

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2010 Legislative Session

Resolution No. CR-66-2010
 Proposed by Council Member Dean
 Introduced by Council Member Dean
 Co-Sponsors _____
 Date of Introduction July 13, 2010

RESOLUTION

1 A RESOLUTION concerning

2 Public Facilities Financing and Implementation Program District

3 Westphalia Center

4 For the purpose of designating a contiguous area within Prince George's County, Maryland (the
 5 "County") as a Public Facilities Financing and Implementation Program District ("PFFIP
 6 District"), such development district to be located in an unincorporated area of the County
 7 known as Westphalia, Maryland and to be known as the "Westphalia PFFIP District;" providing
 8 for, and determining, various matters in connection with the establishment of a PFFIP District,
 9 creating provisions for financing strategies including, but not limited to, pro-rata contributions,
 10 sale leasebacks, funding "clubs," the Surplus Capacity Reimbursement Procedure provided in
 11 Section 24-124 of the County Code, and other methods to ensure equity in the PFFIP District;
 12 making certain findings and determinations with respect to the uses of such financing strategies;
 13 and generally relating to the Westphalia PFFIP District.

14 WHEREAS, The County Council for Prince George's County, Maryland sitting as the
 15 District Council established the Public Facilities Financing and Implementation Program
 16 ("PFFIP") in order to "serve as a technique to ensure the timely provision of adequate public
 17 facilities."

18 WHEREAS, Section 27-107.01(186.1) of the Prince George's County Code defines a
 19 PFFIP as a comprehensive program established by the County Council and intended to
 20 implement and facilitate General Plan, Master Plan, or Sector Plan recommendations regarding
 21 the construction and maintenance of public facilities not subject to public facilities surcharges,
 22 including water, sewerage, transportation (streets and mass transit), libraries, recreation, and

1 privately owned and maintained streets and recreational facilities authorized pursuant to Subtitle
 2 24 of this Code. Intended to include some or all proposed and future development in a specified
 3 area, the PFFIP program includes provisions for financing strategies including, but not limited to,
 4 pro-rata contributions, sale leasebacks, funding “clubs,” the Surplus Capacity Reimbursement
 5 Procedure provided in Section 24-124 of the County Code, and other methods to ensure equity.
 6 Techniques may include but are not limited to tax increment financing, special taxing districts,
 7 alternative construction financing, property tax reductions, tax credits, and/or Federal, State, or
 8 local programs. Public facilities surcharges for public safety and schools will be collected and
 9 distributed in accordance with applicable law; and

10 WHEREAS, the amendments to the Prince George’s County Zoning Ordinance §§27-
 11 107.1, 27-213, 27-476, 27-478, 27-480, 27-483, 27-489, 27-494, 27-503, 27-505, 27-507, 27-509,
 12 27-511, 27-513, 27-514.08, 27-514.10, 27-515, 27-521, 27-542, 27-543, 27-544, 27-545, 27-546,
 13 27-547, and 27-548 provide that a PFFIP must be established for specific areas in order to be
 14 utilized; and

15 WHEREAS, the County Council, sitting as the District Council, adopted the Westphalia
 16 Sector Plan, establishing certain boundaries; and

17 WHEREAS, the boundaries for the Westphalia PFFIP District shall include the area within
 18 the Westphalia Sector Plan and any additional owners/developers, its heirs, successor and/or
 19 assigns that are required to construct the MD 4 at Westphalia Road interchange and interim
 20 improvements, in order to meet a finding of adequacy of transportation facilities for an approved
 21 preliminary plan of subdivision pursuant to Section 24-124 of the Prince George’s County Code;
 22 and

23 WHEREAS, there is a contiguous area of the County consisting of properties set forth in
 24 Exhibit A, attached hereto and made a part hereof as if fully expressed herein; and

25 WHEREAS, road improvements are required at the MD 4 at Westphalia Road Interchange
 26 and Interim Improvements to address existing and future through traffic impacts as well as traffic
 27 impacts generated in the future by development within the Westphalia PFFIP District; and

28 WHEREAS, development proposed within the Westphalia PFFIP District will account for a
 29 percentage of the total projected average daily trips at MD 4 at Westphalia Road Interchange and
 30 Interim Improvements with a substantial amount coming from through traffic on MD 4; and

31 WHEREAS, proposed Milestones for the design and construction of the MD 4 at

1 Westphalia Road Interchange and Interim Improvements are described in the attached Exhibit B
 2 attached hereto and made a part hereof as if fully expressed herein; and

3 WHEREAS, the MD 4 at Westphalia Road Interchange and Interim Improvements are
 4 described in Exhibit B, attached hereto and made a part hereof as if fully expressed herein; and

5 WHEREAS, upon reasonable notice and public hearing, this Resolution will establish the
 6 PFFIP District as a funding mechanism for the MD 4 at Westphalia Road Interchange and
 7 Interim Improvements; and

8 WHEREAS, road improvements are required at the MD 4 at Westphalia Road Interchange
 9 and Interim Improvements in order for the Prince George's Planning Board to make a finding of
 10 adequacy of transportation facilities for development generating traffic, which impacts that
 11 intersection; and

12 WHEREAS, properties that are not required to construct the MD 4 at Westphalia Road
 13 Interchange and Interim Improvements in order to meet a finding of adequacy of transportation
 14 facilities for an approved preliminary plan of subdivision shall not be subject to this PFFIP
 15 legislation; and

16 WHEREAS, the PFFIP District will promote quality development and revitalization within
 17 the Westphalia Sector Plan boundaries and promote the health, safety, and general welfare of the
 18 citizens of the County.

19 SECTION 1. NOW, THEREFORE, BE IT RESOLVED by the County Council of Prince
 20 George's County, Maryland, that a contiguous area of the County is hereby designated as the
 21 "Westphalia PFFIP District" pursuant to Section 27-107.01 of the Prince George's County
 22 Zoning Ordinance generally as set forth in Attached Exhibit A. The Westphalia PFFIP District
 23 shall consist of the property described in Attached Exhibit A of this Resolution and any
 24 additional owners/developers, its heirs, successors and/or assigns that are required to construct
 25 the MD 4 at Westphalia Road Interchange and Interim Improvements, in order to meet a finding
 26 of adequacy of transportation facilities for an approved preliminary plan of subdivision pursuant
 27 to Section 24-124 of the Prince George's County Code, as the boundaries of the Westphalia
 28 PFFIP District may be further specified or modified, at any time, by the District Council.

29 SECTION 2. BE IT FURTHER RESOLVED that any Owners/Developers, its heirs,
 30 successors and/or assigns that are subject to the provisions of this legislation shall be required to
 31 pay a share of the cost ("Fee") for the planning, engineering, construction and administrative

costs of the MD 4 at Westphalia Road Interchange and Interim Improvements as set forth in Attached Exhibit B attached herein, or as otherwise determined by the District Council. The Fee shall be paid into the Westphalia PFFIP District Fund (“Fund”) at the time of the issuance of each building permit. Fees paid by an Owner/Developer, its heirs, successors and/or assigns into the Fund prior to the issuance of building permits shall be credited against the fee at the time of issuance of the initial building permits of that Owner/Developer, its heirs, successors and/or assigns, until repaid. The Fund shall be established prior to the collection of any fees and all revenue collected for the Fund shall only be used for the cost of the improvements listed on Exhibit B and for customary administrative costs associated with the planning, engineering and construction of the MD 4 at Westphalia Road Interchange and Interim Improvements;

SECTION 3. BE IT FURTHER RESOLVED that the Fee for any Owner, Developer, its heirs, successors and/or assigns shall be based on the actual cost of constructing the MD 4 at Westphalia Road Interchange and Interim Improvements based on the contractor’s cost of construction, which shall be in accordance with the Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) guidelines, the Interstate Access Permit Approval (IAPA), and applicable FHWA, State Highway Administration (SHA) and Prince George’s County Department of Public Works (DPW&T) specifications and standards. In no case shall the fee exceed the maximum cost allocations as set forth in Attached Exhibit B.

SECTION 4. BE IT FURTHER RESOLVED that development projects within the Westphalia PFFIP District, and subject to the provisions of this Resolution, are hereby expressly authorized to proceed prior to the completion of the NEPA and IAPA processes. Projects that proceed prior to the conclusion of the NEPA and IAPA process shall pay the fee based upon the current cost estimate. A credit will be issued for any overpayment of the pro rata share paid by the owner/developer, its heirs, successors and/or assigns, which result from a determination that the final estimated cost to construct the MD 4 at Westphalia Road Interchange and Interim Improvements are less than the current estimate. The NEPA and IAPA process shall commence within six (6) months of the adoption of this Resolution. The process may be initiated by any owner/developer, its heirs, successors and/or assigns.

SECTION 5. BE IT FURTHER RESOLVED that the schedule for the design and construction of the MD 4 at Westphalia Road Interchange and Interim Improvements shall be in accordance with the Milestones as described in attached Exhibit B.

SECTION 6. BE IT FURTHER RESOLVED that the Fee shall be based on the ADT

1 assigned to each property as a proportionate share of the estimated final cost to build the MD 4 at
 2 Westphalia Road Interchange and Interim Improvements in accordance with Section 24-124 of
 3 the Prince George's County Code, less any funds received from other sources. The Planning
 4 Board shall determine the fee based on the latest adjusted cost estimate prior to the issuance of
 5 the first building permit of the affected property. Payment of the Fee into the Fund shall be
 6 deemed to satisfy the Adequate Public Facilities requirement for those improvements for each
 7 said project and the Planning Board's condition of approval for the MD 4 at Westphalia Road
 8 Interchange and Interim Improvements.

9 SECTION 7. BE IT FURTHER RESOLVED that any Owner/Developer, its heirs,
 10 successors and/or assigns that have approved plans of subdivision that include a requirement for
 11 the construction of MD 4 at Westphalia Road Interchange and Interim Improvements to meet a
 12 finding of adequacy of transportation facilities shall be subject to the provisions of this
 13 Resolution. For projects that are determined to be vested or partially vested at the time of
 14 preliminary plan or record plat, the Fee shall not be applied to or required on any units or square
 15 footage corresponding to vested trips allocated to any project on a approved preliminary plan or
 16 record plat; and

17 SECTION 8. BE IT FURTHER RESOLVED that the Prince George's County Planning
 18 Board and/or the County Council, sitting as the District Council, shall require that any additional
 19 Owners/Developers, its heirs, successors and/or assigns that are required to construct the MD 4
 20 at Westphalia Road Interchange and Interim Improvements, in order to meet a finding of
 21 adequacy of transportation facilities for an approved preliminary plan of subdivision pursuant to
 22 Section 24-124 of the Prince George's Code, be subject to the provisions of this Resolution.

23 SECTION 9. BE IT FURTHER RESOLVED that the stakeholders will pursue State and
 24 federal approvals for the MD 4 at Westphalia Road Interchange and Interim Improvements.

25 SECTION 10. BE IT FURTHER RESOLVED that the County shall undertake to establish
 26 a Tax Increment Financing District ("Westphalia TIF District") for the Westphalia Town Center
 27 (excluding the Moore Property). The TIF funds will be used to offset costs related to the MD 4
 28 at Westphalia Road Interchange and Interim Improvements associated with the commercial
 29 development within the Westphalia Town Center (excluding the Moore Property).

30 SECTION 11. BE IT FURTHER RESOLVED that any Owner/Developer, its heirs,
 31 successors and/or assigns that are subject to the provisions of this legislation shall execute a
 32 Memorandum of Understanding ("MOU") with the County that sets forth the terms and

1 conditions for the payment of Fees by the Owner/Developer, its heirs, successor and/or assigns
 2 pursuant to the PFFIP substantially in the form set forth in Attached Exhibit C, attached hereto
 3 and made a part hereof as if fully expressed herein. The MOU for each project shall be executed
 4 prior to Planning Board approval of any final plat for that Project. Upon approval by the County,
 5 the MOU shall be recorded among the County land records and noted on the final plat of
 6 subdivision. Failure of the Owner/Developer or its heirs, successors and/or assigns to execute
 7 and record the MOU shall preclude the issuance of any building permit to any Owner/Developer,
 8 heirs, successors and/or assigns that are subject to the provisions of the legislation.

9 SECTION 12. BE IT FURTHER RESOLVED that any Owner/Developer, its heirs,
 10 successors and/or assigns that are subject to the provisions of this legislation and have a project
 11 with more than five hundred seventy-five (575) projected units or one hundred thousand
 12 (100,000) projected square footage shall join a Management Consortium ("Consortium"). The
 13 Consortium shall be formed by the owners/developers, their heirs, successors and/or assigns six
 14 months following the adoption of this Resolution but not later than the date of submission of
 15 construction plans and specifications for any part of the MD 4 at Westphalia Road Interchange
 16 and Interim Improvements to SHA and/or DPW&T for review specifically for the purpose of
 17 administering the planning, design and construction of the MD 4 at Westphalia Road Interchange
 18 and Interim Improvements.

19 SECTION 13. BE IT FURTHER RESOLVED that the County Executive, Chief
 20 Administrative Officer, and the Financial Officer of the County are hereby directed and
 21 authorized to deposit the Fees into the Fund, which will be managed by the Management
 22 Consortium pursuant to an agreement with the County Executive or designated County agency.

23 SECTION 14. BE IT FURTHER RESOLVED that the Fees deposited into the Fund may
 24 be issued from time to time pursuant to an ordinance or ordinances enacted in accordance with
 25 24-124 for the sole and restricted purpose of providing funding for the financing of the design,
 26 construction and administrative costs of the MD 4 at Westphalia Road Interchange and Interim
 27 Improvements. Such Ordinance or Ordinances shall specify, in general detail, the improvements
 28 to be financed through the issuance of the Funds and shall otherwise conform to the applicable
 29 requirements of this Resolution.

30 SECTION 15. BE IT FURTHER RESOLVED that the provisions of this Resolution are
 31 severable, and if any provision, sentence, clause, section or part hereof is held or determined to
 32 be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such

1 illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the
2 remaining provisions, sentences, clauses, sections or parts of this Resolution or their application
3 to other persons or circumstances. It is hereby declared to be the legislative intent that this
4 Resolution would have been passed if such illegal, invalid, unconstitutional or inapplicable
5 provision, sentence, clause, section or part had not been included herein, and as if the person or
6 circumstances to which this Resolution or any part hereof are inapplicable had been specifically
7 exempted herefrom.

8 SECTION 16. BE IT FURTHER RESOLVED that this Resolution is administrative in
9 nature and shall take effect upon approval by the County Executive.

Adopted this 26th day of October, 2010.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

NOTE: ATTACHMENTS A, B and C, ARE AVAILABLE AS AN INCLUSION FILE
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