

**PRINCE GEORGE'S COUNTY COUNCIL  
AGENDA ITEM SUMMARY**

**Meeting Date:** 10/24/95

**Reference No.:** CB-85-1995

**Proposer:** Del Giudice and MacKinnon

**Draft No.:** 2

**Sponsors:** Del Giudice and MacKinnon

**Item Title:** An Ordinance incorporating mitigation techniques  
into the Zoning Ordinance

**Drafter:**

**Resource Personnel:** Mary Lane  
PZ&ED Committee Dir.

**LEGISLATIVE HISTORY:**

**Date Presented:** 9/26/95

**Executive Action:** \_\_/\_\_/\_\_ \_\_

**Committee Referral:**(1) 9/26/95 PZED

**Effective Date:** \_\_/\_\_/\_\_

**Committee Action:**(1) 10/18/95 NR(A)

**Date Introduced:** 10/24/95

**Pub. Hearing Date:** (1) 11/21/95 10:30 AM

**Council Action:** (1) 11/21/95 POSTPONED INDEFINITELY

**Council Votes:** AMc:A, DB:A, SD:A, JE:A, IG:A, WM:A, RVR:A, AS:A, MW:A

**Pass/Fail:** \_

**Remarks:** See CR-55-1995

**PLANNING, ZONING AND ECONOMIC DEV. COM.**

DATE: 10/18/95

Committee Vote: No recommendation as amended, 3-2 (In favor: Council Members MacKinnon, Russell and Wilson; in opposition: Council Members Gourdine and Maloney).

Frank Derro, Tom Masog, and Eric Foster, representing Planning Department, reported back to the Committee with the information that had been requested regarding other APF Ordinances. Four jurisdictions, Montgomery, Howard, Anne Arundel and Charles Counties had been surveyed, and it was found that each jurisdiction uses a different method for allowing varying levels-of-service in different geographic areas, none of which are identical to mitigation techniques utilized in Prince George's County. A memorandum containing this information was put into the record. William Blazek, representing the DPW&T, reported that the Department is currently holding \$4.25 million in developer contributions for road projects, collected from 75 developer entities for 125 projects.

Approximately \$1.75 million of this amount of being held for the construction of State roads, the remainder for County roads. Over the past five years, the County has been spending approximately \$20 million per year on road construction. Abraham Lincoln, President of the Coalition of Civic Associations, spoke in opposition to the legislation.

The discussion regarding the expansion of mitigation into the Zoning Ordinance focused on its current effectiveness in the subdivision process. A primary concern was the timing of the necessary road improvements in relation to the construction of the development, which in some cases has been inadequate. The broader issue of the ineffectiveness of the APF requirement that allows development to be approved if a necessary road project is 100% funded in the 6-year Capital Improvements Program was also discussed. It was noted that certain road projects have been 100% funded in the CIP, allowing adequacy to be found, but these projects were never constructed. The sponsor proposed the following amendment to CB-85-1995, which was accepted by a majority of the Committee members: "Where mitigation is utilized, all transportation facility improvements necessitated by the development shall be in place and operational prior to the issuance of the first building permit for the development." Committee members expressed interest in expanding this requirement into the Subdivision Regulations (Subtitle 24) in the next legislative year, for all transportation improvements required by the Adequate Public Facilities Ordinance. The Planning staff was also asked to provide further information regarding the problems that have occurred with the use of mitigation, particularly those noted by the citizens who testified on October 11.

**PLANNING, ZONING AND ECONOMIC DEV. COM.**

DATE: 10/11/95

Held in Committee.

Staff explained that CB-85-1995 and CR-55-1995 are companion pieces of legislation. CB-85-1995 incorporates the provisions regarding mitigation for the adequate public transportation facilities test into the Zoning Ordinance, and CR-55-1995 amends the adopted Guidelines for Mitigation to make the appropriate references to the use of this technique in the Zoning Ordinance. The County Code was initially amended in 1993 to allow for mitigation in the application of the APF test at the time of preliminary plat of subdivision, which was an amendment to Subtitle 24, the Subdivision Regulations. The following year, Guidelines were adopted by the Council that set forth the criteria that had to be met in order for mitigation to be considered for a specific project. These Guidelines only provided for the use of mitigation at the time of subdivision, since that is the only APF test for which statutory authority exists for mitigation. Since the adoption of the Guidelines, it has come to the attention of the Planning Department and the development community that mitigation cannot be considered for the APF tests that occur at other stages of the development review process, particularly for the Comprehensive Design and Mixed Use Zones. This has resulted in an inconsistent application of the APF test in these zones.

Frank Derro and Tom Masog, representing the Planning Department, explained the concept and practical application of the adopted mitigation techniques to the Committee. They also discussed the

adequate public facilities ordinance with the members. Carmen Anderson, Stan Fetter, representing the Prince George's County Civic Federation and speaking for the Lewisdale Civic Association, Aurelio Nepo, representing the Crestview Area Citizens' Association, Phil Warner, representing the Highpoint Citizens' Association, and Roger Goll, representing the Highbridge Civic Association, spoke in opposition to the legislation. Tom Haller, representing the Chamber of Commerce, spoke in support of the legislation. There was concern expressed by the Committee members that the County and State are not fulfilling their obligations when they are partially responsible for the improvement of a road. Following the testimony and discussion, the Committee agreed to hold the legislation for one week to allow staff to research the APF Ordinances and use of mitigation in surrounding jurisdictions. It was also requested that a representative of the Department of Public Works and Transportation be in attendance at the next meeting to provide information regarding the amount of money that has been collected from developer contributions through mitigation.

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

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

In 1993, the Council enacted an amendment to the Subdivision Regulations (Subtitle 24) that incorporated mitigation techniques for transportation facility inadequacy into the APF test. In 1994, the Council adopted, by resolution, the guidelines for this type of mitigation. However, these guidelines apply only to the APF test performed at the time of preliminary plat of subdivision, and not to the tests imposed at other stages of the development process that are governed by the Zoning Ordinance. As a result, a consistent APF test cannot be applied to projects that are subject to the test at various stages of the review process. This legislation incorporates the guidelines that were previously adopted for subdivision APF tests into the Zoning Ordinance, making them applicable in all cases governed by the Ordinance for which an APF test is applied. For cases that are not normally appealable to the Council, an appeals process is provided that allows the Council to make the final decision on mitigation.

### **CODE INDEX TOPICS:**