



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

January 8, 2007

Memorandum

To: Montgomery County Planning Board

Via: Faroll Hamer, Acting Planning Director

From: Karl Moritz, Research & Technology Center  
Greg Russ, Development Review

Re: Subdivision Regulation Amendment 06-03: *Preliminary Subdivision Plans – Approvals – Applicability of Growth Policy Amendments*

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***Introduction***

On December 5, 2006, Councilmember Marilyn Praisner introduced Subdivision Regulation Amendment 06-03. This SRA would

- Temporarily suspend Planning Board approval of certain preliminary plans of subdivision while a review of the County's Growth Policy takes place, and
- If the Council changes the Growth Policy during the suspension period, the SRA would apply the new Growth Policy to preliminary plan applications filed after December 5.

The Council has scheduled a public hearing on SRA 06-03 for January 16, 2006 at 7:30 pm. Planning Board comments are requested.

**Issues and Recommendations**

Planning staff recommends that the Planning Board support an amended SRA 06-03 that suspends the acceptance of preliminary plan applications as well as preliminary plan approvals. In support of that recommendation, Planning staff makes the following comments and observations:

SRA 06-03's chief effect will be to halt the approval of certain subdivisions under the current Growth Policy's guidelines for administering the adequate public facilities ordinance. It will allow the County Council to decide, during its deliberations on the

Growth Policy this summer, whether these subdivisions should be subject to the new Growth Policy or to the current Growth Policy.

SRA 06-03 will have no effect on the pace of construction in Montgomery County in the next year or so, or on the types of projects that are constructed in the County during that time. This is because development projects that will begin construction in 2007 have already been approved by the Planning Board and would not be subject to SRA 06-03 as drafted. Very small development projects, the kind that could be approved by the Planning Board in January, for example, and begin construction later in the year, are exempt from the approval suspension in SRA 06-03. This *de minimis* exemption applies in all areas except the Goshen and Poolesville policy areas.

Staff believes there is public benefit to suspending approval activity during the Growth Policy review because the new Growth Policy could be substantially different from the current policy. In particular, if there is any likelihood that the new Growth Policy will be more stringent than the current Growth Policy, and it seems to us that there is that possibility, then the suspension serves two purposes: it minimizes the amount of development that is approved under less-stringent rules, and it prevents a rush of applications as developers seek to have their projects considered under the current rules. In recent years, there have been increases in building permit activity to just prior to an increase in the development impact tax and in application activity just prior to the effective date of workforce housing requirements.

As a result, staff's review of SRA 06-03 is focused on determining: which types of development projects might the Council wish to be subject to the new Growth Policy, and at what point(s) in the development review process is a suspension best applied?

*For Which Types of Projects Should Approval Be Suspended?*

Staff believes that SRA 06-03's suspension of approval of projects with the greatest potential impact on traffic congestion and school enrollment is appropriate, since these are the two chief concerns of the Growth Policy. SRA 06-03 would exempt from suspension projects that meet the County's long-adopted definition of "de minimis" development: projects that generate 5 or fewer peak hour automobile trips. These small projects also generate a very small number of public school students. SRA 06-03 would also exempt projects inside Metro station policy areas and enterprise zones. In the case of Metro station policy area development, the rationale is that development in locations near high quality alternatives to the automobile more efficiently use the transportation network, and on a per-unit basis, generate fewer students than other types of residential development. Staff supports exempting these development types from the suspension, as well as development projects in enterprise zones, which by definition are projects that the County intends to encourage.

Staff is recommending one additional exemption – that the approval suspension not apply to the Clarksburg Town Center preliminary plan amendment. This amendment is the subject of a mediated agreement that, in part, reflects current adequate public

facilities requirements. Staff believes the public would be best served by resolving Clarksburg Town Center issues without delay.

*At What Point in the Development Review Process is the Suspension Best Applied?*

The development review process consists of a number of stages and new rules can be applied to development projects at each stage. The Growth Policy comes into play during the Planning Board's review of a preliminary plan of subdivision, and in the past, changes in the Growth Policy have often been applied to projects that are at some stage in the subdivision process, such as:

- *Prior to Filing a Complete and Accepted Application.* Applications for a preliminary plan of subdivision contain the information needed to meet current Growth Policy requirements. For example, a required traffic study would identify if the development project would create unacceptable levels of congestion based on congestion standards in the current Growth Policy. If the congestion standards or other rules change, some additional work would have to be done to modify the application which could also affect the conditions of approval. Staff believes that a suspension on the receipt of applications makes sense because little work can be done on the application until the growth policy issues are settled. Staff does not think it is a good idea to accept applications (and applicants' fees) if the applications are not going to be processed. Among other problems, it will exacerbate a backlog of unprocessed plans. This point in the process is also a good place to apply a suspension because financial arrangements have not been finalized (that typically does not happen until record plat or building permit). A suspension at the application stage would also prevent a rush to submit applications for the sole purpose of being grandfathered under current rules.
- *Prior to Planning Board Action:* The Planning Board's vote to approve a preliminary plan of subdivision is also the recognized point in the development review process when the finding of adequate public facilities is made. Approved projects are added to a list called the "Pipeline of Approved Development." This is also a good point in the development review process to apply a suspension, although not quite as good as at the application stage because in the case of some plans, substantial analytical work has been done. Staff does not believe that projects pending before the Planning Board should automatically be exempted from changes to development standards or regulations.
- *Prior to Release of the Approval Resolution:* The approval resolution, formerly known as the Board Opinion, formalizes that the Board's vote in public session. The resolution contains the exact language of the conditions under which the Planning Board approved the development project, including the conditions for meeting the requirements for adequacy of public facilities. Staff does not believe this would be an appropriate point to apply new development standards or regulations, because doing so would essentially "undo" an action by the Planning Board.

- *Prior to the Release of Building Permits:* Developers are typically required to meet adequate public facilities conditions for their project, or for a phase of their project, prior to the release of building permits. Developers normally do not apply for a building permit until they are ready to begin construction, so the time between the issuance of a building permit and the time when construction begins is usually short. Applying new APF conditions at this stage is likely to be highly disruptive to individual projects and to the County's development economy, creating major problems for the developer that would be out of proportion to the public benefit.

### *Other Considerations*

There has been some discussion about the effect of the suspension in approvals on the County's economy. A few months' pause in approvals will not affect the supply of housing or commercial development available to be built in the near future. The suspension itself will not affect the price of a house or the cost to lease a square foot of office space. It will only delay the approval of specific projects by several months, and staff expects that there will be requests from the representatives of those projects to be exempt from the suspension.

Not all of the affected projects will be delayed by the full length of the suspension, since some of the projects would not have been acted upon by the Board until later this spring. In addition, the delay in approval must be compared to the overall timeline of a project – most projects do not begin construction soon after approval. In fact, the average project does not begin construction within 3 years of approval by the Planning Board.

### *Recommendation Summary*

Staff believes that the suspension should also apply to the acceptance of applications for the affected development types while the approval suspension is in effect. These applications may need to be revised after the suspension is lifted, so it would not be useful for any of the affected parties – including the public, the developer, or staff – to begin the review process. Staff suggests that the SRA be amended to say that the Planning Department must not accept preliminary plan applications (except for the exempted development types) until the suspension is lifted, and will not further process applications received on or after December 5, 2006.

Staff also supports the suspension of Planning Board approval action during the Growth Policy review period, provided there is an expectation that the new Growth Policy's rules may apply to projects that have not yet gone before the Planning Board. In the past, projects with completed applications have sometimes been grandfathered. Staff does not believe that projects with completed and accepted applications should be automatically exempt from a new Growth Policy. Staff instead thinks that the Council should keep that option open to them as they review the Growth Policy this summer. In making this recommendation, staff defines "Planning Board approval" as the moment

when the Board votes for approval of the plan in public worksession, and not the subsequent release of the approval resolution.

Among the reasons that the Planning Board may not endorse the suspension of development approvals: a finding that the suspension is not justified by the pace of growth, that the number and type of pending approvals are not of sufficient magnitude to warrant the suspension, or that development projects that have submitted complete applications should not be held up and then subject to new growth policy requirements. If the Planning Board does not agree with staff about the suspension of approvals, we would continue to recommend that the Board recommend a suspension of the acceptance of new and amended preliminary plan applications of the types (outside of Metro stations, greater than 5 trips) targeted by SRA 06-03 because these projects will be subject to new growth policy requirements and, therefore, we will be able to do very little with these applications.

Staff notes that if the intention of SRA 06-03 were to put a halt to development activity, the suspension would be applied to the issuance of building permits. Staff does not believe this is the intent, and staff suggests that if it were, a suspension of the issuance of building permits would be unnecessarily disruptive to the County economy.

### ***Policy Background***

Montgomery County's Growth Policy is a resolution adopted by the County Council that implements the adequate public facilities ordinance. The adequate public facilities ordinance states that the Planning Board may not approve a preliminary plan of subdivision unless it finds that public facilities are adequate. The Growth Policy resolution is the Council's vehicle for defining "adequate." It also describes the process by which the Planning Board determines if a particular project meets the adequacy standard, and if not, the permissible actions that can be taken for the development project to be approved. These actions can include providing the infrastructure needed to achieve adequacy, reducing the project's impact on public facilities, contributing funds toward infrastructure improvements, or other actions.

The current Growth Policy resolution was approved in October 2003 and went into effect on July 1 of the following year. Prior to this action, the growth policy was approved annually and was officially called the Annual Growth Policy, or AGP. The AGP was first approved in the mid-1980s, although there are County documents with "growth policy" in the title dating from the 1970s. A central feature of the AGP was a process, called Policy Area Transportation Review, for putting areas of the County into moratorium when existing and approved development would cause unacceptable roadway congestion.

Over the period that it was in effect, Policy Area Transportation Review was adjusted in various ways. Typically these adjustments were made to better reflect: the County's planning policies, changes in trip-making or driving behavior, improvements in our ability to model traffic, the relationship between roadway congestion and the

availability of transit, economic conditions, and other reasons. In 2003, the County Council engaged in a “top-to-bottom” review of the Growth Policy. Although particular attention was paid to Policy Area Transportation Review during that review, the Council also reviewed the other transportation adequacy test – Local Area Transportation Review – and the school adequacy test. Although not, strictly speaking, part of the Growth Policy, the review also looked at the development impact tax. The Planning Board’s recommendations included replacing Policy Area Transportation Review with a system to more closely tie the pace of Countywide approvals to the pace of infrastructure delivery and at the same time, direct growth in accordance with the goals of the General Plan.

The result of this review was:

- the elimination of Policy Area Transportation Review as a transportation adequacy test,
- more stringent standards for Local Area Transportation Review, and new rules that applied the test to smaller subdivisions,
- changes to the school adequacy test that made it more stringent in some ways, and less stringent in others, but which did not result in any moratoria due to inadequate school facilities, and
- increases in the development impact tax, including a new development impact tax for schools.

Because major growth policy reviews had moved to a biennial schedule, the next growth policy discussion occurred in 2005. Among the issues that were addressed were: the adequacy of public safety facilities, the time limits for a finding of adequate public facilities, the boundaries of the White Flint and Grosvenor policy areas, and some other issues. The Council made no changes to the 2003 Growth Policy, and it remains in effect. However, the Council subsequently adopted changes to the County Code that implemented the Planning Board’s recommendations regarding time limits of a finding of adequate public facilities, the procedures for conducting an APF for previously-recorded parcels, and the circumstances under which extensions of APF findings would be permitted.

On December 12, 2006, the Montgomery County Council adopted a resolution directing the Planning Board to conduct a new Growth Policy review, to be submitted to the Council by late May, 2007. The timing is to allow the Council to consider changes to the Growth Policy during the summer prior to the lifting of the approval suspension that is contained in SRA 06-03.

### ***Preliminary Plans Subject to the Suspension***

In December, when SRA 06-03 was introduced, staff prepared a list of pending preliminary plans. This was not a list of preliminary plans that would be subject to the moratorium; it was a list of all pending preliminary plans. Following this memorandum is a revised list of plans that staff believes would be subject to the suspension. The list

includes some plans that the Board may act on prior to the effective date of the suspension in approvals.

### ***Growth in Montgomery County***

SRA 06-03 itself will not affect the pace of growth in Montgomery County, but staff understands that the pace of growth is the issue underlying the accelerated review of the Growth Policy. Staff certainly expects that during the review of the Growth Policy we will be looking at past and future growth in detail, especially when evaluating the utility of the moratorium as a staging tool.

Since 2000 Montgomery County has been adding households at an annual rate that has varied between 1 percent and 1.7 percent (averaging 1.43 percent) and has been adding jobs at an annual rate that has varied between 0 percent and 2.65 percent (averaging 1.1 percent). Table 1 shows countywide Montgomery County household and job growth from 1970 to 2006.

Montgomery County grew fastest in the early 1970s and in the mid-1980s. In the early 1970s, household growth peaked in 1973 at 9,000 per year, a growth rate of 5.1 percent. Job growth peaked in 1972 and 1973 when the County added more than 16,000 jobs per year (a growth rate that exceed 9 percent in 1972). A decade later, the County saw job growth reach a record pace, adding almost 120,000 jobs in the six year period from 1983 through 1988. Household growth was also very strong, with three consecutive years (1983-85) of household growth over 10,000 per year.

Because of Montgomery County's size, smaller percentage *rates* of growth can still result in substantial increments of real growth. For example, Table 2 shows the number of housing units authorized for construction (building permits) for five neighboring Maryland jurisdictions from 1990 to the present. For all but a few years in the early 1990s, Montgomery County added more housing units than the other jurisdictions, sometimes by a substantial margin.

The Growth Policy divides the County into smaller subareas for the purposes of measuring and regulating growth. These areas are called "policy areas" and there are 29 of them, not counting the five rural policy areas, which are usually combined for reporting purposes. Development is reported in growth policies in terms of housing units (residential) and jobs (non-residential). Non-residential development is expressed in "jobs" rather than square feet because it better represents non-residential development's traffic impact. A "job" is equivalent to 225-250 square feet of office space, 400 square feet of retail space, etc.

Tables 3 and 4 present a snapshot of past, present, and future growth in each policy area in Montgomery County. The center of each table shows the current pipeline of approved development: the amount of approved, but not yet constructed, development

in each policy area.<sup>1</sup> To the left: growth figures for the past 15 years, in five-year increments. To the right, forecasts of future growth for the next 15 years, in five-year increments. The tables show that on a Countywide basis, there is more than 5 years' worth of residential growth already approved, and more than 10 years of non-residential growth already approved. On a policy-area-by-policy-area basis, the number of years of growth in the pipeline vary widely. In general, though, the tables show that there is sufficient development already approved for the current pace of development to continue unaffected, even if subdivision approvals are suspended for seven months or so.

These tables also show the share of past development, the pipeline, and future growth that is in the cities of Rockville and Gaithersburg. Development in these municipalities is not, of course, subject to County growth controls.

### ***Development Impact on Schools and Transportation Facilities***

Attached to this memo are several reports that discuss the components of increasing demand on transportation and school facilities. Two of these were prepared for the 2003 Growth Policy discussion.

#### *Factors Affecting School Enrollment*

The first memorandum discusses the components of school enrollment change, which are: resident births, aging of the school-age population, and migration. The "migration" category tends to capture housing's role in student enrollment change and there are a variety of factors affecting housing's effect on student enrollment – student generation rates vary widely by housing type, and the mix of new housing each year and in each area is different. The report points out that turnover of existing housing is an important component of school enrollment growth, and substantial enrollment growth has occurred in areas with little new housing. The report notes that 85 percent of housing transfers involve existing housing; it wouldn't be accurate to then say that 85 percent of school enrollment change is due to existing housing turnover. But it is clear that most new households move into existing housing units.

More recently, school enrollment growth has decelerated and even declined. School demographers expect enrollment to grow again, and the school system has noted that there are existing capacity deficits to address that are perhaps most visible in the form of portable classrooms.

Following the school enrollment report is a memo and set of charts showing the latest (June 2006) Growth Policy School Test results. Those results show every school cluster passing the school test, but a number of clusters over-capacity as it is defined by Montgomery County Public Schools.

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<sup>1</sup> The pipeline is undergoing one of its periodic audits as part of the growth policy study. Over the course of this period, some projects may be removed or the amount of development associated with a project adjusted.



## *Transportation Facilities*

Transportation facilities are the subject of the attached February 2003 memo to the Planning Board, the goal of which was to discuss the old Annual Growth Policy's effect on traffic congestion. This memo measures the adequacy of the transportation network in several ways and discusses factors that have affected traffic congestion in Montgomery County. This memo also describes the data sources used to analyze the Annual Growth Policy's effect on traffic congestion, compares countywide growth patterns with transportation improvements and describes how transportation conditions the County compare with other parts of the Washington metropolitan region.

There are certainly factors in addition to growth in County jobs and County housing that have increased traffic congestion. Over the past decades, there has been an increase in the propensity for driving-age members of a household to own a car and to drive it regularly. The long-term trend has been more people driving more vehicles more frequently and for longer distances. Growth outside the County is also a contributor to congestion in the County.

For the Transportation Policy Report, staff analyzed the percentage of traffic in Montgomery County that is "non-resident" in some way: trips from within Montgomery County to destinations outside the County, trips from outside the County to destinations inside the County, and trips through Montgomery County that begin and end outside the County. Non-resident trips are a little over one-third of the total peak hour vehicle-miles traveled in the County, according to that analysis (see following table).

### **Montgomery County P.M. Peak Hour Vehicle-Miles Traveled ('000s)**

Type of Trip	1998		2020		Change 1998 to 2020
	VMT	% of Total	VMT	% of Total	
Total Traffic	1,470	100%	1,730	100%	17.7%
Non-Resident (I-E/E-E)	512	35%	589	34%	15.0%
Through (E-E)	202	14%	205	12%	1.5%

*Note: The data reported above is based on the Travel/2 model reflecting P.M. peak hour conditions for a 1998 estimate and a 2020 forecast, where ...*

- *Internal-External (I-E) trips have an origin inside the county and a destination outside the county.*
- *External-External (E-E) trips pass through the county without stopping.*
- *Non-Resident travel equals the sum of I-E and E-E trips.*

Current congestion levels are measured in the annual Highway Mobility Report, which in 2006 looked at data for 506 of the 762 signalized intersections in Montgomery County. The report notes that:

*Staff found that 15% of the signalized intersections sampled for this report had CLVs<sup>2</sup> which exceeded their Local Area Transportation Review (LATR) standard. In addition, increases in CLVs and travel times, as well as decreases in speeds were observed along some of the sampled routes and corridors. In most cases, much of this increase in congestion can be attributed to the pronounced levels of development in the vicinity of these routes and corridors. However, staff also observed increases in CLVs, as well as longer travel times and decreased speeds along some of the other sampled corridors that were the direct result of infrastructure improvements requiring on-street work zones, which often reduced roadway capacity. This report also identifies some intersections that have seen a recent spike in their CLVs resulting from the opening of a new or extended roadway, in or adjacent to that particular area.*

and

*The results of the year 2010 model run conducted for this report conclude that under the current Constrained Long Range Plan (CLRP) for the year 2010, which includes the Intercounty Connector (ICC), nearly all of the roadway segments in the County's transportation network are forecasted to have V/C ratios under 1.00. This indicates that the future demand is anticipated to be less than the planned capacity for the network. Planned land use development, coupled with the planned transportation infrastructure identified in the CLRP, will help to account for a 20.6% increase in vehicle-miles traveled (VMT) relative to the 1998 base year conditions. Most of this increase in VMT will occur on the freeways. Despite a significant increase in VMT countywide, the average V/C ratio is anticipated to have increased marginally by the year 2010 (vs. 1998 base year network). Furthermore, the forecasted average V/C ratio countywide for 2010 indicates that the planned capacity improvements will help to regulate the increase in VMT and result in a manageable increase in the percentage of congested lane-miles.*

Previous growth policies discussed congestion in terms of average congestion by policy area. Typically staff displayed average congestion in each area based on existing and approved development. This effort also showed the effect of approved development in one policy area on roadway congestion “downstream” in another part of the County.

That analysis was the underpinning of Policy Area Transportation Review and staff did not continue to run this analysis after Policy Area Transportation Review was discontinued. Staff will be developing similar measures as part of the Growth Policy study, but we do not have average roadway congestion figures by policy area at this time.

However, staff will present maps at the Board's January 11<sup>th</sup> worksession that show pending subdivisions subject to the suspension, areas of the County where there is intersection traffic congestion, and areas of the County where school enrollment exceeds capacity.

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<sup>2</sup> Critical Lane Volumes

## ***Rockville Moratorium***

The City of Rockville put a moratorium on development activity into effect on November 13, 2006. The City's news release is attached as a summary of the City's action. The moratorium has a staggered effect, so that certain types of development projects are affected at different times. It affects the filing of new applications. Projects that have received approval but need further approvals to continue through the development process are not affected.

- *Into effect on November 13<sup>th</sup>*: Initial filing of new applications for Special Development Procedures (SDP's) or Planned Development Procedures (PDP's) requiring mayor or council approval, all zoning map amendments (except for historic zoning designation), and all zoning text amendments (except those filed on behalf of mayor and council).
- *Into effect on December 29<sup>th</sup>*: Projects requiring new use permits in non-one family residential zones (excluding use permits implementing an approved Special Exception, PDP, or approved SDP, and except those for public buildings or ADA compliances).
- *Into effect March 15<sup>th</sup>, 2006*: Preliminary Subdivisions except those that subdivide into 3 or fewer residential lots, or those that implement an approved Use Permit or Detailed Application in non-residential zones. In addition, projects with Special Exceptions and Variances except those for ADA compliance, public buildings, or those that increase gross square footage of the Special Exception by less than 10 %.
- *In effect September 7<sup>th</sup>, 2006*: All applications. The moratorium holds until the new zoning ordinance is adopted or December 15<sup>th</sup>, whichever is first.

## ***Additional Language Changes***

This memo previously noted that there is some potential confusion about whether preliminary plans that have been approved by a vote of the Planning Board, but for which a resolution (formerly written opinion) has not been issued, would be subject to the suspension. Staff suggests that the resolution is a document that "memorializes" the earlier action (the vote) of the Planning Board and that the vote is the formal approval of the preliminary plan. Staff recommends amending the language of the SRA to make clear that the Planning Board may adopt resolutions for preliminary plans approved prior to the adoption of the SRA.

Staff offers revised language that would make this clear, as well as alternative text for expressing the point that once the suspension is lifted, all plans that have not been approved will be subject the growth policy that is in effect at the time that the plan is before the Board.

**Sec. 1. Section 50-35B is added as follows:**

**50-35B. Suspension of certain preliminary subdivision plan approvals.**

(a) Except as provided in subsections (b), (c), and (d) the Planning Board must not accept applications for, approve or amend any preliminary plan of subdivision while this Section is in effect.

(b) The Board may accept applications for, or approve a plan for a subdivision that:

(1) is located entirely in a Metro Station Policy Area, as defined in the County growth policy, or an enterprise zone; or

(2) would add 5 or fewer peak hour trips, as defined under the County growth policy, and is not located in the Poolesville or Goshen Policy Areas.

(c) The Board may amend a preliminary subdivision plan that the Board approved before this Section took effect if:

(1) the amendment would not add more than 5 peak hour trips to the number previously approved for that subdivision; ~~and~~

(2) the subdivision is not located in the Poolesville or Goshen Policy Areas; and

(3) the subdivision is part of a mediated amendment process and is located in the Clarksburg Policy Area.

(d) The Board may adopt written resolutions memorializing its actions on preliminary plans of subdivision that were voted on prior to the effective date of this Section.

(e) Any subdivision plan acted upon by the Planning Board after expiration of this Section must be subject to the growth policy and adequate public facilities requirements in effect at the time of the Planning Board's action on the subdivision plan. ~~for which an application for a preliminary subdivision plan was filed on or after December 5, 2006, must be subject to any growth policy or other adequate public facilities requirement adopted before the Planning Board approves that plan.~~

**Sec. 2. Effective date.** This ordinance takes effect on the date of Council adoption.

**Sec. 3. Expiration.** Section 50-35B, added by Section 1 of this ordinance, expires on August 15, 2007.