



Montgomery County Government

MEMORANDUM

July 28, 1994

TO: County Council

FROM: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

A handwritten signature in cursive script, reading "Andrew Mansinne, Jr.", written in dark ink.

SUBJECT: Office of Legislative Oversight Memorandum Report: Office of the
People's Counsel

I. PURPOSE

To comply with the requirement of uncodified Section 3, Bill 11-89, Office of the People's Counsel, which states:

"The Office of Legislative Oversight must evaluate the operation of this Act and the performance of the Office of the People's Counsel, and must report its findings and recommendations to the County Council by December 1, 1994."

II. BACKGROUND

On February 6, 1990, the County Council enacted Bill No. 11-89, which created the Office of the People's Counsel. The major purposes of the People's Counsel were: to promote a full and fair presentation of relevant issues in administrative proceedings concerning land use matters; and to provide technical assistance to citizens and citizen organizations in order to encourage effective participation in, and increasing public understanding of, the County land use process.

Bill 11-89 was codified in the Montgomery County Code as Section 1A-204(b)(3), Office of the People's Counsel; and Section 2-150, People's Counsel-Functions. (See Exhibit A)

In an uncodified section of the bill, the Office of Legislative Oversight (OLO) was directed to evaluate the operation of the legislation and the performance of the Office of the People's Counsel, and to report its finding and recommendations to the Council by December 1, 1994. (It should be noted that the OLO evaluation does not relate to any sunset of the legislation in that the legislation does not have a sunset provision.)

III. DISCUSSION

In each of the five fiscal years since Bill 11-89 was enacted, the Council has not appropriated funds for the operation of the Office of the People's Counsel. Further, the Council has not entered into a contract with an attorney to serve as the People's Counsel. Consequently, at this point in time the Office of Legislative Oversight can not evaluate the operation of the legislation, or the performance of the Office of the People's Counsel.

IV. CONCLUSION AND RECOMMENDATION

Because the County Council has not appropriated funds for the Office of the People's Counsel, OLO is unable to evaluate the performance of the Office of the People's Counsel.

At such time that the Office of the People's Counsel is funded and operational, the Office of Legislative Oversight should include a project to evaluate the operation of the legislation and performance of the Office in a subsequent OLO Work Program.

AM/cca
878/1

Attachment: County Code Sections 1A-204(b)(3) and 2-150

c: Steve Farber, Council Staff Director
Deborah Snead, Senior Staff Specialist

Extract: §1A-204 and §2-150

MONTGOMERY COUNTY CODE

STRUCTURE OF COUNTY GOVERNMENT

§ 1A-204

(3) Office of the People's Counsel.

(A) The County Council may retain as an independent contractor one or more attorneys, along with support staff, consultants, and expert witnesses, to provide the services of the People's Counsel under Section 2-150. The contract may be cancelled at any time by a resolution approved by two-thirds of the Councilmembers in office.

(B) Any attorney retained as the People's Counsel must:

- (i) be a member of the bar of the Court of Appeals of Maryland;
- (ii) have at least 5 years experience in the practice or teaching of law; and
- (iii) have substantial experience with land use legal issues and procedures.

(C) Any attorney retained under the contract must not:

- (i) represent any client in any matter involving land use in any jurisdiction; and
- (ii) appear before any court in Montgomery County, or before any County agency or any bi-county agency with jurisdiction in the County.

(4) Office of Zoning and Administrative Hearings.

a. Acting as the district council under state law, the county council, by a majority vote of councilmembers in office, appoints the hearing examiners of the office of zoning and administrative hearings, and designates one of the hearing examiners as director of the office.

b. The director and the other hearing examiners are not merit system employees.

c. The director appoints and supervises the merit system employees of the office. (1986 L.M.C., ch. 37, § 1; 1987 L.M.C., ch. 28, § 4; 1990 L.M.C., ch. 22, § 1.)

ADMINISTRATION

§ 2-150

Sec. 2-150. People's Counsel—Functions.

(a) *Purpose.* Informed public actions on land use matters require a full exploration of often complex factual and legal issues. An independent People's Counsel can promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made. In addition, a People's Counsel who provides technical assistance to citizens and citizen organizations will encourage effective participation in, and increase public understanding of, the County land use process.

(b) *Authority; duties.* To achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:

(1) the Board of Appeals if the proceeding involves a variance or a special exception;

(2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process or a special exception; and

(3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

(c) The People's Counsel must not appear or intervene in any legislative proceeding, or in any proceeding before a board or agency of any municipality in the County.

(d) The People's Counsel is not a party in a proceeding under subsection (b). To achieve a full and fair presentation of relevant issues, the People's Counsel is entitled to all notices to a party and may participate by making motions, introducing evidence, calling witnesses, examining and cross-examining witnesses, and making arguments as the law and the evidence in the proceeding warrant. The People's Counsel must not be a party to an appeal.

(e) The People's Counsel must not represent the County, any government agency, or any private party in any proceeding. The People's Counsel is not subject to the authority of the County Attorney. Section 411 of the Charter does not apply to participation by the People's Counsel in any proceeding under subsection (b).

(f) If the People's Counsel intends to participate in a proceeding, the People's Counsel must give all parties a notice of intention to participate.

(g) In the People's Counsel's discretion, the People's Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate under subsection (b). The People's Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.

(h) Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Counsel may provide technical assistance to any person about a proceeding under subsection (b). When providing technical assistance under this subsection, the People's Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient.

(i) The People's Counsel must coordinate the services of its office with those offered by the citizens land use information officer in the Planning Board, to avoid inconsistency and duplication and to maximize the assistance offered to citizens.

(j) The People's Counsel must annually report to the Council on the activities of the office. (1990 L.M.C., ch. 22, § 2.)