

**Maryland Tax Education Foundation**  
**7504 Maple Avenue**  
**Chevy Chase, MD 20815**

December 7, 2005

Council Member Nancy Floreen  
Council Member Marilyn Praisner  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council Members Floreen and Praisner:

You may recall that I testified before the Council on November 22, 2005, regarding workforce housing specifically and zoning text amendments generally. The testimony raised the following points:

- A) Bethesda Zoning Giveaway: After the passage of the MPDU legislation in November, 2004, commercial property values in the Woodmont Triangle more than doubled, based on a comparison of transactions occurring 18 months before and those occurring 12 months after. A reasonable conclusion is that a substantial portion of the increased value was attributable to the MPDU legislation, which, as you know, offered greater density or height, while imposing relatively small MPDU-related financial obligations on builders. Such a conclusion was seconded by a Bethesda appraiser as well as a local commercial real estate consultant.
- B) MTEF Study Suggested Auctions: A MTEF study published in November, 2004 (and distributed to the Council) pointed out the giveaway potential (to landowners and developers) of the then proposed MPDU legislation. At a minimum, the Council's actions may have provided benefits of tens of millions of dollars. By auctioning off the increased density, the Council could have increased low income housing by more than 200% over the standard method of giving density away.
- C) Workforce Housing/Woodmont Triangle: The Woodmont Triangle Sector Plan amendment repeats the mistakes of the MPDU legislation, and the Workforce Housing proposal involves similar problems. Rather than give

away valuable density (or height) to wealthy landowners, the Council should consider a market mechanism (perhaps an auction) to capture more of the financial benefit for its citizens.

In the “question and answer” section, you posed the following two questions:

- 1) Did commercial real estate properties near other Metro stations experience similar price increases?
- 2) Have other counties or municipalities sold (or auctioned) brand-new zoning density?

The next two sections answer the questions.

Other Metro Locations: Five Metro stations were identified as having older, low-rise commercial development that was deemed somewhat similar to the Woodmont Triangle. For each Metro location, I examined “before” and “after” (November 30, 2004) commercial real estate transactions, using the Co-Star research database.

Changes in Commercial Real Estate Values

<u>Location</u>	<u>Before</u>		<u>After</u>		
	<u>Median Sq. Ft. Value</u>	<u>No. of Sales</u>	<u>Median Sq. Ft. Value</u>	<u>No. of Sales</u>	<u>% Change</u>
Clarendon (Arlington)	325	10	305	4	(6)
King Street (Alexandria)	247	35	283	12	15
West Hyattsville	---	0	---	0	---
Silver Spring	192	11	209	3	9
Wheaton	132	1	181	1	37
Woodmont Triangle	167	6	420	7	151

West Hyattsville and Wheaton have an insufficient number of transactions from which to draw conclusions.

Silver Spring has three “after” transactions, and Clarendon has four “after” transactions. Both areas show property price changes that are lower than the Woodmont Triangle. Silver Spring may have had less benefit from the MPDU legislation due to its recent build-up.

King Street in Alexandria showed a 15% increase in median property values, based on 47 transactions. This increase was far less than the 151% recorded in the Woodmont Triangle. Due to the number of transactions, King Street is an interesting comparison.

A logical inference from the data is that the MPDU legislation had a significant positive impact on Woodmont Triangle values.

Using A Market Mechanism to Benefit Citizens: Governments can use market mechanisms, including auctions, to sell intangible assets controlled by governments. For example, the federal government auctions off cellular phone licenses, oil and gas leases and timber cutting rights. In 2004, the State of Illinois threw away the giveaway model, innovated, and auctioned off the right to operate a casino for \$519 million

Historically, local governments with zoning power have not sold “new density rights” (or new air rights) outright. Either the rights have been (i) given away for free or (ii) exchanged for a tangible asset such as low income housing, a nursery school or a park, for example. The latter exchange is referred to as “incentive zoning.” The problem with incentive zoning is that the local government typically exchanges something worth \$100 and receives in return something worth perhaps \$20. This is the crux of the problem with the MPDU legislation and Woodmont Triangle Sector Plan.

Please note that there is an active secondary market for additional density, or air rights, in many markets, including Washington, DC. Thus, the Council could find ample precedent in valuing density rights in Woodmont Triangle. Enclosed is a relevant article in the New York Times, indicating a market price of \$430 per square foot for air rights. In New York City, by the way, both the federal government and MTA have considered selling air rights over their properties for cash.

Peter Chinloy, real estate finance professor at American University, and Sean Nolon, Director of the Land Use Institute at Pace University, indicated to me this week that Montgomery County could structure market mechanisms to maximize the proceeds (or incentives) from landowners and developers.

Shouldn't the Council consider reversing the MPDU legislation, and postpone the Woodmont Sector Plan and Workforce Housing Proposal, until the Council learns more about these market mechanisms? Your decision could affect tens of millions of dollars in wealth transfer. By using innovation, the County should be able to increase low income housing substantially more than would otherwise be the case.

Best regards,

Jeff Hooke