more opportunities; but those seem to me pretty threshold questions that it was important to get out.

Council President Praisner,
Right. And I think we will also benefit from some further dialogue from the County Attorney and the Executive Branch on what are the consequences of making any alterations or not proceeding any further when comes to both the community, the developers, and the County's Capital Budget if there are no bonds that are issued for development districts. There are all those questions that it seems to me are part of the conversation that will begin in the MFP Committee. So the last comments go to Councilmember Trachtenbeg.

Councilmember Trachtenberg,
I'm going to make my comments in a very brief manner. And I just want to start off by thanking those that provided memos, input, and also a very thorough report this morning. I think when we approach the end of this exercise, we might consider renaming the MFP Committee to the MMP Committee – Multiple Moving Parts. Because that's, indeed, what I

think we have to deal with within the Committee that I chair. And what I would suggest from the onset is that I don't believe that we can make a rush to a quick judgment or ineffective action. That I really believe the Council has an obligation to pursue a comprehensive evaluation of the legal issues here, but also the policy itself and, obviously, the administration of that policy. And with that in mind, while I know we have one MFP Committee meeting scheduled for September 25th, I've already asked Linda Lauer to schedule two others. And what I would ask my colleagues to do is actually help me define those moving parts. I believe that the September 25th worksession should probably be an overarching conversation; and I would ask that Mr. Firestine or Ms. Barrett participate in that, as well as Mr. Hansen or Mr. Rodriguez. Again, I think that's a good way to start. I would expect that when we schedule additional MFP worksessions that we would try to do it at times during the day when other Committees were not in session; that would allow more people to participate. But I really understand the origin of the Vice President's comment that at some point, we need to get it back in front of the full body because no doubt we do. But I think what I see the role of MFP in this as being is simply to take that onion and start cutting away into the different layers. Eventually, we'll get to the core; but I would suggest, respectfully, that that's not going to happen for a few months. So, again, I intend on sending a memo out the beginning of next week outlining what some of our issues will be for that September 25th worksession. But I would ask my colleagues to get back to me with input so we can start structuring how we're going to talk about this.

Council President Praisner,
Okay. With that in mind, I want to make a couple of additional comments. I thank the staff. We have a note I want to make the public aware of. The Department of Recreation has announced that because of the weather, they have moved tonight's concert in honor of September 11th and the incidents that occurred six years ago. It's been moved to the Rec Department Theater at 4010 Randolph Road. That is, I think the Bushey Drive intersection – the old Bushey Drive Theater – Round House theater. I call it the Bushey Drive. The round building that used to be an elementary school where the Rec Department has its headquarters. The concert will occur there this evening for the public's benefit. I know we have at least eight or ten people here for public hearings that are supposed to start at 1:30. We're going to start those at 1:50. And I know that means very little lunch for my colleagues. I'm very happy to come back and begin the hearings, and then my colleagues can join me. There is one -- first of all Zoning Test Amendments – but also one for which action is required. But I'm anxious for us to complete this and be responsive to the folks who are assembled here. So let's say ten of – five of two we'll start. I'm being pressed on two. So 2:00 p.m. we'll start.

Councilmember Leventhal,
Madame President, will we be ruled out of order either by yourself or by staff if we eat here at the dais?

Council President Praisner,
No, not today – only today.

TRANSCRIPT
September 11, 2007

MONTGOMERY COUNTY COUNCIL

Marilyn Praisner, President
Phil Andrews
Marc Elrich
Nancy Floreen

Michael Knapp, Vice-President
Roger Berliner
Valerie Ervin
George Leventhal

September 11, 2007

Council President Praisner,
Good afternoon ladies and gentlemen. This is a public hearing on a special appropriation to the FY08 Operating Budget of the Department of Finance, excuse me, for the Economic Development Fund - Emergency Assistance Program in the amount of $1,500,000 to address the adverse economic impact of the 2007 drought on the agricultural community. Excuse me. A Planning Housing and Economic Development Committee worksession is tentatively scheduled for September 17th at 2:00 p.m. And we have three speakers, four speakers, I'm not sure. Thanks. I understand. Four. Greg Russ representing the Planning Board. Gary Butson, speaking on his own behalf. Wrong? Oh, it is wrong. Showing me the wrong chart.

Councilmember Knapp,
There you go.

Council President Praisner,
There we go. Wade Butler speaking for the Montgomery County Agricultural Advisory Committee. Drew Stabler for the Agricultural Preservation Advisory Board. George Lechlider Farm Bureau and Robert Butz Soil Conservation District. Come on down. And Wade, you're first. Push the button in front of you please. Thank you.

Wade Butler,
Good afternoon my name is Wade Butler and I'm Chairman of the Montgomery Ag Advisory Board. Happy to be here today and it seems like when you schedule these things we always get a little rain. So to keep things in prospective, you know, this morning we had 1/8th of an inch at our house and you know that's getting the dust down a little bit but it looks nice but we need a lot more. I would like to thank the Council today for having us here and the Ag Advisory Board Committee especially is thankful for the opportunity to present this testimony in support of the special appropriation of $1.5 million to help the farmers impacted by the drought of 2007. We want to express our thanks to County Executive and the County Council for understanding how the drought has impacted the ag community. The AAC and the County farmers extend a special appreciation for the role that Councilmember Mike Knapp took by joining with the County Executive and announcing this program on July 30, 2007 out at Billy Willard's farm in Poolesville. The economic losses of the 1999 drought totaled about $10.6 million and the County government provided $1 million at that time in financial assistance to the farmers. This year, we continue to monitor our crops and today's a slight improvement on some crops still. As our crop conditions continue to -- as the crops continue to grow, the losses are estimated to exceed $13 million as the value of all the crops are higher today than they were in 1999 including all the cost of production. We also evaluated the inflation rate between January '99 and July of 2007 which totaled about 26.8 percent. When we multiply this inflation rate times the economic losses of 1999, we calculated the economic losses for 2007 could be as high as $13.4 million. Thank you for your continued support for farming in Montgomery County. We encourage the County Council to approve the special appropriation for the 2007 Ag EAP. The AAC will work closely with the Department of Economic Development as the program moves forward to make sure that it is fair to all

applicants. The financial relief from this program will help the farmers at a time when they most need it. Thank you.

Council President Praisner,
Thank you. Mr. Stabler.

Drew Stabler,
Yes, my name is Drew Stabler. I'm Chairman of the Agricultural Preservation Advisory Board and a Montgomery County farmer in the Laytonsville area. This year has presented many challenges for Montgomery County farmers. The greatest of these challenges has been the persistent drought conditions impacting Montgomery County and nearly the whole state of Maryland. I believe the economic impact of this year's drought -- were experienced in ‘99, 1999 where agriculture economic losses were exceeded $10 million as Wade pointed out. Increases in our production costs, coupled with significant crop losses will place great economic hardship for many producers within the Montgomery County this year. The Agricultural Preservation Advisory Board supports the proposed Agriculture Drought Assistance Program as a vehicle to provide much-needed financial relief to help minimize the overall impact of this year's severe drought conditions, and encourage Montgomery County farmers to continue their operations in the County. The Board also encourages the County Council to support the special appropriations of $1.5 million for this important agriculture assistance program. On behalf of the Agricultural Preservation Advisory Board, we want to thank both the County Executive and the Council for this initiative that will help stabilize the serious economic impact brought on by the drought of ‘07 and encourage farmers to be part of this County as the areas of discussion have wanted us to be. Thank you.

Council President Praisner,
Thank you. Mr. Lechlider. George? You're next. You need to push the button in front of you, George.

George Lechlider,
Okay.

Council President Praisner,
That’s okay. Thank you.

George Lechlider,
My name is George Lechlider and I farm in Laytonsville and I bought my, and I represent a little over 3,000 families in Montgomery County in the Farm Bureau. I bought my farm in 1946 and this is the worst year I've ever experienced since I've had it. The last drought we had, we didn't have the cost, the price of fuel and the seed and labor has doubled since then and so the cost to us to produce a crop has doubled. Some of you may have seen the September 6th issue in the "Washington Post" in Montgomery -- actually where I provided some comments on the impact of the drought. I realize the expression on my face as outlined in the article looked like I was discouraged. Well it didn't lie, I was discouraged. As I observed the crop conditions on my farm, however, today, I come

before you with a higher view in the light of this proposed agriculture Emergency Assistance Program. And a brighter view in the light of the proposed agriculture Emergency Assistance Program and funded in the amount of $1.5 million. I'm proud of the Montgomery County government in recognizing the impact this drought has placed on our farmers and your willingness to take the necessary steps to help us. This program helps to demonstrate the County commitment to agriculture and our farmers and I'm proud of all of you. The Montgomery County Farm Bureau respectfully requests the County Council to approve the funding for this program which will directly help our farmers. Thank you for hearing the views of the Montgomery County Farm Bureau. Thank you.

Council President Praisner,
Thank you. Mr. Butz.

Robert Butz,
Good afternoon, my name is Robert Butz and I'm here this afternoon on behalf of the Montgomery County Soil Conservation District. We too would also like to extend our thanks to Executive Leggett and Councilmember Knapp for proposing this financial assistance to our farmers. On the back of my testimony I've included a hypothetical farm profitability analysis for a 500-acre corn farm that pretty clearly shows the devastating financial impact that the drought of 2007 will have on farm income. This analysis also shows, however, that under normal crop conditions, row crop farming is in fact a viable enterprise in Montgomery County. The Council should be comfortable knowing that the assistance you're considering today will provide critical support to an otherwise healthy and viable industry and this investment will actually pay dividends in the form of preserving our agricultural economy. The Soil Conservation District as many of you know assists local farmers in improving the soil and water quality of their property by installing conservation practices. These practices include planning things to cover crops, installing grass waterways, planting tree buffers and building manure storage structures. And our office offers technical and financial assistance to the farmer but in all cases the farmer is financially responsible for some portion of our projects. Our programs are voluntary and up to the discretion of the land owner. While the long-term benefits of soil and water conservation to both the farmer and the broader community are well documented, in most cases these practices do not directly produce immediate farm income but rather require capital expenditure. Because of this, these projects may be deferred in times of economic hardship when a farmer must make tough choices in order to continue his business. We believe that the drought assistance program that you are considering today will not only provide the needed capital to support the farmer, but will also provide capital to ensure that they consider, what I believe is their admirable record of improving soil and water quality of their properties. The Chesapeake Bay Foundation has stated that farming using best management practices is one of the best environmental uses of the land second only to virgin forest and we concur with that. The very existence of the Montgomery County farmer protects our open spaces, protects our land, and protects our water. These are things that all of us as a community share in the benefit of but ordinarily have provided to us at no cost. I will also tell you when you look over this drought analysis, farms are so different. I tried to take some mean data and some personal experience and if you have any questions be happy to ask them but it really wasn't meant to represent any one farm

in particular but just to give you a rough idea of what the row crop farming looks like and as far as other types of farming I'm not as well versed in that, but thank you all very much.

Council President Praisner,
Thank you. Council Vice-President Knapp.

Councilmember Knapp,
Thank you Madam President. I just had a question for staff or for Jim or for Justina. When this comes back to the Council, I think that the number or the $1.5 million was a number that kind of was more than $1 million and it was less than 2, but wasn't necessarily based on any actual costs and I know as I understand as you put the program together you identify a payment per crop per acre per farm. Roughly. To the extent that you could actually do that calculation and figure out kind of what the appropriate payment should be and then kind of be able to give us an actual, I guess market cost as opposed to trying to back into $1.5 million. With that million dollar number that was put in 1999 as I understand it was, it was a round number and we kind of made it fit and I don't know if the $1.5 million is the right number or the wrong number but to the extent that we could actually get an understanding of the scope of the drought and then to have what the payments should be on the basis of each individual crop and be able to kind of see what we think the payment should look like on that basis as opposed to kind of just making it all fit in $1.5 million and maybe it will add up to $1.5 million, maybe a little more, maybe a little less. But if you could when it comes back to the Committee or comes back to the full Council have that kind of a calculation that would be helpful.

Unidentified
Absolutely, we will.

Councilmember Knapp,
Okay. Thank you.

Council President Praisner,
Councilmember Andrews.

Councilmember Andrews,
Thank you. I support this appropriation and appreciate Councilmember Knapp's leadership and the County Executive's leadership on this. I was curious about how it works. I got a sense a little bit from the question, but do individual farmers need to apply or is this something that is calculated and then distributed to a list of farmers that are registered with the County or are found on the, you know, through the tax rolls? How is it done?

Jeremy Criss,
Okay. We propose to start the signup for applicants this month and we're proposing that signup will carry through until December. This is it what we did in 1999 to provide ample opportunity for the farmers to get all of their crops reported. There are going to be some crops that we're going to be paying rates per acre on that we're still wrestling with what

that price should be. We know exactly what we paid in 1997 per acre and 1999 we have a decision memorandum that is going to be a part of the packet that will be discussed at your upcoming PHED Committee to show what we did in the past and what we're trying to do now to figure out what those rates will be for this program for 2007. And then the application, we will take all of those applications in and assess the individual losses. The last time we ran the program, the farmer had to demonstrate that they had at least a 20% loss rate and then we would pay on anything above 20%. The farmer had something less than 20%, they weren't eligible for the program. So all of this is spelled out in the manual that, we also have an annual report that will come back and tell you where we -- how we finished the program and the list of all of the farmers. In 1999, we had 95 farmers that applied and received payment.

Councilmember Andrews,
Okay. How do you publicize the program?

Jeremy Criss,
Pardon me?

Councilmember Andrews,
How do you publicize it? I imagine a lot of people are well aware of it and read about it, do you publicize it?

Jeremy Criss,
Yes, we have a meeting. A public meeting announcement that I've already drafted. We'll have the meeting at the Derwood Agricultural History Farm Park. I plan to have that meeting in the month of October. I'm not sure that we're going to get everything altogether with the PHED Committee and get the final action approval of the money so that then we can move forward on getting the announcement so there's a mailing for the public meeting and we also have a group of farmers that come together to look over my shoulder to make sure that what I recommend and the other agricultural agencies is fair and equitable for everyone.

Councilmember Andrews,
Okay. Are part-time farmers eligible to apply?

Jeremy Criss,
Yes, we've got a number of people that are actively engaged in the pursuit of farming. They may have other off farm income and they're eligible for the program.

Councilmember Andrews,
Good. Thank you.

Council President Praisner,
Just for the, I think you can start to get the work ready to be issued as quickly as we as a Council take action, but I don't want to leave any impression that the PHED Committee is going to sit on this because we're not. So we'll move this sprightly through, recognizing

that the time period of actual disbursement comes after -- comes a while after that action. But the comment I wanted to make is I want to understand the relationship of our program to the governor's initiatives and what he's proposing. What actions the governor might make so that we -- how you present this in relationship to that and how we would administer and how the governor would administer or the state Department of Agriculture would administer anything they're doing. So if you could have that for the PHED Committee meeting that would help Jeremy.

Jeremy Criss,
Yes, ma'am.

Council President Praisner,
Good. Thank you all very much. Thank you. [inaudible] Thank you all very much.

Unidentified
Thank you very much.

Unidentified
Thank you.

Council President Praisner,
Thank you. Thank you for being here.

Unidentified
Thank you.

Council President Praisner,
Good afternoon, ladies and gentlemen. This is a public, oh, let me just say if anyone else wants to comment on this piece, this item, the record closes at the close of business today. This is a public hearing on Zoning Text Amendment 07-10 which would amend the zoning ordinance to define the term arts or entertainment entity, revise definitions for the term public use space and public facilities and amenities, provide flexibility for certain Central Business Districts, CBD Zone projects to satisfy a public use space, public facility or amenity requirement, revise provisions for a transfer of public use space in certain overlay zones, establish standards and procedures for an optional method project to make a payment instead of providing any public use space, public facility or amenity on site. Excuse me. Revise requirements and standards for approval of a project plan and generally amend the Central Business District Zones. Persons wishing to submit additional material for the Council's consideration should do so before the close of business on September 14th. The PHED Committee worksession is tentatively scheduled for September 24th at 2:00 p.m. Please call 240-777-7900 to confirm. And let me see. We have four speakers. David Freishtat. Phil Olivetti for the Silver Spring Citizens Advisory Board. Jim Humphrey for Montgomery County Civic Fed and Patrick O'Neil for The Greater Bethesda-Chevy Chase Chamber of Commerce. If you would all come forward please and Dave, you're first.

Dave Freishtat,
Good afternoon, I'm Dave Freishtat with Simon Rogers -- Law Firm on Rockville Pike. I wanted to come here this afternoon to speak in support of this Text Amendment. Members of the business community in Bethesda have worked closely with the Planning Commission and the arts community to implement this program which is part of the Woodmont Sector Plan Amendment that was adopted by this Council about almost two years ago. This is probably the centerpiece of that Sector Plan in terms of helping smaller sites to be developed and instead of having the public space onsite, the money can be -- the equivalent money can be used for larger projects. We support it and hope that the Council will move quickly and adopt it. I want to raise just two other points with you. One is that there are other legislative initiatives in the Sector Plan that have not yet been acted upon and we would like to see them moving forward as well. The last is that the -- we hope that as the Council moves forward with this that the actual calculations for the fee in lieu be reasonable. We don't want to kill the goose. We want to make sure that it's not too much that people can't afford to use it. These projects are the smaller projects that will be taking advantage of this program and we need to be careful of that. We don't be too greedy. Finally, I want to thank Judy Daniel from the Planning Commission staff who has been very active in this process and who has moved it along very well over the last year as we were moving to get to this point. Thank you very much.

Council President Praisner,
Thank you. Mr. Olivetti. Phil.

Phil Olivetti,
Hi. Phil Olivetti. I am with the Silver Spring Citizens Advisory Board. You have our written testimony in form of a letter from our Chair. I'm going to attempt to you know read that letter but I wanted to touch on a few of the high points. I was selected to give this testimony today because I'm Chair of the Board's Commercial and Economic Development Committee. The proposed ZTA addresses developer requirement for public use space and amenities. The Silver Spring Citizens Advisory Board supports this proposed ZTA with amendments to correct two major flaws. We feel strongly that these corrections will make the proposed ZTA more effective land use planning tool. Our Silver Spring Central Business District is in need of large, functional public open spaces. While the optional method of development requires developers to set aside 20% of its land for public use and provide community amenities, the OMD does not always serve our community well. Public use spaces are frequently too small to be practical and threaten to create a hazard, you know, a haphazard smattering of ineffectual pocket parks. While these small areas may benefit the development project itself, they do not create useful community space or effectively compensate Silver Spring for the density added by the development. Although this ZTA attempts to solve the open space problem, it will be completely ineffective for Silver Spring. As written, this ZTA would give developers a choice between either reserving 20% of their space for public use or contributing to an amenity fund. However, by choosing to contribute to the fund, the developer gets virtually nothing in return. In fact, developers would have a disincentive to choose the entire, -- excuse me, the developers would have a disincentive to chose the amenity fund over the OMD. Put simply, developers would have no reason to choose building on 100% of its lot

and contributing to the fund. So how do we fix this? We would strongly recommend that the ZTA be amended to create an incentive for developers to actually use the option of contributing to the fund. Specifically, we propose the developers be granted greater FARs in fair exchange for the equivalent of land that they "purchase" by contributing to the fund. A one-to-one ratio between the land value contributed to the fund and an increase in the FAR would contribute to the necessary incentive and allow the proposed ZTA to accomplish its stated goals. Second, we would urge that the language of the ZTA be amended to require that amenity funds be dedicated for the acquisition of public use space and not for other purposes. In closing, by creating a false option that no reasonable developer would ever choose, the proposed ZTA, without modifications, would perpetuate poor urban planning and would not give us functional usable public space in the CBD. Thank you.

Council President Praisner,
Thank you. Jim.

Jim Humphrey,
Good afternoon. I am Jim Humphrey Chair of the Planning and Land Use Committee for the Montgomery County Civic Federation. We realize that the 2003 legislation, which allows CBD Zoned public use space or amenities to be provided offsite or allows payment in lieu of either is not at issue today but we reiterate a concern of the Federation members because in contrast to what David said, we believe that the offsite provision or payment in lieu will most likely be sought in high density projects and those are the very projects in which the onsite provision of a public facility or amenity or public use space would be most beneficial to the residents of the project. That said, we generally are supportive of ZTA 07-10 with certain reservations. We encourage you all to ensure that the amount of any payment in lieu providing a required – in lieu of providing a required amenity or public use space in CBD Zoned project be at least equal to the cost of the square footage and any improvements that the developer would have incurred had the amenity or public use space been provided onsite. I believe there's language that addresses that very issue in the ZTA. We also think that any amenity or public use space allowed to be provided offsite from a CBD Zoned project should be required to be completed at the same time or before the associated project comes online. We're therefore concerned about the use of this amenity fund, in particular the process that could be used to underwrite the cost for projects that will require payment in lieu of from more than one project to accomplish since by their nature these projects won't be finished and available for use by the time one or more of the associated projects are completed and occupied. What we don't want to happen here is what has occurred with the MPDU program where we get payment in lieu of, or got payment in lieu of, for instance in Bethesda for dozens of units that we have yet to see one of and those were buyouts that occurred starting 19, I'm sorry, 2001 that I'm aware of. That's a long time to wait for an MPDU or an amenity that this fund might be used for. In addition, we'd hope that any amenity or public use space approved to be provided offsite would be located in close enough proximity to the associated project that it will directly benefit the residents of this project. The Federation stands ready to answer any questions and provide any help if requested. Thank you.

Council President Praisner,
Thank you. Mr. O'Neil.

Patrick O'Neil,
Thank you. Good afternoon my name is Patrick O'Neil and I'm the Vice-President for Economic Development and Government Affairs for the Greater Bethesda-Chevy Chase Chamber of Commerce. On behalf of the Chamber I'm here to express qualified support for the Zoning Text Amendment 07-10. The amendment provides needed flexibility in CBD Zones for developers to fulfill their onsite public use space or public facilities and amenities requirements. This flexibility in the form of fee in lieu payments was envisioned in the Woodmont Triangle Sector Plan and the Chamber is pleased that County Council is poised to bring it to fruition in the zoning ordinance. The fee in lieu option also benefits the public because it allows for the pooling of resources to provide significant public improvements as opposed to piecemeal or haphazard benefits that may otherwise result. You will see in the written testimony that was submitted that there are a number of specific language changes that the Chamber is advocating, and the change -- those changes we believe help to strengthen and clarify certain aspects of the Zoning Text Amendment and that is the reason for our qualified support. Had those changes been clearer from our standpoint, it would have been unqualified support, certainly. Before we close our testimony, the Chamber does want to comment on the amount of fee in lieu payments that could be implemented. The Chamber supports the utilization of Planning Board regulations to determine fee in lieu payments. However, the amounts need to be commercially reasonable and feasible. The sample payment amount set forth by Park and Planning staff in a memoranda to Planning Board this past spring, would not encourage developers to use the fee in lieu option. If the amounts are not reasonable, the efforts being made in this proposed legislation as Mr. Freishtat said would be wasted. On behalf of the Greater Bethesda-Chevy Chase Chamber of Commerce thank you for the opportunity to present these comments.

Council President Praisner,
Thank you. Mr. Berliner.

Councilmember Berliner,
Thank you Council President and Chair of the Committee that will have this. I guess I would like to focus, one, I too am very supportive of the general thrust of this. I understand that we can make better use of our public amenities opposed to pocket parks and things like that, that are not used. I believe that there are a number of people that hope that, for example, in the Woodmont Triangle that we can enhance the streetscape of Woodmont Avenue and other things that will really bring that community more to life so I am very supportive of the concept. I want to go back to Mr. O'Neil and ask and share with you. I'm probably on the other side of the equation with respect to the dollars here because from my prospective the dollars are going to be the most important piece that the Chair of the Committee and the Council ultimately will have to deal with and I refer you to, and my colleagues, if they would like, page circle 12 of our packet where the dollars on line 181 through 183 are described as the amount of payment accepted for public facilities and amenities must not be less than the cost of constructing an equal amount of the public

facilities and amenities onsite. As I understand it, Mr. O'Neil, the staff had a different suggestion with respect to that and could you explain for the benefit of the Council the staff suggestion with respect to that, that you found unacceptable?

Patrick O'Neil,
The Chamber as you know has been involved in this for a long time and I'm coming to the game late here so I apologize if my knowledge of the history of this is not as clear as perhaps others may have it be. I understand from people who have been involved from the Chamber side of things that the staff analysis and I don't have the numbers in front of me, but that their analysis as to the amounts were just not something that developers would be.

Councilmember Berliner,
I understand. Let me say my understanding that there are various standards of my colleagues that one could use with respect to this not the least of which would be the standard of the improvements that are made at the value of the space as opposed to the cost of constructing. So, when I look at this language, I look at this language as being the absolute minimum that one would expect and I believe that Park and Planning staff had a different view as well and that it would have required more dollars with respect to this. Certainly one doesn't want to have so much dollars that it dissuades people from participating. I appreciate that, but not clear to me that this number is the right number or that this formulation is the right formulation, so I will be looking to hopefully that the Committee will address this issue and be comfortable that it is, in fact, getting the exactions, I believe is the word was used earlier today, that are appropriate for this particular process.

Patrick O'Neil,
Our message is that the Planning Board -- we're supportive of the Planning Board being involved in this process and the fee setting arrangement and we want to be involved and we'll continue to be involved in that process.

Councilmember Berliner,
And I guess I'm less comfortable with leaving so much discretion to the Planning Board with respect to this. I believe that this is a formula that this Council should be able to understand and be able to adopt and if there's variations from it, as a case arises, one can talk about that, but this is too much discretion from my perspective and the bar is set to low from this Councilmember's perspective. Thank you, Madam President.

Council President Praisner,
Councilmember Floreen?

Councilmember Floreen,
Thank you and thanks to everyone for their testimony. Phil, this applies to optional method projects?

Phil Olivetti,

Correct, it does.

Councilmember Floreen,
So, there is a -- that's the deal, you know, there is additional development opportunity under that zone. This is a requirement of that zone or an option under that zone.

Phil Olivetti,
But it’s my understanding, our understanding that there's no "bonus" for the, you know, for that piece.

Councilmember Floreen,
I mean --. Well, that's part, that’s the optional --.

Council President Praisner,
That’s the optional method.

Councilmember Floreen,
The bonus is the additional density, which is part of that whole optional method process. It's an exchange.

Phil Olivetti,
Correct.

Councilmember Floreen,
You get to build more if you do all of these other things. That's the package and we're dealing with one portion of that package, but inherent in that package is the additional flexibility to go through this process. So, I think -- take another look at that may I suggest and I think your comments are very helpful, but I think as the previous conversations have suggested, the issue may well be whether or not that we will be able to get productive offsite space through this process. There's a long history of projects that have been approved over time with hidden conference rooms that are public space or otherwise very nice features that I suspect in my heart of hearts would have been provided in any event because that was the appeal of the structure and the point of this is to generate public space that is useable and in a chunk that is meaningful. It's always been a challenge down at the Planning Board to sort that out on a project by project effort and the challenge will be indeed as everyone has indicated to make sure that the incentive is there sufficiently to encourage the collection of the larger amount of funds so that an amenity that makes sense for that area is fundable and feasible. And I have no doubt that there will be the usual array of challenges in trying to figure that part out, but certainly -- this primarily is responsive to the Woodmont Sector Plan which recommended something along these lines and I think if we can get it to work, it will be an advantage to all the CBDs. The question is how exactly it will be implemented and I think we will continue to have some suggestions. I did not see Ms., Madam President something from the Planning Board on this. Do we have their --.

Council President Praisner,

Well, they're the ones who sent over the Zoning Text Amendment I believe.

Councilmember Floreen,
Yeah, but there's no --.

Council President Praisner,
I don't know beyond that.

Councilmember Floreen,
There's no one else.

Council President Praisner,
Okay. Jeff.

Jeff Zyontz,
And they will review it in the upcoming weeks or so and be ready for the worksession.

Councilmember Floreen,
When we get to the worksession. Okay. But I do think everyone agrees these are the kinds of things that we'll have to chew over and make sure that they're reasonably predictable under the system but that issue of the bonus is what drives the requirement and through the optional method.

Council President Praisner,
Councilmember Elrich?

Councilmember Elrich,
I would just like staff to provide me or point me to a place where I could see what would feasibly be done for example in Woodmont Triangle to accomplish, in other words, if you're accumulating money to buy something, my picture, I know Woodmont Triangle pretty well, I would like to know where people think this offsite amenity is going to go. I wasn't around for the initial discussion so point me to something I can see.

Unidentified
There's a list in the Triangle Sector Plan.

Council President Praisner,
Okay. Is that -- staff can provide that information to the Councilmember, I believe. I do have a couple of questions or comments that I would like staff to prepare material for. We raised some questions -- I raised some questions -- when we did the Sector Plan about the concerns associated with implementation of this from a standpoint of the difference between the language of what we hope to do and the reality and my -- and that deals with what Planning Board may suggest as exactions or as contributions to some public space or some amenity. And we use those terms, I think too loosely, both public use space, public space and amenity issues and I appreciate the definition changes here but I hope the packet can go through some of that discussion. But the problem I have is going back

to Black Rock or any of the other assumptions of what was going to be space that might be available where there were going to be contributions from developers but yet the County had to take over the project, and with no small funding obligation from the standpoint of the County. So, what I'm interested in is having -- I'm not sure I necessarily agree with my colleague, Councilmember Berliner about the fact that Council would develop the criteria or determine the actual dollar amount pieces, but I am anxious to review more of the Planning Board's regulations or processes for both determining the dollar amounts but also how we would follow-through or implement what are the guidelines for that fund? Who accesses it and what determination is made? What happens when space that was assumed to be a museum or a gallery or whatever changes hands and becomes your neighborhood nail salon which can happen? So, I want to understand the, without it being publicly owned, it does not necessarily permanently remain public use space unless the government wants to interject itself into the private sector process of determining a business for a gallery or other uses and that's the concern I have about this whole concept. Here today, gone tomorrow. And yet the development lives on. So, I would like to have some discussion within the context of this Zoning Text Amendment about the implementation pieces. As I've said before and I have no hesitancy to say again, I think we are very good at creating in Montgomery County concepts. I'm not sure we're that good at the follow-through part or the implementation part or having thought through how this would be implemented and this is one of the issues that I think we need to have some conversation about in this context. Okay. Thank you all very much. Good afternoon, ladies and gentlemen, this is a public hearing on Zoning Text Amendment 07-11 of which, which would amend the development standards and the overlay zone for the Upper Paint Branch Special Protection Area and generally amend the overlay zone for the Upper Paint Branch SPA. Persons wishing to submit additional material for the Council's consideration should do so before the close of business on September 14th. The PHED Committee worksession is tentatively scheduled for September 24th at 2:00 p.m. And we have four speakers, I believe. Greg Russ for the Planning Board, Gary Butson speaking on his own behalf. Andrew Der for Maryland-National Capital Building Industry Association. And Mary Hemingway. I only see two people so Mr. Russ, you may begin.

Greg Russ,
Thank you, Madam President. For the record, Greg Russ from the Montgomery County Planning Board. The Planning Board reviewed Zoning Ordinance Text Amendment number 07-11 at its regular meeting on September 6, 2007. The Board supports enactment of legislation aimed at lowering the impervious surface restriction on new development in the Upper Paint Branch Special Protection Area in order to provide more effective protection of the Special Protection Area stream system resources. To this end, the Planning Board endorses the recommendations in the technical staff report to support the proposed legislation. In addition, the staff report identifies several items needing clarification to make the environmental overlay zone more transparent and understandable to be considered when appropriate. We would be happy to discuss those issues at the worksession. Also, just to mention on ZTA 07-12 which is your next public hearing our staff report will be available for your worksession as well for that.

Council President Praisner,
Thank you. Mr. Der. You need to push the button in front of you so the microphone is on?

Andrew Der,
Thank you Madam President and the Council. I'm Andrew Der representing Maryland-National Capital Building Industry Association. We have 730 companies and 18,000 individuals in the industry. For your background, environmental scientists with over 20 years experience both in the public and private sectors. The industry is aware of the potential effects of development to water quality. And make environmental compliance a stable practice a primary commitment to serve, to provide better community as a quality life. We believe that any changes to the regulatory criteria must be based on technical and sound reasoning. Based on that belief, we do not find the scientific rational exists supporting this supposition that the existing 10% limit in the Upper Paint Branch watershed is not accurately serving the public interest and water quality protection goals. And for this reason the industry can not support the ZTA. Unmanaged impervious surface does have impact on water quality, however, Montgomery County has been managing storm water through Maryland Department of Environment criteria and special protection criteria for many years. And it’s all applies to – by new development and it's been done for decades. Before you is a desktop planning tool relying on impervious surface studies that do not factor in current storm water management practices mandated by the County and state. For example, the above setback buffers in many of the devices that we use today. Many of the studies were that this data was drawn on were done in the 80s and 90s on watershed with little or no storm water management. And for this, for your background, attached you'll find in a technical synopsis of the history and studies and rationale that led to this issue. I also have the detailed analysis here if anybody would like it afterwards. It strikes as curious that if the basin wide water quality protection is the ultimate goal, why is the ZTA before you restricted to new development which is already mitigating its impact. And again, much of our water quality problems are from existing development which also generated the outdated data. And why does it fail to address the unmanaged impervious surface and storm water runoff created by current residents who are improving their property through renovations, additions, tennis courts, swimming pools, et cetera? We would also take this opportunity to request the Council to direct Park and Planning, Department of Permitting Services and Public Works and Transportation to develop and agree upon a working definition of what constitutes impervious surface and that will be acceptable to all and thank you very much for the opportunity to comment and we're available to answer any questions at your request.

Council President Praisner,
Thank you very much. Unfortunately, you may not have a copy of the latest report and analysis when you refer to 1980s. The special taskforce that was looking at the Upper Paint Branch and the significant impacts associated with the inner County connector and other public projects and a variety of other impacts on the Upper Paint Branch did recommend going to 8% and that is based on current analysis and the current work that is going on. So it isn’t 80s documentation. It's current. Councilmember Floreen?

Councilmember Floreen,

Yeah, I had some questions about this. I'm just sort of familiar by reference to the fact that we have the current rules in place. So when we have the work session, Jeff, could you provide us with some update on the master plan and how this relates to that? Typically we do this through a master plan process. So this is a little different and it's using the zoning ordinance to establish these limits is of interest to me. It's different from what we've done in the past, I think. And I would like to understand the background from that and if that's what we've done typically, that's helpful to understand. I don't know about-- I haven't read everything in this, in the report. Can you provide us with what is the current imperviousness within the area at this point?

Jeff Zyontz,
With Park and Planning's help, yes.

Councilmember Floreen,
Yeah, thank you.

Council President Praisner,
Mr. Butson has arrived, correct?

Unidentified
Yes.

Council President Praisner,
So, if you want to testify before I call on other Councilmembers, I'll do that, please. Push the button, that's right. Go ahead.

Gary Butson,
Good afternoon Ms. Praisner and members of the Council. My name is Gary Butson. I live at 2721 Briggs Chaney Road, which is in the Paint Branch drainage area. I also own a lot in that same location at 2723 Briggs Chaney Road, which I applied for a building permit on back in June of this year and one day I was sitting in my office and the blue sheet from the home builders came across my desk and I was quite surprised to see that there was an amendment to limit the impervious to 8%. My architectural drawings and my engineering exceeded 8% and I have followed all of the rules. We have a Planning Board opinion that was, that approved this subdivision in February of 2002 with a cap of 8.9%. So, I was a little shocked and so I started to inquire a little bit and Ms. Praisner's assistant, Claire, has been very helpful and we're working on some language to allow existing prior permits and/or approved subdivisions to continue, if I’m--.

Council President Praisner,
We are working on that.

Gary Butson,
Yes and so that's why I'm here. I'm very interested in this legislation, as you can see why. So, I would like to be kept up-to-date on this and I thank you for your time.

Council President Praisner,
Thank you. Councilmember Ervin, I did note that you weren't listed as co-sponsor the way I know--.

Councilmember Ervin,
I'm supposed to be on there.

Council President Praisner,
I know. I want, I had called it to folk's attention.

Councilmember Ervin,
Alright.

Council President Praisner,
Other issues Councilmember Ervin.

Councilmember Ervin,
Yes. Thank you Mr. Der for your comments. I'm really very interested in what you had to say here and I was wondering if there's any way you can share the document that you referred to in your testimony with us.

Andrew Der,
I – leave it with the Clerk.

Councilmember Ervin,
Okay. Thank you very much.

Council President Praisner,
Thank you. Councilmember Berliner.

Councilmember Berliner,
Mr. Der, I understand your view in part is that you question the equity if you will imposing these kinds of restrictions on new development as opposed to more broadly existing development. I've had a number of developers share a similar lament and articulate that they would be very supportive of increasing standards for existing homeowners in one form or another. Is that your view, sir, that we should do so? Would you be supportive of such measures?

Andrew Der,
Well, my view is that my testimony is basically on the technical information that was the basis of some of these conclusion and my view is that existing development pre-storm water regulation development is our current, is our bigger problem which we need to correct through certain mechanisms. I would support certain methods and incentives to do that. As opposed to exclusively target potential projects or development which are, in my opinion, are very thoroughly mitigated in terms of stream buffer setbacks and best management practices.

Councilmember Berliner,
Thank you.

Council President Praisner,
Okay, I don't see – oh, I'm sorry Councilmember Elrich.

Councilmember Elrich,
I just wanted to ask Mr. Butson a question. I was trying to do some quick calculations. You have 3400 square feet of impervious surface. So, if that's about 8.9%, your lot's about 38,000 square feet? 38, 500?

Gary Butson,
No, sir. The impervious calculation is based on the total tract area and in this case, the total tract area was about 4.9 acres. But these lots are between 20 and 30,000 square feet. So the impervious limit was calculated on the total area, part of the land was left in conservation as an out lot and then there were four lots that each had a limit of about 3460.

Councilmember Elrich,
I'm trying to picture how much impervious surface you would have had to lose on each lot in order to comply?

Gary Butson,
To comply with the --.

Councilmember Elrich,
8%.

Gary Butson,
8%. We would have probably lost at least a couple thousand square feet. Total --. No. Total.

Council President Praisner,
Total.

Councilmember Elrich,
About 500 square feet.

Gary Butson,
About 500 square feet on a R-200 lot. These are zoned R-200.

Councilmember Elrich,
Okay. I'd like, I mean if you have a chance at some point, if you can send me a picture of what this development would look like that would be helpful.

Gary Butson,
Okay.

Councilmember Elrich,
Thank you.

Council President Praisner,
Councilmember Floreen.

Councilmember Floreen,
Well, this conversation is just reminding me of an issue that's come up. I think there may be a disagreement, I'm not entirely sure between Park and Planning and for example, DPWT or DEP in how they define impervious surface. Maybe we could make this, maybe that is part of the plan. I don't know. But I know issues about different kinds of driveway improvements and things like that have been raised in other contexts for resolving these kinds of issues. And Jeff, maybe if you could dig up some of that when we take this up, that might be helpful too.

Council President Praisner,
Okay.

Councilmember Floreen,
You look very happy.

Council President Praisner,
Thank you all very much. Thank you. This is a public hearing on Zoning Text Amendment 07-12 which would amend the zoning ordinance to authorize the Board of Appeals to decide petitions to increase the size of Accessory Structures in one family residential zones and generally amend the standards for Accessory Structures in one family residential zones. Persons wishing to submit material for the Council's consideration should do so before the close of business on September 14th. A PHED Committee worksession is tentatively scheduled for September 24th at 2:00 p.m. And we have four speakers. Denise Parks, Kent Elliott, Steve Kanstoroom and Mary Hemingway. Ms. Parks you are first. There you go. Got it.

Denise Parks,
Thank you.

Council President Praisner,
Good.

Denise Parks,
Good afternoon ladies and gentlemen of the Council. My name is Denise Parks and I would like to thank each of you for your continued service to Montgomery County. I am here today to discuss ZTA 07-12 Accessory Building Standards. My family and I reside in Gaithersburg in a rural area formerly known as Atchison. This area consists of farms and

businesses. My residential zoning is R-200. My home is a 1200 square foot two-story single family dwelling unit constructed in the early 1900s. When my family purchased this property in 2004 we did so with the idea that we could apply for a building permit and have a garage constructed in the rear yard. In 2004 the Department of Zoning stated that we could construct an accessory structure in the rear yard as long as all structures new and old did not cover more than 30% of the land. A mere two years later in 2006 my husband applied for a building permit and was denied. We did not understand this because our planned accessory structure in no way was going to cover more than 30% of the rear yard. It was then that we learned that the basis of the denial was due to ZTA 06-10, which stemmed from other areas in Montgomery County because unsightly accessory structures were being built in residential zones and being used for commercial purposes. I believe ZTA 06-10 to be biased based on reports from the Montgomery County residents directly impacted from this action: ZTA 06-10 does not take into account those property owners that will only construct an accessory structure that compliments the area in which they reside. Currently the proposed language in ZTA 07-12 permits the Board of Appeals to hear cases on denied petitions once a public hearing is held. It is my experience that not everyone receives notice of public hearings and that construction may be allowed to resume without the consent of neighboring property owners. The language proposed in ZTA 07-12 is a possible catch-22. I am respectfully requesting the Council to reconsider the requirements in ZTA 07-12 whereas the Board of Appeals may receive and decide on all denied petitions for accessory structures. I am asking you as the Council to initiate a procedure similar to that of the requirement for the erection of a fence that is on or near the property line. In this instance, the petitioning property owner has to have the approval of all neighboring property owners in writing and that documentation is required to be submitted with the application. I am asking the Council to seek the same requirements for a building permit for an accessory structure. My intent is that this will eliminate the need for Board of Appeals hearings regarding accessory structures and alleviate complaints that may possibly evolve from neighboring property owners. I ask that you give my proposal formal assessment and I look forward to hearing your decision in the near future. Thank you.

Council President Praisner,
Thank you. Kent Elliott.

Kent Elliott,
Yes ma'am. Thank you for the opportunity to speak today. My name is Kent Elliott. The military relocated my wife and I to the D.C. area April '05. This move was to be my last move in more than 20 years of service to the nation so my wife and I were looking to purchase an affordable home in a nice neighborhood. We wanted a home to make commuting easier and a home that would give us room to grow. My most important criteria for the home was that the home had a garage or a garage could be built on the property. We found a great home in Wheaton that met all of our criteria. The house is a beautiful brick colonial in a great neighborhood. Only one, correction, our home is only one of four homes on our street that did not have an addition when we bought our house. The existing zoning laws would permit us to build an addition and a garage to fit our current and future needs. In late '05, early '06 I received bids to build a 24 x 24 garage much like

my neighbor has. This past fall I began to put my permits in order or paper in order to get permits and found I could no longer build a garage to meet my needs. Accessory buildings now have further limitations. I am currently limited to a garage that is only 390 square feet, roughly a 17 x 24. I was left with four choices, build an addition to my main house and then I would have a large enough footprint to have a 24 x 24 garage or build a smaller one-car garage that would not meet my needs. I could not get my Excursion into the garage. Or I could build two one-car garages next to one another which would be less than the cost of getting a variance. Or I could come to the Council and ask for changes. I do not think that those six zoning change was intended to prevent homeowners from having a two-car garage and I do not think that the proposed changes to the zoning was intended to add the additional financial burden to the homeowner of going through a variance. If I'm correct in these two points, then I request that ZTA 07-12 be amended to add or 600 square feet whichever is larger to lines 39 and 64. This addition will allow homeowners with a big enough rear yard to build a two-car garage without the unnecessary expense of going to the Board of Appeals. Most two-car garages today are between 484 feet and 586 feet. I have talked to most of my neighbors and they support my desire to have a 24 x 24 garage. Ms. Mize testified on May 2, 2006 that her typical garage is about 500 square feet. A 24 x 24 garage gives room for two cars, gardening and any other tools without having to have additional accessory buildings. Again, thank you for your time and especially to Ms. Ervin's staff who have been very helpful to me in this process.

Council President Praisner,
Thank you. Mr. Kanstoroom.

Steve Kanstoroom,
Good afternoon. Thank you for letting me testify today. I am a life-time County resident. And last year Councilmembers Praisner and Silverman helped to put through the Zoning Text Amendment that brings us here today. There are some issues I see in it that I think perhaps are unintentional. Let me just start by saying I certainly don't object to anybody having a two-car garage if the neighbors don't object to it regardless of the size of the footprint of their home. And for those that don't know, Susan Mize is my wife so I speak for her too. But that's really not what brings me here today. It's not about a two-car garage. As drafted, there is a word that's changed in this. And the word footprint was changed to floor area. And so, if you go to line number 41 for example on page 4, it says once you go to the Board of Appeals you can ask for 75% of the floor area. Well in the matter that first brought me to the Council, that means once again, my neighbor with a 1,600 square foot footprint can build a 2400 square foot garage. That's a disaster. And I don't think that was anyone's intent but that's what this is. The other issue is we had a, and again, I'm not reading from my, what you have before you, but we had a bill hearing last month on forest conservation enforcement and it was decided to put that off for the time being. Well, those matters regarding the false and misleading information that's flowing through DPS, they have not gone away. And so to pass this before that matter is solved just opens up the door for people to once again put these large illegal structures, I'm not talking about a two-car garage, put these large illegal structures in an illegal forest clearing. Now, as a member of the, appointee of the DPS Advisory Committee I have since learned that those

people that apply for the permits, there's no requirement that they have an accurate survey. So, when you're in the rural cluster zone as I am, what's required is, that they submit only a location survey. That's something that a title company uses to make sure a house is on a lot. As far as accuracy that building to the lot line, it can be off 50, 60, 70 feet. There is no requirements. None. And so by allowing us to go forward as we are, as currently drafted, without any requirement for accuracy in these boundary surveys it's just an absolute recipe for disaster. And again, I don't think that was anyone's intent. But that's the practical matter of what we have here. The written testimony has what I believe are the drawbacks of letting this go forward with regard to the larger lots. And I won't take your time to go through those now. Thank you very much.

Council President Praisner,
Thank you very much. Mary Hemmingway. Mary you need to push the button in front of you so the microphone is on.

Mary Hemingway,
My name is Mary Hemingway. I live on Snyder Lane in Cloverleaf and I've been there since 1967. And again, I am not against somebody getting a 24 x 24 two-car garage in the back of their yard. Since I am all new to this, I have brought some pictures of a construction trailer that perhaps Steve could take up or, I just had knee surgery. And the DPS issued a permit for this in November of 2005. I live in an RE-1 zone but our lot sizes are closer to about 29 or 30,000 square feet. And this construction trailer that was brought into our neighborhood is approximately 14 feet x 60 feet or 840 square feet. The single-family resident on the property is 1176 square feet. And we have been looking at this construction trailer for about two years. Now, under the current zoning, which would be ZTA 06-10 this would not be allowed. And under the amendment the ZTA 07-12 it's possibly to be allowed. Because in running the calculation numbers for percentage of 840 divided by 1160 came up, it's a little bit under 75%. So the conditions you know, I am not in favor of this amendment as it is written. A couple of points I see on it. The conditions under which the Board of Appeals may approve a resolution, they are subject to personal interpretation or personal opinion. Those are lines 39 to 46 and lines 64 to 71. Who is going to decide whether the floor area or the footprint of a building is in harmony with the character of a neighborhood or if they compliment the character of a main building? Everybody has different opinions. And especially, who is going to say if an accessory building is or is not detrimental to the use and enjoyment of the surrounding properties? Would you like to be the neighbor next to this and have a picnic in your backyard with all your friends and have to look at that? There is already enough gray areas or areas open to interpretation in the zoning laws. I am out of time?

Council President Praisner,
Yes, but you can finish that sentence, Mary.

Mary Hemingway,
Oh, I just said there is always enough and thank you.

Council President Praisner,

Thank you. I think this Zoning Text Amendment and the testimony highlights the conflicts between folks who want to do what they would like and whatever rules may or may not be in place not permitting it. And the Zoning Text Amendment comes out of I believe Mr. Elliott, your conversations relative to not being able as you said to put in the garage. The interpretations of the structures and the heights that we've had in a variety of places including Ms. Hemingway's relevance, I don't consider that compatible with any neighborhood, but the, and don't even consider it an accessory building really. But that's the discussion we've had about the trailer, trailer issues and challenges. And I think there is some relevance and I'm going to turn to Councilmember Berliner whose light is on to the whole issues whether they're accessory buildings or additions to buildings and the issues we're talking about as far as size, setback, height, mass and compatibility questions which the taskforce is looking at. Trying to legislate in this area is challenging but we are trying to be responsive to the original legislation option which would allow folks and to look at these on a case by case basis when you got larger than the size. I agree with Mr. Kanstoroom's comments about footprint and floor area because floor area is a calculation of more than one floor and can create a mass and what we were actually looking at is the footprint not the floor area. So we'll need to look at that issue when we discuss the Zoning Text Amendment. But I don't think there was any intent. I'll have to turn to Councilmember Ervin for that. But to calculate every floor of a building to allow you to go out in conjunction with that and I don't think that was the intent ever. So, we'll need to look at that. And thank you Steve, for bringing that to our attention. Councilmember Berliner.

Councilmember Berliner,
Thank you, Council President. And as I think you appreciate and a number of my colleagues do, we have an infill development taskforce looking at the, for the lack of a better term the mansionization of our communities. And it is one of the big issues that we will be turning to is accessory structures because whether they should count and how they count with respect to lot coverage sets of issues, how tall and big they should be is something that has been brought to our attention. Because in some of the communities which there are smaller homes, you see these large additions that have been created that people are going how did this happen? And yet, as you observed, here you have a small home and a desire to have a functional garage for yourself and that is precluded too. So, weaving our way through that in a way that responds to legitimate concerns of neighbors who see people abusing accessory structures as opposed to people like yourself who seek what you think is a very reasonable use of an accessory structure is very difficult. We have talked about issues relating to subjective judgments and in different contexts as we deal with the question of massing and should we have some sort of design review. What is compatible with neighborhoods? And these are very, very difficult issues. I don't know what the intent is of the Chair with respect to this piece of it. We hope to be coming to resolution by the end of this year with respect to a package that will deal with the whole infill development set of issues that we'll be recommending to the Council. This may move first or it may just say, let's see if we should do this in the context of a larger picture because I do think the issue of accessory structures is so intimately related to the whole issue of what we allow on individual lots to be done. But I am fully appreciative of what brings you here today and pledge my part in helping us work our way through this.

Council President Praisner,
Councilmember Floreen.

Councilmember Floreen,
Thanks. I wasn't going to say anything, but in response to Mr. Berliner I would hope that you keep Mr. Elliott's material in your group's conversation. Because it's a good example of one of the community challenges. Some people might you know, if they had the resources might reconstruct a larger home with the garage built in with that implication for the neighborhoods. This is a far more typical and often more desirable solution. But it butts right up – and it was very nice of you to give us the lot information there because it butts right up against the challenge of how homes fit in and how these family needs are resolved. And we have got a collection of people with good concerns, very valid concerns looking at this from different perspectives. And that I might, just will observe is the challenge of a one-size fits all solution to all this. So I do appreciate Mr. Elliott's material in particular. Mr. Elliott, you may not have meant this, but this may help us in some of our other conversations.

Council President Praisner,
Well, actually, if I may, the Zoning Text Amendment modification, the Zoning Text Modification in front of us was part of the original proposal, which would have allowed with I think a fine catch as far as floor area and footprint, would have allowed someone who wanted to do greater than and that the concept is to have someone who wants to do greater than the standard to have a mechanism for that review, unlike a normal Public Hearing process, there is notice requirement to those surrounding. And the, which would address your concern about notice. Because it isn't a public hearing per se, it is a hearing for the public in front of the Board of Appeals as opposed to this broad notice to the world that would, so you would receive as a neighbor a more official notice requirement. Secondly, compatibility with the neighborhood is a standard that the Board of Appeals must use in all of its considerations for special exceptions. It's one of the standards that is their requirement. So, it is, you know, hard to perhaps put your arms around. But it is something that they, at least, have experience using as a measure within the zoning ordinance and within their responsibilities. So and I think to some extent it's whether it's like the pornography definitions or comments, I'll know it when I see it. And that allows the latitude of evaluating the neighborhood and making judgments about compatibility which is their responsibility. Mr. Zyontz.

Jeff Zyontz,
I just wanted to say that we do expect testimony from the Board of Appeals within the record.

Council President Praisner,
Great. Okay. Thank you all very much. This is the last public hearing for the afternoon. It's on Subdivision Regulation Amendment 07-03 Preliminary Subdivision Plans - Approvals - Applicability of Growth Policy Amendments - Extension which would continue and effect certain temporary provisions regarding the applicability of certain growth policy or

adequate public facilities requirements to certain subdivisions and generally amend the process for approving preliminary plans of subdivisions. Action is scheduled in District Council following the Hearing and there are no speakers so we would, I'd entertain a motion for adoption of the SRA. Councilmember Berliner. Second Councilmember Elrich. And now we have to call the roll, correct? [multiple speakers] Yeah, I know. Call the roll please.

Council Clerk,
Ms. Ervin.

Councilmember Ervin,
Yes.

Council Clerk,
Mr. Elrich.

Councilmember Elrich,
Yes.

Council Clerk,
Ms. Floreen.

Councilmember Floreen,
Yes.

Council Clerk,
Mr. Andrews.

Councilmember Andrews,
Yes.

Council Clerk,
Mr. Berliner.

Councilmember Berliner,
Yes.

Council Clerk,
Ms. Praisner.

Council President Praisner,
Yes. George, did you --.

Councilmember Leventhal,
Oh, yes.

Council President Praisner,

Thank you. Okay, then that passes eight zero with Council Vice-President Knapp absent. We are adjourned. And we have a public hearing. Seven to one. Duchy is absent as well. Correct. Thank you. We are adjourned until 8:15 this evening for the public hearing on Budget Priorities. Thank you all very much.