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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

September 7, 2005

MEMORANDUM

TO: Karen Orlansky, Director  
Office of Legislative Oversight

FR: Charles R. Loehr, Director   
Montgomery County Department of Park and Planning

RE: Responses to Certain Legal Issues Related to OLO's Clarksburg  
Town Center Fact-Finding Review

Attached please find the Commission's response to Question 1 as set forth in your Memorandum to me dated August 1, 2005. The answers to the remaining questions are forthcoming.

Attachment

Cc: Adrian R. Gardner, General Counsel  
Michele Rosenfeld, Associate General Counsel

adoption, which must be carried by the "affirmative vote of not less than six members of the Commission," of whom not less than three members shall be from [each] county." § 7-108(4). An affirmative vote of three from either County will carry any master plan located entirely in that County. § 7-108(4).

B. Zoning

Article 28 delegates to the District Council authority to adopt and amend the County's Zoning Ordinance (Chapter 59 of the Montgomery County Code). The Zoning Code is intended to govern the location, height, bulk and size of buildings and other structures; building lines, depths and areas of lots; density and distribution of population; and the location and uses of buildings and structures for trade, industry, residence, recreation, agriculture, etc. § 8-101(b)(2).

Article 28 also authorizes the Council to amend its zoning regulations, including zoning maps, in accordance with procedures adopted in its Zoning Ordinance. § 8-104.

1. Sectional Map Amendment Process

Article 28, §§ 8-101(b)(2) and 8-104(a)(1) provides the enabling authority for the district council to "adopt and amend the map or maps accompanying the zoning ordinance text . . ." in accordance with procedures established in the zoning ordinance.<sup>3</sup>

The Sectional Map Amendment involves an amendment "covering a section of the Maryland-Washington Regional District, portions of which may be proposed to be classified in different zones." Code § 59-H-1.1. Only the commission or district council may propose a sectional map amendment. Code § 59-H-2.1. Applications for a sectional map amendment must be submitted in triplicate to the district council. Code § 59-H-2.7.

The district council must transmit a copy of the application to the Department and the Planning Board within 5 days of accepting the application

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council for that portion of the regional district lying within each county, respectively." § 8-101(a).

<sup>3</sup> Sections 8-101(b)(2) ("each district council, respectively, in accordance with the conditions and procedures specified in this article . . . may be resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text . . ."); and 8-104 (a)(1) ("After duly advertised public hearing each district council from time to time may amend its regulations or any regulation, including the maps or any map, in accordance with procedures established in the respective zoning ordinances." (Emphasis added)).

### C. Subdivision

"The local functions exclusively within the jurisdiction of the respective planning boards include, but are not limited to, the administration of subdivision regulations . . ." § 7-111. The district council adopts subdivision regulations. § 7-116(a). The subdivision regulations are intended to govern such things as the "harmonious development of the [regional] district; coordination of roads; designating areas for dedication; reservation of land for public uses; ensuring adequate public facilities and governing the resubdivision of lots. § 7-116(a).

The Subdivision Regulations have been codified in Chapter 50 of the Montgomery County Code.

With some exemptions (e.g., structures strictly for agricultural use), building permits may not be issued unless the structure is to be built on a lot or parcel shown on a record plat. Code § 50-20(a). (Hereinafter references to the Montgomery County Code shall be "Code"). Under its subdivision authority, the Planning Board approves subdivisions. In essence, in approving a preliminary plan, the Board approves lot location and block layout; identifies road locations; and establishes property that is dedicated to public use (roads, school sites, parks). Code § 50-34(d). A preliminary plan is referred to a number of public agencies for review and comment (Code § 50-35(c)), which comments are provided in a statutorily required subdivision review committee meeting (commonly referred to as the "development review committee meeting"). Code § 50-35(c), and the Board as part of its approval must reconcile any conflicting agency comments. Code § 50-35(c).

As part of its review and approval of a preliminary plan, the Board also establishes a plan's validity period (Code § 50-35(h)); determines the adequacy of public facilities, including roads and public transportation, water and sewer, public safety and schools. Code § 50-35(k). The Board also determines whether the preliminary plan "substantially conform[s]" to the applicable master, sector or urban renewal plan, "unless the Planning Board finds that events have occurred to render the relevant" master plan recommendation no longer appropriate. Code § 50-35(l). Additionally, the Board determines conformance with the Forest Conservation Law (Chapter 22a of the Montgomery County Code) and any applicable water quality review that may be required under Chapter 19 of the Montgomery County Code.

After a preliminary plan is approved, it must be "validated," (i.e., go to record plat). The validity period runs for three years beginning either 30 days after the mailing date of the opinion, or after the final appeal period for any judicial action has run. Code § 50-35(h).

Record plats must be filed in accordance with Code § 50-36. Upon receipt of a record plat, staff has five days to rejected any plat not in conformance with

number and type of dwelling units; the location of green and recreational areas; parking, public facilities; roads; a grading plan, etc. Code § 59-D-3.23.

The Planning Board has five general findings that it must make at the time of site plan review:

1. the site plan is consistent with an approved development or project plan, if one exists for the site;
2. the site meets all of the requirements of the zone where it is located (any any urban renewal zone);
3. the locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient;
4. each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development; and
5. the site plan meets all applicable requirements of Chapter 22A (forest conservation law) and Chapter 19 regarding water resource protection.

Code § 59-D-3.4(a).

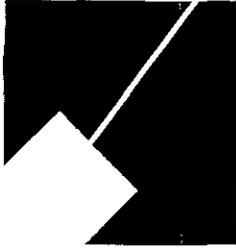
The site plan validity period also is tied to the issuance of an opinion, or the expiration of any appeal period if the project is subject to judicial review. Code § 59-D-3.8.

#### Requested Chart

Also see attached summary chart titled Response to Question No. 1.

Local Map Amendments	Article 28, §§ 8-101 and 8-104; Divisions 59-H-1, 59-H-2, 59-H-3, 59-H-4, 59-H-5, 59-H-6, 59-H-8 of the Montgomery County Code	Recommendation to Planning Board	Recommendation to District Council	Hold public hearing and transmit recommendation to District Council		Final approval authority
Zoning Text Amendments	Article 28, §§ 8-101 and 8-104; Division 59-H-9 of the Montgomery County Code	Recommendation to Planning Board	Recommendation to District Council			Final approval authority
Project Plans	§ 59-D-2.0, et. seq. of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Preliminary Plans and Plats	Article 28, §§ 7-115, 7-116, and 7-117; Chapter 50 of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Site Plans	§ 59-D-3, et. seq. of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Mandatory Referrals	Article 28, § 7-112	Recommendation to Planning Board	Final approval authority			

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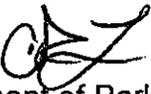
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**Responses to Question 1**  
**Legal Issues Related to OLO's Clarksburg Town Center**  
**Fact-Finding Review**

**Roles and Responsibilities for Master Planning and Regulatory Approvals.**

How do State and County law, regulations, and other governing documents define the roles and responsibilities of the Planning Board, Planning staff and County government in the land use development and regulatory approval process? In your response, include the master plan process, the sectional map amendment zoning process, the zoning text amendment process, and the regulatory approval processes for a preliminary plan of subdivision, a project plan, and a site plan. Attach a summary chart of agencies powers, roles, responsibilities and authorities for the County's land use planning, development approval and implementation.

**Response:**

A. Master Plan Process

The Montgomery County Planning Board ("Board") is established in Article 28 of the Maryland State Code (the "Regional District Act"), which establishes the "Commission" as a ten-member body, five of whom "shall be residents and registered voters of Montgomery County," and the other five residents and registered voters of Prince George's County. Md. State Code Art. 28 § 2-101.<sup>1</sup> Not more than three Boardmembers from each County can be from the same political party.

The Board has authority to, and has, adopted a "general" master plan. § 7-108(b). The Board has authority to adopt, and from time-to-time to amend, functional master plans, which include subjects such as roads, highways, transit, parks, etc. § 7-108(c). The Board also may initiate area, or local, master plans, or may initiate or amend master plans at the direction of the District Council. § 7-108(d). The District Council is required to establish an ordinance that sets forth procedures for the adoption of master plans. § 7-108(d)(2). These procedures are codified in Chapter 33A of the Montgomery County Code. The District Council must, within certain time constraints, "approve, modify, or disapprove" a master plan submitted by the Board. § 7-108(d)(2)(ii). Failure to take one of these actions within the proscribed time frame "shall constitute approval of the plan or amendment as submitted by the Planning Board." § 7-108(d)(2)(ii). Upon District Council<sup>2</sup> approval of a master plan, it is returned to the Commission for

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<sup>1</sup> All statutory references shall be to Article 28 unless otherwise indicated.

<sup>2</sup> "The County Councils of Montgomery County and Prince George's County are each individually designated, for the purposes of this article [28], ad the district

adoption, which must be carried by the “affirmative vote of not less than six members of the Commission,” of whom not less than three members shall be from [each] county.” § 7-108(4). An affirmative vote of three from either County will carry any master plan located entirely in that County. § 7-108(4).

## B. Zoning

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The Sectional Map Amendment involves an amendment “covering a section of the Maryland-Washington Regional District, portions of which may be proposed to be classified in different zones.” Code § 59-H-1.1. Only the commission or district council may propose a sectional map amendment. Code § 59-H-2.1. Applications for a sectional map amendment must be submitted in triplicate to the district council. Code § 59-H-2.7.

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council for that portion of the regional district lying within each county, respectively.” § 8-101(a).

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and the Planning Board must submit a written recommendation to the district council, which will become part of the record on the application. Code § 59-H-3.2.

Upon proper notice, (Code § 59-H-3.2), the district council must hold a hearing on all sectional map amendments. Code § 59-H-4.1. The district council has final approval authority over section map amendments. Code Division 59-H-7.

## 2. Zoning Text Amendment Process:

Article 28, § 8-101(b)(2) states, in pertinent part, that “each district council, respectively, in accordance with the conditions and procedures specified in this article, may by ordinance adopt and amend the text of the zoning ordinance . . . .” (emphasis added). Section 8-104(a)(1) of Article 28 states, in pertinent part, that “[a]fter duly advertised public hearing each district council from time to time may amend its regulations or any regulations . . . in accordance with procedures established in the respective zoning ordinances.”

Division 59-H-9 (Text Amendments) of the Zoning Ordinance governs the adoption of zoning text amendments. Section 59-H-9.1 allows “any individual or governmental agency” to submit a request for a zoning text amendment in writing to the district council and permits “the council or any individual member of the council” to introduce a text amendment for consideration by the full council.

Section 59-H-9.2 requires that a copy of the text amendment must be transmitted to the county planning board and county executive for their within 5 days following introduction of the amendment. Within 30 days of the introduction of a text amendment, the district council must set a date and time for public hearing. Code § 59-H-9.32.

The Planning Board is required to submit a technical staff report and preliminary recommendation to the district council on the proposed text amendment at least 5 days prior to the public hearing date.

At the end of the public hearing, the district council may 1) continue the hearing to a date certain; 2) hold the record open for additional written testimony; or 3) may close the record. Code § 59-H-9.34.

The action of the district council must be taken in open session and requires an affirmative vote of at least 5 members to be adopted. Code § 59-H-9.41. All adopted text amendments must be accompanied by an opinion by the district council setting forth its conclusions and reasons. § 59-H-9.5. Unless otherwise stated in the ordinance, all text amendments become effective 20 days after adoption by the council. Code § 59-H-9.6.

### C. Subdivision

"The local functions exclusively within the jurisdiction of the respective planning boards include, but are not limited to, the administration of subdivision regulations . . . " § 7-111. The district council adopts subdivision regulations. § 7-116(a). The subdivision regulations are intended to govern such things as the "harmonious development of the [regional] district; coordination of roads; designating areas for dedication; reservation of land for public uses; ensuring adequate public facilities and governing the resubdivision of lots. § 7-116(a).

The Subdivision Regulations have been codified in Chapter 50 of the Montgomery County Code.

With some exemptions (e.g., structures strictly for agricultural use), building permits may not be issued unless the structure is to be built on a lot or parcel shown on a record plat. Code § 50-20(a). (Hereinafter references to the Montgomery County Code shall be "Code"). Under its subdivision authority, the Planning Board approves subdivisions. In essence, in approving a preliminary plan, the Board approves lot location and block layout; identifies road locations; and establishes property that is dedicated to public use (roads, school sites, parks). Code § 50-34(d). A preliminary plan is referred to a number of public agencies for review and comment (Code § 50-35(c)), which comments are provided in a statutorily required subdivision review committee meeting (commonly referred to as the "development review committee meeting"). Code § 50-35(c), and the Board as part of its approval must reconcile any conflicting agency comments. Code § 50-35(c).

As part of its review and approval of a preliminary plan, the Board also establishes a plan's validity period (Code § 50-35(h)); determines the adequacy of public facilities, including roads and public transportation, water and sewer, public safety and schools. Code § 50-35(k). The Board also determines whether the preliminary plan "substantially conform[s]" to the applicable master, sector or urban renewal plan, "unless the Planning Board finds that events have occurred to render the relevant" master plan recommendation no longer appropriate. Code § 50-35(l). Additionally, the Board determines conformance with the Forest Conservation Law (Chapter 22a of the Montgomery County Code) and any applicable water quality review that may be required under Chapter 19 of the Montgomery County Code.

After a preliminary plan is approved, it must be "validated," (i.e., go to record plat). The validity period runs for three years beginning either 30 days after the mailing date of the opinion, or after the final appeal period for any judicial action has run. Code § 50-35(h).

Record plats must be filed in accordance with Code § 50-36. Upon receipt of a record plat, staff has five days to rejected any plat not in conformance with

the preliminary plan, and the reasons for rejection must be in writing. Code § 50-37(b). If not rejected within five days, the Board must approve or disapprove a plat within 30 days, or the plat is deemed approved. Code § 50-37(c).

#### B. Project Plans

Project plans are governed by Division 59-D-2 of the Zoning Ordinance, and are required in specific zones (Code § 59-D-2.0) when an "optional " method of development is desired. A project plan is required "to ensure that the development will include the public facilities, amenities and other design features that will create an environment capable of supporting the greater densities and intensities permitted by the optional method of development . . ." Code § 59-D-2.11.

A project plan application must include a land use plan that includes (among other things) the locations and uses of all buildings and structures, the general bulk and height of the principal buildings and their relationship to each other; a preliminary classification of dwelling units (including MPDUs); the general locations of vehicular and pedestrian circulation systems; parking; public dedications; and preliminary forest and water quality plans. Code § 59-D-2.12.

The Planning Board must publicly notice and hold a public hearing. Code § 59-D-2.2. The Board must make extensive findings including such things as: compliance with the zone; conformance with the sector plan; compatibility with existing or potential development; adequate public facilities; preliminary conformance with forest conservation and water quality statutes. Code § 59-D-2.42. In making these findings the Board must consider numerous plan elements, including the size and shape of the development; the proposed size, shape, height, arrangement and design of structures; the location and size of open spaces, pedestrian and vehicular circulation; landscaping, lighting and screening; and project staging. Code § 59-D-2.43. The Code also provides for major and minor amendments (Code § 59-D-2.6, to be discussed in more detail in response to question no. 7).

A project plan remains valid for up to 24 months after a written opinion or any applicable judicial appeal period has run (Code § 59-D-2.7), provided a site plan has been reviewed and approved within statutory time limits.

#### C. Site Plans

Site plan review is governed by Division 59-D-3 of the Zoning Ordinance. A site plan may cover all or any part of a lot or tract (Code § 59-D-3.1(a), and a site plan application may be filed by a person with a financial, contractual or proprietary interest in the property). Code § 59-D-3.21. The Code specifies certain information that must be included in the application, including such information as the location, height, ground coverage and use of all structures; the

number and type of dwelling units; the location of green and recreational areas; parking, public facilities; roads; a grading plan, etc. Code § 59-D-3.23.

The Planning Board has five general findings that it must make at the time of site plan review:

1. the site plan is consistent with an approved development or project plan, if one exists for the site;
2. the site meets all of the requirements of the zone where it is located (any any urban renewal zone);
3. the locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient;
4. each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development; and
5. the site plan meets all applicable requirements of Chapter 22A (forest conservation law) and Chapter 19 regarding water resource protection.

Code § 59-D-3.4(a).

The site plan validity period also is tied to the issuance of an opinion, or the expiration of any appeal period if the project is subject to judicial review. Code § 59-D-3.8.

#### Requested Chart

Also see attached summary chart titled Response to Question No. 1.

## RESPONSE TO LEGAL QUESTION NO. 1

Item for Approval	Code Provision(s)	Planning Staff	Planning Board	Zoning Hearing Examiner	Board of Appeals	District Council
Master Plans	Article 28, §§ 7-108 and 7-111; Chapter 33A of the Montgomery County Code	Recommendation to Planning Board	<ol style="list-style-type: none"> <li>1) Initiate Master Plan or Amendment</li> <li>2) Recommendation to District Council</li> <li>3) Adoption of Master Plan</li> </ol> (Full Commission, which includes both the Montgomery and Prince George's Planning Boards, adopts the Master Plan after approval by the District Council)			Approval of Master Plan
Sectional Map Amendments	Article 28, §§ 8-101 and 8-104; Divisions 59-H-1, 59-H-2, 59-H-3, 59-H-4, 59-H-7, 59-H-8 of the Montgomery County Code	Recommendation to Planning Board	Recommendation to District Council			Final approval authority

Local Map Amendments	Article 28, §§ 8-101 and 8-104; Divisions 59-H-1, 59-H-2, 59-H-3, 59-H-4, 59-H-5, 59-H-6, 59-H-8 of the Montgomery County Code	Recommendation to Planning Board	Recommendation to District Council	Hold public hearing and transmit recommendation to District Council		Final approval authority
Zoning Text Amendments	Article 28, §§ 8-101 and 8-104; Division 59-H-9 of the Montgomery County Code	Recommendation to Planning Board	Recommendation to District Council			Final approval authority
Project Plans	§ 59-D-2.0, et. seq. of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Preliminary Plans and Plats	Article 28, §§ 7-115, 7-116, and 7-117; Chapter 50 of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Site Plans	§ 59-D-3, et. seq. of the Montgomery County Code	Recommendation to Planning Board	Final approval authority			
Mandatory Referrals	Article 28, § 7-112	Recommendation to Planning Board	Final approval authority			

Special Exceptions	Article 28, § 8-110; § 59-A-4.2, et. seq., § 59-A-4.128, § 59-A-4.48, § 59-A-4.61, § 59-G-1, et. seq. of the Montgomery County Code	Recommendation to Planning Board or directly to Hearing Examiner and/or Board of Appeals (see §§ 59-A-4.128, 59-A-4.48 and 59-A-4.61)	Recommendation to Board of Appeals (see §§ 59-A-4.128, 59-A-4.48 and 59-A-4.61)	Recommendation to the Board of Appeals	Final approval authority	
Zoning Variances	Article 28, § 8-110; § 59-A-4.2, et. seq., § 59-A-4.128, § 59-G-3, et. seq. of the Montgomery County Code	May make recommendation to Board of Appeals (see §§ 59-A-4.128, and 59-G-3.1)	May make recommendation to Board of Appeals (see §§ 59-A-4.128, and 59-G-3.1)		Final approval authority	

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