

**Joint Center for Housing Studies**

**Harvard University**

**Forty Years of Fighting Sprawl: Montgomery County,  
Maryland, and Growth Control Planning in the  
Metropolitan Region of Washington, D.C.**

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## I. INTRODUCTION

In the early 1960s, representatives of ten planning commissions from the metropolitan region of Washington, D. C. drafted a farsighted plan for the future growth of their territories, which they called "Wedges and Corridors." Inspired by this vision, Montgomery County, Maryland, located on the northwest border of the District of Columbia, in 1964 adopted its own version of the Wedges and Corridors plan, entitled the General Plan for the Year 2000.<sup>1</sup> Montgomery County's plan, like the regional plan, set forth a vision of preserving open spaces in "wedges" while channeling new residential and commercial development into a series of urban centers along the county's transportation corridors, one of which would contain a proposed mass transit line. The county's plan eloquently set out a land use policy of "smart growth" almost four decades before that term became a popular buzzword. In the intervening years, the county has developed what is generally acknowledged to be one of the most sophisticated systems of growth management in the United States. Supported by an educated citizenry, the county's principal planning institution, the Montgomery County Council, and its principal planning advisors, the Montgomery County Planning Board, have continued to work toward achieving the basic vision of Wedges and Corridors.

The development of green "wedges" has been an almost unqualified success. Today some 93,000 acres—more than a quarter of the county's total of 324,000 acres—have been declared part of an Agricultural Reserve protected through a variety of easement programs and zoning techniques. In addition, Montgomery County has

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<sup>1</sup> Frederick Gutheim, *Worthy of the Nation: The History of Planning for the National Capital* (Washington, D.C.: Smithsonian Institution, 1977, 338; Maryland-National Capital Park and Planning Commission, *On Wedges and Corridors: a General Plan for the Maryland-Washington Regional District* (Silver Spring, Maryland: M-NCPPC, 1964). For additional information on the General Plan, see Appendix A. The first revision of this plan was issued in 1968, which revision some observers refer to as the General Plan.

aggressively acquired land for parks, and as a result, the county now contains almost 56,000 acres of public parkland and open space. Of the total open space, 44,000 acres comprise county, state and federal parks, and the remaining acreage is owned by the sanitary commission, towns, and private individuals (whose open spaces are preserved under easements). Every stream valley shows green on the county's land use maps, attesting to the policy of watershed protection through the acquisition and protection of stream banks. In all, 46 percent of the county's acreage is protected from development or designated as part of the Agricultural Reserve.<sup>2</sup>

Montgomery County's goal of directing growth into a series of urban centers located along transportation corridors took longer and proved more difficult than acquiring open spaces. As envisioned in the 1964 plan, commercial and residential development occurred along the transportation corridors served by the new Metro subway system and the north-south U. S. highways Interstate 270 and Interstate 95. To encourage concentrated development, the county pioneered sophisticated planning techniques such as providing public amenities in exchange for allowing developers to build at increased densities and fostering public/private partnerships to enhance commercial areas with landscaping, public events and other attractions. At most of the Metro stations, particularly in the older communities close to the District of Columbia, there is or eventually will be a concentration of shopping, office, and high-rise residential development. The community of Bethesda, close to the District boundary, has become a model for livable urban space. And after years of stagnation, the historic community of Silver Spring that borders the District of Columbia, is the beneficiary of a major

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<sup>2</sup> The figures are from the 1998 *Parks, Recreation and Open Space (PROS) Master Plan* published by M-NCPPC.

revitalization effort funded by local, state and federal governments and spearheaded by the county. In the northern or "upcounty" area, tracts of farmland have become the town of Germantown, which, after long delays, is developing the planned urban core that will serve as a town center. Clarksburg, a new town planned as the northernmost corridor city, is as yet the final development frontier in Montgomery County.

The following pages lay out in detail the major influences on the patterns of development and land use in Montgomery County in the last decades of the twentieth century. The first section describes the context and characteristics of Montgomery County that pertain to its land use policies and patterns of growth. Included in this section are descriptions of the context of the region of the District of Columbia, the general history of the county, its demography and economy, government and planning institutions, political traditions, and housing policy. The second section of the case study recounts the mechanisms for and results of implementing the plan for wedges and corridors in Montgomery County. In particular, this section examines the county's policy of preserving agricultural lands and its attempts to encourage planned urban development in two contrasting cases, Bethesda and Germantown. The second section concludes with an assessment of the success of the general plan of 1964.

## **II. Overview**

Montgomery County has had some outstanding successes in achieving what is now called "smart growth." These triumphs are the product of progressive land use planning and a responsible government that made the zoning decisions necessary to implement that planning. They have been made possible by the county's access to a variety of state and local institutional tools, and by a civic infrastructure and civic

traditions that mobilize environmentalists and public-spirited citizens with a concern for the quality of life in the county. This civic infrastructure has facilitated the emergence of extraordinarily able and innovative leaders in elective and appointive offices, and this in turn has led to a dedicated and competent civil service in County government and in the planning agency.

Yet, by its own assessment, the county has failed to achieve many of the "smart growth" objectives set forth in its General Plan of 1964. While the major transportation corridor along Interstate 270 is not yet fully developed, it is plagued by congestion, strip-retail, and sprawling development instead of the self-contained corridor cities that were envisioned by the General Plan.<sup>3</sup> The independent municipalities of Gaithersburg and Rockville, both identified as "corridor cities," have chosen more traditional styles of suburban development.

Montgomery County has developed traffic mitigation policies that have become a model for communities throughout the United States. In areas of traffic congestion, developers can be required to institute measures such as transit subsidies for employees and car pooling programs. Despite one of the highest rates of mass transit use in the nation, roads are congested and are growing more so. There are large-lot residential communities and sprawling office parks that are extremely difficult to serve by transit or other forms of traffic reduction such as car pools. Planners, citizens and elected officials agree that some of the major growth management tools are "in trouble." The County Council has ordered major overhauls of the Zoning Ordinance, as well as several other major tools that have been utilized to manage and stage development.

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<sup>3</sup> The assessment of Montgomery County's record of successes and failures in meeting the objectives of the 1964 *General Plan* may be found in Maryland-National Capital Park and Planning Commission,

While the county has developed a variety of policies and institutions for the preservation of open space, there are fewer tools for Montgomery County, or for any local government for that matter, to facilitate development where "smart growth" requires it. Since development ultimately depends on private sector decisions, the county has been challenged to provide incentives that encourage the building of the livable urban development that attracts both residents and businesses.

Some say that Montgomery County has "sprawl," despite its sophisticated planning system and active and well-informed electorate. The government of Montgomery County, like the people of Montgomery County, is somewhat ambivalent about its goals for the future. It has been difficult to reconcile the desire for economic growth with the desire for stable neighborhoods. And some of the same people, who decry "sprawl," have supported the large-lot zoning that creates automobile dependency. There has been a constant tension between those who want economic growth and those whose greatest priority is neighborhood protection. This tension has been reflected in the shifting policies and plans that have made the county what it is today.

It would appear that the county has realized its greatest "smart growth" successes in those areas where there has been strong citizen support for the planners among the neighborhood activists most directly affected. Indeed, in the urban area of Bethesda, one of the county's greatest triumphs in urban planning, the consensus extended to the business community as well. "Smart growth" succeeds best where it is a part of the vision the community has for itself. Joel Garreau's central thesis in *Edge City* is summed

up by his quote from Pogo: "I have met the enemy and he is us."<sup>4</sup> If a community prefers large lot zoning to cluster development, or single use suburbia in the place of mixed-use development, it is impossible for planners to be both responsive to the community and faithful to the principles of "smart growth." It seems further, that the development of a consensus for sound planning depends on the quality of leadership in both public and private sector, and particularly among the planning professionals who are charged with information and outreach during the planning process.

In the past four decades planners and officials have tested a variety of strategies and invented a number of institutions to preserve open space and concentrate growth where it can best be served by mass transit. In many ways, Montgomery County is unique. The lessons it has learned through its successes and its failures, however, are of value to other communities that want to contain the costs that dispersed development imposes on the environment as well as on state and local governments.

### **III. Context and Characteristics of Montgomery County**

#### **The Context for Growth in the Washington Region**

Proximity to the Federal Government provides a permanent engine of economic growth in the Washington region. From 1970 to 1990, the population of the Washington region increased by 35.5 percent, while the amount of land used for urbanized purposes (houses, shopping centers, office buildings, parking lots, etc.) increased by 95.7 percent.<sup>5</sup>

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<sup>4</sup> Joel Garreau, *Edge City: Life on the New Frontier* (New York: Anchor Books, 1991), xxi.

<sup>5</sup> Brookings Institution, *A Region Divided*, p. 29. . Research and Development and consulting firms ("beltway bandits") with government contracts have been important additions to the economies of most of the region, and hundreds of non-profits and lobbying associations have been drawn to the District and its suburbs. The conventional wisdom is that defense-related industries have tended to predominate in Fairfax with its proximity to the Pentagon. In Montgomery County the health sciences have tended to predominate.



One of the magnets for life sciences firms has been the location in Bethesda of the National Institutes of Health (NIH), the county's largest employer with a FY 2001 budget of over \$20 billion. The NIH is a major source of grants to academic and private institutions. Other major Federal presences include the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, and the Food and Drug Administration. The U.S. Department of Health and Human Services, with an annual budget of more than \$430 billion, is the largest grant-making agency in the Federal government.

Another major factor in the growth of the Metropolitan region has been the development of highway, rail and air transportation facilities. There can be no doubt about the overarching influence of highway construction on land use not only in the Washington Metropolitan area, but also in the entire nation. The Interstate Highway System, approved by the Congress on June 29, 1956, has been called "the greatest peacetime public works project in the history of the world."<sup>6</sup> Gas tax receipts were sequestered into an annual \$50 billion Highway Trust Fund to build forty-one thousand miles of roads. The Capital Beltway, I - 495, has become a major transportation artery for the entire region, carrying far more local traffic than planned. While its effect has been particularly dramatic in neighboring Fairfax, Virginia, the Beltway interchanges have been magnets for commercial as well as residential development in Maryland. The so-called "Outer Beltway" that was to provide a by-pass for traffic around the region was, for a variety of reasons, never built.

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<sup>6</sup> Jane Holtz Kay, *Asphalt Nation: How the Automobile Took Over America and How We Can Take It Back* (New York: Crown Publishers, Inc., 1997). p. 231.

The 100-mile subway system, Metro, is a major factor in the region's land use as well as transportation patterns. Montgomery and Fairfax took different approaches to route location and this becomes a factor in development patterns. While regional planning for the Metro system began in 1954, it was 1970 before the routings were finalized.<sup>7</sup> In Montgomery County the route follows the existing Baltimore and Ohio Railroad line for much of the way, providing for transportation links between the Metro system and AMTRAK and MarcRail, which serve commuters from West Virginia and Western Maryland.

Metrorail, together with regional (Metrobus) and local county (Ride-On) bus systems, has provided a somewhat imperfect mass transit infrastructure to serve the Wedges and Corridors Plan. Originally, the Metro system was planned to reach the proposed corridor city of Germantown, but cost considerations led to the abandonment of that plan for the initial construction effort.<sup>8</sup>

Immigration into the Washington region is the cause of considerable growth as well as demographic change. All of the suburbs show growth in Hispanic, Asian and African populations, many of whom are refugees. The public school system in Montgomery County has become "minority majority."

As in communities throughout the United States, in Montgomery County the business community strongly supports economic growth because it stands to profit from growth. Similarly local government officials like growth because it provides a tax base that allows them to provide services without raising taxes. There is a considerable body

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<sup>7</sup> Henry Bain who was involved in early Metro planning efforts provided valuable information on Metro history in an interview by Lucille Harrigan, Rockville, Maryland, 31 July 2001. See also Zachary M. Schrag, "Mapping Metro, 1955-1968: Urban, Suburban, and Metropolitan Alternatives," *Washington History: Magazine of the Historical Society of Washington, D.C.*, 13, No. 1 (Spring/Summer, 2001).

<sup>8</sup> Neal Potter, interview by Lucille Harrigan, Chevy Chase, Maryland, 11 August 2001.

of literature that provides both theoretical basis and descriptive accounts of the importance of the issue of growth as "the guiding concern around which [local] governments are constructed."<sup>9</sup> Although Montgomery County Councils have tended to be responsive to the slow-growth activists, individual councilors and the Council as a whole are also tied to the business representatives who call for selective growth as a means to create a healthy tax base. Certainly in Montgomery County there is widespread agreement that the issue of growth is important in electoral politics, and it is acknowledged that both pro-growth and anti-growth forces may influence electoral outcomes.<sup>10</sup>

Montgomery County, despite its commitment to managed growth, was by no means immune from the migration trends that affected all of the United States. The massive movement of residents and jobs out of the inner cities and into the suburbs affected the Washington metropolitan area. Matthew Kahn notes that in 1950, 57 percent of metropolitan area residents lived in central cities. By 1990 it was reduced to 37 percent. For all urban areas in the United States, urban area population grew by 92.43 percent, while the amount of "urbanized" land increased by 245.3 percent.<sup>11</sup> In the Washington region, the flight of jobs to the suburbs was facilitated by a conscious Federal government policy of decentralization.

At the present time, many states and communities throughout the United States are acutely aware of the negative consequences of sprawl - traffic congestion, long

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<sup>9</sup> Jonas, Andrew E.G. and David Wilson, eds., *The Urban Growth Machine: Critical Perspectives Two Decades Later*. (Albany: State University of New York Press, 1999.)

<sup>10</sup> Former councilor and County Executive Neal Potter identified "growth" and "taxes" as central issues in Montgomery County politics. It is generally acknowledged that quality education is also a salient issue and candidate campaign literature inevitably includes statements of support for adequate school funding.

<sup>11</sup> Matthew E. Kahn, "The Environmental Impact of Suburbanization," *Journal of Policy Analysis and Management*, 19, no.4 (2000).

commutes, demands for massive expenditures on road and other infrastructure improvements, and the like. It is easy to forget that the single-use zone for suburban single-family homes was once regarded as a progressive reform that would protect homes from noxious commercial and industrial uses.<sup>12</sup>

### **Historical and Demographic Characteristics of Montgomery County**

Montgomery County, Maryland, encompasses an area of 497 square miles just north of the District of Columbia. One of the first counties in America to be established by elected representatives, it was established by the Maryland Constitutional Convention in 1776. Served by the Port of Georgetown, it became one of the early tobacco producing regions. Its Native American trails and primitive roads were part of the region's first main thoroughfare to the West. By the time of the Civil War, there had been a shift away from the concentration on tobacco farming and the county was producing rich crops of corn, wheat and oats as well as orchard and dairy products.

The advent of the electric trolley in the late nineteenth century together with road improvements spurred development in the communities located closest to the nation's capital. High quality residential neighborhoods were planned and developed, and Montgomery County over the years became a conventional "bedroom community" for those who came to work in the nation's capital. The more rural, northern portions of the county remained largely in agricultural use. As the areas closest to the District of Columbia grew in population and economic activity, there developed a natural tension between the "upcounty" rural residents, generally conservative and suspicious of taxes,

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<sup>12</sup> Andrew Duany, Elizabeth Plater-Zyberk and Jeff Speck, *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*. (New York: North Point Press, 2000).

and the more liberal "downcounty" areas focused on quality of life issues and the need for quality school, library and cultural services. Vestiges of this division persists today in the voting strength of Republicans in the "upcounty" and liberal Democrats in the "downcounty."<sup>13</sup>

During the last decades of the twentieth century, Montgomery County has burgeoned into an area of growth and prosperity. Between 1970 and 2000 the county's population grew by two-thirds, rising from 522,500 to 867,000. The government of Montgomery County has kept pace. In 1970 the county Operating Budget was \$66 million; by 2000 it had grown to \$2.4 billion, and the number of County employees had more than doubled.

**Table 1:Montgomery County, Maryland Growth Indicators**

<b>Montgomery County</b>	<b>1970</b>	<b>1980</b>	<b>1990</b>	<b>2000</b>
<b>Population</b>	522,542	578,807	756,848	867,244
<b>Housing units</b>	161,171	215,960	295,617	N.A.
<b>Population density (people per sq.mile)</b>	1056.5	1170.3	1530.2	1753.4
<b>People employed*</b>	228,973	343,820	487,919	464,115**
<b>County government operating budget</b>	\$66. 2 million	\$598.5 million	\$1.4 billion	\$2.4 billion
<b>County government employees</b>	3,538	4,250	6,664	7,984

**Sources:** Figures for the population, population density, and housing units are taken from the U.S. Census as compiled by Geolytics, Inc. (Census CD Forty Years). County operating budget and government employee figures are taken from the Montgomery County Operating Budgets for the indicated years. At-place employment is drawn from the Montgomery County Planning Department, Research and Technology Center, "Montgomery County State and Regional Trends: 1950-1990," (Silver Spring: M-NCPPC, December 1991.) County government employment figures do not include Montgomery County Public Schools.

\* People employed refers to all those who work in Montgomery County, including people from other jurisdictions who commute to jobs within the county and the self-employed.

\*\* Figure for the year 2000 based on the "1997 Census Update," Montgomery County Planning Department, Research and Technology Center. (Silver Spring, Maryland: M-NCPPC, July 1999.)

<sup>13</sup> Historical information is taken from "Your County Government and History," a joint project of the Montgomery County Historical Society and the Montgomery County Department of Public Information. The publication is available online at the MC Government website: [www.co.mo.md.us](http://www.co.mo.md.us)

There have been very significant demographic changes during the past 20 years, particularly in the decade between 1980 and 1990. Over 25 percent of the county's residents are now black or Asian and almost 9 percent are of Hispanic origin. Every year since 1991 has seen the arrival of over 6,000 legal immigrants.<sup>14</sup> The highest population densities have been traditionally found in the "downcounty" communities closest to the District of Columbia - Silver Spring, Takoma Park, Bethesda, North Bethesda, Kemp Mill, Aspen Hill and Wheaton. But the "upcounty" areas, especially Germantown and Gaithersburg, where more and cheaper land is available for development, have been the areas of most rapid recent growth. The 1994 census update shows that 68 percent of the county's population is now "upcounty."

Despite recent demographic changes, including the influx of foreign-born residents, the county remains at the top of the nation in household income and education. Average household income is \$101,000, and the average sales price for a single-family home is over \$250,000. The average wage earned in 1996 by full-time workers was \$57,024, and reflecting the situation nationwide, men earned almost 50 percent more than women. Average wages vary by racial and ethnic groups, with blacks and Hispanics averaging \$37,990 and \$35,393 respectively. Over 60 percent of the adults hold bachelor's degrees and almost 31 percent have a graduate or professional degree. An estimated 82 percent of households own a computer and 72 percent have Internet access.

### **Employment and Economic Development**

Although the federal government has traditionally provided Montgomery County residents with a cushion of employment even in times of recession, in recent years

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<sup>14</sup> Population figures are from Maryland-National Capital Park and Planning Commission publications. See bibliography. In particular note the M-NCPPC Census Update, "Employment Characteristics of

commercial firms have become the area's major employer. By 1997 61 percent of the county's employed residents worked for private, for-profit businesses. Of these, 11 percent were self-employed. The private, not-for-profit sector employed a little more than 13 percent of the workforce.<sup>15</sup>

While business leaders tend to compare Montgomery County unfavorably with its neighbor, Fairfax, Virginia, in fact Montgomery County has experienced great economic growth, particularly in the fields of biotechnology and communications.<sup>16</sup> The county administers an Economic Development Fund that has awarded more than \$13.4 million to 107 employers spurring the creation and retention of 30,000 jobs and \$1 billion in private capital investment. "The 15-mile stretch of Interstate 270 that runs from Bethesda to Gaithersburg," proclaims the county's Office of Economic Development, "now houses one of the world's largest and smartest collections of genomic firms. The chief draw is the NIH which dispenses \$14 billion a year in research grants."<sup>17</sup> Two-thirds of the 300

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Residents." Most are available on the M-NCPPC website: mc-mncppc.org.

<sup>15</sup> "1997 Census Update," Montgomery County Planning Department, Research and Technology Center. (Silver Spring, Maryland: M-NCPPC, July 1999.)

<sup>16</sup> An article by Martin Kady in the February 9, 2001 *Washington Business Journal*, "Montgomery Officials Play Blame Game Over Hughes" illustrates the typical business reaction when a corporation locates or relocates in one of the Washington suburbs. The Howard Hughes Medical Institute chose to locate its one-half billion-dollar state-of-the-art biotech campus in Loudoun County rather than in Montgomery County. This was used by Marylanders for a Second Crossing as an argument for another bridge across the Potomac in the area of the county's agricultural Reserve. Tom Reinheimer, Co-chair of MSC is quoted as saying, "There seems to be no planning in terms of transportation facilities. councilor Steve Silverman (who is generally regarded as pro-business though opposed to the second crossing" had a different view. "It's a stretch to tie this to traffic congestion. It is disappointing, but the reality is we don't have a lot of large tracts of land left. On balance, [Northern Virginia] has more tools in their arsenal than we do in terms of economic development." Silverman noted the popular view that "On land use, Northern Virginia has had a 'come one, come all' attitude, while Montgomery County has been more restrictive." Hughes executives were quoted as cited proximity to Dulles Airport as important in their location decision. Montgomery County officials, Kady claims, never had a chance to make their pitch to Hughes. Another Montgomery councilor, Derick Berlage, is quoted as saying, "If someone is dead set on a gleaming office park surrounded by cows, they're going to Loudoun County. If they want a more dynamic, urban office location next to a subway, they'll come here."

<sup>17</sup> Montgomery County Department of Economic Development, "Montgomery County: The Idea Location," (Rockville, Maryland: Montgomery County Government, 2001); Sally B. Donnelly and Adam Zagorin, "D.C. Dotcom," *Time*, August 14, 2000.

biotechnology companies operating in Maryland, according to *Time* magazine, are located in Montgomery County. The county government owns and operates the Shady Grove Life Sciences Center, a 300-acre research and development park that is home to leading biotech companies and the campuses of Johns Hopkins University and the University of Maryland's Center for Advanced Research in Biotechnology. (CARB).

Close to 1800 information technology firms are located in Montgomery County, making it second only to Silicon Valley in terms of highest concentration of technology workforce. Some 20 companies offer advanced broadband high-speed services. Fiber optic carriers include the national industry leaders, AT&T, MCI Worldcom, and Verizon.<sup>18</sup> The Maryland Technology Development Center, the county's "incubator" facility, provides low-cost office space for information technology companies in the start-up phase. A second information technology incubator is being developed in downtown Silver Spring.

Montgomery County's current County Executive, Douglas Duncan, has been aggressive in promoting a "business-friendly" image of the county. Economic development strategies include a New Jobs Tax Credit and Enhanced New Jobs Credit that provides a six-year tax credit available to businesses that increase their space by at least 5,000 sq. ft and employee count by 25 new jobs. A State Tax Credit program gives credit against one of the following taxes: corporate or personal income taxes, financial institutions franchise tax, insurance premiums tax. An "Enterprise Zone Tax Credit" is available to businesses that locate in designated areas of downtown Silver Spring and Wheaton.

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<sup>18</sup> Montgomery Co. Dept. of Economic Development, "Montgomery County: The Idea Location."



The rates of office construction over the last fifty years reflect the emergence of Montgomery County as a center of employment and economic growth. As can be seen in Table 2, office construction rates in the county increased significantly during the 1950s, 1960s and 1970s, reaching an all-time high of over 22.4 million square feet of rental building area completed in the decade of the 1980s.

**Table 2: Office Building Construction Completion by Decade  
Square Feet of Rental Building Area**

<b>No yr. Given</b>	<b>Before 1950</b>	<b>1950- 1959</b>	<b>1960- 1969</b>	<b>1970- 1979</b>	<b>1980- 1989</b>	<b>1990- 1999</b>	<b>2000- 2001</b>	<b>Total</b>
3,492,414	98,126	1,558,436	5,667,645	12,102,271	22,466,707	7,194,843	3,706,484	56,286,926

**Source:** Maryland-National Capital Park and Planning Commission, Montgomery County Planning Department, Research and Information Systems Division, February 2002.

With a thriving and diverse economic base, Montgomery County enjoys high rates of employment. (See Table 1.) Unemployment is usually less than other metropolitan areas and, according to 1997 census figures published by the Maryland-National Capital Park and Planning Commission, had fallen to a low figure of 2.9 percent. The commission's report indicated that almost 3/4 of residents over the age of 16 (464,000) were employed and 81,000 (12.8 percent) worked part-time. More than 65 percent of women were employed outside of the home. Less than 14 percent of this age group were retirees and another 6.6 percent had chosen the "homemaker" and "not otherwise employed" categories for their employment status.<sup>19</sup>

Reflecting the character of local employers, most of Montgomery County's workers are highly skilled and work in white-collar occupations. More than half of the employed residents in 1997 were engaged in high white-collar jobs as professionals,

<sup>19</sup> "1997 Census Update," Montgomery County Planning Department, Research and Technology Center. (Silver Spring, Maryland: M-NCPPC, July 1999.)

executives, or managers. Employed residents in professional occupations—such as teachers, scientists, or doctors—made up a striking 36 percent of the local workforce, three times the national proportion. Another 20 percent were executives or managers, twice the percentage found in the nation's workforce. Thirteen percent of employed residents, compared to 20 percent at the national level, worked in administrative support or clerical positions. (At about 100,000 managers and executives to 59,110 administrative or clerical workers, there are almost two executives for every one administrative worker living in the county.) Because of the high concentration of high technology and biotechnology firms and public institutions in the metropolitan area, clinical and science technicians made up 5.3 percent of the workforce compared to three percent in the nation.<sup>20</sup>

Once a classic "bedroom" community for the city of Washington, Montgomery County now provides employment for almost 58 percent of its workers. The percentage of residents commuting to work in the District of Columbia continues to decline from 27.4 percent in 1977 to 23.6 percent in 1997. There has been a steady increase in the number of residents commuting to Northern Virginia and in 1997 eight percent of the workforce crossed the Potomac River to work. While 72 percent drive alone to work, over 13 percent use mass transit. The average commuting time for County residents is 30 minutes.

The high level of education in the Montgomery County population is reflected in the student body in its public schools. A 2001 brochure published by the Department of Economic Development boasts about the \$1.5 billion budget for schools, and the average student SAT score of 1093 (among the nation's best and tops in Maryland), and the

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<sup>20</sup> Ibid.

nation's highest number of National Merit Scholar finalists. But explosive growth has exacerbated the problem of overcrowded and crumbling schools. Though the county, with state assistance, makes a heavy investment in school construction and modernization, portable classrooms and overcrowded schoolrooms are all too common.<sup>21</sup>

### **Geographical Patterns of Development**

The Washington region does not mirror the classic economic pattern of the central city plagued by economic and social ills surrounded by more affluent suburbs. Rather, the socio-economic divide tends to be an east-west division. Montgomery County and its Western neighbors across the Potomac in Virginia (Fairfax and Loudoun Counties) share affluence with Northwest Washington, D.C. The eastern part of the District and Prince George's County has not generally shared in the high-tech job growth and economic successes of the Western communities.<sup>22</sup>

By the 1990s distinct land use patterns had emerged in Montgomery County that reflected and contributed to the regional configuration. According to a 1992 county planning board report, an urban ring bordered the District of Columbia, which comprised "an older, well-established, and densely developed area characterized by diversity in

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<sup>21</sup> See Brookings Institution, *A Region Divided: The State of Growth in Greater Washington, D.C. Washington, D.C.: The Brookings Institution Center on Urban and Metropolitan Policy, 1999*. There is a continuing heated debate in Montgomery County about the degree to which growth "pays for itself." The Brookings Institution study notes that: "Places like Montgomery...are struggling to find ways to pay for more services and schools to meet the demands of their new residents, business owners, and companies. Proponents of policies to restrict or slow growth cite evidence that growth can be costly to a community, particularly when there is very low employment, as there is in the Washington region. Former 20-year Councilmember and one-term County Executive Neal Potter never failed to call attention to data suggesting that growth does NOT always pay for itself. The debate was continued in the recent special election to replace a District I Councilmember when Democratic candidate Pat Baptiste espoused the Potter point of view. Her victorious Republican opponent, Howard Denis, chose to focus on Baptiste's lack of support for school funding and her opposition to the Intercounty Connector, claiming in his literature that "We need traffic relief now because of the growth that has already occurred." A recent report of a blue ribbon Commission on the Future of Montgomery County took the contrary view, calling for policies to attract new high tech companies to increase the tax base to provide the services needed by a community that is increasingly diverse in race, ethnicity and in income.

<sup>22</sup> See Brookings Institution, *A Region Divided*.

income, ethnicity and racial composition." <sup>23</sup> The site of much of the county's high-rise housing, the character of the "Urban Ring" communities varied from the elite Chevy Chase area with its "upscale" shopping, to the more modest housing and retail in Wheaton and Kensington east of the main roads of Wisconsin and Connecticut Avenues. The planning board identified two areas of "Suburban Communities" located in the eastern and western portions of the county between the corridor and the "Residential Wedge." These are largely a collection of single-family subdivisions with one quarter and half-acre lots with a scattering of townhouses and garden apartments. The green "Wedge" of the 1964 Plan has evolved into two distinct parts. The Agricultural Wedge consists of about 93,000 acres delineated as the Agricultural Reserve. The Residential Wedge is defined as all Wedge areas outside the Agricultural Reserve. Together they constitute approximately 2/3 of the county's entire land area.<sup>24</sup>

### **Governmental Structure**

Unlike many of the other 3,000-odd counties in the United States, Montgomery County, Maryland, provides a wide variety of the services generally provided by municipal government. Land use, public safety, parks and recreation, health and human services, libraries, schools, public safety and corrections, and education from pre-school to junior college are all within the purview of the county government. While there are several independent municipalities, many of the major "towns" such as Bethesda, Silver Spring, Potomac and Germantown are unincorporated and have no governing structure.

One of Maryland's home rule counties, Montgomery County has an effective government with a reputation for responsiveness and integrity. Land use authority is

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<sup>23</sup> *General Plan Refinement*, 24.

<sup>24</sup> *Ibid.*, 31.

effectively lodged in a nine-member County Council that has five members elected by Councilmanic District and four at-large. An independently elected County Executive is responsible for management of the government departments and has significant influence in proposing and administering an annual operating budget over two billion dollars.

Montgomery County has two incorporated cities, Rockville and Gaithersburg, which have their own planning and zoning authority, somewhat complicating the county's land use management efforts. Though there have been some disagreements among the leaders of the different levels of government, there has also been a great deal of cooperation among the elected officials and the planning staffs of the county and the municipalities. About a dozen small municipalities and special taxing districts levy special taxes and provide a range of services to their residents.

Public facilities are financed through a six-year capital improvements program financed largely by bonds. Despite the demands for new schools and roads as well as other facilities, effective management and prudent debt policy has enabled the county to maintain its coveted and much touted AAA bond rating.

A single public school district encompasses the entire county, and policy for the schools is determined by an independently elected Board of Education. Despite the rapid growth in school population, the system retains a reputation for excellence that makes it a selling point for economic development efforts.

### **Planning Institutions**

The "charter," so to speak, of land use planning in Montgomery County is contained in the 1932 Regional District Act that establishes the institutional arrangements through which the County Council exercises much of its land use authority. A reflection of the Progressive Movement in American public administration, the Act 1932 created,

for planning purposes, the Maryland-Washington Metropolitan District consisting of Montgomery and Prince George's counties. As the Commission exists today, only administrative matters are handled by the bi-County Commission, with each county having its own six-member Planning Board that also oversees the counties' parks.<sup>25</sup>

The Montgomery County Planning Board (MCPB) is the county Council's primary advisory on land use issues. It is composed of five citizen members, of which no more than three may be of the same political party. It is appointed by the Montgomery County Council, which also designates the full-time chair of the Board. The Chair receives a salary of over \$100,000 and plays important roles in administrative oversight and agenda setting. The other Board members serve part-time with a modest stipend. A part of the Maryland-National Capital Park and Planning Commission, the MCPB operates with considerable independence from its Prince George's County counterpart, with a small bi-County staff handling centralized administrative matters. With a \$92.10 million FY 2002 budget, the agency has a total of 1160 work years (the total equivalent of full-time employees). The largest part of the budget (57.7 percent) is devoted to operations and debt service for the very extensive parks department. About 21 percent of the budget is allocated for the self-supporting Enterprise Funds, other units and reserves. Just less than 16 percent of the budget (\$14.67 million) funds the Planning Department with its 158 work years.<sup>26</sup>

The heart of the staff is the Community-Based Planning Division that develops master plans and facilitates the implementation of its recommendations. Interdisciplinary teams are assigned to seven geographic areas. "When a master plan is prepared, the

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<sup>25</sup> For additional information concerning the Regional District Act, see Appendix A.

interdisciplinary team, already familiar with community issues, engages in a highly efficient plan making process." These teams work with other government agencies and developers and the community throughout the implementation process. Each team is also responsible for a substantial regulatory caseload.<sup>27</sup> Given the stimulating work environment, the highly competitive salaries, and the national reputation of the Montgomery County Planning Board for innovative work, the Board has not experienced difficulties in recruiting and retaining a staff that adheres to high standards of excellence.

The planning department is supported by a skilled staff in the Technology and Research Center that makes extensive use of the Geographic Information System (GIS) and provides research support to many other areas of the county Government.

An important part of the land use process in Montgomery County is the institution of the hearing examiner. The first zoning hearing examiner positions were established in Anne Arundel County, Maryland, in 1965 and Montgomery County in 1967. The hearing examiner is defined as "the appointed official who conducts quasi-judicial hearings on applications for at least one flexible device - parcel rezoning, special use permits, variances - enters written findings based on the record established at the hearing, and either decides on the application or makes a recommendation to a local legislative or administrative body." The hearing examiner must conform to general principles of due process, with requirements for notice, and for the designation of parties of record with "significant interest in the subject matter."<sup>28</sup> Because the hearing examiner process is

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<sup>26</sup> Maryland-National Capital Park and Planning Commission, *Proposed Annual Budget FY 2002 - Montgomery County Programs*.

<sup>27</sup> Maryland-National Capital Park and Planning Commission, *Proposed FY03 Budget, Community-Based Planning*.

<sup>28</sup> Lauber, Daniel, "The Hearing Examiner in Zoning Administration," *American Society of Planning Officials, Planning Advisory Service Report no. 312*) Washington, D.C.: Planning Advisory Service, ASPO, 1975).

governed by these rules, Courts usually have a strong presumption in favor of his rulings when they are contested. Former Montgomery County hearing examiner Philip Tierney notes that not only does the county Council almost invariably accept his recommendations (sometimes after a remand), but also his recommendations are almost never overturned in court.<sup>29</sup> Martin Klauber, a former hearing examiner and long-time participant in Montgomery County planning issues, calls the establishment of the hearing examiner in 1967 "an incredible breakthrough." Prior to the creation of the office, elected officials, who were subject to political pressures, ruled on zoning cases directly.<sup>30</sup>

The Montgomery County Council has enacted legislation creating the office of people's counsel. A relatively new institution for Montgomery County, the people's counsel is charged with representing the public interest in land use issues. The appointment of a former Hearing Examiner to be the first people's counsel reflects the Council's commitment to effective representation for the public interest in determining land uses. While the institution is too new for an assessment of its effectiveness, it is another example of the county's commitment to an open and fair land use process.<sup>31</sup>

### **Political History<sup>32</sup>**

Growth has been a significant, if not the most significant issue in Montgomery County electoral politics.<sup>33</sup> And while County Councils and individual councilors have

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<sup>29</sup> Philip Tierney, former Hearing Examiner for Montgomery County, interview by Lucille Harrigan, Rockville, Maryland, 23 July 2001. Zoning attorney Dalrymple notes, however, that Tierney is appointed by the Council and serves at his pleasure. In support of his contention that land use is basically a political decision, Dalrymple believes that a Hearing Examiner, who unlike Tierney did not reflect the basic views of the Council, would be replaced. Dalrymple, Robert, Esq., interview by Lucille Harrigan, Silver Spring, Maryland, 31 July 2001.

<sup>30</sup> Martin Klauber, People's Counsel for Montgomery County, interview by Lucille Harrigan, Rockville, Maryland, 29 June 1001.

<sup>31</sup> For additional information concerning the People's Counsel, see Appendix A.

<sup>32</sup> Former County Executive and County councilor Neal Potter and former Montgomery County and Maryland Elections Administrator Marie Garber shared their files and recollections with the author.



differed on the degree to which growth ought to be encouraged or controlled, there has been since 1968, a general support for sound planning policies.

Montgomery County's politics in the 20's and 30's was dominated by what was called "The Lee Machine," a coalition of landowners and real estate interests dominated by "Colonel" E. Brooke Lee, an aristocratic landowner whose descendants and relatives remained a force in politics through the 1980s.<sup>34</sup> Fortunately, the "Colonel" had a vision for the future of Montgomery County that included not only the development of the unincorporated town of Silver Spring, but also the acquisition of parkland and the protection of open space that set the stage for later, more sophisticated efforts for farmland preservation.

The County was originally under a county commissioner system that kept most governmental power with the state legislature in Annapolis. A study by the Brookings Institution in 1948 recommended a home rule charter and shortly thereafter a charter movement was mobilized with considerable leadership from the county's League of Women Voters.<sup>35</sup> Charter supporters secured the necessary signatures to place the proposal before the electorate, but home rule was defeated in both 1944 and 1946, opposed by many incumbent elected officials and members of the development community. But Montgomery County was in a period of rapid change, with a population that doubled between 1946 and 1950. In 1948, 56 percent of the electorate approved the

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<sup>33</sup> There is a considerable body of literature on the importance of growth as an issue in local U.S. politics. For a summary see Andrew E.G. Jonas and David Wilson, eds., *The Urban Growth Machine: Critical Perspectives Two Decades Later* (Albany: State University of New York Press, 1999).

<sup>34</sup> E. Brooke Lee's son, Blair Lee III served as Lieutenant Governor and Acting Governor of Maryland. His daughter, Elizabeth Lee Scull succeeded her husband David Scull as a member of the Montgomery County Council. She was, in turn, succeeded on the Council by her son, David Scull.

<sup>35</sup> "Your County Government and History," a joint project of the Montgomery County Historical Society and the Montgomery County Department of Public Information. Online at the Montgomery County Government website: [www.co.mo.md.us](http://www.co.mo.md.us)

charter and Montgomery became the first home rule county in Maryland and many of the leaders of the Charter movement won elective office.

Former County Executive and long-time councilor Neal Potter identifies "growth" and "taxes" as the two most compelling issues in local elections since the 1960s.<sup>36</sup> In 1962, a pro-growth coalition allied with developers and real estate interests published a widely distributed tabloid two weeks before the election. It endorsed three Democrats and four Republicans for County Council, calling itself "County above Party." The "CAP" coalition made a clean sweep of the previously Democratic County Council and ushered in an era of runaway rezoning that made a mockery of the Wedges and Corridors Plan. Neal Potter notes that the incumbent Council had facilitated its own defeat by raising the income tax by \$.34 in the July preceding the election largely for a large pay increase for County teachers.<sup>37</sup>

The 1966 election was the beginning of what Potter calls "the revolution" in politics in Montgomery County. The issue was clearly growth and the upzoning perpetrated by the so-called "Diggs" Council (after Kathryn Diggs, one of its leaders) shocked County residents with a massive upzoning of County land done, literally on their last night in office. But the civic activists defeated themselves by organizing a third party that took 11 percent of the vote from the pro-planning Democrats. The 1966 Council was decidedly less favorable to runaway growth, but had several pro-business Republicans. Idamae Garrott, a former chair of the League of Women Voters, who eventually became the matriarch of the "slow growth" forces, was elected to the Council along with a number of moderate Republicans and Democrats. The establishment of a home rule

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<sup>36</sup> Neal Potter, interview by Lucille Harrigan, Chevy Chase, Maryland, 11 August 2001.

Charter provided for the first elected County Executive. County voters also selected James Gleason, a conservative Republican, as its first elected County Executive under a new Charter.

By the 1970 election, the civic activists had learned the lesson of the hazards of third party politics and threw their support to a Democratic slate that included Idamae Garrott, Neal Potter, William Willcox and Dickran Hovsepian, all strong advocates of neighborhood protection and restrained growth. Candidates William Sher and Sydney Kramer had stronger ties to the business community, but were nevertheless supporters of the planning process. Elizabeth Scull, the granddaughter of "Col." E. Brooke Lee, won a seat on the Council as a Democrat. She was both a staunch supporter of a strong Planning Board and a tireless advocate for affordable housing.

A long-time observer of the county's Planning process notes that the county Executives elected in the 70s and 80s tended to be pro-business and pro economic growth.<sup>38</sup> Responsibility for land use is firmly lodged in the county Council. While Executives have considerable authority during the budget process, the Council is also the final fiscal authority and in a position to carry out its policies and priorities with respect to land use and the related area of transportation.

During the 1970s, and through the 80s and 90s, men and women with a strong commitment to sound planning policies dominated the county Council. These were Councils that presided over successive endorsements and refinements of the Wedges and Corridors General Plan. They ensured the influence and effectiveness of the Planning

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<sup>37</sup> Neal Potter and a number of other observers of Montgomery County politics cite the importance of the tax issue in this and other Montgomery County elections.

<sup>38</sup> Philip Tierney, former Hearing Examiner for Montgomery County, interview by Lucille Harrigan, Rockville, Maryland, 23 July 2001.

Board by the appointment of effective and progressive members. Royce Hanson<sup>39</sup> was appointed as the first full-time Chair of the Board, and under his leadership the Planning Board staff became one of the most able and innovative in the nation. These Councils, with the advice of Hanson and the Board, enacted of a series of land use planning tools that made Montgomery County one of the nation's leaders in land use planning.

In land use issues, party politics has been largely irrelevant. Montgomery County has traditionally had a strong majority of Democratic voters, and the 1970, 1974, 1978, 1982, and 1986 Councils were entirely Democratic. When Republicans Betty Ann Krahnke and Nancy Dacek were elected to the Council in 1990, they proved to be strong supporters of orderly and progressive planning. In fact, Krahnke, who had served on the Montgomery County Planning Board, was a staunch defender of citizens who sought to protect their neighborhoods from the effects of development. She was largely responsible for a reform of the Board of Appeals, the body that rules on Special exceptions to the Zoning Ordinance, and broke new ground in insisting on the development of regulatory standards for the Board's decisions.<sup>40</sup>

There is considerable disagreement about the ability of the "slow-growth" civic coalition to influence the outcome of elections. In the 2000 special election to replace Betty Ann Krahnke, one of the heroines of the civic community, the candidate she endorsed, Democrat Pat Baptiste, was defeated by a Republican with closer ties to the

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<sup>39</sup> Royce Hanson has been a highly respected but also controversial figure in Montgomery County's political life. An academic and an attorney, Hanson was the Democratic Congressional candidate in two elections in the 1960s. Though defeated in the General election, Hanson remained influential in County governance and politics. He was appointed Chair of the Planning Board and earned a reputation for his vigorous defense of the professional planning staff as well as his creativity and leadership in making Montgomery County's planning institutions and policies a model for many other jurisdictions.

<sup>40</sup> Martin Klauber, Montgomery County's people's counsel, holds that the development of standards in regulation is a significant advance in land use law.

business community, Howard Denis.<sup>41</sup> But the issue of the pace of growth has been part of virtually every local election campaign, and continues to be a yardstick by which many voters measure their candidates.

Some observers may question the political effectiveness of the civic activists who are a part of the slow-growth coalition, but developer, activists and officials are in agreement about its level of knowledge and sophistication and about its willingness to commit endless hours to study of complex issues. The slow-growth coalition has its transportation experts who understand computer modeling enough to question the county's experts. They have *pro bono* attorneys, or financial resources to hire legal counsel and the sophistication to know how to challenge development plans at every step of the way.<sup>42</sup>

The slow-growth coalition has been most visible in its opposition to greater densities. And since the county seeks to achieve greater densities in the corridor cities, the effect of citizen activism can be to delay "smart growth." The Friendship Heights Sector Plans were the subject of intense and effective citizen opposition that continues into the present effort by the Chevy Chase Land Company to implement provisions of the Approved and Adopted Friendship Heights Sector Plan.<sup>43</sup>

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<sup>41</sup> Stanley Schiff, interview by Lucille Harrigan, Kensington, Maryland, 6 August 2001. Schiff notes that Pat Baptiste was both "outspent and outsmarted" by Howard Denis who ran a well-financed and effective campaign, blanketing his district with colorful literature promising relief from traffic congestion.

<sup>42</sup> Martin Klauber, former People's Counsel for Montgomery County, interview by Lucille Harrigan, 29 June 2001.

<sup>43</sup> In February 2001, the Council granted rezoning of a small parcel in Friendship Heights from the R-60 zone to the TS-M (transit station mixed-use). This zoning was specifically recommended in the Approved and Adopted Friendship Heights Sector Plan approved by the Council in January 1998. The Technical Staff of the Planning Board approved the application and the Planning Board unanimously recommended approval. The application then went to the Hearing Examiner who conducted twelve days of public hearings. The Council deferred a decision and in July 2000 remanded the application to the hearing Examiner who subsequently required additional traffic analysis. The additional analysis was filed and after three additional days of public hearing, the Hearing Examiner recommended approval. Subsequent to the approval of the application by the county Council, Chevy Chase Village and other opponents petitioned for

## The Civic Infrastructure

Though the local press often characterizes the forces involved in planning issues as either "pro-growth" or "slow-growth," the situation is far more complex. Election campaigns bring out the rhetoric, and the most strident voices are the ones at the extremes. But the county does have an influential cadre of educated, well-informed citizens who are willing to devote considerable time and energy to studying complex public policy issues often as members of government-appointed advisory commissions and task forces. This kind of constituency was mobilized for the Bethesda Central Business District plans and was instrumental in the development of Bethesda as an attractive urban center.

The high level of political participation and civic activism is in part a reflection of the high socio-economic status of the population and the political sophistication that comes from close proximity to the national government. The entire County is divided into civic associations, with the master list of between three and four hundred associations maintained by the Montgomery County Planning Board staff. These are organized into two umbrella organizations: the Montgomery County Civic Federation in the western part of the county and Allied Civic in the east. The representative of Audubon Naturalist Society is an effective lobbyist and testifies before the Council and the Planning Board on issues with environmental implications. The local chapter of the

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judicial review of the Council's action. Chevy Chase Land principal attorney, C. Robert Dalrymple, provided background on this case.

In an unpublished paper written in 1977, former Planning board chair Royce Hanson tells of the efforts of the Bethesda Coalition to undo the balances that had been achieved in negotiations with affected parties. "The result was, finally, a plan with general acceptance, yet with a number of specific objections creating problems in the plans finally approved by the Council, or creating serious resentment by specific property owners who are potential litigants. The controversy also delayed the plan, resulting in the loss of some of its proposals." Royce Hanson, "*On Being Chairman*," unpublished paper reproduced by Maryland-National Capital Park and Planning Commission, Silver Spring, Maryland, July 1977, 3.

Sierra Club is also active and its work is respected by councilors.<sup>44</sup> A relatively new group is Sustainable Montgomery or SuMo, which studies environmental issues and submits testimony on issues from recycling to the preservation of trees during the development process. Montgomery County Green Democrats appear to be a growing force within the Party and sponsor a wide range of activities and there is a PAC organized by the Greens to raise money for the support of candidates in local primary and general elections.<sup>45</sup> The effectiveness of the civic community in elections varies. Undoubtedly it influenced Neal Potter's primary election victory over incumbent County Executive, Sidney Kramer. On the other hand, its fundraising efforts have been unable to match what the business community can raise, and its "get-out-the vote" efforts are not yet effectively organized.<sup>46</sup>

Citizen advisory committees and task forces are legendary in Montgomery County. At the present time there are about 100 continuing and *ad hoc* groups appointed by the Executive, the Council or by the Planning Board. Continuing boards, committees and commissions include neighborhood library and recreation boards as well as groups that have an advisory function for specific master plans or for departments or programs of County government. Ad Hoc groups frequently are appointed by the Council or Executive or jointly. They are assigned a variety of tasks such as the review and assessment of programs or agencies or for more general topics such as the future of Montgomery County.<sup>47</sup>

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<sup>44</sup> Neal Potter, interview.

<sup>45</sup> The local Democratic Party newsletter, "The Montgomery County Democrat" lists a variety of Green Democrat activities.

<sup>46</sup> Neal Potter, interview.

<sup>47</sup> In research for her doctoral dissertation, the author polled all 1400 contributors to the Montgomery County Democratic Party in the 1970s and found that almost 35 percent of the 523 respondents would "if

A long-time civic activist notes that the county is not yet effectively involving the minority community, particularly the large number of Hispanic and Asian immigrants.<sup>48</sup> The County continues to invest energy and funds in outreach efforts and maintains continuing liaison with the leadership of minority communities. The County's League of Women Voters is still widely respected for its studies of the land use process and for its recommendations on complex ballot questions. The League, however, like many civic organizations has suffered because of the proportion of women who hold full-time jobs. Leadership in the League tends to be women of retirement age, and while they are effective and hard working, they often lament their failure of the League to enlist younger women.<sup>49</sup>

Developers and builders also exhibit a high degree of sophistication, taking the lead, for example, in drafting mixed-use zones and in pioneering "new town" style developments.<sup>50</sup> Paid lobbyists for the Chamber and the American Automobile Association join with prestigious legal representatives of the building and development community in support of the pro-business agenda. There has been, however, a notable lack of unity among business leaders on development issues, and the regional Chambers of Commerce have failed to create a strong umbrella organization or to speak with one voice on general planning issues.<sup>51</sup>

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asked" accept appointment to a board or commission. See Lucille F. Harrigan, "Individual Styles of Political Activism" (Ph.D. diss., The American University, 1976, p. 140.)

<sup>48</sup> Stanley Schiff, who is Co-Chair of the county's Transportation Policy Task Force, notes for example, that many members of the Hispanic community are totally dependent on what is for them a totally inadequate public transportation system. And yet it has been difficult for the Task Force to engage members of the community in its efforts. Stanley Schiff, interview by Lucille Harrigan, Kensington, Maryland, 6 August 2001.

<sup>49</sup> Barbara Steckel, former President of the Montgomery County League of Women Voters, interview by Lucille Harrigan, Rockville, Maryland, 8 August 2001.

<sup>50</sup> See Duany, et al., *Suburban Nation*, for a description of the Kentlands development.

<sup>51</sup> Edward Asher, interview by Lucille Harrigan, Friendship Heights, Maryland, 24 July 2001. Asher is a Chamber of Commerce official and President of the Chevy Chase Land Company. Montgomery County



## **Housing Policy**

As might be expected, there are a variety of factors contributing to the high cost of housing in Montgomery County. Rapid population growth coupled with programs that have removed close to one half of the county's land from the development envelope, result in high land prices. The high levels of household income create a thriving market for high-end housing that developers are eager to serve. There is a generally recognized shortage of housing that can be afforded by clerical and service workers, many of whom are new immigrants.

Montgomery County has developed a series of progressive policies to encourage construction of affordable housing. A recent Brookings Institution study identified the county as having the oldest and most productive inclusionary zoning program in the country," and inclusionary zoning projects all over the country have long been modeled after the Montgomery County program.<sup>52</sup> The Moderately Priced Dwelling Unit (MPDU) requires developers of projects over 50 units to provide a number of below market-rate units in exchange for a modest density bonus. These have often been developed with some imagination to be compatible with the market-rate units.<sup>53</sup> But the price of these units is controlled for a limited period of time: for rental units, 20 years and for owner-occupied, 10 years. And large-lot zones, a significant portion of Montgomery's housing market, are exempt from MPDU requirements. Although almost 11,000 affordable units

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newspapers have widely noted the squabbles among members of the Chamber of Commerce, which arose from efforts to create a central countywide organization.

<sup>52</sup> Karen Destorel Brown, "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area," A Discussion Paper Prepared by the Brookings Institution Center on Urban and Metropolitan Policy. (Washington, D.C.: The Brookings Institution, October 2001.)

<sup>53</sup> Even the luxury development of million dollar homes adjoining the championship Avenel golf course contains its quota of moderately priced dwelling units.

have been produced since the ordinance was enacted in 1974, less than 4,000 of these are no longer restricted in price.

In the mid-70s, the county broadened the mandate of its housing authority and created the Housing Opportunities Commission (HOC) with the power to issue tax-exempt bonds. Using a combination of Federal, State and local funds and its bonding authority, the HOC has provided below-market rate mortgages for home ownership and for the construction of rental housing. It also engages in creative partnerships with private developers to leverage public funds to include below-market-rate units in mixed-income communities. In 1979 HOC began using its bond-issuing authority to finance private multi-family developments and single-family home purchases. In the past two decades HOC has issued about a half billion dollars in tax-exempt mortgage revenue bonds.

The location of subsidized units has been a matter of controversy in the county, since they often house families with a variety of problems. The Housing Opportunities Commission has instituted a program of providing support services for such families. The HOC has been given the right of first refusal to purchase one-third to 40 percent of the units provided under the MPDU program. HOC also provides below market-rate mortgage financing for qualified MPDU purchasers. Families living in assisted housing often receive mortgage and closing-cost assistance from HOC. The Commission also retains an option to buy back individual units when families sell.<sup>54</sup>

While the MPDU program has been effective in the past, few large developments are being built today and the flow of new units has been greatly diminished. A number of

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<sup>54</sup> Michael F Schubert and Alison Thresher, "*Three Case Studies of Mixed Income Housing Development*," (Online posting by John D. and Catherine T. MacArthur Foundation, sponsor of research, April 1996.)

elected and appointed officials continue to identify the lack of affordable housing as one of the major problems in Montgomery County.<sup>55</sup>

#### **IV. IMPLEMENTING THE PLAN FOR WEDGES AND CORRIDORS**

The land use process in Montgomery County has evolved into what one zoning attorney calls both "comprehensive and cumbersome."<sup>56</sup> At the core of the process is the adoption of periodic Master Plans for the seven planning areas of the county. A Master Plan for one of the county's twelve Planning Areas begins with a Citizens Advisory Committee, a yearlong effort that may meet almost weekly to discuss trends and issues. This results in a Planning Staff issues report and a preliminary Draft Plan that is used in public hearings and work sessions before the Planning Board. After a Planning Board recommendation the Draft Plan goes to the county Council, which as a matter of practice, almost always holds its own public hearings. The Council then applies the recommended zoning to the land in a Sectional Map Amendment. A description of this process will be found in Appendix A.

Defenders of the complex planning process in Montgomery County are apt to claim that it dilutes the inevitable political nature of land use decisions. The People's Counsel, Martin Klauber, has been intimately associated with that process for many years. Acknowledging the fact that landowners often become frustrated with the complexity of the land use process, Klauber notes that the process in Montgomery County has allowed each of the sides to make their representations in a manner, which

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<sup>55</sup> At an October appearance before the Board of Directors of Montgomery United Way, Charles Short, the Director of the county's Department of Health and Human Services identified the lack of affordable

they feel is appropriate and fair. "The forum is the safety valve," Klauber says. "Rather than channeling all land use decision into the political arena, the process becomes paramount and thus diminishes the political factors that might otherwise dominate land use decisions." Land use can never be divorced entirely from politics, but Klauber feels that Montgomery County addresses this issue "as well as it can be addressed in any government." While a number of informants stress that decisions are often a matter of politics, few would dispute the importance of the land use process. Much of the energy and effort of both sides focuses on ensuring an open process, even though actors may exert political influence on the decision-makers at a different level.<sup>57</sup>

Others are not so sanguine. Steven Kaufmann, one of the county's premier zoning attorneys, points to the increasing politicization of the zoning process.<sup>58</sup> Senior members of the Planning Board staff who decline to be identified publicly echoed this sentiment. They noted that the recent updates of the Potomac Master Plan and the Upper Rock Creek Master Plan, undercut the independent role of staff in gathering data and preparing a staff draft by a foreshortening of the process and the involvement of stakeholders in public forums at an earlier stage.

### **Preserving the Wedges - The Agricultural Reserve and Land Acquisition Policy**

Montgomery County has had extraordinary success in preserving open space and agricultural land in the face of the inevitable economic pressures for development in the Washington Region. Two important factors have been the long-standing policies in favor of land acquisition for parkland and for conservation, and the efforts that have been made to preserve farmland and support agriculture as a viable and productive industry.

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housing as one of the major barriers to moving families from dependency to self-sufficiency.

<sup>56</sup> C. Robert Dalrymple, interview by Lucille Harrigan, Silver Spring, Maryland, 31 July 2001.

## **Land Acquisition Policy**

Beginning with the first purchases under the Capper Crampton Act in 1930, the county has had a very aggressive policy of acquisition of parkland and open space. When it was established in 1927, the bi-county Maryland-National Capital Park and Planning Commission was charged with the preservation of stream valleys and the coordination of development in the suburbs north and east of Washington D.C. The Commission was successful in carrying out that mandate. Between 1940 and 1960 the county's population increased over 300 percent, from 84,000 to 341,000 residents. Responding to the needs of this growing population, the Commission acquired over 12,000 acres of parkland from 1962 to 1971. Since 1970, the park system has been assisted by State grant funds from the Maryland Program Open Space. During the 1970s and 80s, the conservation-oriented County Councils and the Planning Boards they appointed brought the total to 23,500 acres. The county today owns over 28,000 acres of parkland, including 344 park and open space area, 242 of which are developed for recreational use. About half of the parkland is relatively undeveloped, the other half is in active use with amenities such as play equipment, ball fields, and picnic areas.

In all the county has close to 56,000 acres of public parkland and open space, including 44,000 acres of County, State and Federal parks as well as acreage owned by the sanitary commission, municipalities and private open spaces under easement. Every stream valley shows green on the map, attesting to the policy of watershed protection through the acquisition and protection of stream banks. These aggressive policies

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<sup>57</sup> Martin Klauber, interview by Lucille Harrigan, Rockville, Maryland, 29 June 2001.

<sup>58</sup> Steven Kaufmann, interview by Lucille Harrigan, Silver Spring, Maryland, 10 January 2002.

continue until the present day with the Legacy Open Space program and local and State greenway projects.<sup>59</sup>

Most of this land was acquired from willing sellers, with very few and very small parcels acquired through condemnation. The County continues to be the recipient of land donations.<sup>60</sup>

### **Agricultural Reserve**

A central feature of Montgomery County's 1968 General Plan as well as current updates of the General Plan is the Agricultural Reserve, today about 93,000 acres with 526 farms and 350 horticultural enterprises covering over 29 percent of the county's land area.<sup>61</sup> The Reserve is the product of visionary and effective leadership in the face of strong economic pressures for development, and it enjoys strong citizen support. But while the program has had some notable successes, the Transfer of Development Rights Program<sup>62</sup> is in difficulty, and there are lingering tensions between planners and working farmers over the conditions imposed on the agricultural industry.

The farming industry employs more than 10,000 residents and produces more than \$350 million annually from farm products and operations. But only 45 percent of the farmers work full time in the industry and the average age of the operator is almost 57

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<sup>59</sup> Data is from M-NCPPC, *Park, Recreation, and Open Space Master Plan*, 1998.

<sup>60</sup> William Griese, Montgomery County Parks Department Land Acquisition Specialist, interview by Lucille Harrigan, Silver Spring, Maryland, 3 July 2001.

<sup>61</sup> Agricultural Services Division, Montgomery County Department of Economic Development, *"Montgomery County Agricultural Industry Fact Sheet."* (Rockville, Maryland: Montgomery County Government, July 2001.)

<sup>62</sup> In the 1980s, Montgomery County became one of the first jurisdictions in the country to enact a Transfer of Development Rights (TDR) program. As modified after a court challenge, the TDR program involves zoning certain areas of the county as "sending" areas and other areas "receiving" areas. Landowners in a "sending area" (The Agricultural Reserve) may sell one "development right" per 25 acres to someone wishing to achieve the maximum permitted density in a "receiving area." It is a means of transferring the right to build from the Agricultural Reserve, to those areas of the county served by transit and more suitable for development. During the discussions preceding the adoption of the program, several observers noted that TDRs involve a free market transaction and are hence governed by the laws regarding contracts. For

years. The horticulture industry<sup>63</sup> has grown dramatically in the past 25 years. With gross sales of \$125 million, this sector provides 70 percent of the farm employment. Horses also rank high in economic importance. A 2001 *Montgomery County Horse Study* produced by the Montgomery County Soil Conservation District for the Department of Economic Development concluded that horse owners spend almost \$72 million annually on horses. The survey added another \$21.6 million for the annualized amount of fixed horse-keeping costs such as tractors, trucks, arena, fencing, etc.

The Transfer of Development Rights (TDR) program was launched in the early 1980s with a pilot project in the community of Olney in the north center part of the county.<sup>64</sup> There was a lively market for TDRs, which sold for \$15,000. A portion of the town of Olney was designated as a receiving area and a quality development (Hallowell) was built using the additional density.

Across the county, prices for TDRs have fluctuated over the years, peaking in 1996 at \$11,000. Prices today are at about \$6,000 and are no longer being bought and "banked" by developers. A concerned Montgomery County Planning Board has appointed a 25-member TDR Task Force to recommend rescue measures.<sup>65</sup> There are a variety of problems that have been identified. One is the general shortage of receiving areas, both because of the failure of the Council to zone sufficient areas, and because of

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some, this was an indication that the status of the Agricultural Reserve would be more secure than if protected by zoning alone.

<sup>63</sup> Horticulture is defined by the Agricultural Services Division of the county's Office of Economic Development as including nurseries and landscaping companies, arborists, sod farms and lawn care firms and green house businesses.

<sup>64</sup> The TDR program has survived a number of legal challenges. The Council was required by the courts to use conventional zoning procedures to designate the "sending" and "receiving" areas. There has, however, been lingering political opposition from the residents of "receiving" areas who feel that they are being subjected to inappropriate density.

<sup>65</sup> Judy Daniel, the Planning Board official who staffs the Task Force indicates that it is expected to report to the Planning Board in very early spring. The Board will then forward recommendations to the county Council for action.

the increasing stringency of environmental regulations that can make it impossible for developers to utilize additional density.<sup>66</sup> An additional problem is the regulation that requires developers, if they use TDRs at all, to use two-thirds of the maximum number for the receiving area. Because of environmental or financial considerations, the developer may not wish to use this many, and is thus precluded from using any TDRs at all.

There are a number of other problems that have been identified as obstacles to agricultural preservation. Farmers chronically complain about the need to go through the cumbersome special exception process for what they regard as accessory farm use. While there have been some modifications of the zoning ordinance to permit farm products sales, farmers would like to see the removal of restrictions on processing of farm products, and other special exception requirements for keeping horses. Some farmers are also concerned about the effects of the Rural and Rustic Roads program. Montgomery County has enacted a number of measures to preserve these relics of the rural past, and they are much enjoyed by cyclists, hikers and Sunday drivers. But many of these roads in the agricultural preserve are in need of upgrading for the passage of the heavy farm equipment that is now a part of modern farming, and current regulations prohibit such improvements.

The recent proliferation of state, county and private programs for easement and open space conservation have also created coordination problems. While the additional sources of funding are welcomed, it is often difficult for a landowner or even for planners to decide which program is most appropriate for a property. Planners intend to convene a

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<sup>66</sup> Jeremy Criss, who heads the Agricultural Services Division of the Office of Economic Development, believes that under the present conditions, it is probably necessary to have two opportunities for receiving



"summit" of the managers of these programs to improve communication and coordination.

### **Creating Corridor Cities I: Bethesda, a Success Story**

The Bethesda Central Business District plan area consists of 405 acres in the southernmost corner of Montgomery County. It is a community located on "one of the oldest Native American trails in the East" that became a major route for pioneers moving westward in the 19<sup>th</sup> century.<sup>67</sup> By 1926 there was an identifiable "town" of Bethesda, surrounded by high-quality single-family residential development. A major milestone was the advent of the Metro subway system; the 1970 Master Plan reflected concerns about how this new mode of transportation would affect the central business district (CBD) and the surrounding residential communities. The Council reduced the size of the CBD and adopted a Commercial Transition (CT) Zone to protect nearby single family residential communities.<sup>68</sup> The 1976 Bethesda Central Business district Sector Plan downzoned many of the properties in the area, reducing theoretical development potential from 63 million square feet to 12.4 million square feet. A large retail-office-hotel complex with a large public plaza area was approved for the subway station. This complex opened in 1984 in conjunction with the opening of the Bethesda Metro subway station. A 1982 amendment to the CBD plan related to staging issues and development scale. Peak-hour vehicle trips, calculated under the Adequate Public Facilities scale, became the limiting factor in granting development approvals. The 1982 Amendment

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for every available development right that is sold. Interview by Lucille Harrigan, Derwood, Maryland, 30 October 2001)

<sup>67</sup> Bethesda-Chevy Chase Chamber of Commerce (2001).

<sup>68</sup> Maryland-National Capital Park and Planning Commission, . *Bethesda CBD Sector Plan - Approved and Adopted July 1994*, 20 ff.

established a "beauty contest" for optional method applications<sup>69</sup> based upon a set of Standards for Comparison. This gave the Planning Board discretion in selecting those projects that would provide the most desirable public amenities.

The late 80s were a period of rapid growth for Bethesda as well as the rest of the county. According to a former Director of the Bethesda Government Center, the opening of Metro "opened the floodgates" of development.<sup>70</sup> Bethesda Development was accomplished within the framework of the Master Plans, including a 1990 revision and a Bethesda CBD Plan approved and adopted in July of 1994.

Perhaps more than any other corridor city, Bethesda is a resounding success and a tribute to the creativity and imagination of both the development and the government/planning community. One of the most crucial elements in the success of Bethesda was the involvement of an active and very sophisticated citizenry from the single-family residential districts immediately around the CBD and some residents from the higher density units inside the CBD. The formal advisory group for the most recent Master Plan was chaired for about four years by Malcolm Rivkin, who was a local resident and a planning consultant with a nationwide practice. Rivkin notes that the most recent Master Plan was approved in the mid-1990s by the county Council "in record time because there was near unanimous citizen support." Rivkin notes that the Advisory Commission was comprised of citizen, developer, business, and institutional interests and had a major impact on the shape of the plan. Of the many public meetings and forums Rivkin notes, "I don't recall any density bashing.... That is because the citizens wanted the planning to

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<sup>69</sup> When developers choose "optional method" development they are subject to site plan review and required to provide amenities such as setback and public spaces in return for greater height and greater floor area.

<sup>70</sup> Gail Nachman, former Director of the Bethesda Government Center, interview by Lucille Harrigan, Bethesda, Maryland, 22 October 2001.

succeed. They relished the services and the accessibility to them and the retail, the employment center, the public spaces, and the Metro. And the Plan and the county guaranteed protection of neighborhoods."<sup>71</sup>

Today there are towering office and apartment buildings and a thriving commercial sector. Development is well on its way to achieving the development levels envisioned in the Bethesda CBD Plan. But the traditional Farm Woman's Market in its original single-story building still sells local produce every Wednesday and Saturday and open plazas and urban parks invite pedestrians. There are restaurants for every ethnic taste, and a Barnes and Noble bookstore provides a late evening destination among the sidewalk cafes and specialty shops.

The development of Bethesda was not without its challenges. The County had considerable difficulty achieving its goal of providing affordable housing. Planners conceived of the idea of selling the air rights over a county-built parking garage, but the original purchaser of the rights found it impossible to get financing on the private market. Eventually the county's Housing Opportunities Commission built the project by floating its own bonds. The 308-unit Metropolitan apartment complex now provides about 100 below market rate apartments, subsidized by the 2/3 of the apartments that rent for market rate.<sup>72</sup> Here again, the support of the citizenry encouraged government involvement. A Government-sponsored Senior Center and Day Care Center add to the conveniences of the Bethesda Government Center. Bethesda is also on its way to

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<sup>71</sup> The authors wish to acknowledge the contribution of both Goldie and Malcolm Rivkin of Rivkin Associates for reading a draft of this article and providing comments. In addition to their work in Bethesda, the Rivkins were also instrumental in the development of Montgomery County's traffic mitigation efforts. These have involved public sector matching funds to employers who subsidize transit for employees as well as a variety of van pool, car pool and private shuttle bus programs. Traffic mitigation is often a condition imposed on developers.

becoming a center for the arts. A centrally located site will soon house a 400-seat legitimate theatre, to add to the amphitheater, theatre and dance academies and a lively collection of art galleries.

Montgomery County has recognized that its urbanized centers, with their landscaping and street trees and public spaces, require a higher level of maintenance than is customary, even in a county known for its high level of services. In the late 80's the county enacted legislation authorizing the creation of Urban Districts.<sup>73</sup> In these Districts, there may be a special tax on properties that develop under the optional method. There are also transfers from the enterprise funds generated by the parking lot district. In Bethesda, the Department of Public Works and Transportation initially managed the expenditure of these funds. However, there was a growing sentiment in the business community that the Department was unable to give the kind of attention that was required. It became evident that the major stakeholders, particularly in Bethesda, wanted more control over "their" money.<sup>74</sup> In the early 90's two councilors who themselves lived in Bethesda (Bruce Adams and Betty Ann Krahnke) sponsored amendments to the Urban District Law that provided for a public/private Bethesda Urban Partnership to oversee the expenditure of funds.<sup>75</sup> In addition to the landscaping and general maintenance, the partnership sponsors a variety of community-building events such as lunchtime and evening concerts, a children's festival and the annual "Taste of Bethesda" when many of the restaurants sell samples of their signature menu items.

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<sup>72</sup> According to a rental agent queried by the author in October 2001, rent for a one-bedroom market-rate apartment ranges from \$1530 to \$1965, depending on size.

<sup>73</sup> In addition to Bethesda, Wheaton, and Silver Spring also have urban districts. The latter two communities are older and have needed revitalization, in comparison with Bethesda, where most of the construction is more recent.

<sup>74</sup> Nachman, interview.

It is interesting to reflect on the nature of the civic infrastructure of Bethesda, where the residents tend to be older and more affluent than in many other areas of the county. A coalition of citizen's associations has been vigilant in protecting the quality residential neighborhoods that ring the high-rise development. Issues such as cut-through traffic and parking as well as the scale of development have mobilized the associations.

### **Creating Corridor Cities II: Germantown – the Challenges of Controlling Development in the Countryside**

The Germantown Planning Area consists of approximately 11,000 acres within a three-by-five mile area located some 25 miles northwest of the Washington, D.C. boundary. It is bisected by the major north/south interstate, I-270, and was identified as one of the original corridor cities in the 1964 General Plan. As originally envisioned, the rapid rail Metro system would have served Germantown, but cost considerations halted the line at Shady Grove. A 1974 Germantown Master Plan recommended that Germantown develop into a "new community" similar to new communities such as Reston, VA and Columbia, Maryland. But land ownership in Germantown was fragmented among many different parcel holders and there was no single developer to plan a cohesive community. Montgomery County government attempted to coordinate the efforts of many individual landowners. "Local government was going to attempt to guide and stage development through its planning, zoning, subdivision and capital programming processes."<sup>76</sup>

Germantown, in contrast to Bethesda, had no existing urbanized core when the general plan was adopted in 1964 and in the following years developed in conventional suburban fashion with low-density residential areas development and no identifiable core. Though originally identified as a corridor city around a Metro station, cost considerations excluded Germantown from the original Metro plans. Developers provided townhouses

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<sup>75</sup> The legislation would also permit such partnerships in the communities of Wheaton and Silver Spring, but they have not yet been established.

provided for in the Master Plan, but for some time, Germantown remained, in the words of local civic activists and elected officials, "a donut with a hole in it." Rival civic associations lobbied county government for additional efforts to attract developers of a town center, and there was a movement for incorporation as a municipality on the theory that with its own government, Germantown might have more clout to obtain the services and amenities its residents desired.

Plans for Germantown were also the victim of economic forces during its early years of growth in the late 1970s and early 1980s. Treatment capacity limitations created a "sewer moratorium," and the energy crises affected the entire housing market. Interest rates rose so high that the market rate exceeded the legal limit in Maryland, and in order to hold down interest rates, builders further increased already inflated housing prices.<sup>77</sup> These economic forces, coupled with lower prices for land than in the in the "downcounty" area, created a strong market for townhouses in Germantown. But economic conditions created significant problems in the building industry, and several subdivisions were built by a succession of builders after the initial entrepreneurs filed for bankruptcy.

Montgomery County Government provided strong support to the Germantown Plan objectives. A Germantown campus of Montgomery College was established, and police and fire stations were built. The County opened an upcounty Government Center that housed a branch library and several social service agencies. The Planning Board has used the Adequate Public Facilities Ordinance to stage development and avoid premature development that would have precluded the development of the Mixed-Use Center. On

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<sup>76</sup> This approach has been identified as a "first" in the United States in the text of the July 1989 Clarksburg Master Plan published by M-NCPPC, P.7.

balance, it does not seem wrong to conclude that Germantown today is at best only “a qualified success, in terms of the master plan’s objectives.”<sup>78</sup> After years when the town center was merely a “hole in the donut,” there is extensive construction of both commercial and high-density residential areas.<sup>79</sup> The objectives of the Germantown Plan are also supported by the considerable impetus behind a proposed “Corridor Cities Transitway” that would link the northernmost station of the Metro system at Shady Grove with the developing communities of Germantown and Clarksburg, and eventually the major city of the neighboring Frederick County.<sup>80</sup>

While there have been a number of individual citizens interested in the future of Germantown, it has been difficult to mobilize a Germantown constituency for the objectives of the plan. In part, this is a function of demographics. Most of the new young families, many with two wage earners who have little time or energy for civic activities, occupy townhouse and single-family developments. Nancy Dacek, who actively reaches out to the community and offers constituent services, represents the area on the county council. Despite her many efforts to involve members of the community in planning, few activists have emerged to articulate a vision for the future of Germantown.<sup>81</sup>

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<sup>77</sup> Ibid., p 8.

<sup>78</sup> Ibid., p. 9.

<sup>79</sup> The “Commercial Pipeline” report issued by Park and Planning on September 30, 2001 indicates that development in Germantown is proceeding rapidly toward the development limits set in the Master Plan.

<sup>80</sup> On October 4, 2001, County Councilmembers, officials of the municipalities of Gaithersburg and Rockville, and members of the business community cooperated in sponsoring a symposium on a proposed Corridor Cities Transitway. Governor Paris Glendening gave a keynote address offering his strong support for a project that supports his signature issue of “smart growth.”

<sup>81</sup> On October 3, 2001, Mrs. Dacek invited the officers of all the Germantown homeowners’ associations to bring their concerns to her at a meeting at the Upcounty Government Center. Most of those attending were from older communities in Germantown, and their concerns were primarily associated with issues like the parking of commercial vehicles on neighborhood streets and the lack of police responsiveness to this issue.

The smaller planned corridor town of Clarksburg, to the northeast of Germantown is the "final frontier" of corridor development in Montgomery County. County planner, Sue Edwards (2001) notes that the lessons of Germantown are being applied to improved planning in Clarksburg. A major effort has been made to achieve the development of the town center prior to the buildout of the residential area. Both the scale of development and the pattern of land ownership are making this possible, and there is already lively interest by homebuyers and business owners who wish to locate in Clarksburg.

### **Taking Stock of the General Plan in the 1990s**

In 1991, the county Council endorsed a Planning Board proposal to undertake a review and assessment of the 1964 Wedges and Corridors Plan. The *General Plan Refinement* document approved and adopted by the Council in December of 1993 gave a frank assessment of the county's record in adhering to its original vision. It is quoted in some length because it is, in a sense, the county's own assessment of its successes and failures in implementing its own vision.

The 1-270 Corridor has not yet fully evolved. In developmental terms, it is an adolescent. Its present achievements in fulfilling the 1964 General Plan and 1969 General Plan Update visions have been modest. The Corridor is plagued by congestion and poor pedestrian amenities. It is characterized by surface parking lots, strip retail, and sprawling development, instead of densely developed identifiable centers. In addition, a full range of community services is available only in the more developed portions of the Corridor.

Most of the corridor cities did not develop as envisioned. Rather, high-density development has occurred along a line (Maryland 355 and I-270) in the center of the Corridor. Development radiating out from the centerline lessens in density as the distance increases. Demand to develop the I-270 Corridor came well in advance of the transit stations envisioned in the 1964 General Plan. Consequently, early development was characterized by low-density office parks loosely strung along I-270, with housing located away from the main arteries of travel. Higher density development has begun to appear around the Corridor's Metrorail stations and other key locations. East-west transportation movement remains a problem.



Much of the residential development in the Corridor is relatively new and built to popular suburban standards. Curved, cul-de-sac streets in strictly residential areas lend an air of privacy while reducing the intrusion of through traffic. On the other hand, they tend to reduce mobility and inhibit community interaction beyond the immediate neighborhood.<sup>82</sup>

The *Refinement* notes that the "Corridor concept remains sound. At the same time, its future holds a number of challenges." Market forces encourage development in both transportation corridors to spread toward the rural wedge and low-density suburban communities areas. It is often difficult to ensure that a developer will utilize the full extent of the density or the variety of uses permitted in the zoning established by the Council. The County lacks the authority to mandate the density and variety it would like to see in the areas designated as Corridor Cities. The Zoning Ordinance is under review, and the consulting firm is one with experience in the concept of minimum density.<sup>83</sup>

The Wedges and Corridor plan adopted by Montgomery County in 1964 has, to a considerable degree, guided its growth and development. Despite regional and national forces that have encouraged growth and economic development policies to attract growth, the county has maintained its 93,000-acre agricultural reserve and continues to encourage farming as a viable economic activity. Growth has generally been channeled into the transportation corridors with wedges of open space. This general scheme has survived the county's growth in population, its profound demographic changes, and its change from a bedroom community to a major employment center.

It is an irony of "smart growth" that it is often resisted by those with strong convictions about preserving the quality of life in residential neighborhoods. "Smart growth" calls for greater densities in just those areas where people already live. Political

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<sup>82</sup> M-NCPPC, *General Plan Refinement*, p. 27.

opposition is less in the countryside, simply because there are fewer people to place pressure on elected officials. The intense opposition to development in the Metro-served Central Business District of Friendship Heights is a classic example of this opposition.

Astute observers note that the problem may be less opposition to density, than anxiety about the design. Former Planning Board Chair Royce Hanson summarized the problem.

Few people have seen density or height used with imagination, comfort and beauty. They have seen tenements and degraded neighborhoods, architectural mediocrity, and destruction of nature and privacy. In some of these cases - perhaps most - these atrocities were not planned, but that either makes no difference or is used to prove the point. Mistakes are often more famous than successes. Prominent urban renewal disasters poison the well against almost any public effort to undertake fairly large-scale urban revitalization in core areas.... Mistakes in land use remain highly visible for generations. Plans are seen only as promises to be broken.<sup>84</sup>

Long-time civic activist Stanley Schiff expressed the same sentiment. "It's not density so much as design" that explains the opposition of the civic community to concentration of housing and jobs at transportation nodes.<sup>85</sup>

While there has been considerable public support for preservation of the wedges<sup>86</sup> it has been more difficult to generate support for the concept of corridor cities. In the 1972 and 1976 elections, there was a ballot proposal for Development districts that would

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<sup>83</sup> Sue Edwards, M-NCPPC Project Manager for Germantown and Clarksburg, interview by Lucille Harrigan, Silver Spring, Maryland, 31 October 2001.

<sup>84</sup> Royce Hanson, "On Being Chairman," unpublished paper, July 1977, photocopy provided by Maryland-National Capital Park and Planning Commission.

<sup>85</sup> While the development community believes that the planning process is too complex and lengthy, the civic community also has problems with it. One of the issues identified by Stanley Schiff is the fact that developers and Planning Board Staff engage in considerable negotiation and bargaining on a development plan before citizens are even aware that anything is in the works. He believes that the opportunities for compromise and agreement would be greater if citizens could be brought in at these earliest stages.

<sup>86</sup> A blue ribbon Commission on the Future of Montgomery County reporting to the Council in 2001 took a strong position in favor of economic development, particularly in the high tech and related sectors. The same Commission took an equally strong position in favor of the Agricultural Preserve and against projects

have given the Council authority to condemn land around transit stations in order to facilitate the building of corridor cities. The voters defeated both proposals, with opposition coming from the liberal wing of the Democratic Party as well as business interests.<sup>87</sup>

In Montgomery County, a crucial factor has often been the ability of Planning Board staff and political leadership to persuade and encourage the private sector and even other governmental institutions to share their planning visions.

In Germantown, for example, planners differed with the administration of Montgomery College on the appropriate location for the upcounty campus. The final location is a compromise, rather than ideal from the land use perspective. Also in Germantown, the persuasive powers of the Planning Board and staff were important in ensuring that developers' projects fully implement the density and employment goals of the Plan.

Both Rockville and Gaithersburg are identified in the General Plan as corridor cities. Both are incorporated municipalities with their own mayor and council. Most importantly, they have authority for land use within their boundaries and control both the scale and timing of development through planning and zoning authority. These communities have progressive land use policies and often cooperate with County planners, however their citizens and their governing bodies did not share the General Plan vision. Many of their land use decisions have not always been consistent with the

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such as the proposed TechWay or upper county bridge over the Potomac from Virginia that would encroach upon that reserve.

<sup>87</sup> The Rockville, Maryland Public Library maintains a reference file of campaign materials from these elections.

original vision of the General Plan, following a more traditional style of suburban development.<sup>88</sup>

But with these exceptions, Montgomery County has effective institutional and policy tools for land use planning and zoning. And these tools, when used imaginatively and when supported by an active and informed citizenry, can be used to preserve open space. What is more difficult, is the positive part of the equation - directing growth into new urban centers that are already served by transit or provide opportunities for transit use. The roots of this difficulty are many. While land use management may be a traditional function of local government, building cities is not. Local jurisdictions must rely on private sector decisions. The incentives and restrictions of planning and zoning are imperfect tools at best when the object is to create a desirable and attractive urban environment.

Incentives and persuasion are imperfect tools for building corridor cities. But there has been an understandable reluctance to expand the role of government to make it more effective. In Montgomery County, the concept of Development Districts, which would have provided a tool for government action to develop around transit stations, was twice defeated at the polls.

## **V. CONCLUSION**

Montgomery County has had some extraordinary successes in fostering "smart growth" and yet has failed to attain many of the goals of its 1964 Plan. Those failures, however, are the product of its own ambivalence on the matter of growth and development. There has been constant political tension between those whose focus is

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<sup>88</sup> Royce Hanson, communication with Lucille Harrigan, January 11, 2002.

jobs, growth and tax base and those whose paramount values are preservation of neighborhoods and environmental protection. At a recent conference Governor Paris Glendening noted that wherever he went throughout the State, he heard objections to two things: "sprawl" and "density."<sup>89</sup> The dream of a home in the country persists despite the punishing commutes that it often entails. Indeed, the same individual who wants no more economic growth welcomes the high tech firms that employ her children. The same civic activist, who urges more transit use and less "sprawl," drives from his country home to his job in an office park. And Montgomery County government is responsive to these dichotomous messages. It engages in an ever-shifting balancing act between fiscal and environmental concerns. There is a continuing debate about whether growth "pays for itself," or whether the costs of providing schools and other services outweigh the increases in the tax base brought by new companies. Because both Montgomery County government officials and the electorate that chooses them are very knowledgeable, the debate is never simplistic. Even though there are identifiable "pro-growth" and "slow-growth" officials, political coalitions are not entirely predictable. The ambivalence of the electorate is reflected in the shifting policies of the government.

As one looks at the triumphs and failures of the Montgomery County planning process, one is struck by the importance of leadership in the public sector and in the private sector as well. Many of the county's most innovative policies and institutions were put into place during the time when a Council that was open to innovation appointed an equally innovative Planning Board Chair as their principal advisor. Possessed of a clear planning vision inherited from the Garden City tradition of planning,

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<sup>89</sup> The remark was made by Governor Glendening at the "Corridor Cities Transitway Symposium" in Rockville, Maryland, 4 October 2001.

Royce Hanson was unafraid of controversy and was fearless in defense of the professionalism of his staff and created a climate that made it possible for Planning Board staff to put their best work before the decision-makers. As the experience of Bethesda shows, leadership in the private sector is vital in obtaining the support and confidence of the community.<sup>90</sup>

Our nation has entered an era when the conventional planning wisdom is being overturned. Local governments all over the United States are testing new strategies of land use. The planning concepts of "mixed-use," and "transit serviceable" are competing with the ideal of the suburban cul-de-sac with a car for each member of the family parked in front. Today, the Internet contains an extraordinary number of websites devoted to the issue of "sprawl" and how to avoid it. The term, "smart growth," which ten years ago few people had even heard of, has become a mantra of state and local officials throughout the nation. Old assumptions about what makes "quality of life" are being challenged. Americans may never forsake their dreams of a home in the country, but they may revise their notions about what that "in the country" might mean and how long they want to spend on a gridlocked highway to reach it. If the experience of Montgomery County is any guide, the new strategies for "smart growth" will best succeed when voters in affected communities give enlightened government officials strong support for their efforts at controlling development.

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<sup>90</sup> Royce Hanson, interview by Alexander von Hoffman, 7 June 2001.

## APPENDIX A

# Montgomery County, Maryland Land Use Institutions and Documents

### Contents

**Montgomery County General Plan - "Wedges and Corridors"**

**1932 Regional District Act**

**People's Counsel**

**The Master Plan Process in Montgomery County**

**Adequate Public Facilities Ordinance**

**Maryland Planning Act of 1992**

### Montgomery County General Plan "Wedges and Corridors"

The General Plan for the Year 2000, adopted by the County Council in 1964, is a bold statement for conservation of land resources and open space and the channeling of development into planned urban centers served by transit. It reflects the plans that were laid out for the entire Washington area by a regional planning effort and articulates the "smart growth" philosophy thirty-seven years before it became a popular planning slogan.

Land should be treated as one of our most precious possessions, using efficiently what we need for accommodating expected urban growth, and conserving the rest for the unforeseeable future. Land is too valuable an asset to be heedlessly wasted by allowing it to be developed aimlessly in a scattered pattern. Extravagant 'leap-frogging' of developed into the countryside and overemphasis on larger and larger residential lots waste the land and establish widespread patterns of land use which become obsolete before they are even fully developed.<sup>91</sup>

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<sup>91</sup> Maryland-National Capital Planning and Planning Commission, *On Wedges and Corridors: A General Plan for the Maryland-Washington Regional District, Adopted by the District Council 22 January*. (Silver Spring, Maryland: M-NCPPC, 1964.)

Great expanses of open space in and near the urbanized area provide a feeling of freedom and relief to those urbanites who spend much of their time in the hustle and bustle of crowded shopping and working areas.... Maintenance of large amounts of clean open space, uninterrupted by scatter urban development, requires consolidated urbanization. Should it ever become necessary for future generations to urbanize part of the preserved open space, demolition of obsolete urban scatteration will have to be the first step.<sup>92</sup>

The General Plan sets forth the following goals:

- Expand opportunities for outdoor recreation on both public and private land
- Facilitate the orderly and efficient arrangement of public utilities and services
- Provide an efficient transportation system including rapid transit
- Encourage greater variety of living environments by new Towns and Residential clusters
- Invite imaginative urban design
- Assure implementation of the plan

The plan envisions a radial corridor pattern with the centers of new corridor cities about 4 miles apart. Sixty-three percent of future growth was to be directed to the urban ring, 24 percent in the corridor cities. These were to be real cities, clustered around transit stations and characterized by tall buildings for residential and commercial use, urban parks and social and cultural amenities. The cores were to be surrounded by pie-shaped residential communities with local shopping, educational and recreational facilities.

The Plan called for wholesale zoning changes. "Present zoning in much of the Regional District will allow a residential density that is not compatible for the General Plan."<sup>93</sup> The General Plan includes the concept of staged or sequential zoning and the use of the sectional map amendment that actually applies the zoning in master plans to the

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<sup>92</sup> Ibid., p. 17.

<sup>93</sup> Ibid., p.75.



land. The Plan assumes that subdivision regulations will be in place to discourage premature subdivision and ensure that land is reserved for schools, parks and other purposes.

Perhaps the most remarkable thing about the General Plan is the fact that it enjoyed such widespread and effective support in Montgomery County. It was supported by large numbers of civic activists, and after 1970 by almost every elected official.<sup>94</sup>

### **Regional District Act**

The 1932 Regional District Act gives to the Montgomery and Prince George's District Councils broad powers to recommend land use plans for the district and for transportation, public facilities and amenities:

Including among other things, such matters as the location, arrangement, character and extent of streets, roads, parkways, highways, boulevards, viaduct, bridges, waterways, water fronts, parks, forests, playgrounds, squares, aviation fields and other public ways, grounds and open spaces, the general location of public buildings and other public properties, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated for light, transportation and communication, power and other purposes, the preservation of forests and natural scenery, water conservation works, a zoning plan for the control of the height, area, bulk, location and use of buildings and premises, and other factors of city and regional planning. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, comprehensive, adjusted, systematic and harmonious development of the district, and the co-ordination and adjustment of said development with and to the public and private development of other parts of the State of Maryland of the city of Washington and of the District of Columbia.<sup>95</sup>

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<sup>94</sup> Former Councilor and later County Executive Neal Potter remembers that he was the first person to testify publicly in favor of the General Plan. During the period of its adoption, the General Plan was given lip service even by those officials who later violated its fundamental principles of staged and managed growth. While it was taken seriously by Potter and many civic activists, others thought of it as a general regional vision for growth and were not concerned about implementing it. Its implementation through specific planning decisions was later the subject of bitter controversy.

<sup>95</sup> Laws of Maryland, 1932, *Act Creating Maryland-National Capital park and Planning Commission with Amendments, "Regional District Act."* Published by the Commission, 1932.

Each plan requires at least one public hearing and is to include "maps and descriptives." The Commission was given authority to receive Federal, state and local government or private funds for the acquisition of parks and other public grounds and the right to issue bonds. The Regional District Act incorporates the Capper-Cramton Act by which Congress provided for the establishment of the George Washington Memorial Parkway and provided for the acquisition of parklands in the District of Columbia and Maryland and Virginia as part of a comprehensive open space plan for the area.

The Councils of Montgomery and Prince George's counties, sitting as district councils, retain the ultimate authority for land use decisions, approving rezoning and master plans. The Council has, in effect, delegated all authority for subdivisions to the Montgomery County Planning Board, which also acts as principal land use advisor to the County Council. The act also establishes appointed boards of zoning appeals, also intended to be somewhat insulated from political pressures. A mandatory referral provision requires that all public agencies and utilities submit plans for new facilities to the Planning Commission before an acquisition or construction project is undertaken.<sup>96</sup>

### **The People's Counsel**

The Montgomery County Code defines the function of the People's Counsel:

Informed public actions on land use matters require a full exploration of often-complex factual and legal issues. An independent People's Counsel can protect the public interest and promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which sound land use decisions can be made. In addition, a People's counsel who provides technical assistance to citizens and citizen organizations will encourage effective participation in,

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<sup>96</sup> Ibid., p. 112.

and increase public understanding of and confidence in, the County land use process.<sup>97</sup>

The People's Counsel is authorized to participate in proceedings before the Board of Appeals for variance or special exceptions under the zoning ordinance. In addition, he or she may appear before the Council or before the Hearing Examiner or the County Council for a local map amendment (zoning case), a development or schematic development plan approved under the zoning process or a special exception.<sup>98</sup> The People's Counsel is also authorized to appear before the Planning Board if the proceeding involves action on an optional method development,<sup>99</sup> a subdivision plan or a site plan. Once the counsel files a notice of intention to participate, he or she is entitled to all notices to a party and may participate by making motions, introducing evidence, calling witnesses, examining and cross-examining witnesses and making arguments as the law and evidence in the proceedings warrant. The Counsel may file and argue an appeal the same as any other party to the proceedings.

Martin Klauber, the first appointed People's Counsel, noted that the establishment of this office was but one more step in a series of innovations and landmark decisions that have reformed and refined the process of approving land use in Montgomery County.<sup>100</sup>

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<sup>97</sup> Montgomery County Code, Section 2-150.

<sup>98</sup> A "special exception" requires a hearing before the County's Board of Appeals that determines whether the application meets the special requirements set for in the Zoning Ordinance for that use.

<sup>99</sup> The County Zoning Ordinance provides for developers to proceed under an "optional method of development" that, simply stated, provides for greater building height in return for setbacks for public space and amenities. The developer is subject to site plan review and a variety of conditions may be imposed.

<sup>100</sup> Martin Klauber, Montgomery County People's Counsel, interview by Lucille Harrigan, Rockville, Maryland, 29 June 21001.

## **The Master Plan Process in Montgomery County**

The Master Planning Process in Montgomery County has undergone considerable evolution and, indeed, is under continuing review.<sup>101</sup> Phase 1, which generally takes about six months, involves detailed data collection, technical analyses, and map preparation by staff. The community planners also, during this phase, try to gather opinions from members of the community with special emphasis on broadening outreach efforts to traditionally under represented groups. In Phase 2, the staff issues a 10-15 page “Purpose and Strategy Report” that is first presented to the Planning Board. The Board determines if a master plan advisory group is to be appointed. In Phase 3 the purpose and outreach strategy report is sent to the planning board for their Approval and if there is a master plan advisory group, it reviews and comments on the report. After Planning Board approval, staff forms a technical working group including staff from other county and/or state or regional agencies. The most intensive part of the work is in Phase 4 when alternatives and draft master plan recommendations are identified. During this two or three months there are frequent meetings of the members of the master plan advisory and technical working groups. During Phase 5, staff finalizes the staff draft plan and presents it to the board for approval. In Phase 6 the Board holds public hearings and work sessions.

After the Board approves a final draft plan, the plan moves to Phase 7 when it is submitted to the County Council and the Executive who is required to provide a fiscal impact statement and his recommendations to the Council. Though they are optional, the

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<sup>101</sup> The description of the current master planning process in Montgomery County is taken from *The Master Planning Process in Montgomery County, Maryland*, a pamphlet prepared by the Montgomery County Department of Parks and Planning, September 1997.

County Council almost always holds its own public hearings on the plan in Phase 8. After Council approval, the plan, with any amendments, is returned to the Planning Board for formal adoption. Once the master plan is approved and adopted, the community-based planners continue to work in the master plan area, assuming a formal role as planning coordinators.

Since 1970 the County has developed a series of functional master plans, for Historic Preservation, Bikeways, Park, Recreation and Open Space that provide an overlay to area Master Plans. In 2001 the County produced "Creative Montgomery: A vision for the Arts and Humanities in Montgomery County, Maryland."<sup>102</sup> There are also sector plans for more limited areas of the County. The Council, in consultation with the Planning Board, develops a work program for the Board providing for periodic reviews of all plans.

The County Council has also amended the Zoning Ordinance to provide a variety of tools to implement Master Plans. There are a variety of mixed-use zones and floating zones<sup>103</sup> that require site plan review and provision of amenities by the developer. The County has established Transportation Management Districts that require measures to encourage transit use and car-pooling. The Transit Impact Zone is a special tool to allow greater densities at Metro stops. The Council deals with a constant stream of "Text Amendments" or revisions to the Zoning Ordinance. These most often are undertaken at

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<sup>102</sup> Supported and funded by the County Government, this study was produced under the auspices of the Arts and Humanities Council of Montgomery County and involved over 200 citizens, many of whom participated as representatives of community organizations or non-profits.

<sup>103</sup> "'Floating zones' are a device permitting the establishment of tracts or parcels of land in a specialized use category in accordance with a comprehensive plan, without predetermining the exact location but leaving that decision to future needs and demands of a community as they are recognized from time to time." The zone "floats" over the entire county or city until a property owner applies for a descent on his/her land. See Stanley Abrams, *Guide to Maryland Zoning Decision, 3<sup>rd</sup> Edition* (Charlottesville, VA: The Michie Co., 1992.)

the request of a landowner and refine, and often expand, the permitted uses allowed in a zone. The Council ratifies its Master Plan decisions through the Sectional Map Amendment through which the appropriate rezoning is effected to implement planning decisions.

### **Adequate Public Facilities Ordinance**

Adopted by the County Council in 1973, the Adequate Public Facilities Ordinance provides that "a preliminary plan of subdivision must not be approved unless the Planning Board determines that public facilities will be adequate to support and service the area of the proposed subdivision."<sup>104</sup> In the mid-1980s the Council provided for the adoption of an annual growth policy to guide the Planning Board in its administration of the public facilities ordinance.

The major constraint on development density under the Adequate Public Facilities Ordinance has been traffic and the traffic study becomes a very important part of the land use process. Over the years the Planning Board staff has developed a complex and sophisticated methodology involving computer modeling to determine the level of average traffic congestion in an area. This system is referred to as "the black box" and, it is said by some, very few really understand what goes on inside.<sup>105</sup> This is followed by a local area review, which relies on traffic counts at key intersections, adding the development in the "pipeline"<sup>106</sup> as well as the estimated number of trips that will be generated by the proposed development.

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<sup>104</sup> Montgomery County Code, Section 50-35(k).

<sup>105</sup> Interview by author with former Capital Improvements Program manager John Hansman, Washington, DC, 1 July 2001. In a recent interview former County Executive Neal Potter noted that "we ought to take a closer look at the black box" noting that perhaps the process had resulted in an unreasonable traffic congestion in the Bethesda area.

While the public facilities cited by the Adequate Public Facilities Ordinance include transportation, schools, water and sewer facilities, and police, fire and health services, up until now, inadequacy of transportation has been the only basis for declaring which of the 27 planning areas of the county is in moratorium for new jobs and/or new housing. Under the annual growth policy, the Planning Board calculates the amount of development (jobs or housing units) that can be supported by the existing and programmed transportation network. A "staging ceiling" for each area is adopted each July by the Council. When a proposed plan of subdivision comes before the Board, there is a "local area transportation review" to determine if the proposed plan will cause unacceptable local traffic congestion at nearby critical intersections. The effect of the transportation test is affected by the County's policy of permitting developers to make necessary road improvements to permit their projects to proceed.

Given the rapid growth in school population, the issue of school capacity has been salient for both Councilors and their constituents. This issue has been complicated by matters of education policy in regard to class size, the use of portable classrooms, the reopening of closed schools and the pattern by which elementary and middle schools feed into high schools. These matters are largely under the purview of the independently elected Board of Education. However, the Council in the fall of 2001 in conjunction with its periodic review of the policy element of the annual growth policy adopted, by resolution, a tighter school test for new development. This has had the effect of placing an additional area of the County (the community of Damascus in the northeast part of the County) under building moratorium. A number of members of the Council have expressed a general dissatisfaction with the complexity of the annual growth policy and

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<sup>106</sup> i.e., development that has been approved but has not yet been built.

the number of exemptions that are applied. There is considerable controversy about the effectiveness of the Adequate Public Facilities Ordinance as a tool for staging growth. Some feel that it has successfully delayed development until the necessary infrastructure has been provided. Others believe that it is overly complex and is ineffective. There has been a special dilemma associated with transit station areas where traffic is allowed to reach otherwise unacceptable levels on the theory that commuters have a transit alternative.

Councilor Howard Denis voiced the growing frustration in October 2001 during a Council session. Denis said he was reminded of Gibbon's words describing the Holy Roman Empire as "neither holy, Roman, nor empire." The annual growth policy is no longer annual, he noted, it does not really control growth, and it is not really a policy. Following the discussion where Denis made his remarks, the Council mandated a comprehensive review of the AGP as part of the work program of the Planning Board, and proposals for revisions will come before the Council in the Fall of 2003.

Montgomery County has long used water and sewerage services as a tool to manage growth. Indeed, during the 1970s much of the county was in moratorium (for the approval of new subdivisions) because of the lack of additional sewerage capacity. While water and sewerage are provided by the quasi-independent bi-county Washington Suburban Sanitary Commission, the Council has the authority to determine water and sewer categories for each property insofar as they conform to the sanitary commission's budget-making process. It should be pointed out that even when a planning area is in a growth "moratorium" previously approved projects might still proceed.

It is obvious that growth policy is political issue in Montgomery County. Members of the business community and developers believe that the process has become



far too complicated and time consuming. The traffic analyses required by the Adequate Public Facilities Ordinance can be particularly time-consuming for developers. A classic example of ponderous nature of the review process was described by the President of the Chevy Chase Land Company, Edward Asher, and by his principal attorney, C. Robert Dalrymple, of the old Montgomery County firm of Linowes and Blocher.<sup>107</sup> Chevy Chase Land owned large parcels of land in the downcounty areas and has a policy of developing, maintaining and redeveloping its holdings rather than engaging in speculative activities. In keeping with both "smart growth" and the duly adopted master Plans, Chevy Chase Land has sought to redevelop a total of 300,000 sq. foot located at the Friendship Heights Metro Station just over the border from the District of Columbia. It has taken some ten years to get to the site plan stage, and there has been adamant opposition from the adjoining residents of the single-family residential community of Chevy Chase Village<sup>108</sup> at every step of the way. Both Asher and his attorney note that the complexity of the development process provides an opportunity for citizen litigation at many different steps. Citizens can and do file lawsuits, and even when these are without basis, citizens suffer no financial penalty for having caused the developer costly delays. Business plans become outmoded and economic conditions change as the process drags on and on.<sup>109</sup>

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<sup>107</sup> Interviews by author with Edward Asher, President, Chevy Chase Land Corporation, Friendship Heights, Maryland, 24 July 2001 and Robert Dalrymple, Esq., law firm of Linowes and Blocher, Silver Spring, Maryland, 31 July 2001.

<sup>108</sup> In contrast, the Village of Friendship Heights on the west side of the proposed development has been willing to work with the developer and, as a result, was able to secure many of its demands for neighborhood convenience stores to serve the residents, many of them both affluent and elderly, of its high-rise apartments.

<sup>109</sup> One of the Friendship Heights two sites, 112,00 square feet, was the subject of fifteen days of public hearings. Though the development is in keeping with the Master Plan for the area, citizens brought lawsuits over the zoning application, the project plan applications, the site plan and the subdivision. When asked about the possible use of "slap" suits, or counter suits against citizens for the losses caused by such delays, Dalrymple noted that he and the developer felt these were inappropriate in Montgomery County,

## **Maryland Planning Act of 1992**

While Montgomery County prides itself on its innovative growth management policies, it is also true that its anti-sprawl efforts have been supported by a variety of State programs. The current Governor of Maryland, Paris Glendening, has made "smart growth" his signature issue, and current County efforts have been enhanced by the adoption of the Maryland Planning Act of 1992.<sup>110</sup> The act provides funding incentives for development which conforms to its "visions" which include: concentration of development in suitable areas; protection of sensitive areas; direction of rural area growth to existing population centers; stewardship of the Chesapeake Bay; and conservation of resources including a reduction in resource consumption. The act requires the implementation of a sensitive areas element designed to protect environmentally impacted areas. These include areas such as the 100-year floodplains, streams and their buffer areas, habitats of threatened and endangered species, and steep slopes. The act had had practical effects such as the Governor's support for transit ways and the availability of state funds for revitalization and redevelopment in areas served by transit.

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where residents take prides on the openness and democratic practices of their government. In the end, Dalrymple note, the land use process is always political and dependent on the actions of the legislative body. The County Council would be loath to look kindly on a "slap" suit that offended a number of its civic activist constituents. While the most recent citizen lawsuit was won by the developer, in November 2001 citizens were still considering another appeal.

<sup>110</sup> The provisions of the act are summarized on p. 9 of the Bethesda Central Business District Sector Plan, noting that the Plan "embraces and confirms the...visions of the Maryland Economic Development, Resource Protection and Planning act of 1992." Montgomery County Department of Parks and Planning, *Bethesda CBD Sector Plan*, approved and adopted July 1994 (Silver Spring, Maryland: M-NCPPC, July 1994.)

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