GO ITEM 1
October 28, 2020
Worksession

M E M O R A N D U M

October 23, 2020

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 13-20, County Property – Disposition – Affordable Housing

PURPOSE: Worksession – Committee to make recommendations on Bill[1]

Expected attendees:

DHCA Director Aseem Nigam
Greg Ossont, DGS Deputy Director

Bill 13-20, County Property – Disposition – Affordable Housing, sponsored by Lead Sponsor Councilmember Jawando, was introduced on March 10. A public hearing was held on July 7 at which there were no speakers.

The County property disposition law requires the Executive to conduct a reuse analysis, including seeking proposals for use by other outside agencies for the property, before issuing a declaration of no further need for real property. The property disposition law requires the Council to approve the Executive's declaration of no further need for real property valued at more than $100,000.[2] The Council must also approve any sale of surplus real property proposed by the Executive for less than fair market value. Finally, the law permits the Executive to dispose of real property valued at more than $100,000, as adjusted, without Council approval if the buyer agrees to build at least 30% moderately priced dwelling units (MPDU) or other price restricted affordable dwelling units.[3] A flow chart showing the current disposition process for non-exempt property dispositions is at ©20.

Bill 13-20 would change the 30% moderately priced housing exemption from voluntary to mandatory. Any disposition that is being used primarily for housing would automatically be required to include at least 30% of the dwelling units as MPDUs under Chapter 25A. The exemption from the process described above would only apply if 15% of the dwelling units are standard MPDUs (available for residents at 65% or 70% of area median income depending on the

[1] #PublicLandforAffordableHousing

[2] The Finance Director must adjust the $100,000 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).

[3] All housing developments in the County are required to build either 12.5% or 15% MPDUs depending on the location.

unit type) and 15% of the dwelling units are MPDUs available for residents with an income of 50% or less of area median income. A memorandum from the Lead Sponsor is on ©6.

Public Hearing

Although there were no speakers, Jane Lyons, representing the Coalition for Smarter Growth (©18), submitted written testimony supporting the Bill. C. Robert Dalrymple and Matthew Gordon, representing Broad Branch Development, opposed the Bill (©15-17). Amanda Farber, representing the East Bethesda Citizens Association submitted an email message supporting the opposition to the Bill in the letter written on behalf of Broad Branch Development (©19).

Issues

1. What is the fiscal and economic impact of the Bill?

OMB was unable to estimate the fiscal impact because the number and type of projects on property dispositions under the Bill is unknown (©12-14). However, OMB pointed out that requiring a developer to increase the number of MPDUs in a project would reduce the developer's revenue and increase the likelihood that the developer would seek financial assistance from the County. A similar request could occur from a developer who agrees to restrict half of the MPDUs to residents at less than 50% of area median income. One form of the financial assistance would likely be the price the County receives for the property sale.

OLO's economic impact statement concluded that increasing the number of affordable units in the County could benefit the County's economy by benefitting residents at the lower income levels without significantly increasing the cost to develop housing in the County because most housing developments are not on County-owned land (©7-11). OLO also concluded that the Bill could impose increased costs on residents who do not need affordable housing.

2. Would the Bill result in more MPDUs at the expense of other public benefits?

The attorneys for Broad Branch Development argued that the Bill would adversely affect their proposed development on a County parking lot in downtown Bethesda by doubling the required number of MPDUs. They argued that their proposed development includes other important public benefits, such as parks and replacement parking, that would become economically unaffordable if they must also build 30% MPDUs. A developer would not move forward on a project if their return on investment is insufficient to support the costs. Additional MPDUs reduce the projected rents from the dwelling units and thereby reduce the return on investment. Broad Branch recommends amending the Bill to exclude County land that is recommended for another public benefit from this new requirement.

It is beyond dispute that the County needs to increase its stock of affordable housing, including housing available for residents at less than 50% of area median income. Bill 13-20 would only affect developments proposed for County surplus property. As OLO pointed out, a small percentage of housing developments are likely to occur on County-owned land. Council staff is unable to predict if Bill 13-20 is likely to result in more affordable housing units on County surplus property or less because it would be more difficult to find developers willing to build any housing on County surplus property. The only way to find out is to try it.

3. What are the County Attorney's clarifying amendments?

The County Attorney's Office did not find any legal issues with the Bill, but they suggested 5 clarifying amendments (©21-22).

a. The Bill applies the 30% MPDU requirement to a development that "will be used primarily" for housing. The County Attorney's Office recommended defining the term "primarily." We agree. This can be done by:

Add the following after line 3:

(b) As used in this Section the following words have the meanings indicated:

* * *

<u>*Used primarily for housing* means more than 50% of the gross floor area of all buildings in the project will be used for dwelling units.</u>

b. The County Attorney's Office recommended that the term "income restricted" used in subsection (f)(1) should be defined. We agree. This could be done as follows:

Amend lines 48-51 as follows:

<u>(1)</u> <u>Any disposition of property that will be used primarily for housing development must require that 30% of the housing units built on the property be income restricted under an agreement with the Department of Housing and Community Affairs that complies with the moderately priced dwelling unit program established in Chapter 25A.</u>

c. The County Attorney's Office recommended that the reference in subsection (f)(1) to an agreement with DHCA should be an agreement with the County, as approved by DHCA. We agree. This can be done by:

Amend lines 48-51 as follows:

(1) Any disposition of property that will be used primarily for housing development must require that 30% of the housing units built on the property be income restricted under an agreement with the County, as approved by the Department of Housing and Community Affairs.

d. The County Attorney's Office recommended that the reference to subsection (d) on line 70 of the Bill be replaced with a description of the disposition process required in subsection (d). Council staff disagrees with this recommendation. Subsection (d) sets forth certain requirements that can be easily reviewed and does not require a repeat in this subsection.

e. The County Attorney's Office recommended that the term "income control period" used in subsection (f)(3) should be changed to "control period" because that term is defined in the applicable regulation (COMCOR 25A.00.02). We agree. This can be done by:

Amend line 72 as follows:

abide by the **[[**income**]]** control period applicable to the moderately

4. Technical Amendment.

The Bill includes a definition of "area median income" in subsection (f)(2)(A)(ii). Since Section 11B-45(b) is a separate subsection for definitions, we recommend that the definition of area median income in (f)(2)(A)(ii) be moved into subsection (b).

This packet contains:

Bill No. 13-20
Concerning: County Property – Disposition – Affordable Housing
Revised: 10/21/2020 Draft No. 2
Introduced: March 10, 2020
Expires: September 10, 2021
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando

AN ACT to:

(1) require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units;
(2) exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units; and
(3) generally amend the County law regarding disposition of County property.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-45

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Sec. 1. Section 11B-45 is amended as follows:

11B-45. Disposition of real property.

* * *

(e) (1) 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:

(A) 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

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

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

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

(C) The Council may disapprove the Executive's declaration of no further need if the Council finds that:

(i) there is further need for the real property;

(ii) a County department or outside agency has expressed need for the real property; or

(iii) approval of the declaration is contrary to the public interest.

(2) 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.

(3) 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.

(4) 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.

[(5)**]** (f) *Dispositions related to affordable housing.*

(1) Any disposition of property that will be used primarily for housing development must require that 30% of the housing units built on the property be income restricted under an agreement with the Department of Housing and Community Affairs.

(2) (A) **[**This subsection and subsection (c)**]** Subsections (c) and (e) 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:

(i) at least **[**30%**]** 15% 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)**]**; and

(ii) at least 15% of the housing units built on the property will be for residents with an income of 50% or less of area median income. In this subsection, *area median income* means the median household income for the Washington, DC metropolitan area as estimated by the U.S. Department of Housing and Urban Development adjusted for family size.

(B) A disposition of property exempt from Subsections (c) and (e) under (f)(2)(A) must comply with the requirements of Subsection (d).

(3) The income restricted units under subsection (f)(1) and (f)(2) must abide by the income control period applicable to the moderately priced dwelling unit program established in Chapter 25A.

* * *

[(f)**]** (g) * * *

[(g)**]** (h) * * *

[(h)**]** (i) * * *

Approved:

Sidney Katz, President, County Council   Date

LEGISLATIVE REQUEST REPORT

Bill 13-20
County Property – Disposition – Affordable Housing

DESCRIPTION:	Bill 13-20 would require a disposition of property that will be used primary for housing development to include a certain number of moderately priced dwelling units and exempt certain dispositions from certain requirements if the disposition will include a certain percentage of moderately priced dwelling units and lower income dwelling units.
PROBLEM:	The availability of affordable housing continues to be a challenge in Montgomery County
GOALS AND OBJECTIVES:	To increase the availability of affordable housing in the County.
COORDINATION:	Office of Procurement
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney (240) 777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

TO: Councilmembers, Chiefs of Staff
FROM: Will Jawando, Councilmember
DATE: March 5, 2020
SUBJECT: County Property Disposition

The availability of affordable housing continues to be a challenge in Montgomery County. As the cost of housing continues to rise and wages remain stagnant, it becomes an even greater issue. According to a recent American Community Survey, 49.5% of renters and 23.3% of homeowners are housing burdened in our county.

As you are aware, under current law, a Property Disposition that will be used primarily for housing development does not need to comply with the fair market value requirement or the declaration of no further need process if 30% of the units are MPDUs. The County Executive is required to send over the material terms of the disposition contract for a comment period.

The attached draft would do the following:

- Require dispositions that will be used primarily for housing development to include 30% income restricted units (in other words, these dispositions will no longer be exempt from the fair market value requirement or declaration of no further need process);
- Exempt from the declaration of no further need process and the fair market value requirement any disposition that will be used primarily for housing development if 15% of the units are MPDUs and 15% of the units are for residents with an income of less than 50% of area median income. The County Executive would still be required to send over material terms for a comment period.

We must continue to find innovative ways to increase affordable housing in our county. Leveraging opportunities like Property Dispositions to maximize affordable housing stock is critical. It is even more important when it comes to increasing housing that is deeply affordable.

If you have any questions or if you would like to co-sponsor the draft bill, please contact Pamela Luckett in my office. Thanks in advance for your consideration.

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Bill 13-20

County Property – Disposition – Affordable Housing

SUMMARY

Given the acute need for affordable housing, especially among lower income households, the Office of Legislative Oversight (OLO) expects Bill 13-20 to have a positive, yet small, impact on the Montgomery County economy. However, it is possible that the bill could create minor costs for housing developers, as well as renters and buyers of housing units who are ineligible for affordable units.

BACKGROUND

Bill 13-20 is intended to address the lack of affordable housing in the County. To increase the availability of affordable housing, the bill would amend the law regarding the disposition of property owned or controlled by Montgomery County Government (MCG) that will be used primarily for housing developments.[1] Under current law, the process for the County Executive to dispose of County-owned land involves three requirements: (1) verifying to the Council that the sale will not fall below the full market value[2]; (2) attaining Council approval for a declaration of no further need for the property;[3] and (3) providing the Council with the material terms of the disposition.[4] Requirements (1) and (2), however, do not apply for any disposition of property in which the housing development will include 30% or more of moderately priced dwelling units (MPDUs).[5]

Bill 13-20 would make two changes to current law governing the disposition of County-owned property that will be used primarily for housing developments. First, it would "require that 30% of the housing units built on the property be income restricted under an agreement with the Department of Housing and Community Affairs."[6] The second change modifies the conditions in which dispositions are exempt from the full market value and declaration for no further need requirements, respectively (1) and (2) above. To waive these requirements, the recipient of County-land must commit to what is referred to here as the "15-15 split." Under this rule, the housing developer must ensure

[1] According to Montgomery County Code, "*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." The disposition process does not apply to "surplus school facilities and property of nominal value identified in the regulation." Montgomery County Code § 11B-45(b)(2) [hereinafter "MCC"].

[2] Full market value is established "by at least one professional appraisal of the property obtained by the Director within 12 months before a declaration is submitted to the Council." MCC § 11B-45(c).

[3] MCC § 11B-45(e)(1)(C)(ii).

[4] MCC § 11B-45(d)(1).

[5] MCC § 11B-45(e)(5).

[6] County Council for Montgomery County, Maryland. Bill No. 13-20. County Property – Disposition – Affordable Housing. February 27, 2020. 2.

that "at least 15% of the housing units built on the property will be moderately priced dwelling units," and that "at least 15% of the housing units built on the property will be for residents with an income of 50% or less of area median income."[7]

Ultimately, the goal of Bill 13-20 would be to encourage the County Executive to include the 15-15 split in negotiations with housing developers, thereby increasing the stock of affordable housing in the County.

INFORMATION, ASSUMPTIONS and METHODOLOGIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff. Data used in this statement come from publicly and non-publicly available sources. All publicly available data sources are cited.

VARIABLES

The variables that could affect economic impacts in the County are the following:

- Rate of inclusion of the 15-15 split in deals between County Executive and housing developers
- Stocks of MPDUs and other affordable housing units in the County
- Demand for MPDUs and affordable housing among County residents
- Percentage of households with annual incomes of $60,650 or less[8]
- Number of per year dispositions for housing developments
- Number of housing units built in these developments per year

IMPACTS

Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

OLO believes that Bill 13-20 could create costs for housing developers. Increasing income-restricted housing units in their developments could result in lower rents and per sale profit margins, thereby reducing the overall profits of housing development companies. However, OLO believes these costs would be minimal for three reasons.

First, affordable housing units on County-disposed land will likely make up a small portion of all new housing units constructed in the near future. This much is suggested by available data on the contribution of housing units on disposed land to the development of new units in the County. From 2014 to 2019, 866 housing units have been constructed on County-disposed land, only

[7] Ibid.

[8] The area median income (AMI) for Montgomery County is $121,300. U.S. Department of Housing and Urban Development. FY 2019 Median Family Income Documentation System. HUD.gov. https://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn (accessed on March 25, 2020).

220 of which were MPDUs. During this time, an estimated 5,909 new housing units have been constructed in the County.[9] Thus, while housing units on County-disposed land contributed to approximately 15 percent of all new units, MPDUs on disposed land made up only 4 percent of all new units. Based on these figures, OLO expects affordable housing units on disposed land to continue to be a small portion of housing developers' product portfolios, even if Bill 13-20 increases the number of affordable units built on disposed land.

Second, the potential costs to housing developers could be offset by benefits they would receive from other inclusionary zoning policies, such as fee waivers, tax reductions, density bonuses, and other devises that lower the cost of building affordable housing for developers.[10] Note that aggregating the financial incentives from all such policies that developers could be eligible for is beyond the scope of this statement.

Third, it is theoretically possible that housing developers would pass additional costs created by Bill 13-20 onto customers who are ineligible for affordable housing by increasing rents and/or asking prices for non-MPDU units. This claim assumes that the rental and for-sale housing markets are sufficiently non-competitive to give developers some degree of pricing power.[11]

In brief, Bill 13-20 could potentially create minimal costs for housing developers. OLO does <u>not</u> anticipate that these costs would be sufficiently high to reduce developers' capital investments, to drastically cut into their operating costs, or to negatively impact their workforce compensation. In addition, OLO does not anticipate that the bill would have a significant impact on the County's competitiveness in the residential housing sector or overall economic development.

Residents

Employment, property values, taxes paid, etc.

OLO believes that residents, particularly those in lower income households, would benefit from Bill 13-20.

The need for affordable housing in the county, especially for lower income households, is acute. There has long been a growing demand for accordable

[9] Housing unit data for 2019 from the U.S. Census Bureau is unavailable. To estimate the number of new housing units constructed from 2014 to 2019, OLO added the per year average of new units during the 2014 to 2018 period to the total number of new housing units constructed during this period. U.S. Census Bureau. 2014-2018 American Community Survey 5-Year Estimates. Census.gov. https://data.census.gov/cedsci/table?q=%202014-2018%20American%20Community%20Survey%20%28ACS%29%205-year%20estim&tid=ACSDP1Y2018.DP05&y=2018 (accessed March 25, 2020).

[10] Urban Ventures. Final Report on MPDU Program: Analysis of Current Program and Research on Other Localities' Inclusionary Zoning Programs. June 7, 2018. 24.

[11] Indeed, there has been considerable consolidation in the housing development sector since the Great Recession, leading some industry experts to express concern over the "creeping oligopolies." Andrew Van Dam. "Economists identify an unforeseen force holding back affordable housing." *Washington Post*. October 17, 2019. https://www.washingtonpost.com/business/2019/10/17/economists-identify-an-unseen-force-holding-back-affordable-housing/ (accessed March 26, 2020).

housing among County residents. The percentage of households spending 35 percent or more of their income on housing costs has steadily increased over the last thirty years, especially for renters.[12] While the demand for affordable housing has been increasing, the supply, especially for lower income households, has not kept up. As the 2019 Montgomery County Trends report states, "Reaching the low-(50 percent AMI) to very low-(30 percent AMI) income population remains a challenge in this county as these populations have grown faster than the supply of housing affordable to them." The report adds, "MPDUs – the most reliable source of affordable housing production – are often out of reach for them, and often Low Income Housing Tax Credit (LIHTC) projects do not include a large share of low – to very low-income units, due to their expense."[13]

The unmet demand for affordable housing carries economic costs. For the households directly affected, burdensome housing costs can create difficult trade-offs among important household expenses, such as healthcare and childcare. For other residents and businesses in the County, they lose out on the stimulating effects from consumer spending that burdensome household costs reduce. By increasing the supply of affordable housing, Bill 13-20 has the potential to reduce the burden of housing costs for lower income households in the County, assuming the affordable units would be occupied by current Montgomery County residents. Indeed, there is evidence to support this assumption. In 2017, a survey of all properties participating in the MPDU rental program found that seventy-three percent of residents in the program had previously lived in Montgomery County.[14] Moreover, reducing housing costs for lower income households would stimulate the economy due to increased consumer spending. However, as discussed above, OLO expects these potential benefits to be modest, given the small share of affordable housing units on County-disposed land to the total stock of affordable housing in the County.

Despite these beneficial economic impacts, Bill 13-20 could theoretically impose costs on County residents who do not need affordable housing. As mentioned in the previous section, the bill could lead to housing developers passing costs onto buyers of non-MPDUs. However, OLO does not expect that these costs would be substantial. For one, they would be small due to the low share of affordable units constructed on disposed land and the diffusion of these costs across many buyers of non-MPDUs. Secondly, they would be offset by the stimulating effects described above.

[12] Montgomery County Planning Department. 2019 Montgomery County Trends: A Look at People, Housing and Jobs Since 1990. January 2019. 64.
[13] Ibid. 65.
[14] Urban Ventures. Final Report on MPDU Program. 5.

WORKS CITED

Andrew Van Dam. "Economists identify an unforeseen force holding back affordable housing." *Washington Post*. October 17, 2019.

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Montgomery County Code.

Urban Ventures. Final Report on MPDU Program: Analysis of Current Program and Research on Other Localities' Inclusionary Zoning Programs. June 7, 2018.

U.S. Department of Housing and Urban Development. FY 2019 Median Family Income Documentation System. HUD.gov.

U.S. Census Bureau. 2014-2018 American Community Survey 5-Year Estimates. Census.gov.

Montgomery County Planning Department. 2019 Montgomery County Trends: A Look at People, Housing and Jobs Since 1990. January 2019.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does <u>not</u> represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO), with assistance from Stephanie Killing (DHCA), Greg Ossont (DGS), and Ronnie Warner (DGS).

Fiscal Impact Statement
Bill 13-20, County Property – Disposition – Affordable Housing

1. **Legislative Summary**
Bill 13-20 would require a disposition of County-owned property that will be used primarily for housing development to include a certain number of moderately-priced dwelling units (MPDUs) and exempt dispositions from certain requirements if the disposition will include a certain percentage of moderately-priced dwelling units and lower income dwelling units**.**

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**
Under current laws and regulations governing the disposition process[1], the County Executive may dispose of real property (including transfers of ownership, leases, or licenses) that will primarily be used for housing development *without* requiring the developer to commit beyond the 12.5 to 15.0 percent MPDU requirement.

The Bill would now require that 30 percent of the housing units built on the property be "income restricted under an agreement with the Department of Housing and Community Affairs[2]."

In addition, current regulations allow for disposition of County-owned property to occur at *less* than full market value (FMV) and without Council review of a Declaration of No Further Need (DNFN) *if at least 30 percent of the units are MPDUs or another type of affordable unit* (as defined under the County's impact tax laws). The County Executive must still submit the material terms of the disposition to the Council for review.

The Bill would provide the FMV and DNFN exemptions only to those transactions where the following terms are met:
- 15 percent of the units are designated as MPDUs (income-restricted at 70 percent of area median income (AMI)); *and*
- 15 percent are income restricted at or below 50 percent of AMI.

The Bill effectively requires the County Executive to seek at least 30 percent income-restricted units and creates incentives for the County Executive to seek more affordable units in order to expedite the disposition process.

Impacts on County revenues and expenditures are difficult to estimate as each property disposition may be unique in its terms, scope, and financial structure determining the level of support requested to meet the requirements. Increasing the number of affordable or income-restricted units under this bill results in reduced cashflow to pay debt, and increased financing subsidy needed to offset reduced rents/sale prices. If the County is selling the land (for example, land owned by a Parking Lot District), the County's

[1] See Executive Regulation 11-13 here: https://www.montgomerycountymd.gov/exec/Resources/Files/11-13AM.pdf
[2] "Income restricted" means that the control period of affordability must be equivalent to the MPDU program, generally a 99-year control period.

proceeds will be reduced by the value reduction represented by the increased affordable unit requirement.

These types of costs may be passed onto the County under several potential types of scenarios:

a) a housing development project may request additional County financial assistance (e.g., tax expenditures/waivers, grants, etc.) in order to provide 30 percent of the total units as income-restricted (noting that a developer that meets the 30 percent requirement is eligible for impact tax exemptions on all of its units, including market-rate, under the current impact tax laws); and/or

b) a project may also request additional County financial assistance in order to provide housing units at 50 percent of AMI. Developers can borrow less money from conventional lenders as housing units are targeted to lower income ranges; a developer may need to offset the income loss by increasing market-rate rents, or by requesting additional County financing or subsidies.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
Without additional data on the types and number of residential development projects that would be affected, it is difficult to estimate revenues for the next six fiscal years. Similarly, without this information, it is difficult to estimate the amount of loans that might be requested as a result. While loans are not expenditures, they do represent a use of resources.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs**.
Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**
Not applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**
Not applicable.

7. **An estimate of the staff time needed to implement the bill.**
No staff time is needed to implement the Bill.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**
Not applicable.

9. **An estimate of costs when an additional appropriation is needed.**
Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Revenue and loan cost estimates may be affected by:

- amount of subsidy/County assistance needed by the developer to meet the bill's requirements; and/or
- number of parcels suitable for housing development.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

The Bill is intended to incentivize the production of housing units for income ranges below 70 percent of AMI (the MPDU program household income limit). However, as housing financing needs increase at lower income ranges, more financial incentives are likely to be requested by developers. The amount of the incentives is difficult to estimate and may vary by individual project.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Executive branch notes that the current laws and regulations governing the disposition process affords greater flexibility than the requirements of this bill.

14. The following contributed to and concurred with this analysis:

Greg Ossont, Department of General Services
Stephanie Killian, Department of Housing and Community Affairs
Lisa Schwartz, Department of Housing and Community Affairs
Naeem Mia, Office of Department Management and Budget
Pofen Salem, Office of Department Management and Budget

Richard Madaleno

4/08/20

Richard S. Madaleno, Director
Office of Management and Budget

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July 6, 2020

VIA EMAIL AND OVERNIGHT DELIVERY

The Honorable Sidney Katz, President
and Members of the County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Broad Branch Development's Written Testimony for Montgomery County Council Public Hearing on Council Bill No. 13-20, County Property – Disposition – Affordable Housing (the "Disposition Bill")

Dear Mr. Katz and Members of the County Council:

On behalf of Broad Branch Development ("Broad Branch"), owner and developer of the property located at 4702 West Virginia Avenue in Downtown Bethesda (the "Property"), we are submitting this written testimony to the Montgomery County Council ("Council") for its July 7th public hearing on the Disposition Bill. While Broad Branch understands and appreciates the Disposition Bill's goal to create additional regulated affordable units through the redevelopment of County land, the Disposition Bill is drafted too broadly such that it will be detrimental to achieving other important public benefits and goals. More specifically and as described in greater detail below, the Disposition Bill will constrain and discourage the conversion of various County Public Parking Lots ("PLD Lots") to publicly accessible parkland in Downtown Bethesda. To this end, it is vital that the Council acknowledge that there are other public benefits separate and apart from regulated affordable housing that are often desirable and leveraged through redevelopment of County land. As explained below, it would not be in the public interest to mandate that 30% regulated affordable housing units be required in all dispositions that primarily involve housing development because such a broad requirement would conflict with other public interests (e.g., creation of public parkland, libraries and other public amenities).

By way of background, Broad Branch obtained development approvals from the Montgomery County Planning Board in May of 2020, which permit construction of a multi-family residential building with up to 19 dwelling units on the Property (the "Project"). The Property is located immediately to the east of Montgomery County Public Parking Lot 44 ("PLD Lot 44"). Significantly, the Approved and Adopted 2017 Bethesda Downtown Sector Plan (the "Sector Plan") recommended rezoning PLD Lot 44 "to increase the maximum allowable building height from 60T to 70 feet with the goal of converting this parking lot to parkland." (Sector Plan, p. 135). Consistent with the Sector Plan's overarching goal of increasing parks and open space throughout Downtown Bethesda, other PLD Lots are recommended to be incorporated into redevelopment that facilitates parkland (including the envisioned Eastern Greenway). In addition to the creation of public parkland, the Sector Plan increased the minimum requirement from 12.5% to 15% Moderately Priced Dwelling Units ("MPDUs"). Moreover, it is understood that the delivery of public park space through redevelopment of these PLD Lots would also likely require funding for or construction of replacement parking spaces in an underground parking garage. In order for the Sector Plan vision to come to fruition, these PLD Lots must be assembled with adjacent private property to allow for delivery of public parkland, replacement parking spaces, and increased affordable housing commitments (if a certain number of residential units are provided). Given the existing demands and requirements imposed as a result of the Sector Plan, the requirement that these PLD Lots also provide 30% of the dwelling units as MPDUs will create an impediment to the creation of any public parkland or MPDUs. In short, the development costs associated with delivery of a substantial public park and undergrounding replacement parking spaces is significant such that requiring a redevelopment project to also provide 30% of the dwelling units as regulated affordable units (MPDUs or otherwise) is not economically viable.

Given this example in Downtown Bethesda, it is important that the Disposition Bill not require that every disposition of County land that will be used primarily for housing development include a minimum of 30% of the dwelling units as income restricted affordable units. While it may be possible to leverage the disposition of County land to allow for 30% regulated affordable dwelling units in some instances, a broad-brush application of this requirement to all dispositions will conflict with the adopted land use vision for properties in many other cases. As a result, it is important the Montgomery County Disposition Law remain flexible so that the County Executive and County Council can respond to the unique circumstances of each property in a manner that delivers appropriate public benefits. In the case of public parking lots in Downtown Bethesda, the Sector Plan vision for increased public parkland will be severely compromised if the Disposition Bill is adopted as drafted. While the Sector Plan prioritizes additional affordable housing by requiring a minimum of 15% MPDUs, the Disposition Bill would also preclude the creation of additional MPDUs in Downtown Bethesda by effectively making redevelopment of the PLD Lots with public park space, replacement parking spaces and 30% regulated affordable housing economically infeasible. Therefore, the Disposition Bill jeopardizes both the creation of public parkland and increased affordable housing in Downtown Bethesda. At a minimum, the Disposition Bill must be revised to exclude County land that is recommended for another public use or amenity (e.g., parkland, library, etc.) in the applicable master plan. Notwithstanding the foregoing, we urge the Council to maintain the existing provisions in the

Disposition Law and allow the County Executive to establish the parameters relative to public benefits sought through redevelopment of County land on a case-by-case basis.

Thank you for consideration of Broad Branch's written comments, and if you have any questions or require any additional information, please do not hesitate to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple

C. Robert Dalrymple

Matthew Gordon

Matthew Gordon

cc: Montgomery County Councilmembers
Ms. Amanda Mihill
Mr. Chris Conklin, Director of MCDOT
Mr. Shane Crowley
Mr. Jason Weinstein

July 8, 2020

Montgomery County Council
Council Office Building
100 Maryland Ave.
Rockville, MD 20850

Bill 13-20, County Property – Disposition – Affordable Housing (Support)

Public Testimony

Jane Lyons, Maryland Advocacy Manager

President Katz and Councilmembers, thank you for the opportunity to submit written testimony on Bill 13-20. Please accept these comments on behalf of the Coalition for Smarter Growth, the leading organization in the D.C. region advocating for walkable, inclusive, transit-oriented communities. **We strongly support any efforts to make better use of our public land for affordable housing.**

Bill 13-20 would require any disposition of property that will be used primarily for housing development must be 30 percent income-restricted, with 15 percent as moderately priced dwelling units (MPDUs) and the other 15 percent for households earning 50 percent of less of the area median income (AMI).

For too long, the county has not used its public land for its full potential. With many county properties located near high-capacity transit and land being a significant cost of construction, subsidized land costs makes deeper levels of affordability possible. At a time when we need 75 percent of new housing in the region to be affordable for low and middle income households, this legislation is common sense.

We would like to see this legislation go a step further. If county land dispositions meet certain requirements, such as being a certain distance from transit, it should be required for that land be used for affordable housing. There is nothing under current law prioritizing or requiring certain uses to be considered, or giving preference to experienced affordable housing developers as partners.

We need to re-imagine how we use public land, when being disposed of and when redeveloping. Libraries, community centers, and other public facilities should all be co-located with housing. Our region already has several examples of housing co-located with public facilities. We hope this legislation will be a first step for better using public land for the public good.

Therefore, we urge you to support Bill 13-20 and seek provisions to make it even stronger. Thank you for your consideration.

From: Katz's Office, Councilmember [Councilmember.Katz@montgomerycountymd.gov]
Sent: Wednesday, July 08, 2020 10:35:12 AM
To: Council President
Subject: Fw: Bill 13-20 Comments from East Bethesda Citizens Association

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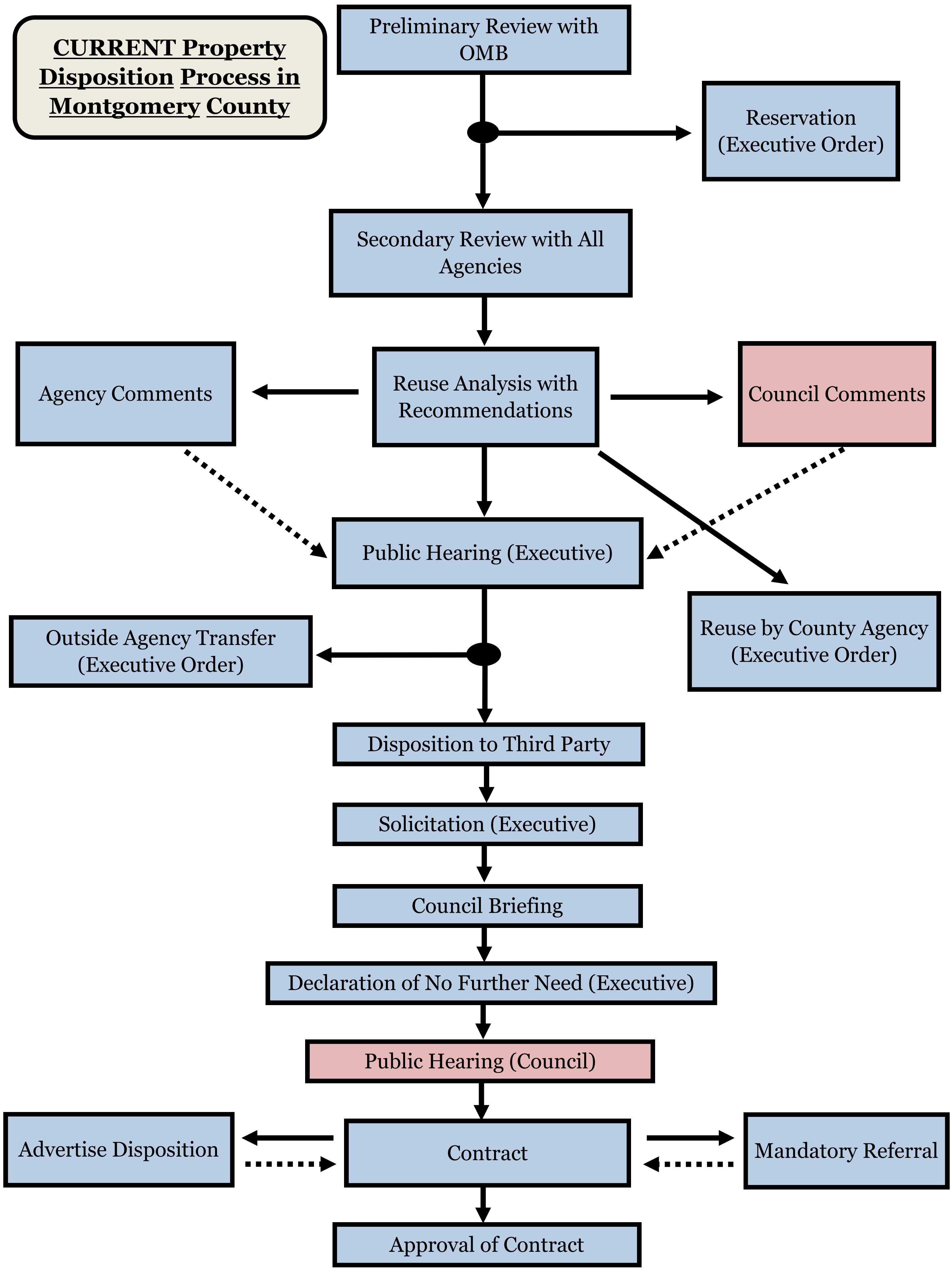
From: Amanda Farber <amandafarber@hotmail.com>
Sent: Wednesday, July 8, 2020 9:57 AM
To: Katz's Office, Councilmember <Councilmember.Katz@montgomerycountymd.gov>; Friedson's Office, Councilmember <Councilmember.Friedson@montgomerycountymd.gov>
Cc: Riemer's Office, Councilmember <Councilmember.Riemer@montgomerycountymd.gov>; Navarro's Office, Councilmember <Councilmember.Navarro@montgomerycountymd.gov>; Jawando's Office, Councilmember <Councilmember.Jawando@montgomerycountymd.gov>; councilmember.albornaz@montgomerycountymd.gov <councilmember.albornaz@montgomerycountymd.gov>; Glass's Office, Councilmember <Councilmember.Glass@montgomerycountymd.gov>; Hucker's Office, Councilmember <Councilmember.Hucker@montgomerycountymd.gov>; Rice's Office, Councilmember <Councilmember.Rice@montgomerycountymd.gov>
Subject: Bill 13-20 Comments from East Bethesda Citizens Association

[EXTERNAL EMAIL]

Montgomery County Council President Katz;
and Montgomery County Councilmembers:

The East Bethesda Citizens Association is in support of the July 6, 2020 letter provided to you by Matt Gordon and Bob Dalrymple on behalf of their client, Broad Branch Development, regarding proposed Bill 13-20, County Property - Disposition - Affordable Housing, and the potential impacts of the Bill on future development involving County parking lots #25 (Maple Ave) and #44 (West Virginia Ave). There was extensive community input during the Downtown Bethesda Plan regarding those specific lots, and there has been regular ongoing communication between developers and the community about how to best accomplish the goals in the master plan in those particular locations. Discussions have been very positive and have focused on the goals of providing additional housing, underground parking, and park space. Thus, we ask that there be flexibility with regards to Bill 13-20 for locations such as these where there are already important public benefits proposed to be addressed by development.

Thank you,
Amanda Farber,
EBCA VP


CURRENT Property Disposition Process in Montgomery County
Preliminary Review with OMB
Reservation (Executive Order)
Secondary Review with All Agencies
Agency Comments
Reuse Analysis with Recommendations
Council Comments
Public Hearing (Executive)
Reuse by County Agency (Executive Order)
Outside Agency Transfer (Executive Order)
Disposition to Third Party
Solicitation (Executive)
Council Briefing
Declaration of No Further Need (Executive)
Public Hearing (Council)
Advertise Disposition
Contract
Mandatory Referral
Approval of Contract

OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

To: David Dise, Director
Department of General Services

Via: Edward B. Lattner, Chief EBL
Division of Government Operations

From: Clifford L. Royalty, Chief CLR
Division of Zoning, Land Use & Economic Development

Date: March 13, 2020

Re: Bill 13-20, County Property – Disposition – Affordable Housing

Bill 13-20 ("the Bill") proposes to require that a disposition of County land that will be used "primarily" for a housing development must require that 30% of the housing units be "income restricted." The Bill also exempts from the core disposition processes a disposition of land that will be used primarily for housing if 15% of the units are moderately priced dwelling units and another 15% of the units are reserved for residents with "an income of 50% or less of area median income."

Our office has no legal objections to the Bill. We do, however, suggest clarifying revisions. Those suggested revisions are:

1. The Bill applies to "property that will be used *primarily* for housing development . . . ." (Emphasis added). We recognize that the word "primarily" was transposed from the existing law, but the existing law is in need of clarification and the Bill is proposing to mandate moderately priced dwelling units; therefore, we recommend defining "primarily" by reference to floor area ratio or some other objective measure.

2. In Section (f)(1), at line 8, the Bill requires housing units to be "income restricted," but the Bill does not define the phrase as it is used that section. The Bill does define the phrase in Section (f)(2) at lines 15-25, but Section (f)(2) describes the properties that are exempt from the full disposition process. The term "income restricted," as used in Section (f)(1), should be defined.

3. At lines 8-9, the Bill requires that income restrictions be memorialized in an "agreement with the Department of Housing and Community Affairs." The "agreement" should be with the County, as approved by DHCA.

4. At line 28, we would replace the phrase “Subsection (d)” with a description of what aspect of the disposition process the transaction is exempt from.

5. We recommend deleting the word “income” from the phrase “income control period” at line 30. The applicable regulation (COMCOR 25A.00.02) defines “control period.”

cc: Dale Tibbitts, Special Assistant to the County Executive
Marc Hansen, County Attorney
Amanda Mihill, Legislative Attorney