

# Prince George's County Council

## Agenda Item Summary

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**Meeting Date:** 11/20/2012  
**Reference No.:** CB-104-2012  
**Draft No.:** 2  
**Proposer(s):** Park & Planning  
**Sponsor(s):** Franklin  
**Item Title:** A Subdivision Bill for the purpose of incorporating Section 9-206 of the Environment Article of the Annotated Code of Maryland and making changes to the subdivision regulations

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**Drafter:** M-NCPPC Staff  
**Resource Personnel:** M-NCPPC Staff

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>		<b>Executive Action:</b>	12/6/2012 S
<b>Committee Referral:</b>	10/9/2012 - PZED	<b>Effective Date:</b>	1/1/2013

**Committee Action:** 11/7/2012 - FAV

**Date Introduced:** 10/9/2012  
**Public Hearing:** 11/20/2012 - 10:00 AM

**Council Action (1)** 11/20/2012 - ENACTED  
**Council Votes:** WC:A, DLD:A, MRF:A, AH:A, ML:A, EO:-, OP:A, IT:A, KT:-  
**Pass/Fail:** P  
**Remarks:**

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### AFFECTED CODE SECTIONS:

24-101, 24-103, 24-105, 24-107, 24-108, 24-111, 24-112, 24-113, 24-114, 24-114.01, 24-115, 24-116, 24-117, 24-118, 24-119, 24-119.01, 24-120, 24-121, 24-122.01, 24-122.02, 24-123, 24-124, 24-128, 24-129, 24-130, 24-135.02, 24-137, 24-138, 24-138.01, 24-139, 24-141, 24-142, 24-152

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### COMMITTEE REPORTS:

#### PLANNING, ZONING & ECONOMIC DEVELOPMENT

**Date 11/7/2012**

Committee Vote: Favorable with recommended amendments, 3-1 (In favor: Council Members Franklin, Harrison and Patterson. Oppose: Council Member Olson)

CB-104-2012 was discussed in conjunction with CR-83-2012, a Resolution concerning the Implementation in Prince George's County of Senate Bill 236, Sustainable Growth and Agricultural Preservation Act of 2012 for the purpose of adopting the Prince George's County Sustainable Growth Act Tier Map. CB-104-2012 proposes amendments to Subtitle 24 to integrate SB 236 into the County Code. Both items were transmitted by the M-NCPPC Planning Board for the County Council's consideration.

Derick Berlage and CJ Lammers, representing the Planning Board, provided a PowerPoint summarizing the purposes and provisions of SB 236, consequences of not adopting Tiers, effect on development in Tiers I-IV, decisions which must be made by the Council, and the Planning Board's recommendations. The two decisions which must be made by the Council are 1) mapping Sustainable Growth Act Tiers (CR-83-2012 adopts the Tier Map), and 2) number of

lots allowed in a minor subdivision. The Planning Board's transmittal of the legislation recommended that the definition of minor subdivision as currently provided in the Subdivision Regulations be revised from four to seven lots (CB-104-2012). On October 9, 2012, the County Council introduced CB-104-2012, Draft-1, with the definition remaining at four lots. Subsequent to introduction of the legislation, the Planning Board staff transmitted additional non-substantive clarifying amendments which were presented for the committee's review and consideration.

The Office of Law reviewed the legislation and found it to be in proper legislative form with no legal impediments to its enactment. The Office of Audits and Investigations reviewed CB-104-2012 and determined the enactment of the legislation may have a negative fiscal impact on the County due to the potential loss of tax receipts that would have been received by the County if there were no restrictions on the number of residential lots that could be subdivided.

Yates Clagett, President of the Farm Bureau, and Sandra Crow, testified regarding the legislation. Mr. Clagett requested the Council's consideration of changing the minor subdivision definition to seven lots as recommended by the Planning Board and also suggested consideration of a Transfer of Development Rights Program due to the equity loss for property owners associated with the implementation of SB 236.

The committee voted favorable on the legislation including the non-substantive clarifying amendments provided by the Planning Board staff as well as the change to the minor subdivision definition from four to seven lots.

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#### **BACKGROUND INFORMATION/FISCAL IMPACT:**

(Includes reason for proposal, as well as any unique statutory requirements)

A preliminary plan of subdivision accepted prior to October 1, 2012, or a legal deed of division accepted into the county land records prior to October 1, 2012 for residential uses on septic, is grandfathered from SB 236. On or after October 1, 2012, SB 236 is applicable with or without any further action by the county to approve the Sustainable Growth Act (SGA) tiers or amend the Subdivision Regulations (Subtitle 24).

In order to establish a clear and transparent process for the residential subdivision of land, and to ensure that the county conforms to the state mandate, staff is recommending amendments to Subtitle 24. This subdivision bill is intended to implement SB 236 and not go beyond the state mandate. SB 236 restricts the number of residential lots that can be created using septic fields in Tier IV; in Tier IV a major subdivision is not permitted. The limitation on the number of residential lots is based on the county's definition of a minor subdivision. The bill also contains provisions that clarify the difference between a preliminary plan and final plat.

Currently in Prince George's County, a subdivision of four or fewer lots in a residential zone can utilize a minor subdivision process that does not require public notice or a public hearing. In addition, certain deed divisions of land are exempt from the requirement to file a preliminary plan of subdivision and a final plat. For example, the creation of any number of lots can occur to linear decedents and antecedents through the intra-family transfer process through the use of a deed without a preliminary plan of subdivision or a final plat.

The current exemptions from the preliminary plan of subdivision and plat processes are primarily for residential uses and are used most often in the Rural Tier for intra-family transfers of newly created lots. Currently these subdivisions of land are performed by the recordation of a deed, and then only reviewed later when an application for building permit is submitted. This can often occur years after the original division of land. The existing intra-family transfer provision is not limited in the number of lots that can be created, except by the number of linear decedents or antecedents. Once the division occurs the lots can be immediately sold to unrelated people. On or after October 1, 2012, these divisions of land are subject to SB 236. In other words, an existing legal parcel of land or lot as of October 1, 2012, cannot be subdivided beyond the number of lots permitted in a minor subdivision in perpetuity in Tier IV. The ability to track the division of land in the future becomes imperative to ensure conformance to SB 236.

Therefore, the exemptions from filing a preliminary plan and final plat of subdivision that exist in the current code in Section 24-107 are proposed to be modified for residential and agriculture subdivisions in Tier IV. To ensure

conformance with the restrictions on the number of lots and proposed uses required in SB 236, staff is recommending that the exemptions from filing a preliminary plan of subdivision be retained and require only a minor final plat, instead of eliminating the exemptions altogether. The plat is required by SB236.

The plat process will enable the county, as well as an existing or perspective property owner, clear notice of the restrictions on the use and further subdivision of the land. SB 236 requires "plat notes" which will ensure that over time the cumulative number of lots and use of the property does not exceed that permitted by SB 236. Currently, a minor preliminary plan of subdivision may be approved by the Planning Director and requires no public notice. Minor subdivisions are currently not approved by the Planning Board. If a minor subdivision requires a Planning Board action it is converted to a major subdivision for which public notice and posting is required. However, SB 236 does not allow major subdivisions in Tier IV; therefore, staff is recommending the creation of a process which would allow a minor subdivision to be approved by the Planning Board when necessary. Minor subdivisions that require Planning Board approval include applications with a variation or other situations where a public hearing is deemed by the Planning Director to be necessary or appropriate. The minor subdivisions that are approved by the Planning Board will be processed as a major subdivision with all the applicable provisions including public notice and a public hearing.

Staff is recommending the expansion of the definition of a minor subdivision to include remainder agricultural parcel(s). Remainder agricultural parcels are specifically allowed by SB 236 in addition to the number of lots allowed by the county's definition of a minor subdivision. Remainder parcels are restricted to agricultural uses in perpetuity by SB 236. These remainder parcels may be re-subdivided but must remain in agricultural uses, which would also be noted on the minor final plat each time the parcel is further subdivided.

The amendments proposed to Subtitle 24 are intended to be narrowly focused to integrate SB 236 into the County Code.

11/20/2012: CB-104-2012 was amended on the floor as recommended by PZED Committee; CB-104-2012 (DR-2) was enacted.

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**CODE INDEX TOPICS:**

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**INCLUSION FILES:**

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