

Prince George's County Council

Agenda Item Summary

Meeting Date: 11/30/2004
Reference No.: CB-095-2004
Draft No.: 2
Proposer(s): Knotts, Dean, Peters, Dernoga, Exum, Bland
Sponsor(s): Knotts, Dean, Peters, Dernoga, Exum, Bland
Item Title: A Subdivision Bill modifying the procedures for approval of final plats in cluster subdivision cases, to authorize appeals from Planning board to District Council of decisions on cluster subdivision final plats

Drafter: Steven M. Gilbert, Principal Counsel
Resource Personnel: Betty Horton-Hodge, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented:	9/28/2004	Executive Action:	12/8/2004 S
Committee Referral:	9/28/2004 - PZED	Effective Date:	1/10/2005

Committee Action: 10/6/2004 - FAV

Date Introduced: 10/19/2004
Public Hearing: 11/30/2004 - 10:00 AM

Council Action (1) 11/30/2004 - ENACTED
Council Votes: MB:A, WC:A, SHD:A, TD:A, CE:A, DCH:A, TH:-, TK:A, DP:A
Pass/Fail: P
Remarks:

AFFECTED CODE SECTIONS:

24-119, 24-137

COMMITTEE REPORTS:

Planning, Zoning & Economic Development Committee

Date 10/6/2004

Committee Vote: Favorable, 4-0 (In favor: Council Members Dernoga, Bland, Exum, and Harrington)

This legislation amends the Subdivision Regulations to allow for the appeal to the District Council of final plats acted on by the Planning Board in cluster subdivision cases.

Staff informed the committee of the referral comments that were received. The Principal Counsel provided a memorandum with the following analysis of the legislation. CB-95-2004 addresses one of the principal issues created by County Council v. Dutcher, 365 Md. 399, 780 A.2d 1137 (2001). There the Court of Appeals held that the Regional District Act, in § 7-117 of Article 28, Annotated Code of Maryland, does not authorize an appeal to the District Council from a Planning Board decision on a preliminary plan (or plat) of subdivision but would allow an appeal from action on a final plat. This bill will repeal the preliminary plat appeal provisions of the Subdivision Regulations and replace them with final plat appeal provisions. The bill applies, as do the provisions being repealed, only to cluster subdivisions, not subdivision cases generally.

The Regional District Act is the State law delegating and restricting the District Council's power to enact and amend the Zoning Ordinance and to make decisions in individual zoning cases. It also authorizes the County Council, acting with the County Executive, to approve and amend the Subdivision Regulations, but it gives the District Council only limited authority in the decision of subdivision cases. As to appeals to the District Council in subdivision cases, the Court in Dutcher concluded:

[A]lthough the County Council may yet choose to authorize administrative appeals to the District Council from the Planning Board's actions on final subdivision plats, an Administrative appeal is not authorized from the Planning Board's action on preliminary Plans of subdivision.

365 Md. At 427, 780 A.2d 1137. Dutcher involved a cluster subdivision, but the holding of the case applies to all subdivisions.

The Committee and Council should also note that it is the Subdivision Regulations, not State law in the Regional District Act, which defines the preliminary plan and final plat procedures and the issues to be decided in each proceeding. The Subdivision Regulations presently provide for most issues, including public facilities adequacy, to be decided at the time of approval of the preliminary plan. Section 7-116 (g) of Article 28 then provides that Planning Board (or Planning Commission) action on the preliminary plan may be petitioned for review to the Circuit Court.

CB-95-2004 provides only for final plat appeals to the District Council in cluster subdivision cases. It makes no substantive changes to the Subdivision Regulations provisions concerning matters to be reviewed at the time the Planning Board takes actions on preliminary and final cluster subdivision plats. The Subdivision Regulations will still provide that all substantive issues are decided in the preliminary plan process and that the major issue at final plat is conformance of the proposed final plat to the approved preliminary plan.

The Committee and Council should note that the present bill, in lines 6 and 7 on page 4, states that the Planning Board decision of issues for either "preliminary" or "final" plat may be reviewed on appeal to the Council, in cluster subdivision cases. The bill also provides in lines 24 and 25 on page 2 that a final plat appellant may challenge any preliminary or final plat decision the Planning Board makes in the cluster subdivision case. A decision should be made whether "preliminary plat" questions should be decided in a District Council appeal, at time of final plat. It is arguable whether Dutcher would permit decision of preliminary plan issues in final plat cases. If the Council decides to include preliminary plan questions in final plat cases, it may be prudent to add a severability clause to the bill.

The Office of Law reviewed CB-95-2004 and noted that the Dutcher case makes a distinction between "preliminary plans" and "final plats," and does not refer to preliminary plats. Also, Article 28, § 7-117, distinguishes between "plats" and "preliminary plans." Therefore, to maximize clarity, the Office of Law recommended that CB-95-2004 follow suit with this distinction in the new language and refer to "preliminary plans" and "final plats." Otherwise, the legislation is in keeping with the findings in the Dutcher case, and there appear to be no legal impediments to its adoption.

The Planning Board opposed CB-95-2004 as drafted and provided the following comments. The review of final plats are viewed by most jurisdictions throughout the country as a ministerial action often permitted to be performed by staff. The decisions made at the time of final plat are traditionally those that simply memorialize the decisions made at the time of preliminary plan in preparation for recordation of the plat. As drafted, CB-95-2004 would in essence allow for an appeal of a final plat for reasons not associated with the required findings for approval of final plats and allow for issues settled at the time of preliminary plan approval to be revisited. In many instances this appeal would affect preliminary plans that may have been approved years earlier and possibly already adjudicated properly through the court system. On its face, this bill looks to accomplish that which the Court of Appeals, as illustrated in the "Dutcher" decision (2001), has expressly prohibited. If the District Council desires to have appeal rights over final plats, the bill should be amended to focus on the very limited findings the Planning Board is required to make when it acts on final plats.

Additionally, in accordance with the "Dutcher" decision, CB-95-2004 should also utilize the opportunity to change

all Subtitle 24 references from Preliminary “Plat” to Preliminary “Plan,” which appears to be further confused by the bill. Finally, the legislation appears to allow a party of record in a preliminary plan to appeal a final plat, to which they may not be a party of record. This new provision would seem to raise several legal questions of standing.

The Planning Board’s comments also noted that all cluster subdivisions have a required Detailed Site Plan (DSP) process and the existing process provides for all DSP’s to either be appealed to or called up by the District Council. The Cluster development process already includes an appropriate provision for the District Council to act in an appellate fashion.

The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-95-2004.

Chairman Dernoga explained that the Court, in the Dutcher case, concluded that appeals of Preliminary Plans are not authorized due to existing wording in § 7-117 of Article 28, Md. Code Ann. Chairman Dernoga stated that CB-95-2004 was an imperfect solution to the problem created by Dutcher, but that since the development industry argued for the Dutcher interpretation of § 7-117, it should not complain about the Council’s adherence to the decision by providing for an appellate process at the final plat stage. Chairman Dernoga announced that the County Council would be sponsoring State legislation to return Article 28 to the pre-Dutcher rules, and expressed hope that the industry would support such State legislation. Chairman Dernoga stated that if the State legislation passed and returned the rules to their prior status, that the County Council would repeal CB-95-2004, because the present problem would be resolved.

Hamer Campbell, representing the Maryland National Capital Building Industry Association, spoke in opposition to this legislation. Aurelio Nepa spoke in support of the bill.

Council Member Harrington expressed concern that CB-95-2004 would slow the approval process with there being no time limit on when appeal matters must be heard by the Council. Mr. Harrington suggested that the Council impose stricter adequate public facilities regulations, especially for transportation, which can be implemented at subdivision review and may limit the appeals to Planning Board decisions.

Planning Department staff was present to respond to the committee’s comments concerning existing adequate public facilities regulations. Faroll Hamer, Development Review Division Chief, informed the committee that the staff evaluates proposed subdivisions for transportation adequacy based on the Guidelines for the Analysis of the Traffic Impact of Development Proposals (“Guidelines”). The “Guidelines” are reviewed by the Council and adopted by the Planning Board.

Council Member Bland expressed interest in reviewing the Guidelines, and possibly forming a task force, to provide recommendations on appropriate updates of these regulations.

BACKGROUND INFORMATION/FISCAL IMPACT:

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

In *County Council v. Dutcher*, 365 Md. 399, 780 A.2d 1137 (2001), the Court of Appeals held that § 7-117 of Article 28, Md. Code Ann., the Regional District Act, does not authorize an appeal to the District Council from Planning Board action on a preliminary subdivision plat.

But the Dutcher decision indicates that § 7-117 would authorize an appeal from a final plat.

This bill implements the Court of Appeals’ decision by permitting appeals from final plat decisions in cluster subdivision cases.

CODE INDEX TOPICS:

INCLUSION FILES:
