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MCCF Testimony for Council Hearing on Subdivision Staging Policy Amendment 14-02

My name is Jim Humphrey, presenting testimony on behalf of the Montgomery County Civic Federation (MCCF) as Chair of the Planning and Land Use Committee. At their September 18 meeting, the members of the MCCF Executive Committee voted unanimously to recommend Council not approve Subdivision Staging Policy Amendment (SSPA) 14-02.

The amendment would change the Local Area Transportation Review (LATR) as applied in the White Oak policy area. The LATR is a test applied when development projects come to the Planning Board for their Preliminary Plan approval. It is at this stage that the Board determines whether local signalized intersections have the capacity to handle traffic from the planned project, or whether there is no capacity remaining so the project can only get approval if an added transportation fee is paid.

The LATR test is used to enforce the county's Adequate Public Facilities Ordinance (APFO), which requires the Board to determine schools, roads, transit and other public facilities are adequate to handle new development projects before approving them.

At present, when the LATR is applied to new projects countywide, the test calculates traffic volume at nearby intersection by counting not only actual traffic but also projected traffic from nearby projects that are approved by the Board but are not yet built. This projected traffic from approved, unbuilt projects is called "background traffic."

The change proposed for the White Oak area by SSPA 14-02 would only count "background traffic" from approved but unbuilt developments for which building permits have been issued by the Department of Permitting Services. The difficulty is that traffic capacity of an approved unbuilt project could be "reallocated" to a second project without rescinding the APFO approval of the first project. Hence, when the original project is later granted building permits with their valid APFO approval there could be insufficient traffic capacity to support both projects; and, the latter project might have avoided paying the added transportation fee intended to fund intersection and road improvements aimed at increasing traffic capacity.

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We understand some persons might perceive a problem with approved but unbuilt projects sitting idle in the pipeline (some not built in more than a decade since receiving their Preliminary Plan and APFO approvals), while newer projects ready to move forward are made to pay a fee because the aged approvals have absorbed traffic capacity in the area. We do not believe, however, that the solution is to weaken one of the key tools used to enforce the APFO.

Instead, we think the solution to clearing the glut of idle pipeline projects lies in Council instructing the Planning Board to grant minimum length validity periods for APFO approvals, to not routinely grant nearly all requests for extensions of APFO approval validity periods and, in the case of larger, multi-phase projects, to only grant Preliminary Plan and APFO approval to each phase when it is ready to proceed to completion. Additionally, the Council must use restraint and not approve blanket extensions to APFO validity periods, as they did in the recent past in response to a weakened economy.

Although Subdivision Staging Policy Amendment 14-02 is proposed to only apply to the White Oak Policy Area, the legislation, if adopted, will set a dangerous precedent for the undermining of the Adequate Public Facilities Ordinance, which will likely be sought by developers in other planning areas across the entire county. The Civic Federation, therefore, respectfully urges County Council members to disapprove SSPA 14-02. Thank you for considering our views.