

November 1, 2001

Memorandum

To: Montgomery County Planning Board

From: Karl Moritz, Research Manager, 301-495-1312

Re: Montgomery County Council Revisions to the Annual Growth Policy

The Montgomery County Council adopted a revised Annual Growth Policy on October 30, 2001. This memorandum summarizes how the AGP has been changed.

1. Top-to-Bottom Review of the AGP

The Council directed the Planning Board to perform a “top-to-bottom” review of the Annual Growth Policy over the next two years. The Council expressed concern about a variety of issues, from the method of setting staging ceilings to the number of exceptions. The Council noted that the AGP is a product of an era when Montgomery County was rapidly growing and still had a large percentage of its planned growth yet to come. Now that it is a maturing County approaching buildout, it may be appropriate to regulate growth in other ways.

Park and Planning staff are developing a suggested work program for the Planning Board’s review.

2. School Test Tightened

The Council revised the AGP’s school test to make it more stringent. Previously the school test standard was 110 percent of capacity; as of November 1, 2001 the test is 100 percent of capacity. The Council also clarified its definition of “capacity” to be a standard number of students per classroom (called *AGP capacity*), rather than Board of Education *program capacity*, wherein the capacity of a classroom depends on how the classroom is used. AGP capacity is:

Grade	Capacity
Half day kindergarten	44
Full day kindergarten	22
Grades 1-6	25
Secondary Grade	22.5

The Council voted to exempt senior housing from moratoria imposed by inadequate school facilities, but did not support either a *de minimis* provision or a special ceiling allocation for affordable housing, so both small-scale development and affordable housing will be subject to school moratoria. The Council is directing the Planning Board to propose rules for allowing developers to address the school facility needs of their projects.

The effect of the Council's action is to put the Damascus cluster into moratorium for new residential subdivisions. The Damascus cluster includes the Damascus and Clarksburg policy areas, as well as the rural areas surrounding those two policy areas. The Council grandfathered both preliminary and pre-preliminary plans filed before November 1, 2001 from the school test. Grandfathered pre-preliminary plans will expire unless approved by the Planning Board prior to July 1, 2002.

3. Staging Ceiling Adjustments Due to Model Revalidation (Issue 1 in the Planning Board's Final Draft AGP Policy Element)

The County Council did not adopt the suggested staging ceiling adjustments, opting instead for the "top-to-bottom" AGP review. The Council directed that the method for setting staging ceilings – including whether staging ceilings should continue to be part of the AGP -- should be specifically addressed in that review.

4. Silver Spring Staging Ceiling Provisions and Local Area Transportation Review Standards (Issue 2)

Apart from the staging ceiling adjustments due to the model revalidation, the Council adopted the Planning Board's recommendations on this issue. The special provisions in the AGP governing Silver Spring CBD staging ceilings will be retained, as will the special procedures for Local Area Transportation Review. The Council also agreed with the Planning Board's recommendation to expand the use of queuing analysis, now permitted in Silver Spring CBD only, to all other County Metro Station Policy Areas.

5. LATR Congestion Standards by Policy Area (Issue 3)

The Council concurred with the Planning Board's recommendation to retain the current standards for congestion for Local Area Transportation Review.

6. Exemption of Free-Standing Child Day Care Facilities (Issue 4)

The Planning Board recommended against exempting free-standing child day care facilities; the Council crafted a very narrow exemption for such facilities located adjacent to policy areas that are not in moratorium. This exemption is expected to benefit one applicant, Academy Child Day Care, which owns a parcel in the R&D Village (which is

in moratorium) across Darnestown Road from North Potomac, which is not in moratorium.

7. Expirations of Findings of Adequate Public Facilities (Issue 5)

This was an information item that the Planning Board transmitted without recommendation, although the Board noted that the capacity resulting from expiring non-residential plans may, at times, be better allocated to housing. The Board proposed to make any such recommendations in the AGP Ceiling Element. The Council agreed.

The Council also responded to two requests for extensions on findings of adequate public facilities. The first was from the Institute for Genomic Research (TIGR) in the R&D Village, and the second was from a subdivision in Rock Spring Park known as the IBM property. Both of these subdivisions are pay-and-go approvals, which have a 4-year time limit, and the owners requested an extension to 12 years, which the Council granted. The Planning Board did not have an opportunity to review these requests.

8. Alignment of Policy Area and Municipality Boundaries (Issue 6)

The County Council concurred with the Planning Board's recommendations to update policy area boundaries to be consistent with the municipalities of Rockville and Gaithersburg.

9. Measuring the Effect of ATMS (Issue 7)

The County Council concurred with the Planning Board's recommendations to continue developing the means to measure the congestion relief provided by advanced transportation management systems.

10. Strengthening the AGP's Support of Smart Growth in Metro Station Policy Areas (Issue 8)

The County Council agreed with the Planning Board's objective to facilitate development near Metro stations and the Council implemented many of the Planning Board's specific recommendations. The provisions approved by the Council are:

Countywide Development Impact Tax: The Council passed the countywide development impact tax 5-4. The version passed by the Council is consistent with the Planning Board's recommendations. The main differences are two. First, the approved version expresses a policy of spending tax revenues in proximity to where they are collected; the Planning Board felt that the spending priority should be Metro Station Policy Areas even if the revenues were raised elsewhere. Second, in the approved version, development in Metro Station Policy Areas would pay half the rate of development in other areas (the Planning Board recommended a full exemption). In staff's view, these differences are minor compared to the benefit of implementing this tax. There is potential for a veto by

the County Executive. Overturning the veto would require six affirmative votes by the Council.

Requiring existing employers to participate in Transportation Management Organizations: This will require separate legislation but the Council signaled its approval of this initiative as proposed by the Board.

Intersections Counted in LATR by Development Inside Metro Station Policy Areas: The Planning Board recommended that development inside Metro Station Policy Areas (MSPAs) not be required to address congestion at intersections outside Metro Station Policy Areas. The purpose was to remove one of the main challenges to meeting APF tests inside MSPAs. The Council did not agree with the Board's recommendation; however, the Council's endorsement of the Board's proposal to revise and expand the *Alternative Review Procedure for Metro Station Policy Areas* considerably reduces LATR as a barrier to development in MSPAs.

Alternative Review Procedure for Metro Station Policy Areas: The Council implemented the Board's recommendation to revise and expand this provision so that it covers Policy Area Transportation Review (staging ceilings) as well as Local Area Transportation Review (intersection congestion). However, while the Board recommended that development using this provision either provide an added component of MPDUs (residential and mixed use projects) or pay the impact tax (non-residential projects), the Council-adopted provision is different. It requires development using this provision to pay the impact tax and to mitigate 50 percent of its trips (either on-site or off-site).

11. Strategic Economic Development Projects (Issue 9)

This was a set of two proposals to provide greater flexibility in the AGP for "strategic economic development projects." Both were adopted by the Council.

The first, which was endorsed by the Planning Board, allows the development capacity from publicly-funded infrastructure to be allocated to a specific subdivision. Up until now, development capacity had to be allocated on a first-come, first-served basis.

The second, which was not endorsed by the Planning Board, implements a process through which the County Executive can propose "strategic economic development project" designation for a subdivision for Council approval. This designation allows the subdivision to meet all APF requirements by paying the development approval payment. This procedure will automatically sunset on October 31, 2003.

12. Special Provision for Corporate/Medical Research Headquarters Facilities (Issue 10)

The County Council concurred with the Planning Board's recommendations to allow certain headquarters facilities, such as Lockheed Martin and the Howard Hughes Medical Institute, to meet the APF requirements for additions or expansions by paying the development approval payment.

13. Methodology and Scope of Traffic Studies at Zoning (Issue 11)

The zoning ordinance requires a finding of adequate public facilities before rezoning applications can be approved. However, because there is no specified methodology for conducting traffic studies at zoning, the requirement has been inconsistently applied. The Council has directed the Planning Board to develop a standard test for its consideration.

Although this issue involves the adequate public facilities ordinance, traffic studies at zoning are not part of the AGP. The Council's direction to the Planning Board is that the Board's recommendations should return to the Council as soon as practicable and should not wait until the next AGP Policy Element.

14. Alternative Review Procedure for Limited Residential Development (Issue 12)

The County Council concurred with the Planning Board's recommendation that this procedure sunset as scheduled on October 31, 2001. The Council grandfathered preliminary plans and pre-preliminary plans filed before November 1, 2001. Grandfathered pre-preliminary plans must be approved by the Planning Board by July 1, 2002.

The Council also concurred with the Planning Board's recommendations concerning the Artery/Ryland golf course community in Fairland/White Oak. The community continues to be eligible for the procedure and the community can build out at the pace requested by Artery/Ryland. However, the Council agreed with the Planning Board to disapprove of Artery/Ryland's request that the "planned unit development" requirement be dropped.

15. Minor Amendments to the Annual Growth Policy (Issue 13)

The County Council concurred with the Planning Board's recommendations to amend two provisions of the AGP. The Council agreed to replace the sliding scale used to determine one aspect of the eligibility requirements for the *Special Ceiling Allocation for Affordable Housing* with a single set of numbers. Now policy areas where 500 units have already been approved under the Allocation will be ineligible for further approvals under the Allocation if the area's housing moratorium has been longer than 5 years and is deeper than -1,000 units.

The Council also agreed to set a time limit for approval for projects that are still eligible for approval under the old “pay-and-go” provision. The Board had recommended a deadline of May 1, 2002. The Council set the deadline for May 1, 2003.

15. Jobs/Housing Conversion in Metro Station Policy Areas

This issue was not addressed in the Final Draft AGP Policy Element but was addressed by the Board at its September worksession. The Council concurred with the Planning Board’s recommendation on this issue. The Council’s action allows the Planning Board to approve applications from previously-approved non-residential subdivisions in Metro Station Policy Areas to be “converted,” in whole or in part, to residential.

16. Special Provision for Hospitals in the R&D Village Policy Area

A late request for special treatment under the AGP was from Shady Grove Adventist Hospital, which requested that it be permitted to meet its transportation facilities obligations by paying the development approval payment for its planned 350,000 square foot expansion. The Council agreed. The Planning Board did not have an opportunity to review this request.

17. Issues to be Addressed in the Future

In addition to the top-to-bottom AGP review, the Council also directed the Planning Board to (1) continue monitoring the grade-separated interchanges on Route 29 for consistency with the Fairland and White Oak Master Plans and to (2) work with the Board of Education to develop options for residential development to meet school facility adequacy requirements in areas that are in moratorium because of schools.

Availability of Adopted Resolution

When it approved the AGP, the Council delegated to its staff the authority to make technical or readability changes to the resolution. These have not been completed and so a final resolution is not yet available. Staff will provide the Planning Board with the adopted resolution as soon as it is available.