

GO and T&E COMM #1
June 20, 2019

MEMORANDUM

June 18, 2019

TO: Government Operations and Fiscal Policy Committee
Transportation and Environment Committee

FROM: Linda McMillan, Senior Legislative Analyst *LM*

SUBJECT: **Worksession: Declaration of No Further Need: Disposition of County Public Parking Lot 43 located at 8009 Woodmont Avenue, Bethesda, Maryland**

PURPOSE: Recommendation to Council

Expected for this session:

Al Roshdieh, Director, Department of Transportation
Jose Thommana, Chief, Division of Parking, Department of Transportation

Background

The County's property disposition law requires, with certain exemptions, that County-owned property being sold or being leased for more than two years, have a Declaration of No Further Need approved by the Council. The Executive must provide the Council with the material terms of the sale or lease, any information required by the Council to make its decision and must advertise the Declaration of No Further Need in the County Register (it is issued as an Executive Regulation). The Council must meet certain deadlines for action or extension. The Council is required to hold a public hearing, unless it affirmatively waives this requirement. The Council must affirmatively approve any recommendation from the Executive to dispose of property in a below market transaction. Approval of a Declaration of No Further Need authorizes the Executive to dispose of the property. The Executive is not required to dispose of the property and the Council is not executing or approving a contract when it approves a Declaration of No Further Need.

The resolution to approve the disposition of the Bethesda Parking Lot District's Public Parking Lot #43, located at 8009 Woodmont Avenue was introduced at the Council's January 22, 2019 session. It is attached at © 1-2. A public hearing was held on February 12, 2019. There

were no speakers. On February 26, 2019 the Council extended the time for consideration of this property disposition to July 31, 2019 (©7-8).

The Executive's memo and Declaration of No Further Need are attached at © 3-6. The main provisions are:

- The property will be sold to Aksoylu Properties, LLC in a fee-simple, full market transaction. The parcel is approximately 7,700 square feet*. The appraised value was \$7,500,000 and an annual escalator is in place.
- The developer responded to a Request for Development Proposal issued by the County. No department or agency expressed an interest in reuse of the property.
- Aksoylu Properties, LLC, will develop a mixed-use project with at least 310 residential units. Twenty percent of the units will be Moderately Priced Dwelling Units (MPDU) affordable to households whose incomes do not exceed 65% of Area Median Income (AMI).
- The development will include approximately 13,638 square feet of commercial and retail space.
- There will be at least 354 parking spaces, or such number as required for housing and retail uses.

*This is incorrect, the parcel is approximately 12,500 square feet as noted in the RFDP, appraisal, and documents to the Planning Board.

Discussion Issues

Request for Development Proposals - 2014

The Department of Transportation issued a Request for Development Proposal for PLD Lot 43 that required response to be received by October 31, 2014. The RFDP says:

- The property is located at 8009 Woodmont Avenue and is approximately 12,500 square feet in size and is an improved surface parking lot.
- If it is redeveloped as mixed-use retail and residential, the County is seeking to include a minimum of 20% of units affordable to households with incomes no greater than 60% of area median income, deeper levels of affordability are preferable.
- The redevelopment must meet parking requirements without relying on parking provided by the Bethesda Parking Lot District.

Executive Announces Agreement - 2015

On January 14, 2015, County Executive Leggett issued a news release saying that Aksoylu Properties, LLC was selected to redevelop PLD Lot 43 and that it would be part of several properties that have been assembled to be known as 8000 Wisconsin Avenue. The news release said that the project would have 248 market rate units and 62 moderately priced units (20%). The release says the County will receive fair market value for the property. (© 9)

2018 Scope of Project

PLD Lot 43 is now part of a development that consists of several assembled properties and is known as 8000 Wisconsin Avenue. Information from the May 2018 Sketch Plan memo and June 2018 review from the Bethesda Downtown Design Advisory Panel says:

- The project proposed is a mixed-use, transit-oriented development that will include approximately 430,000 square feet of gross floor area, including up to 410,000 square feet of residential use.
- Approximately 441 multi-family dwelling units.
- Up to 20,000 square feet of retail uses.
- Project will provide 25% MPDUs (111 MPDUs).
- Below grade parking for approximately 312 vehicles. The applicant requested benefit points for providing fewer than the maximum number of parking spaces.
- In March 2018, DHCA reviewed the MPDU assumptions per the Sketch Plan and request an adjustment to reduce efficiency MPDUs by one and add one two or three-bedroom unit, noting that the applicant intends to address the overall bedroom mix at Preliminary/Site Plan.

Inconsistencies between Declaration of No Further Need/Executive Order and Current Project

Size of the parcel: Executive Order 197-18 incorrectly states that the property is approximately 7,700 square feet in size instead of 12,500 square feet. This should be corrected before the Council action.

Parking Spaces: Executive Order 197-18 says that the proposed project will include “structured parking including at least 354 parking spaces or such number of parking spaces needed to provide all required parking for the housing and retail uses...” The 2018 information says parking will be for approximately 312 vehicles. The final number will, of course, comply with zoning requirements, but the 354 originally required per the disposition also noted that parking must not rely on parking provided by the Bethesda Parking Lot District. Executive staff should clarify whether they said 354 spaces because of PLD needs or whether the lower number of spaces is acceptable. Since the Executive Order must be corrected for the parcel size, it would be best to update the parking requirement as well.

Affordability of MPDUs: Executive Order 197-18 says that the terms of the disposition are 20% MPDUs serving households whose income does not exceed 65% AMI. The developer is providing 25% MPDU to satisfy other requirements and gain certain financial benefits, and this is not an issue regarding the material terms of the disposition. However, the affordability for MPDUs in high-rise developments can be based on household income of 70% AMI. The Joint Committee should hear from Executive staff about whether the MPDUs required as a term of the disposition will be affordable to households at 65% AMI.

Full Appraised Value - Price to be Paid

The County appraised the property in 2015 and after negotiations entered into an agreement for a base price of \$7.5 million (the appraised amount), with a 3% annual escalation rate. The escalation began in 2017 and the current payment required per the agreement is \$8.055 million.

County Code Section 60-2 (© 10) says that the county may “utilize any property acquired with parking lot district funds for purposes other than off-street parking or may sell, lease or otherwise dispose of property or portions of property...on the condition that the county reimburse the district affected the fair market value of the property disposed of or used for purposes which do not provide for off-street parking.” The Code allows the Executive to lease PLD property for less than fair market value for two specific types of affordable housing: productivity housing and opportunity housing. The affordable housing in this project is not either of these and the property is recommended to be sold.

With certain exceptions, County Code Section 11B-45, Disposition of Real Property, requires the Council to waive the requirement for disposition of full market value transaction. This part of the Code defines the full market value as the value “determined by at least one professional appraisal of the property obtained by the Director within 12 months before a declaration is submitted to the Council.” (© 11). Because the appraisal used for this disposition was more than 12 months old when the Council received the Declaration of No Further Need, Council staff requested an updated appraisal. The new appraisal states several assumptions, including development using the optional method, and gives a current value of \$9 million; \$945,000 more than the amount expected to be paid by the applicant.

This situation identifies a conflict in the two sections of County Code. If the County expects to consider the disposition of additional PLD properties for development, specifically for affordable housing, this should be reconciled. However, this situation and Declaration is before the Council now.

Council staff believes that the Council has the following two options in order to comply with the law as currently in place:

1. Approve the agreed upon price for the sale of the property by waiving the full market transaction. Include in the resolution a requirement to “pay” the Parking Lot District the additional \$945,000 from the General Fund. The County Code does not say when the Parking Lot District must receive the full value, so this can be done over, for example, a four-year period.
2. Do not approve the Declaration of No Further Need because it is not a full market value transaction. The Executive would have to re-negotiate material terms and send a new Declaration that includes the full market value.

Council staff recommendation

Council staff recommends approval with the following conditions:

- The Executive must issue an amended Executive Order that corrects both the background and action sections to state that the property is approximately 12,500 square feet.
- If it is acceptable to have fewer than the 354 parking spaces that were identified in the material terms, amend the language in the Executive Order (as it must be re-issued anyway) to reflect that parking will be in compliance with zoning requirements but the project will not rely on the use of any other PLD parking facilities.
- Receive written confirmation that DHCA will require the MPDUs to be affordable to households with an income of 65% of area median income. DHCA must approve an MPDU agreement for any project to move forward. Executive staff has told Council staff that the applicant is assuming a 65% AMI.
- Approve the disposition with a waiver of the full market value requirement. The applicant entered into an agreement that at the time was based on an appraisal with an escalation clause. In this instance, Council staff is not recommending disapproval, although staff is concerned that there is a significant difference between the new appraisal and the amount that will be paid.
- Include the following language in the approval resolution: “The Council waives the requirement for a full market value disposition. The Fiscal Year 2021-2026 Fiscal Plan for the Bethesda Parking Lot District must include any transfers from the General Fund needed to comply with any requirement that the Parking Lot District be reimbursed at fair market value.”
- Discuss the issue of full market value when the GO Committee holds a worksession on Bill 13-19, County Property – Disposition – Reuse Analysis. The reason for having a 12-month requirement was to ensure that the value the County receives is based on relatively current conditions (zoning, other sales in the area). At the same time, if the Council determines that an older agreement still provides an appropriate value for a Parking Lot District or other County asset, it should be able to approve such a transaction.

Transfer to Housing Initiative Fund (HIF)

County Code Section 11B-45 (f)(1) says, “Notwithstanding any law to the contrary but subject to any applicable bond covenants, 25 percent of the proceeds from the sale of real property owned by the County must be transferred to the Montgomery County Housing Initiative Fund to promote a broad range of housing opportunities in the County.” (© 12). Executive staff has told Council staff that the Executive intends to make this transfer (under certain circumstances it can be waived.)

Attached:

Resolution to approve Declaration of No Further Need	© 1-2
January 7, 2019 memo from County Executive with material terms	© 3-4
Executive Order 197-18	© 5-6
Resolution to extend time for consideration	© 7-8
January 14, 2015 News Release	© 9
County Code Section 60-2	© 10
County Code Section 11B-45	© 11-14

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of Declaration of No Further Need: Disposition of County Public Parking Lot 43 located at 8009 Woodmont Avenue, Bethesda, Maryland.

Background

1. Montgomery County Code §11B-45 requires the Council to approve a Declaration of No Further Need before the Executive can dispose of real property that has more than nominal value. Prior to seeking Council approval of a Declaration of No Further Need, the Executive must:
 - (a) submit all material terms of the proposed disposition and any appraisal the Executive relied on in setting the property's market value to the Council; and
 - (b) publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property.If the Council, by resolution, approves the Executive's Declaration of No Further Need, the Executive may dispose of the property for fair market value.
2. On January 9, 2019, the Council received a memo from County Executive Elrich recommending the Council approve a Declaration of No Further Need for Public Parking Lot 43 located at 8009 Woodmont Avenue in the Bethesda Parking Lot District. The terms are for a fee-simple, full market value sale to Aksoylu Properties, LLC. The memo explains that a no department or agency expressed an interest in reuse of the property. The County issued a request for proposals and has determined that the property should be sold to Aksoylu Properties, LLC, the only developer who could productively use the property. The development will include at least 310 residential units, of which 20% will be Moderately Priced Dwelling Units affordable to households whose income does not exceed 65% of Area Median Income, at least 354 parking spaces, and approximately 13,638 square feet of commercial and retail space.
3. The County Executive advertised Executive Regulation 197-18, Disposition of County Property: 8009 Woodmont Avenue, Bethesda, in the November 2018 County Register.

This is the County Executive's Declaration of No Further Need. No comments were received.

4. The Government Operations and Fiscal Policy Committee and Transportation and Environment Committee held a joint worksession on XXXXXX and recommend XXXXX.
5. A public hearing was held on February 12, 2019.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Declaration of No Further Need for the Bethesda Parking Lot District's Public Parking Lot 43, located at 8009 Woodmont Avenue, Bethesda, Maryland, is approved and the property may be disposed of in a full market transaction as described in the material terms provided to the Council on January 9, 2019 and in Executive Order 197-18.

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.,
Clerk of the Council



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Marc Elrich
County Executive

January 7, 2019

To: Nancy Navarro, President
Montgomery County Council

From: Marc Elrich *ME*
Montgomery County Executive

Subject: Executive Order 197-18, Disposition of County Public Parking Lot 43
located at 8009 Woodmont Avenue, Bethesda, MD

This memorandum is to request the Disposition of Public Parking Lot 43 in the Bethesda Parking Lot District (PLD) and to transmit the material items of the fee simple sale of Lot 43 to Aksoylu Properties, LLC for full market value consideration.

This disposition, published in the November County Register, will facilitate the development of the property along with adjoining properties into a mixed-use development project that would include at least 310 residential units, of which twenty percent (20%) will be moderately priced dwelling units ("MPDUs") serving households whose income does not exceed sixty-five percent (65%) of the Area Median Income for the Washington Metropolitan Statistical Area. The development proposal is consistent with the Bethesda sector plan and would include approximately 13,638 square feet of commercial and retail space, underground structured private parking including at least 354 parking spaces, and other features and amenities.

This parcel, currently a Public Parking Lot (Lot 43) in the Bethesda PLD, is approximately 7,700 square feet. The Department of Transportation (MCDOT) conducted a reuse analysis for this parcel, no Departments or Agencies expressed an interest in the property, consequently MCDOT is recommending sale of the property for full market value to Aksoylu Properties, LLC. Following an extensive RFP process, Aksoylu Properties, LLC has entered into an agreement with the County to acquire this parcel and is the only property developer who could productively use this property.

As required under Section 11b-45 of the Montgomery County Code, an Executive Order declaring that the County-owned site is no longer needed for public use must be issued. Attached please find an Executive Order (197-18) published in the November 2018 County Register to give notice of my intent to proceed with disposition of Lot 43 to Aksoylu Properties,

Marc Elrich
January 7, 2019
Page 2 of 2

LLC for full market value and that the property is no longer needed for public use. The required advertisement for the material terms has now concluded without any comments or questions being received from the public.

With the conclusion of this 30-day review period, I now make the declaration of no further need which will start the Council 60-day process that includes either holding or waiving a public hearing, holding a Council committee work session, and finally full Council action to consider approval of this declaration. My staff is available to help facilitate the approval process if needed.

I hope this information is helpful. If you have any question, please contact Jose Thommana, Division Chief, Division of Parking Management, Department of Transportation at 240-777-8740 or jose.thommana@montgomerycountymd.gov.

Attachment

Cc: Al Roshdieh, Director, MCDOT
Jose Thommana, Chief, Division of Parking, MCDOT
Eric Willis, Section Chief of Real Estate, MCDOT
Jeffrey Riese, Chief Engineering Maintenance, MCDOT
Jeremy Souders, Chief Administrative Services, MCDOT



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Disposition of County Property: 8009 Woodmont Avenue, Bethesda	Executive Order No. 197-18	Subject Suffix
Montgomery County Department of Transportation	Department No.	Effective Date Nov 01, 2018

BACKGROUND

WHEREAS, the County acquired 8009 Woodmont Avenue (the "Property") in 1961 to operate as a public parking facility; and

WHEREAS, the property is currently operating as a County public parking facility (Lot # 43 – Woodmont Parking Lot) providing thirty-seven (37) surface parking spaces; and

WHEREAS, the property is approximately 7,700 square feet in size, is zoned as CR 3.0, C 1.0, R 2.75, H 175, and is largely unimproved except for a sidewalk; and

WHEREAS, the value of the property was appraised as \$7,500,000.00 on May 10, 2015; and

WHEREAS, a reuse analysis was conducted to determine if any County Department or Outside Agency had a need to use the Property for a public purpose; and

WHEREAS, through the reuse analysis, it was determined that there is no interest in the Property and the County Executive determined that the Property is no longer needed for public use; and

WHEREAS, the County entered into a Purchase and Sale Agreement with Aksoylu Properties, LLC (the "Developer") for the full appraised value of \$7,500,000.00, plus an annual escalator to ensure payment of full market value; and

WHEREAS, the Developer would develop a mixed-use project on the Property and on adjacent land owned by the Developer. The proposed project would include at least 310 residential units, of which twenty percent (20%) will be moderately priced dwelling units ("MPDUs") serving households whose income does not exceed sixty-five percent (65%) of the Area Median Income for the Washington Metropolitan Statistical Area, approximately 13,638 square feet of commercial and retail space, underground, structured parking including at least 354 parking spaces or such number of parking spaces needed to provide all required parking for the housing and retail uses, and such other features and amenities as may be determined by the Developer; and

WHEREAS, the County Executive has determined the property is no longer needed for public use and should be conveyed to the Aksoylu Properties, LLC to replace Lot 43 with a multi-family housing and retail development that includes below grade private parking; and



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Disposition of County Property: 8009 Woodmont Avenue, Bethesda	Executive Order No. 197-18	Subject Suffix
Montgomery County Department of Transportation	Department No.	Effective Date Nov 01, 2018

WHEREAS, in accordance with the provision of Montgomery County Code Section 11B-45, Disposition of Real Property, the County Executive must issue an Executive Order declaring that County-owned land is no longer needed for public use.

ACTION

In consideration of the above recitals, the County Executive hereby declares that there is no further public need for the County Property located at 8009 Woodmont Avenue, Bethesda, MD 20816, comprising approximately 7,700 square feet, and hereby directs the Department of Transportation to take all steps necessary to dispose of the Property in the manner described in this Executive Order, including disposing of the Property to Aksoylu Properties, LLC for full market value.

Approved as to Form and Legality
Office of the County Attorney

By:
Date: 10-4-18

APPROVED

Isiah Leggett
County Executive

Distribution:

- County Council
- County Attorney
- Department of Transportation
- Department of General Services

Resolution No.: 19-44
Introduced: February 26, 2019
Adopted: February 26, 2019

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Extend the Time for Council Action for Approval of Declaration of No Further Need: Disposition of County Public Parking Lot 43 located at 8009 Woodmont Avenue, Bethesda, Maryland

Background

1. Montgomery County Code §11B-45 requires the Council to approve a Declaration of No Further Need before the County Executive can dispose of real property that has more than nominal value. Prior to seeking Council approval of a Declaration of No Further Need, the Executive must:
 - (a) submit all material terms of the proposed disposition and any appraisal the Executive relied on in setting the property's market value to the Council; and
 - (b) publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property.

The Council must act on the Declaration of No Further Need within 60 days of receiving the Declaration or it is automatically approved. The Council may extend the 60-day deadline by resolution if the Council President has informed the Executive, within 30 days of receiving the proposed action, that the Council has not received all information necessary to review the proposed action.

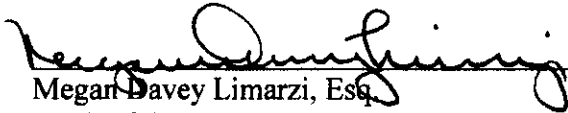
2. On January 9, 2019, the Council received a memorandum from County Executive Elrich that recommended the County dispose of County Public Parking Lot 43 located at 8009 Woodmont Avenue in the Bethesda Parking Lot District. The memo included Executive Regulation 197-18, which is the Executive's Declaration of No Further Need.
3. The Council held a public hearing on the proposed disposition on February 12, 2019.
4. On February 5, 2019, the Council President notified the Executive that the Council might need to extend the time for consideration to allow time for an updated appraisal as required for a fair market value disposition.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The time for Council action on the Declaration of No Further Need contained in Executive Order 197-18, Disposition of County Property: 8009 Woodmont Avenue, Bethesda, is extended to July 31, 2019.

This is a correct copy of Council action.



Megan Davey Limarzi, Esq.

Clerk of the Council



News Releases

MONTGOMERY COUNTY, MARYLAND



For Immediate Release: 1/14/2015

Leggett Announces Public/Private Partnership in Bethesda to Construct Mixed Use Development on Parking Lot 43; 20 Percent of Housing Will be Affordable

Montgomery County Executive Ike Leggett today announced that a developer has been selected to redevelop a County parking lot (known as Lot 43) located at 8009 Woodmont Avenue, Bethesda into a mixed use project that includes housing, retail/commercial space and underground parking. The proposal outlines a plan to develop the site --at no cost to the County and with all private financing. The project will increase the area's stock of affordable housing by guaranteeing that at least 20 percent of the units built will be set aside as moderately priced residences and provide sufficient private parking to eliminate any reliance on other public parking facilities in Bethesda. In exchange, the County will receive the fair market value of the parking lot property.

"This is a win-win for the County that provides great public benefits through enhanced economic development and the addition of affordable housing with more than 60 new units -- all at no cost to the public," said Leggett. "Bethesda is already an exciting place in which to live, work and play, and this project will make it even better."

The Montgomery County Department of Transportation (MCDOT) spearheaded the agreement.

The developer has assembled properties in the 8000 block of Wisconsin Avenue for the project that will include 248 market rate residential units, 62 moderately priced residential units, 13,638 square feet of commercial and retail space and 354 underground parking spaces. Under County code, the developer is only required to provide 39 units of affordable housing, or 12.5 percent of the total.

"I look forward to working very closely with the Bethesda community and Montgomery County to develop a successful mixed use project of which we can all be very proud," said the project's developer Ahmet Aksoylu, president of Aksoylu Properties, LLC. "This project will contribute to the economic growth of the County and increase the inventory of the County's affordable housing stock through strategic redevelopment of underperforming public parcels in downtown Bethesda."

Print

Montgomery County Code

Sec. 60-2. Acquisition of land for parking lots; improvement, operation, maintenance and sale or lease thereof.

(a) To provide off-street parking facilities for the use of the public in and for each district, the County may acquire by purchase, lease, condemnation, or otherwise any land in a district, or any land outside any district, if the land is located in whole or in part within 600 feet of the boundary of any district as created or modified, after public hearing under Section 11B-46. After acquiring any land, the County may improve the land for use as off-street parking lots and operate and maintain a parking facility under this Chapter.

(b) Notwithstanding any other provision of this chapter, the county may utilize any property acquired with parking lot district funds for purposes other than off-street parking or may sell, lease or otherwise dispose of property or portions of property, including mineral rights, air rights, and easements, on the condition that the county reimburse the district affected the fair market value of the property disposed of or used for purposes which do not provide for off-street parking. However, the county need not reimburse a parking lot district at fair market value for the transfer of interests in property as authorized under subsection (c). The county executive may issue regulations under method (2) to implement this subsection.

(c) Locating affordable housing near property devoted to commercial, industrial, and general business uses benefits businesses located in the district. Therefore, the county executive may, for less than fair market value, lease property acquired with parking lot district tax funds or transfer the air rights or an easement to property acquired with parking lot district tax funds, if the county executive, by executive order:

(1) provides that the interest in property to be transferred must be used for:

- (A) a productivity housing project under chapter 25B, Article 4, Productivity Housing Program; or
- (B) an opportunity housing project under chapter 56, Article VI, Housing Opportunity Act.

However, the county executive may allow up to 20% of the gross floor area of the housing project to be used for retail purposes if the retail use is compatible with the surrounding property;

(2) determines that the property to be transferred is not reasonably expected to be needed for parking in the foreseeable future;

(3) determines that the property to be transferred is not required to assure revenue necessary to pay outstanding or planned bonded indebtedness; and

(4) determines that the transfer of property is consistent with the obligations of the County under any outstanding bond agreements. (Mont. Co. Code 1965, § 44-2; 1985 L.M.C., ch. 36, § 1; FY 1991 L.M.C., ch. 20, § 1; 2010 L.M.C., ch. 49, § 1.)

Sec. 60-3. Taxes to be levied.

(a) The council is hereby authorized, beginning with the fiscal year 1968-69, to levy and cause to be collected annually special taxes in the nature of ad valorem taxes not to exceed the following amounts on the described property within each district:

(1) A tax of one dollar (\$1.00) on each one hundred dollars (\$100.00) of assessed value of real property, including both the value of the improvements, if any, and the value of the land, which is used in whole or in part

Print

Montgomery County Code

Sec. 11B-45. Disposition of real property. [Note]

(a) The County Executive must adopt regulations to establish a process for the disposition of any real property owned or controlled by the County, other than surplus school facilities and property of nominal value identified in the regulation. The regulations must provide for:

- (1) coordination among public agencies, including any municipality in which the real property is located;
- (2) opportunity to reserve property for alternative public use;
- (3) comparative analysis of reuse proposals before any disposition actions; and
- (4) public notice and hearing on possible dispositions before final decision on disposition, except that the County Executive may waive the public hearing requirement for any real property that:
 - (A) has nominal value; or
 - (B) is recommended to be reused by the County government.

(b) As used in this Section, disposition means a sale, a lease or license for a term of 2 years or longer, or a lease or other document which includes an option to buy. If a license or lease for an initial term of less than 2 years is extended or renewed beyond 2 years, that extension or renewal is a disposition. Disposition does not include:

- (1) a lease of or license to use any parkland, or any facility located on parkland, that the Parks Department operates or manages for the County;
- (2) a license to use County property that is coterminous with a contract for services performed by the licensee;
- (3) a license to use County property to provide child or adult day care services;
- (4) a sale or lease of property to the Housing Opportunities Commission for housing development;
- (5) a sale of one or more housing units obtained by the County using its right of first refusal under Section 11A-3 or 11A-4, Chapter 25A, or Chapter 53A, and resold for not less than the County paid; or
- (6) a transfer of County right-of-way that is needed to implement a road or transit project that is included in the applicable master or other land use plan.

(c) Unless the County Council waives this requirement under subsection (e)(2)(B), the Executive must not dispose of any property owned or controlled by the County at less than full market value. In case of a sale of property, full market value must be determined by at least one professional appraisal of the property obtained by the Director within 12 months before a declaration is submitted to the Council.

(d) Before seeking Council approval of a declaration of no further need under subsection (e), the Executive must submit to the Council and allow the Council at least 30 days to comment on:

- (1) all material terms of the disposition, including the price or rent to be paid and any associated economic incentives; and
- (2) any appraisal that the Executive relied on or will rely on in setting the property's market value.

11

In addition, the Executive should when practicable submit for prior Council review the parameters and material terms of a disposition that has not begun to be negotiated. Any document submitted under this subsection to the extent the document need not be disclosed under state law, must be treated as confidential.

(e) In addition to the process required under subsection (a), before the disposition of any real property owned or controlled by the County (other than a property which has either nominal value or an appraised value lower than \$100,000) becomes final:

(1) the Executive must publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property or, if the disposition is a lease or license, has no further need for the property during the term of the lease or license; and

(2) the Council, by resolution adopted after the Council holds a public hearing with a least 15 days advance notice, must approve;

(A) the Executive's declaration of no further need; and

(B) any disposition of the property at less than full market value.

The Director must adjust the \$100,000 floor in this subsection on July 1 every third year by the percentage increase or decrease in the applicable Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index, during the previous 3 calendar years, rounded to the nearest \$1000. The Council may waive the public hearing required by this subsection if it concludes that a hearing on a particular proposed disposition is not necessary to properly assess the proposed action. If the Council does not act under this subsection within 60 days after the Executive has submitted the proposed action, the proposed action is automatically approved. The Council may extend the 60-day deadline by resolution if the Council President has informed the Executive, within 30 days after the Executive submitted the proposed action, that the Council has not received all information necessary to review the proposed action. If the 60 day deadline would fall during August or from December 15 through December 31, the deadline is automatically extended until the next scheduled Council session. This subsection and subsection (c) do not apply to any disposition of property that will be used primarily for housing development if the recipient legally commits to the Director of the Department of Housing and Community Affairs that at least 30% of the housing units built on the property will be moderately priced dwelling units or other units that are exempt from the development impact tax under Section 52-41(g)(1)-(4).

(f) (1) Notwithstanding any law to the contrary but subject to any applicable bond covenants, 25 percent of the proceeds from the sale of real property owned by the County must be transferred to the Montgomery Housing Initiative Fund to promote a broad range of housing opportunities in the County.

(2) This subsection does not apply to real property in an area designated under Chapter 56 as an urban renewal area.

(3) In this subsection:

(A) "Proceeds" means the sale price of the real property, minus expenses the County incurs from the sale.

(B) "Real property" includes the right to develop the space above real property ("air rights").

(4) The County Executive may waive this subsection for the portion of any proceeds from a sale that the County uses for a related purchase of real property. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 9, § 1.)

(g) The Executive must adopt regulations to establish a process for disposition of surplus schools. As used in this Section, "surplus school" means any building used at any time as a public school and later conveyed to the County and all or part of the land which constitutes the school site. The regulations must provide for:

12

- (1) the ultimate decision by the County Council, as required by state law, whether to dispose of a surplus school and its site, including any fields and recreational areas;
- (2) a statement from the Board of Education before a surplus school is disposed of that the school will not be needed for public educational uses in the foreseeable future, and in any case at least for 10 years after the proposed sale;
- (3) a statement from the Executive that the surplus school will not be needed for public recreational or human service uses in the foreseeable future;
- (4) (A) timely referral to the Planning Board for its review under state law of any proposal to dispose of a surplus school, and
 - (B) a statement from the Board that the site will not be needed for park uses;
- (5) an opportunity to offer alternative proposals before the Executive recommends a disposition to the Council;
- (6) a public hearing by the Executive or the Executive's designee, after reasonable notice, before any proposal to dispose of a surplus school is forwarded to the Council for action;
- (7) a preference for the disposition that best retains public access to the school and its athletic and recreational facilities; and
- (8) inclusion in any sale or lease with an option to buy of a clause that retains the County's right to first refusal of any later sale of the property, subject to any mortgage or deed of trust then on the property, at fair market value.

If the Council does not receive any statement required under paragraphs (2)-(4), it may nevertheless dispose of a surplus school if it finds, considering all factors, that the public interest will be best served by disposing of the school.

(h) The Executive must adopt regulations to establish a process for leasing surplus schools. The regulations would apply in each case after the Council has adopted a reuse resolution which indicates what types of uses are acceptable. At a minimum, the regulations must require:

- (1) a process that offers potential users a fair opportunity to present reuse proposals to the Executive's designee within the scope of uses approved by the Council reuse resolution;
- (2) referral of each proposed lease to the Council, Planning Board, and Board of Education for comment;
- (3) a reasonable opportunity for public comment before any lease is signed on behalf of the County;
- (4) continued community use of facilities such as auditoriums, gymnasiums, and playgrounds and playing fields except to the extent community access would unduly interfere with the lessee's use of the property; and
- (5) preservation of the County's right to retrieve the property on reasonable notice for public school use when requested by the Board of Education. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 20, § 2; 2012 L.M.C., ch. 12, § 1; 2016 L.M.C., ch. 7, § 1; 2018 L.M.C., ch. 3, § 1.)

Editor's note—See County Attorney Opinion dated 1/31/00 indicating that the County may consent to the recording of a notice in the land records reflecting the State's right of recovery under the Community Facilities Capital Grant statute.

2012 L.M.C., ch. 12, § 2 (in part) and § 3, state:

Sec. 2. Applicability. This Act takes effect on the date when it becomes law [May 15, 2012]. County Code Section 11B-45, as amended by Section 1 of this Act, does not apply to any disposition of County property for which a legally enforceable contract, lease, or other agreement was signed by all parties before that date.

13

Sec. 3. Applicability - White Flint Sector Plan area. Section 11B-45(b)-(e), as amended by Section 1 of this Act, does not apply to any sale by the County of real property located in the boundaries of the White Flint Sector Plan if: (a) the property was acquired by the County from the State Highway Administration; (b) the property was originally acquired by the State Highway Administration to construct Montrose Parkway; and (c) the sale by the County is completed on or before December 31, 2012.

2003 L.M.C., ch. 4, states: The Laws of Montgomery County 2003 are amended as follows:

(a) Notwithstanding those provisions of County Code Section 11B-45 or Regulation 4-99AM referred to in subsection (b) to the contrary, the County Executive may contract with the Yeshiva High School of Greater Washington, Inc. to:

(1) modify an existing lease-purchase agreement for the former Belt Junior High School to allow the County to reacquire that school and transfer it to Montgomery County Public Schools for public educational uses; and

(2) at the same time enter into a lease agreement for the former Montgomery Hills Junior High School that would allow Yeshiva High School of Greater Washington, Inc. to lease and occupy that school after the County has made certain improvements to it.

(b) Any agreement authorized by subsection (a) may:

(1) be adopted without following the reuse process in sections 4.1 through 4.7 of Regulation 4-99AM;

(2) have a longer term and greater notice of termination than required by section 6 of Regulation 4-99AM;

(3) limit community use of interior spaces as necessary to provide the lessee adequate security;

(4) allow the lessee to make certain minor capital improvements without County approval, and conform the rent credit provisions accordingly; and

(5) modify the capital improvement reimbursement provisions of section 6.9 of Regulation 4-99AM.

(c) Any agreement authorized by subsection (a) must:

(1) be subject to the approval of the County Council; and

(2) be referred to the Planning Board under state law in a timely manner for its review.

1999 L.M.C., ch. 20, § 3, reads: "Applicability. Section 11B-45, as amended by this Act, applies to any lease or other disposition of a closed school, as defined in that Section, that takes effect after this Act takes effect [January 6, 2000], including any renewal of a lease previously in force, but not to any extension of a lease previously in force without any material change in the terms of the lease. Any lease or other disposition of a closed school after the effective date of this Act [January 6, 2000] must conform to Section 11B-45 and the regulations required by Section 11B-45." 1999 L.M.C., ch. 20, § 4, reads: "Regulations. The County Executive must submit to the Council for its approval the regulations required by Section 11B-45, as amended by Section 2 of this Act, not later than 30 days after this Act takes effect [January 6, 2000]."