

"Federation Corner" column
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What's good for the goose...

by Jim Humphrey
Chair, MCCF Planning and Land Use Committee

On July 17, the Planning Board considered a piece of legislation, recently introduced in the County Council, which would allow the County Executive to accept an arts or entertainment facility as a "public amenity" if such amenity is offered in exchange for allowing the rest of a developer's project to be bigger than the standard approval size. The legislation would also allow the developer up to 15 years to apply to the Board for approval of the project for which the arts facility was already accepted as the public amenity.

The process of allowing a developer to build a larger project than the standard approval size, by requiring a significant public amenity in exchange, is referred to as Optional Method development.

The Board voted unanimously to recommend to Council that they not approve this legislative proposal, over concern that it would usurp the Board's authority to decide whether a public amenity offered by a developer was of sufficient value to merit Optional Method approval. It would also lock the Board into approving the rest of the project at bigger than standard size since the County Executive would have already accepted a public amenity from the developer, which is only required under Optional Method.

But, isn't the usurpation of authority exactly what the Planning Board did when they approved a growth policy implementation procedure in January of this year without checking with the County Council as to whether the scheme reflected the Council's intention?

In November of last year, the County Council approved the 2007-2009 growth policy. Admittedly, it was better than the so-called growth policy in place, which had been gutted by the previous Council in 2003, but not by much. But, there is one promising addition in the new growth policy.

Under the current policy, the adequacy of roads and transit is assessed for each of the County's 21 policy areas. If the transportation facilities, the term used to refer to roads and mass transit, are found to be inadequate to support additional growth in any area, then a developer of a new building project in that area must mitigate a certain percentage of the vehicle trips that his development would normally be expected to generate. In this case, mitigation is defined as either eliminating trips or using a formula that allows provision of some improvement--like a street widening, or a bus shelter, or bike lockers--to offset a specified number of trips.

For example, in order to get approval for a new project in the North Bethesda policy area, which includes the White Flint and Twinbrook Metro Station areas, a developer must agree to mitigate 25% of the vehicle trips that their project would normally be expected to generate. Projects to be built within 1000 feet of a Metro Station are expected to generate a lower number of vehicle trips, due to their proximity to mass transit. Still, one might expect that even these projects would be required to mitigate 25% of that lower number of vehicle trips. I believe this is the process for calculating trip mitigation that the Council intended, and it is certainly the method that the public expected to be used. However, the Planning Board adopted another method of calculating required trip mitigation for projects to be built near Metro Stations that reduces or, in some cases, eliminates it completely.

As a result, no project to be built within 350 feet of the White Flint, Grosvenor or Twinbrook Metro Stations is required to mitigate any vehicle trips, under the Planning Board procedure currently in use, even though these stations are in a policy area that requires 25% trip mitigation under the Council's new growth policy.

No project within 750 feet of the Wheaton, Forest Glen or Glenmont Metro Stations is required to mitigate any vehicle trips, even though these stations are in a policy area that requires 10% trip mitigation under the new growth policy.

No project within 850 feet of the Shady Grove Metro Station is required to mitigate any vehicle trips, even though this station is in a policy area that requires 5% trip mitigation under the new growth policy.

By the way, for those of you in Bethesda, Silver Spring and Friendship Heights who are keeping score at home, projects in those areas have their own tables for calculating the number of vehicle trips they will generate. And so it is somewhat more complicated to calculate the projects in those areas for which trip mitigation is reduced and those for which it is eliminated under the Planning Board scheme.

Regardless of whether one thinks a particular method for calculating trip mitigation is preferable over the other, the appropriate thing for the Planning Board to have done, prior to adopting either method, would have been to ask the County Council which method better reflected their intentions in approving the new growth policy. After all, it is the County Council, not the Planning Board, which is authorized in law to establish a growth policy for the County.

Similarly, regardless of whether one thinks the opinion of the County Executive should carry great weight in deciding which arts or entertainment facilities should be accepted as public amenities in exchange for approval of Optional Method development, it is the Planning Board that is authorized in law to approve new development projects.

If the Planning Board is so concerned about the possible usurpation of their power by the County Executive, then Board members should not have been so eager to usurp the Council's authority to define the County growth policy by adopting a questionable method of implementation last January. After all, the golden rule preaches "do unto others as you would have them do unto you." Or, in that folksy style so characteristic of Planning Board Chairman Hanson, "what's good for the goose is good for the gander."

The views expressed in this column do not necessarily reflect official positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to waynemgoldstein@hotmail.com