



AGRICULTURAL PRESERVATION ADVISORY BOARD

December 5, 2012

Francoise Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland
20910

RE: Zoning Rewrite Process – Optional Method of Development Public Hearing
Staff Draft of Overlay and Floating Zone: December 6, 2012

Dear Madam Chair:

On behalf of the Agricultural Preservation Advisory Board (APAB), please accept this correspondence as APAB testimony regarding the Optional Method of Development sections incorporated into the Staff Draft of Overlay and Floating Zone Report as part of the December 6, 2012 public hearing. We request our testimony be entered into the public record regarding the Staff Draft Report.

The APAB recognizes that a great deal of time and effort has been expended by staff to pursue avenues that would encourage greater use of TDRs for certain development projects. We understand the complexity that is involved in the planning for TDR/BLT uses. The APAB is very encouraged by the progress that has been made and the recognition that more needs to be done to promote TDR/BLT uses.

The APAB is also aware of the very tight time constraints that have been imposed on staff to bring all the various parts of the zoning revision process into clarity and the APAB would like to help by bringing our thoughts and perspectives into the process so that all matters can be considered and perhaps improve upon the good work staff has been diligently working on over the past several months. We are very supportive of efforts of planning staff to increase the use of TDRs and BLTs wherever possible.

As part of our review we would like to raise a few questions that may be helpful in understanding the relationship between “excess” TDRs and BLT uses under the Optional Method of Development.

As we understand the change from the Euclidian zone for TDRs to a TDR overlay zone will not result in changes from the way TDRs are codified currently for residential uses. The

recommendation results in the same TDR to unit ratios as well as the same density designations for residential development.

It appears the most significant proposed changes involve TDR uses in mixed use zones. We understand that staff is proposing an overlay zone (all current receiving areas with zoning designation “/TDR”) where the purchase of TDRs will be required. We further understand that staff recommended that one (1) TDR would be equivalent to 3,500 square feet of development above standard method which could be applied to both residential and commercial development. We understand that during the work session the Planning Board recommended to increase the ratio for TDRs to 4,500 square feet instead of 3,500. Furthermore, each TDR would represent one public benefit point and a minimum of 5 benefit points must be achieved through the purchase of TDRs for a TDR Overlay Zone (receiving area).

This does raise an interesting question relating to the application of this method and the value associated with the TDR use as compared to the application and value associated with BLT use.

The CR zone which requires the use of BLTs under the optional method of development for the first 5% of incentive density (which includes both residential and commercial applications), allows 20,000 gross square feet of incentive density for each BLT and for the incentive density above 5%, each BLT purchased allows 30,000 gross square feet of incentive density. Currently the easement value associated with this density through the purchase of BLTs averages about \$240,000 dollars.

If we apply the methodology proposed for TDR uses in mixed use zones and equate this application to the current value of purchased TDRs we find that it creates an imbalance situation.

It is our understanding, that each TDR applied to a project under the optional method must represent one public benefit point and a minimum of 5 benefit points must be achieved through the purchase of TDRs. If one public benefit point would be associated with 4,500 square feet of space as recommended by the Planning Board, and a minimum of 5 benefit points must be achieved through the purchase of TDRs, then the purchase of 5 TDRs x 4,500 square feet of additional residential and commercial space would equate to about 22,500 square feet. At the current estimated TDR value of \$25,000 per TDRs, multiplying this value times the number of TDRs required would equate to a total of \$125,000 for 22,500 square foot of mixed use space.

We believe this creates an imbalance with BLT uses where BLTs and TDRs are planned for use in the same areas unless the square footage for BLTs is increased as well.

The premise of the BLT program was to provide enhanced compensation for landowners willing to forgo development options in the RDT zone if they could demonstrate their land could achieve approval for on-site waste disposal systems. Obviously this requires an investment on behalf of rural landowners to achieve this approval. Once achieved, it changes the dynamic on the value of TDRs associated with the approved on-site waste disposal system. The value of this Buildable TDR once the on-site waste disposal system is achieved averages around \$300,000.00 as this represents the fair market value of a buildable lot in the RDT zone as verified by an appraisal study DED conducted for the BLT program. This value was the driving factor in establishing a square foot equivalent in BLT receiving areas that would be comparable to the

development value. This value has been documented through the private sale of BLTs which averages about \$240,000 easement value per BLT.

This analysis begs the question. What will be the impact to the BLT program if a developer can purchase 5 “excess” TDRs at a value of \$125,000 and achieve a greater level of square footage for both residential and commercial development over what would be required under the optional method for BLTs in the CR zone without increasing the square footage for BLTs as well? We believe that unless there is consideration for increasing the square footage for BLTs, an imbalance will exist that would threaten the viability of the BLT program. The square footage equivalent for each BLT purchased should always be greater than the square footage equivalent for excess TDRs purchased in mixed use zones. Alternatively, the Planning Board could reconsider what staff originally recommended, which was 3,500 square feet for each TDR. Applying this equivalent is more in line where the minimum of 5 benefit points and the square footage associated with it, would be less than the equivalent for 1 BLT under the CR zone. For example, 3,500 sf X 5 TDRs would equal 17,500 square feet and less than 20,000 square feet for 1 BLT in the CR zone.

Furthermore, the APAB understands that under the staff proposal, the current BLT zones will operate in a similar fashion as they operate currently, although the name of one zone is proposed to change. In the proposed zone conversion, the current TMX would convert to CR while the current LSC zone will remain LSC. Under the optional method of development in the CR zone, the purchase of 5 points worth of BLTs is mandatory however a developer may choose to purchase more to reach the maximum number of allowed points. In discussion with your staff they believe that what is “currently proposed will require the purchase of BLTs in an amount that in each zone that will be the same as they exist today”. This is not entirely correct, with the elimination of the TMX zone, [which has a different equivalent than the CR zone], a developer could achieve greater density and would be required to purchase less BLTs. Please see the example below:

Under the Optional Method of Development in the TMX zone:

- 1 BLT equates to 7,500 square feet of (non residential/commercial space)
- 1 BLT equates to 9,000 square feet of residential space

Under the Optional Method of Development in the CR zone:

For the first 5% of incentive density, each BLT purchased or payment allows 20,000 gross square feet of incentive density.

For the incentive density above 5%, each BLT purchased or payment allows 30,000 gross square feet of incentive density.

For a development project requiring 20,000 square feet under the optional method of development in the current TMX zone would require the purchase of 2.667 BLTs as opposed to 1 BLT for the same square footage requirement in the CR zone.

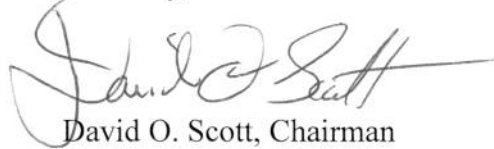
Clearly, the elimination of the TMX zone in favor of the CR zone will result in less BLTs being required for mixed used development projects in BLT receiving zones.

The County needs to increase use for BLTs in mixed use development projects if the BLT program is going to be successful in enhancing our farmland preservation efforts in the RDT zone. Without the BLT program, there will not be funding available through our traditional programs to protect this important diminishing resource.

The APAB appreciates the opportunity to present our view and seeks responses to the questions we have raised concerning the Optional Method of Development. We fully appreciate all the hard work staff has put into this effort and understand the complexity of all issues involved. We are committed to assisting you and your staff as this process continues to move forward.

Thank you for considering the views of the Montgomery County Agricultural Preservation Advisory Board.

Sincerely,

A handwritten signature in black ink, appearing to read "David O. Scott", with a long horizontal flourish extending to the right.

David O. Scott, Chairman

cc: Jane Seigler
Pam Dunn
Margaret Chasson, League of Women Voters