AGENDA Item 18
March 31, 2009
Action

MEMORANDUM

March 27, 2009

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Action:** SRA 09-01, Adequate Public Facilities – Validity Period

Planning, Housing and Economic Development Committee recommendation: enact with amendments.

SRA 09-01, Adequate Public Facilities – Validity Period, sponsored by the Council President at the request of the County Executive, was introduced on February 10, 2009. A public hearing was held on March 17 (see testimony, ©17-32) and a Planning, Housing and Economic Development Committee worksession was held on March 23.

As introduced, SRA 09-01 would extend the standard validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years, and also extend by 2 years the validity period of any preliminary subdivision plan approved since January 1, 2004.

After extensive discussions with Executive branch staff and development community representatives, the Planning Board submitted a redraft which modified parts of the Executive's proposal, primarily to insert a 2-year sunset date, and resolved several technical problems. Council staff produced a further redraft which the Committee considered at its March 23 worksession and recommended enactment of with minor added amendments.

Issues/Committee amendments

1) Validity periods – automatic extensions SRA 09-01, as redrafted by the Planning Board, would automatically extend the validity period of any existing approved preliminary subdivision plan and the Planning Board's determination of adequate public facilities adequacy for 2 years. See ©8-9, lines 157-172. These extensions would apply to any plan or determination that remained valid on March 31, 2009.

While Council staff was still skeptical of the general goal of "stimulating" land development that the Executive has adopted, we concluded that this proposal would adjust the already-approved validity periods to the current economic situation and especially the lack of financing that most developers have encountered. In staff's view this is a more tangible reason to adopt a one-time loosening of the current standards. The Committee agreed, and modified the staff draft to make clear that the automatic 2-year extension would also apply to the validity period of any development for which a timely extension application was pending on March 31, 2009.[1] **Committee recommendation:** automatically extend currently valid adequate public facilities and preliminary subdivision plan approvals for 2 years.

2) Validity periods – prospective The major issue posed by this SRA as redrafted is whether to extend the standard validity period, of both adequate public facilities findings and preliminary plan approvals, for all new projects as well as for those already approved (which were covered in the previous issue). The Planning Board redraft would add 2 years to the current minimum 5-year and maximum 10-year adequate public facilities validity periods for projects that the Board approves in the next 2 years (from April 1, 2009, through March 31, 2011). In other words, the range of the standard validity period would be 7-12 years instead of the current 5-10 years. For preliminary plan approvals, the validity period would be extended from 3 to 5 years for preliminary plans approved during that same period.

In Council staff's view, a better case can be made to extend the validity period for already-approved developments, which have likely run into unexpected financial challenges, as the Civic Federation recommended, than for new applications. For projects that the Planning Board reviews in the future, the current law directs the Board to consider each application individually and set its validity period, within the standard 5-10 year range, based on its particular situation. The Council and Planning Board's recent trend regarding the pipeline of development has been to reduce the maximum validity periods that are allowed in the law, with the goal of "freshening" the pipeline – that is, clearing out deadwood projects (those that are likely never to be completed) which absorb transportation capacity that newer projects could better use.

As the Planning staff report (see ©14) noted, the first limits on the validity of an adequate public facilities finding were set in 1989, and those limits were tightened in 1999 and further tightened most recently in 2007. The public interest in making these adjustments was to limit the use of, and reduce reliance on, outdated traffic and school enrollment studies and obsolete infrastructure requirements. The Civic Federation testimony (see ©29-30) cited and attached the Planning Board rationale for these changes (see ©31-32), which were expected to benefit both the public and the development community.

While the 2007 revisions of the County Growth Policy made the need for a fresher pipeline less acute, in Council staff's view this policy goal is still worth pursuing. However, this SRA takes the opposite direction; it would increase the minimum adequate public facilities validity period from 5 to 7 years in the Executive's original proposal, and the maximum from 10 to 12 years in the Planning Board redraft (which the Executive concurs with), and the preliminary plan standard validity period from 3 to 5 years. Under the current law (not amended

[1]Planning staff noted at the Committee worksession that only one such application was pending as of March 23.

by this SRA), the developer of a project whose APF validity period is about to expire can apply for an extension of 2½ to 6 years, depending on the type of development, and the Planning Board can grant one if the Board finds that the project is partly built or sufficient numbers of building permits have been issued. Similarly, the Planning Board can extend a preliminary plan validity period, if the Board finds that the project remains viable, for delays that are not the applicant's fault. However, the Committee disagreed with Council staff and was persuaded that the current economic conditions warrant these extensions. **Committee recommendation:** increase the minimum validity periods for new projects to 7 years.

3) Maximum validity periods The Planning Board redraft would, for projects approved in the next 2 years, increase the current 10-year limit for a finding of adequate public facilities compliance to 12 years. This would temporarily repeal the reduction from 12 to 10 years that the Planning Board recommended, and the Council adopted, less than 2 years ago. See Planning Board 2007 testimony, cited by the Civic Federation, on ©31-32. The Board's current recommendation (see ©11) is that this change will "provide the same benefit to larger, multi-phase plans that increasing the minimum time provides for smaller, one-phase plans." Council staff believed that the Board had the better argument 2 years ago, but (as with the previous issue) the Committee concluded that current economic conditions warrant these extensions. **Committee recommendation:** increase the maximum APF validity period from 10 to 12 years.

Effect of SRA

To resolve questions raised by land use attorneys and assure that this SRA is interpreted as intended, Council staff notes that:

- the extension of each adequate public facilities finding or preliminary plan becomes a part of any original, applicable, existing, or other validity period that is currently effective;
- the validity period which this SRA extends includes any extension already approved by the Planning Board;
- as extended, a validity period (including an extension of an existing approval and one granted by the Board during the operation of the SRA) can remain in effect beyond the April 1, 2011, sunset date of this SRA;
- an "original validity period", as that phrase is used in 50-20(c)(10) and elsewhere, if still in effect on March 31, 2009, would include the automatic 2-year extension granted in this SRA; and
- any extension resulting from this SRA would not preclude the Planning Board from granting another extension under §§50-20(c) or 50-35.

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Ordinance No. _____
Subdivision Regulation Amend. No. 09-01
Concerning: Adequate Public Facilities-
Preliminary subdivision plans –
Validity Period
Revised: 3-25-09 Draft No. 4
Introduced: February 10, 2009
Public Hearing: March 17, 2009
Adopted: _____
Effective: April 1, 2009

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN AMENDMENT to:

(1) extend the validity period for a determination of adequate public facilities for certain developments;

(2) extend the validity period for certain preliminary subdivision plans; and

[[(2)]] (3) otherwise revise the validity period for certain developments.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
[[Section]] Sections 50-20 and 50-35

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

OPINION

Subdivision Regulation Amendment 09-01 was introduced on February 10, 2009, at the request of the County Executive to temporarily extend the validity period of a finding of adequate public facilities and an approval of a preliminary plan of subdivision by the Planning Board.

The Council held a public hearing on March 17, 2009, to receive testimony concerning the proposed amendment. The Council's Planning, Housing, and Economic Development Committee considered this SRA at a worksession on March 23, 2009, and recommended that it be enacted with further amendments.

The District Council reviewed Subdivision Regulation Amendment 09-01 at a worksession held on March 31, 2009, and enacted the Amendment as recommended by the Planning, Housing and Economic Development Committee.

For these reasons and because to approve this Amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 09-01 will be approved.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

Sec. 1. Section 50-20 [[is]] <u>and Section 50-35 are</u> amended as follows:

50-20. Limits on issuance of building permits.

* * *

(c) * * *

(3) <u>(A)</u> A determination of adequate public facilities made under this Chapter is timely and remains valid:

[[(A)]] <u>(i)</u> [[For]] <u>for</u> 12 years after the preliminary plan is approved for any plan approved on or after July 25, 1989, but before October 19, 1999;

6

10 [[(B)]] (ii) [[For]] for no less than [5] [[7]] 5 and no more
11 than 12 years after the preliminary plan is
12 approved, as determined by the Planning Board at
13 the time of approval, for any plan approved on or
14 after October 19, 1999, but before August 1, 2007;
15 [[and]]
16 (iii) for no less than 7 and no more than 12 years after
17 the preliminary plan is approved, as determined by
18 the Planning Board at the time or approval, for any
19 plan approved on or after April 1, 2009, but before
20 April 1, 2011; and
21 [[(C)]] (iv) [[For]] for no less than [5] [[7]] 5 and no
22 more than 10 years after the preliminary plan is
23 approved, as determined by the Board at the time
24 of approval, for any plan approved on or after
25 August 1, 2007, and before April 1, 2009, or on or
26 after April 1, 2011. [[If an applicant requests a
27 validity period that is longer than [5] 7 years, the
28 applicant must submit a development schedule or
29 phasing plan for completion of the project to the
30 Board for its approval. At a minimum, the
31 proposed development schedule or phasing plan
32 must show the minimum percentage of the project
33 that the applicant expects to complete in the first
34 [5] 7 years after the preliminary plan is approved.
35 To allow a validity period longer than [5] 7 years,

the Board must find that the extended validity period would promote the public interest. The Board may condition a validity period longer than [5] 7 years on adherence to the proposed development schedule or phasing plan, and may impose other transportation improvement or mitigation conditions if those conditions are needed to assure adequate levels of transportation service during the validity period.]]

(B) If an applicant requests a validity period that is longer than the minimum specified in this paragraph, the applicant must submit a development schedule or phasing plan for completion of the project to the Board for its approval. At a minimum, the proposed development schedule or phasing plan must show the minimum percentage of the project that the applicant expects to complete in the first 5 or 7 years, as appropriate, after the preliminary plan is approved. To allow a validity period longer than the minimum specified in this paragraph, the Board must find that the extended validity period would promote the public interest. The Board may condition a validity period longer than the minimum specified in this paragraph on adherence to the proposed development schedule or phasing plan, and may impose other transportation improvement or mitigation conditions if

those conditions are needed to assure adequate levels of transportation service during the validity period.

[[(D)]] (3A) A determination of adequate public facilities made under this Chapter is timely and remains valid:

* * *

(ii) The Board must grant an application to extend the validity period established under [[(D)(i) of]] this [[subsection]] paragraph for an additional 5 years if:

* * *

[[For any preliminary plan that was approved between January 1, 2004 and (effective date), the validity period is extended 2 years.]]

(4) The Planning Board may extend a determination of adequate public facilities for an exclusively residential subdivision beyond the otherwise applicable validity period if the Department has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Board may approve one or more extensions if the aggregate length of all extensions for the development do not exceed:

(A) for a preliminary plan approved before April 1, 2009, or on or after April 1, 2011:

(i) 2½ years for a subdivision with an original validity period of [5] [[7]] 5 years; or

86 [[(B)]] (ii) 6 years for a subdivision with an original
87 validity period longer than [5] [[7]] 5 years; and
88 (B) for a preliminary plan approved on or after April 1, 2009,
89 and before April 1, 2011:
90 (i) 2½ years for a subdivision with an original validity
91 period of 7 years; or
92 (ii) 6 years for a subdivision with an original validity
93 period longer than 7 years.
94 * * *
95 (7) [[Submittal and approval requirements for]] For each extension
96 of an adequate public facilities determination[[.]];
97 (A) [[The]] the applicant must submit a new development
98 schedule or phasing plan for completion of the project to
99 the Board for approval;
100 (B) the applicant must not propose any additional development
101 beyond the amount approved in the original determination
102 [[of adequate public facilities]];
103 (C) the Board must not require any additional public
104 improvements or other conditions beyond those required
105 for the original preliminary plan;
106 (D) the applicant must file an application for an extension with
107 the Board before the [[original]] applicable validity period
108 has expired; and

109 (E) the Board may require the applicant to submit a traffic
110 study to help the Board decide if the extension would
111 promote the public interest.
112 * * *
113 **50-35. Preliminary subdivision plans-Approval procedure.**
114 * * *
115 (h) *Duration of Validity Period and Actions Required to Validate the Plan.*
116 * * *
117 (2) *Duration of Validity Period.*
118 (A) An approved preliminary plan for a single phase project
119 remains valid for [[36]] 60 months [[from]] after its
120 Initiation Date for any preliminary plan approved on or
121 after April 1, 2009, but before April 1, 2011, and for 36
122 months after its Initiation Date for any preliminary plan
123 approved on or after April 1, 2011. Before the validity
124 period expires, the applicant must have secured all
125 [[governmental]] government approvals necessary [[as
126 condition precedent for plat recordation]] to record a plat,
127 and a final record plat for all property delineated on the
128 approved preliminary plan must have been recorded
129 [[among]] in the County land records.
130 (B) An approved preliminary plan for a multi-phase project
131 remains valid for the period of time [[established]] allowed
132 in the phasing schedule approved by the Planning Board.
133 Each phase must be assigned a validity period, the duration
134 of which must be proposed by the applicant as part of an

application for preliminary plan approval or [[an application]] for preliminary plan revision or amendment, [[reviewed by staff,]] and approved on a case-by-case basis by the Planning Board, after considering such factors as the size, type, and location of the project. The time allocated to [[a]] any phase must not exceed [[36]] 60 months [[from]] after the initiation date [[associated with]] for that particular phase for any preliminary plan approved on or after April 1, 2009, but before April 1, 2011, and 36 months after the initiation date for that particular phase for any preliminary plan approved on or after April 1, 2011. The cumulative validity period of all phases [[may]] must not exceed the APFO validity period which runs from the date of the initial preliminary plan approval, including any [[extensions]] extension granted under Section 50-20(c)(5). [[Validation of a]] A preliminary plan for a phase [[occurs upon the recordation of]] is validated when a final record plat for all property delineated in that [[particular]] phase of the approved preliminary plan is recorded in the County land records.

* * *

Sec. 2. Effective Date. This amendment takes effect on April 1, 2009.

Sec. 3. Automatic Extensions.

(a) Notwithstanding any provision of Section 50-20(c) to the contrary, the validity period of any determination of adequate public facilities that was valid on March 31, 2009, or for which a timely application for an

161 extension of the validity period was pending on March 31, 2009, is
162 automatically extended for 2 years after the date when the validity
163 period would otherwise have expired. This 2-year extension must be
164 treated for all purposes as part of the validity period that was extended.
165 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
166 validity period of any preliminary subdivision plan that was valid on
167 March 31, 2009, or for which a timely application for an extension of
168 the validity period was pending on March 31, 2009, including any
169 separate phase of a multi-phase plan, is automatically extended for 2
170 years after the date when the validity period would otherwise have
171 expired. This 2-year extension must be treated for all purposes as part
172 of the validity period that was extended.
173 *Approved:*
174
175
176 Isiah Leggett, County Executive Date
177 *This is a correct copy of Council action.*
178
179
180 Linda M. Lauer, Clerk of the Council Date

Las → MF
cc
SDF
Las → LS
BD
AM
CHS

040271

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

February 02, 2009

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Legislation – Adequate Public Facilities – Validity Period

I am attaching for the Council's consideration a subdivision regulation amendment (SRA) which would extend the validity period for a determination of Adequate Public Facilities (APF). I am also attaching a Legislative Request Report and a Fiscal Impact Statement for the proposed SRA.

This SRA is one of four legislative proposals which I am submitting to the Council today to implement the 11-point economic plan which I announced in December 2008. Each legislative proposal is designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn. Developers and builders started experiencing a tightening of the credit markets 6-12 months ago, which made it difficult to obtain financing and caused a far reaching slow down in development. Some projects that provided infrastructure improvements before a full build-out are at a standstill because of the economy. To obtain an APF extension under current law a developer or builder must generally show that a certain percentage of the project has been completed and may have to build or pay for costly infrastructure or pay for a new traffic study. This SRA allows developers and builders to avoid these extra steps and costs as the economy and lending market recover.

My 11-point economic plan included a proposal to provide an economic impact analysis for all legislative and regulatory changes which would analyze the impact of the proposed change on local businesses. We are in the process of completing an economic impact analysis for this SRA and will forward it to Council in the near future. I look forward to working with the Council as it considers this SRA and my other three legislative proposals which provide opportunities for some measure of relief to our business community and residents.

IL:dg

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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

March 12, 2009

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Subdivision Regulation Amendment No. 09-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 09-01 at its regular meeting on March 12, 2009. After careful review of the material of record, the Board voted unanimously to recommend approval of the Subdivision Regulation Amendment with revisions as included as a separate attachment to this memorandum.

As introduced, SRA 09-01 extends all currently valid adequate public facilities reviews for an additional 2 years. It also modifies the time limits for adequate public facilities review for new plans to no less than 7 and no more than 10 years, as determined by the Planning Board at the time of subdivision. The Board supports the 2 year extension for all currently valid approvals, but recommends changes to the proposed language to limit its applicability. For new plans, the Board supports increasing the time limits of the validity period for the adequate public facilities review by 2 years, but only for a limited period. We recommend changes to the proposed language to sunset the regulation two years after the effective date of the proposed legislation. The Board also recommends that the maximum time permitted for the validity of a new adequate public facilities review be modified to 12 years during the effective dates of this legislation. This would provide the same time benefit to larger, multi-phase plans that increasing the minimum time limit provides for smaller, one-phase plans.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

The legislation also extends the validity period of all currently valid preliminary plans for 2 years. The Planning Board supports this extension, but recommends changes to the proposed language to limit its applicability and to clarify that it also applies to the validity period of each phase of a multi-phase project.

The Board believes that the subject SRA would be an important measure for assisting developers and builders during the current economic downturn by allowing them to avoid extra steps and costs to request APF and preliminary plan extensions as the economy and lending market recover. Attached to this memorandum is also the technical staff report that further clarifies the Board's intent and recommendations.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, **with Commissioners Alfandre, Cryor, Hanson, and Robinson voting** to transmit the aforementioned comments. Commissioner Presley was absent. The vote on the text amendment was taken at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, March 12, 2009.

Royce Hanson
Chairman

RH:CC

Attachments

1. Proposed SRA No. 09-01
2. Technical Staff Report

ATTACHMENT 2

MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #12
3/12/09

DATE:	March 4, 2009
TO:	Montgomery County Planning Board
VIA:	Rose Krasnow, Chief, Development Review Cathy Conlon, Subdivision Supervisor Ralph Wilson, Zoning Supervisor
FROM:	Greg Russ, Zoning Coordinator
REVIEW TYPE:	Subdivision Regulation Amendment
PURPOSE:	Generally amend the Subdivision Regulations to extend the standard validity period for a determination of adequate public facilities for certain developments and to extend the standard preliminary plan validity period.

SUBDIVISION REGULATION AMENDMENT: 09-01
INTRODUCED BY: Council President at the request of the County Executive
INTRODUCED DATE: February 10, 2009

PLANNING BOARD REVIEW: March 12, 2009
COUNCIL PUBLIC HEARING: March 17, 2009; 1:30pm

STAFF RECOMMENDATION

***Staff recommends approval of SRA 09-1 to extend the validity period for Adequate Public Facilities and Preliminary Plans with revisions* to:**

1. **Sunset the APF validity period extension two years after the SRA effective date;**
2. **Place the preliminary plan validity period extension under Section 50-35(h) instead of Section 50-20; and**
3. **Sunset the preliminary plan validity period extension two years after the SRA effective date**
4. **Extend maximum time limit from 10 years to 12 years**

Staff is in favor of the proposed limited time-frame extension of the validity period for a preliminary plan and for a determination of adequate public facilities (APF). This would be an important measure for assisting developers and builders during the current economic downturn. Given the difficulty of obtaining financing coupled with the market slowdown, developers with approved plans would otherwise have to apply for extensions for which they might not be found eligible (economic feasibility is not considered a valid reason) or they might have to build

or pay for costly infrastructure or pay for a new traffic study to obtain an APF extension. The SRA allows developers and builders to avoid these extra steps and costs as the economy and lending market recover.

Validity Period Extensions

As introduced, the SRA provides a two-year extension of the APF validity period with no limit on the duration of this provision. As previously noted, ***a time limit should be included that terminates the regulation two years after the effective date of the subdivision regulation amendment***.

The SRA also includes ***a provision for a two year validity period extension of a preliminary plan***. Two issues: First, the proposed provision is located in the wrong section of the subdivision regulations. The provison should be placed under 50-35(h) of the subdivision code, instead of Section 50-20(c). Second, as with the APF validity period extension, the automatic **preliminary plan extension should sunset *two years after the effective date of the subject legislation***.

Staff has revised the SRA to include our recommendations. Other revisions have been made to clarify the overall intent of SRA 09-01.

BACKGROUND/ANALYSIS

County Executive Leggett requested introduction of SRA 09-01 as one of four legislative proposals to implement an economic plan designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn.

Existing Requirements

In Montgomery County, proposed development is tested for the adequacy of public facilities that will serve that development. Typically, the testing occurs at the time of the Planning Board's review of a preliminary plan of subdivision. Chapter 50 of the Montgomery County Code addresses the testing for adequate public facilities, as does the Growth Policy resolution adopted by the County Council every two years.

When the Planning Board finds that public facilities are adequate to support a subdivision, the finding has a limited validity period. Prior to July 25, 1989, there were no time limits on a finding of adequate public facilities. From July 25, 1989 until October 19, 1999, the time limit was 12 years. Beginning October 19, 1999, the time limits were changed to no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision. Beginning August 1, 2007, the time limits were changed to no less than 5 and no more than 10 years, as determined by the Planning Board at the time of subdivision.

Section 20 of Chapter 50 contains the language setting the time limits of a finding for adequate public facilities by the Planning Board. It also contains the language that deterrnines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities. All building permits for a development must be issued within these time limits, or a new test for adequate public facilities must be done.

Chapter 50 also establishes time limits for the validity of the Planning Board's approval of a preliminary plan of subdivision. An approved preliminary plan for a single phase project remains valid for 3 years from its Initiation Date, which is 30 days from the date of mailing of the Planning Board's written opinion. Before the validity period expires, a final record plat for all property delineated on the approved preliminary plan must have been recorded among the County Land Records. An approved preliminary plan for a multi-phase project remains valid for the period of time established in a phasing schedule approved by the Planning Board. The validity period for each phase must not exceed 3 years from the Initiation Date of the preliminary plan. Validation of a preliminary plan for a phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

Section 35 of Chapter 50 contains the language setting the time limits for the preliminary plan validity period. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the preliminary plan validity.

Analysis of Proposed Legislation

As introduced, the proposed legislation extends all currently valid adequate public facilities reviews for an additional 2 years. It also modifies the time limits for adequate public facilities review for new plans to no less than 7 and no more than 10 years, as determined by the Planning Board at the time of subdivision. Staff supports the 2 year extension for all currently valid approvals, but recommends changes to the proposed language to limit its applicability. For new plans, staff supports increasing the time limits of the validity period for the adequate public facilities review by 2 years, but only for a limited period. We recommend changes to the proposed language to sunset the regulation two years after the effective date of the proposed legislation. We also recommend that the maximum time permitted for the validity of a new adequate public facilities review be modified to 12 years during the effective dates of this legislation. This would provide the same time benefit to larger, multi-phase plans that increasing the minimum time limit provides for smaller, one-phase plans.

The legislation also extends the validity period of all currently valid preliminary plans for 2 years. Staff supports this extension, but recommends changes to the proposed language to limit its applicability and to clarify that it also applies to the

validity period of each phase of a multi-phase project. Staff also recommends that this provision be moved to Section 35 of Chapter 50 because that is the section that specifically discusses the duration of preliminary plan validity.

CC/GR

Attachments

1. Proposed SRA No. 09-01

Public Hearing - March 17, 2009

Subdivision Regulation Amendment 09-01, Adequate Public Facilities - Validity Period
Testimony of Assistant Chief Administrative Officer Diane Schwartz Jones

Good afternoon. I am Diane Schwartz Jones, Assistant Chief Administrative Officer with the Office of the County Executive. I want to thank Council President Andrews for sponsoring Subdivision Regulation Amendment 09-01on behalf of the County Executive, and the District Council for its timely consideration of this proposed amendment to provide some relief to our business and lending communities during these trying economic conditions.

SRA 09-01 proposes a simple 2-year extension of the validity period for adequate public facilities determinations for development projects in the County. This proposal is intended to provide relief to developers and their lenders as we make our way through the current economic crisis.

Over the past two years, the County has experienced the severe impacts of the recession that has gripped our entire nation. The persistence and duration of negative economic indicators suggests that the region's economy will experience slower growth during the first half of 2009 and not re-accelerate until early summer at the earliest, depending on the breadth and depth of the national recession. Developers and the building industry think even that is optimistic. In meetings with a cross-section of the development industry, representatives expressed their strong belief that the development industry will not get moving again until 2012, and real activity will not be evident until 2013.

The data shared with you on March 3 during the testimony of Kathleen Boucher and others on the bills that implement three other components of the County Executive's 11-point Economic Assistance Plan point to a need for local government action to help our residents and businesses during this difficult economic time.

The Executive views this particular Subdivision Regulation Amendment as a modest step to allow members of the development industry and their lenders to not suffer further economic pressure due to expiring adequate public facility validity periods during the pendency of this economic *force majeure* when very few have the means to implement existing projects or pursue new projects. This is not the time to require investment of additional funds to keep an approval in its *status quo* for a project that has no hope of going forward for the next year or two. And, as projects reactivate, it is not the time to impose additional expense or delay to obtain an extension in order for the project to proceed.

Without the proposed extension of validity periods, by the time that the economy turns around and loans are available to enable construction to recommence, many validity periods will have expired or will be on the verge of expiring. Developers will be required to either let their

prior investment in their APF determinations, and in some cases, infrastructure for a project lapse, or be faced with the expense of applying for an extension which may include a new traffic study. Perhaps even more compelling, in order to protect an existing adequate public facility determination in the midst of a stagnant economy, a developer may be faced with the need to invest additional funds to complete infrastructure even though it cannot otherwise proceed with its project due to the unavailability of construction funds or the absence of prospective tenants.

The development and building community has requested some modifications to SRA 09-01. We have been engaged in discussions on these requests with industry representatives and Park and Planning Staff. As a result of these collaborative discussions, Park and Planning Staff has suggested a modified version of the pending Subdivision Regulation. The Planning Board voted last Thursday in favor of the modified SRA. We support the analysis of the Planning Board Staff and the collaborative approach that has been undertaken with all interests. We look forward to working with the PHED Committee on the proposed amendments to accomplish the objective of the proposed Subdivision Regulation Amendment.

Adoption of SRA 09-01 will provide fiscal relief and benefit to some of our business community during this economic *force majeure* and will not result in fiscal loss to the County. When the economy finally does improve and funding will again be available for projects, the extension provided by this SRA may well result in a positive fiscal impact to the County, because these projects will not experience the further delay of reapplying and awaiting such approvals.

County Executive Leggett believes that this is the right thing to do and encourages the County Council to adopt the proposed SRA with amendments to reflect the collaborative work of the development community, Park and Planning Staff and the County.

Thank you for the opportunity to testify in support of this Subdivision Regulation Amendment. We appreciate the County Council's cooperation and look forward to working with the Council as it considers the County Executive's 11-Point Economic Assistance Plan.

MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION
1738 Elton Road, Suite 200, Silver Spring, Maryland 20903
(301) 445-5400 / Fax (301) 445-5499
Email : communications@mncbia.org
Website : www.mncbia.org

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Maryland National Capital Building Industry Association (MNCBIA)
Testimony
On
Subdivision Regulation Amendment No. 09-01
Before the Montgomery County Council
March 17, 2009

Good afternoon, President Andrews and Council Members. My name is Tom Farasy.

I am the 2009 President of Maryland-National Capital Building Industry Association. The BIA represents builders and developers in Prince George's, Montgomery, St. Mary's, Charles and Calvert counties. We have 600 + members today. Our members are in survival mode, making painful decisions [be it layoffs or furloughs or shortened workweeks] to insure that they ride out this recession -- this is the reality that frames the industry's comments today.

The MNCBIA supports the County Executive's intent to provide for an automatic extension of Adequate Planning Facility (APF) approvals per SRA 09-01; however the extension of APF approvals alone does not fully address the problem. To be effective, the legislation should be amended to incorporate all approvals that are part of the land use regulatory process; in addition, the one-year extension should become a two-year extension to more comprehensibly reflect the current economic downturn, given the infeasibility of obtaining financing.

Last week, the Planning Board discussed and approved amemdments to SRA 09-01 that address the industry's concerns; the amendments recognize that additional approvals should also be extended, propose a two-year extension to projects that have valid APF, and add a sunset date - the BIA supports these changes.

SRA 09-01, as amended, provides relief to the Industry in light of today's economic and financial crisis. Given the national, regional and local forecasts, we can only hope that during the 24-month extension we will see financing become available, job stability and consumer confidence return.

In my March 03 testimony on Bills 4-09 and 5-09, we furnished several key market reports for Montgomery County prepared by Hanley Wood, a company that tracks new home sales; the picture the data presents highlights the depth of the current poor real estate market, and underscores the long range forecasting by industry experts who do not see any turnaround until well into 2010.

While we anticipate a recovery, and anticipate that the President's Stimulus Bill will have an effect, what we know is that this recovery will not be traditional, and

there is no guaranteed trigger date.

We believe SRA 09-01, ***if amended***, sends an important message to the financial and capital markets ... that Montgomery County is a place where investment is encouraged ... that its leaders understand the current economics ... that the County is not afraid to put measures in place to protect the investments being made in the County.

Our members look forward to participating in the Council's worksessions on this legislation. Thank you for the opportunity to present the industry's perspective today.

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March 17, 2009

The Honorable Phil Andrews, President
and Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation Amendment No. SRA 09-01

Dear President Andrews and Members of the Council:
The Greater Silver Spring Chamber of Commerce (the "Chamber") is pleased to submit this letter as the testimony of the Chamber for the March 17, 2009, public hearing on Subdivision Regulation Amendment No. SRA 09-01 (the "SRA").

The Chamber supports the efforts of the County Executive, the Planning Board, and the County Council to provide regulatory relief and economic assistance to County businesses during this extraordinarily difficult economic time. This assistance is especially needed by those businesses in the development industry, both commercial and residential, businesses that would particularly benefit from the SRA. Most importantly, the SRA will provide a means for development projects that are already approved, and that have passed all the County's hurdles, to remain able to proceed as soon as the economic climate allows.

The Chamber appreciates the efforts of the County Executive in bringing this SRA forward. At the same time, the Chamber acknowledges and commends the efforts of the Planning Board Staff, Executive Staff, and Council Staff for working with the private sector -- in a very short time -- to modify the provisions of the SRA so that it better achieves the intended purpose. We appreciate the willingness by all of the staffs to be responsive to our concerns. This has been a very cooperative effort to reach a common goal. The amendments to the SRA that are now recommended by the Planning Board and Staff with the transmittal letter to you represent a consensus with the private sector on the means by which to achieve the goal. The latest draft incorporates the changes made during our discussion with the Board last Thursday.

The amended SRA represents a careful drafting of language to assure that the proposed APF extension applies only as intended and only for a limited period. All participants have sought to make clear that the proposed extension will apply only to those APF approvals which remain currently valid and existing. At the same time, the provision is meant to be fair by including all such approvals, without distinction.

The SRA also takes the important step of creating a corresponding extension for existing preliminary plan approvals. Although the preliminary plan approval is the point in the process where the APF determination is made, the validity period for the preliminary plan approval is shorter than that of the APF approval that is obtained at the same time. The preliminary plan approval is validated by recording a plat.

8601 Georgia Avenue, Suite 203, Silver Spring, Maryland 20910 • 301/565-3777 • Fax: 301/565-3377
info@silverspringchamber.com • www.silverspringchamber.com

Given the current economic conditions, the resources available to process a site plan or other approvals that are preconditions for plat recordation has become problematic. As a result, there is a need to provide this extension for the platting process as well, as a means of making the APF extension effective and meaningful.

As amended, the SRA gives approved plans an opportunity to weather this economic storm and remain prepared to lead the future recovery when conditions improve. This is exactly the kind of legislative response that is needed in these circumstances. The Executive and his Staff are to be commended for proposing it; the Planning Board and its Staff are to be commended for supporting and improving it; and we look forward to congratulating the Council on passing it.

If you have any questions on our testimony, please do not hesitate to contact us.

Sincerely,

Jane Redicker
President

LERCH EARLY & BREWER CHARTERED

SUITE 460 | 3 BETHESDA METRO CENTER | BETHESDA, MD 20814-5367 | TEL 301.986.1300 | FAX 301.986.0332 | WWW.LERCHEARLY.COM

ATTORNEYS

STEVEN A. ROBINS
DIRECT 301.657.0747
SAROBINS@LERCHEARLY.COM

Public Hearing on SRA 09-01
Adequate Public Facilities Validity Period
Hearing Before the Montgomery County Council
March 17, 2009

Good afternoon President Andrews and members of the Montgomery County Council. My name is Steven A. Robins and I am an attorney with Lerch Early & Brewer in Bethesda, Maryland. I am here today testifying not only as an individual but also on behalf of several clients that have an interest in this matter.

Let me first thank County Executive Leggett and his team for putting forth the legislation as part of his Economic Response package. Of all the pieces of legislation in the package, this is the one that in my opinion is most necessary in this unprecedented economic environment. I also would like to thank your Staff as well as the Planning Board and its Staff for evaluating the SRA, listening to many of us involved in ad hoc working groups that were established to address the legislation and coming up with a workable SRA that provides meaningful relief. The legislation that was reviewed by the Planning Board just last week, is technically sound and does what it is intended to do. It is a reasonable measure to provide some relief to those individual that have valid preliminary plans and adequate public facilities determinations, but may not be able to finish the land use processes or move forward with construction during this economic situation. The legislation preserves and protects these approvals while we all weather the storm. Hopefully, the legislation also will help stimulate application activity and give applicants the incentive to move forward and pursue approvals, knowing that they will be afforded somewhat longer validity periods.

I know that we all are trying to think of ways to improve the economic situation here in the County. While this particular piece of legislation may not be part of a "stimulus" package in the true sense of the word, it certainly is a welcomed relief. Thank you very much for your consideration and support.

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

March 17, 2009

Barbara A. Sears
301.961.5157
bsears@linowes-law.com
Samantha L. Mazo
301.961.5261
smazo@linowes-law.com

Mr. Philip M. Andrews, President
and Members of the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Public Hearing on Subdivision Regulation Amendment 09-01

Dear Council President Andrews and Members of the County Council:

This firm represents Toll Brothers, a home builder that has developed, or is in the process of developing, several communities in Montgomery County. Toll Brothers, along with others in the home building industry, has been significantly impacted by the current economic crisis. With the well publicized difficulties in the housing and capital markets, Toll Brothers anticipates that the time necessary for the economic recovery of the housing industry will be lengthy. For these reasons, Toll Brothers strongly supports the Subdivision Regulation Amendment 09-01 ("SRA 09-01"), with the modifications recommended by the Planning Board.

Specifically, Toll Brothers urges the County Council to adopt the language recommended by Montgomery County Planning Staff on March 4, 2009 and approved by the Montgomery County Planning Board on March 12, 2009 ("Planning Board Recommendations") in order to address several of its specific issues of interest, namely, (1) extending the existing adequate public facilities determination by two years, and (2) making clear that the two-year extension of the preliminary plan validity period also extends the validity period to record final plats including those validity periods established for individual phases of a multi-phase project, pursuant to Section 50-35(h) of the Subdivision Regulations.

Toll Brothers believes that the legislation as modified assists in balancing the needs of Montgomery County and the development community and appreciates the efforts of the County Council, County Executive and Planning Board to respond to these important needs. For these reasons, Toll Brothers urges the County Council to adopt SRA 09-01 with the Planning Board Recommendations.

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Thank you for your consideration of our comments.

Very truly yours,

LINOWES AND BLOCHER LLP

Barbara A. Sears /scm

Barbara A. Sears

Samantha L. Mazo

Attachments

cc: Diane Schwartz-Jones, Esq.
Mr. Jeff Zyontz, Esq.
Mr. Michael Faden, Esq.
Mr. John Harris
Mr. Al Edwards

LAW OFFICES

MM&C FOUNDED 1946

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200-B MONROE STREET
ROCKVILLE, MARYLAND 20850
(301) 762-5212
FAX (301) 424-9673
WWW..MILLERMILLERCANBY.COM

SUSAN W. CARTER
ROBERT E. GOUGH
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GLENN M. ANDERSON (FL)
MICHAEL G. CAMPBELL (DC, VA)
SOO LEE CHO (CA)
AMY C. GRASSO

** All attorneys admitted in Maryland and where indicated*

SWCARTER@MMCANBY.COM

March 12, 2009

Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

RE: SRA 09-01, Adequate Public Facilities – Validity Period
Brooke Grove Foundation, Inc.

Dear President Andrews and Members of the County Council:

I write to you on behalf of my client, the Brooke Grove Foundation, Inc., concerning SRA 09-01, the proposed amendment to the Subdivision Regulations that would extend the minimum validity period of an "adequate public facilities" review from five (5) to seven (7) years following the date of preliminary plan approval (Section 50-20(c)(3)(C)). While we support this legislation which has been proposed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn, we would urge the Council to go a step further and automatically extend all existing APF approvals by an additional two (2) years, including those APF approvals that have been extended by the Planning Board in accordance with the provisions of Section 50-20(c)(4) and (5).

Background

The Brooke Grove Foundation, as you may be aware, is a non-profit organization that has been providing care to the elderly since it was founded in 1950. It operates today under special exception approval for a life care facility with facilities that include a nursing home, group assisted living facilities, and independent living facilities. The first three phases of this four phase project have been completed and the Foundation is about to embark on the final phase of development, the construction of 330 apartment units to be located in three apartment buildings.

By written opinion dated October 8, 1996 (Preliminary Plan 1-96022), the Planning Board made a finding of adequate public facilities that allowed Brooke Grove to proceed with construction of 141 of the overall 370 independent living units that were approved. Forty (40) of these units (the "villas") have been constructed. However, we returned to the Planning Board in 2007 to request a four (4) year extension of the APF validity period in order to construct the remaining 101 units for which the Foundation already had APF approval.

The Planning Board considered the fact that the Foundation had already completed the required roadway improvements associated with the APF approval and understood that Brooke Grove was diligently and actively moving forward with the implementation of its special exception and subdivision approval. However, as we explained to the Planning Board, unlike a typical subdivision, each phase of a life care facility must undergo a lengthy feasibility study and certification process by the Maryland State Office on Aging, followed by satisfaction of certain "pre-sale" requirements before construction may commence. Very briefly, a provider may not collect deposits until a financial feasibility plan, including funding sources, has been approved by the State. After that has been completed, the provider must satisfy a sixty-five (65%) percent "pre-sale" requirement and collect deposits equal to ten (10%) percent of the total entrance fee for each contracted unit before it can begin to build.

Proposed Subdivision Regulation Amendment

It is our understanding that the intent of the proposed amendment to the Subdivision Regulations is to ease the burden on builders and developers impacted by the national economic downturn by granting a two (2) year extension on existing APF approvals. The Brooke Grove Foundation is clearly impacted by the same economic issues that are driving this legislation and has concern that it may lose its APF approval before the validity period expires if it is unable to adhere to its projected schedule. Accordingly, we would urge the Council to modify the proposed legislation to make it clear that the automatic two (2) year extension of the APF validity period applicable to approved preliminary plans also applies to extensions that may have been granted in accordance with Section 50-20(c)(4) and (5) of the Subdivision Regulations.

Thank you for your attention to this request.

Very truly yours,

MILLER, MILLER & CANBY

Susan W. Carter

Susan W. Carter

SWC/dlt

cc: Michael Faden, Esquire
Jeffrey Zyontz
Diane Schwartz Jones
Cathy Conlon
Dennis Hunter

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March 17, 2009

5104 Elm St., Bethesda MD 20814 (301)652-6359 email - theelms518@earthlink.net

MCCF Testimony to County Council on SRA 09-01--To Increase Minimum Validity Period from 5 to 7 Years for Adequate Public Facilities (APF) Findings

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. The Federation did not adopt a position in support of, or opposition to, this legislation, but opted to present several points for Councilmembers to consider during their deliberations.

Specific MCCF considerations regarding SRA 09-01

1. The law already allows the Planning Board to grant developers or builders longer than the minimum 5 year APF validity period, and authorizes the Board to grant requests for extensions if it would be "in the public interest" (which justification would undoubtedly apply in the current economic crisis).

2. At the July 2007 hearing on SRA 07-01, legislation that tightened the validity period, Karl Moritz testified for the Planning Board in favor of creating a minimum 5 year period, stating (see attached text of his testimony)--

> *"The traffic studies on which an APF finding is based are valid for about 5 years and school conditions can change significantly in five years."*

3. In his February 2 transmittal memo, the County Executive stated, "Developers and builders started experiencing a tightening of the credit markets 6 to 12 months ago..." It seems appropriate, then, to limit the applicability of any extension of the minimum validity period to developers who already have their APF finding from the Board but whose funding may have been withdrawn or delayed due to the banking crisis (perhaps only those which received their APF finding in the past 2 to 3 years). The extension need not be applied from the present time forward, since it would be well advised in the current economic climate for applicants to apply for an APF finding only if they have a secure loan agreement and believe they can finish the project within the currently allowed validity period.

4. The changes proposed to Sec. 50-20(c)(4), regarding time limits for an extension, do not seem to be relevant as a response to the crisis. And, as noted in Planning Board testimony for the July 2007 hearing, time limits for an extension of a finding of adequate public facilities are generally limited to one-half of the period of the original finding.

5. MCCF is concerned that not only would this legislation retroactively alter all APF findings made by the Board over the past 10 years but it is not drafted to sunset, and would constitute a permanent change to the validity period. This is a move in the opposite direction from previous Council enactments which tightened the validity period. These concerns could be resolved by limiting the applicability of this SRA to only projects that have received their APF finding in the past few years (see Item 3 above).

General note re this SRA as part of County Executive's Economic Stimulus package
- No economic or fiscal impact analysis of this SRA has been presented, even though one of the proposals in the County Executive's 11-Point Economic Stimulus Package (released 12/18/08) reads--

> "*8. Provide an economic and fiscal impact analysis as part of any legislation or regulatory change. The analysis to include an assessment of the impact on both the County and the parties being regulated.*"

In order to achieve the full benefit of this proposal, such analyses must be released to the public early enough that those testifying on the legislation can study the analyses and prepare comments on them (and have testimony vetted by their organizations, if representing a group) prior to the Council hearing. Thank you.

ATTACHMENT to MCCF
testimony on SRA 09-01,
March 17, 2009

Montgomery County Planning Board
Testimony on SRA 07-01
July 10, 2007

My name is Karl Moritz and I am pleased to present the testimony of the Montgomery County Planning Board on Subdivision Regulation Amendment 07-01. SRA 07-01 implements recommendations contained in the Planning Board's *Final Draft 2007-2009 Growth Policy* related to the time limits of a finding of adequate public facilities.

A builder will not receive building permits unless there is a valid finding of adequate public facilities (APF) on the property. If a builder is not able to complete his project within the timeframe of his APF finding, the project's APF finding may be eligible for an extension under limit circumstances. If the project is not eligible for an extension, it must go through the adequate public facilities process again.

When the Planning Board finds that public facilities are adequate to support a proposed development project, that finding remains valid for a specific timeframe. Before 1989, a finding of adequate public facilities (APF) did not expire, but in that year, a 12 year time limit was imposed. In 1999, the time limit was reduced again, to 5 years for most subdivisions but up to 12 years for larger subdivisions.

Those actions were the County's response to a concern about a large and inactive pipeline of approved development. There are a number of reasons why it is in the public interest to have a pipeline of approved development that contains projects that are active and moving forward to completion, including:

- The Growth Policy's transportation tests require developers to include as "background" traffic the trips generated by development projects already in the pipeline. If those projects are not going to be built, a developer may be required to make an unnecessary improvement. The development community sometimes refers to these as "paper trips."
- The traffic studies on which an APF finding is based are valid for about 5 years and school conditions can change significantly in five years.
- The pipeline of approved development is used for a variety of planning purposes, and is a factor that is taken into account when deciding where new facilities should be programmed.
- If the Council adopts a form of a policy area-level transportation test in the next Growth Policy, the pipeline will likely play an even larger role in the process of testing for the adequacy of transportation facilities.

At the request of the County Council, the Planning Board reviewed the issue of APF time limits in the Growth Policy this spring. The recommendation can be found on page (Roman numeral) six of the Planning Board's statement in the front of the report. The staff analysis begins on page 89.

The Planning Board's chief concerns are:

- *That the 12 year outside time limit is too long. Data* show that most projects, even large ones, can be completed in a decade. If the project is not yet complete in 10 years, but remains active, the project is eligible for an extension.
- *That inactive projects can remain in the pipeline for long periods of time.* The Board is recommending language that would allow the Board to condition longer approvals on a phasing plan submitted by the developer. The phasing would show the minimum amount of development that would need to be completed in the first five years after approval. If the minimum amount is not reached, the project would not receive the balance of its APF time limit.
- *That public facilities remain adequate during the validity period of APF findings of any length.* In order to ensure this, the Board may have to impose additional transportation improvement or mitigation conditions on projects with a longer APF time limit.

The Planning Board appreciates the Council's consideration of these recommendations. If there are any questions, the Board would be happy to address them.

* * *

From Introduction to Planning Board's 2007-2009 Final Draft Growth Policy, attached to Moritz 7/10/07 testimony on SRA 07-01 above--

3. **The normal time limits for the validity of a finding that public facilities are adequate to serve a project should be limited to five years.** The time limit is for receiving the last building permit and, thus, does not require that the project be completed, although most projects are completed in five years. Large and complex projects should be allowed a longer validity period, based on a staging plan, but initial validity periods of greater than 10 years should not be granted. For the Planning Board to approve a validity period longer than five years, the applicant must present a staging plan for the project, the Board must find that the longer period has a public benefit, and it may require additional transportation mitigation measures. Traffic studies are generally valid for about five years. Moreover, projects with long validity periods but low activity levels essentially hoard capacity, and can prevent other projects that are ready to build from proceeding due to lack of available capacity. This is a particular problem in Metro station areas and other locations where development advances County policy goals.

* * *

From APF staff analysis in Planning Board's *2007-09 Final Draft Growth Policy* (pg.89), attached to Moritz 7/10/07 testimony on SRA 07-01 above--

Section 20 of Chapter 50 contains language setting the time limits of a finding of adequate public facilities by the Planning Board and the language that determines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities. Time limits for an extension of a finding of adequacy public facilities are generally limited to one-half of the period of the original finding. A project with an original APF time limit of 5 years could receive an extension up to 2 ½ years long.