

Oppose House Bill 980

Protect Maryland's Public Ethics Law

Defend Transparency, Accountability and Protections Against Special-Interest Influence in Zoning and Land Use

Testimony Opposing House Bill 980 (PG 416)

Prince George's County – Public Ethics – Definition of Application

Senate Education, Health and Environmental Affairs Committee

Hearing Date: April 1, 2021

Position: OPPOSE

Community Research and Sustainable Hyattsville respectfully urge the Prince George's County Senate Delegation to issue an Unfavorable report on House Bill 980. We urge you to defend transparency and accountability in Prince George's County's zoning and land use processes and to defend essential protections against the undue influence of monied special interests on those decisions. The County's zoning and land use decisions can have long-lasting, far-reaching impacts on communities, residents' quality-of-life, the environment, on transportation, and on schools and other essential services.

Community Research and Save Our Sustainable Hyattsville (Sustainable Hyattsville) are Prince George's County-based nonprofit organizations dedicated to promoting sustainability, protecting communities, public health and the environment, and promoting good government. We are members of a growing alliance of more than 20 civic, environmental, and good government organizations that oppose House Bill 980 in its current form and that call upon you to defend critical protections in Maryland's Public Ethics Law.

Many of us base our concern and opposition in our experiences in zoning and land use cases before the county Planning Board and District Council, and in our experiences with zoning-related legislation before the County Council. Members of our organizations and communities care so strongly about this controversial, ill-advised legislation that since last Wednesday they have sent more than 480 letters to all Prince George's County Senators and placed hundreds of calls to their offices.

To be clear, our intent is not to “kill” the Zoning Re-write or the County-wide Zoning Map Amendment (CMA). It is to ensure that key protections provided by the Public Ethics Law and key due process rights provided in the Zoning Ordinance are preserved. And it is to ensure that developers may not use the CMA process to evade those ethics and due process protections, and intensify zoning on their properties. Contrary to claims made by parties who support HB 980, rejecting this attempt to weaken the Public Ethics Law would not kill the Re-write or the CMA, but it would help to protect the integrity and credibility of the County's process and decision

According to the State Ethics Commission, the General Assembly enacted Maryland's Public Ethics Law to achieve several essential goals:

1. To assure the people of the impartiality and independent judgment of officials and employees.
2. To avoid improper influence or even the appearance of improper influence.
3. To require officials and employees to disclose financial affairs and to meet minimum standards of ethical conduct.

Over the years, the General Assembly has built into the Maryland's Public Ethics Law a range of common-sense measures that aim to ensure the credibility, fairness and credibility of zoning and land use decisions, including specific provisions that apply to Prince George's County. Those provisions generally are not unduly onerous, and at a time when too many people too little faith in government, it is essential that the Delegation and General Assembly avoid further undermining that faith.

To maintain and restore the public's faith, Prince George's County and Maryland need more transparency and accountability, not less. We need more protections against the undue influence sought by deep-pocketed developers and other special interests, not fewer.

Our Concerns Are Based on Experience, Not Speculation

In a specific case concerning a highly controversial project, Sustainable Hyattsville has documented clear or potential violations of the Ethics Law by applicants, agents and council members. In that case, the owner of record and/or agents to the applicant gave what we believe to be prohibited contribution, totaling several thousand dollars, to the campaign committees of council members.

Searching that case file, we found that neither the contributors nor the Council Members had filed the legally required affidavits disclosing those contributions. None of those council members recused themselves when the case came before the District Council. The developer in that case has applied for more intensive uses and densities through the current County-wide Sectional (Zoning) Map Amendment process. If the General Assembly passes HB 980 those multiple violations of the Ethics Law and the public trust could, we believe, be retroactively legalized. This is akin to a wealthy individual who has been cited several times for speeding in a residential area convincing a local agency to retroactively raise the speed limit and vacate those citations.

House Bill 980 Would Weaken Critical Public Ethics Protections

HB 980 would undermine the Public Ethics Law by badly weakening or simply wiping out a range of common-sense requirements and prohibitions as they relate to the County-wide Sectional Map Amendment and to instances in which property owners and developer apply for more intensive zoning through the CMA process. It would allow developers and the District Council to do on a county-wide level what the Public Ethics Law rightly prohibits on a project-specific level.

Because the prohibitions and requirements imposed by the Ethics Law apply to the 36 months before an application is filed and during the pendency of the application, and because HB 980 would exempt what would otherwise be violations during that period and through HB 980's sunset, this bill may simply wipe out those common-sense protections for a span of several years.

Undermining Due Process: Developers May Use the CMA Process to Evade Critical Public Review

Further, developers seeking to intensify zoning may use the County-wide Sectional (Zoning) Map Amendment process to evade the normal administrative process that applies to zoning applications. That normal process generally requires the applicant, the Office of the Zoning Hearing Examiner, and the District Council to issue direct notice to a property's neighbors, local municipalities, local civic associations, and registered Persons of Record at certain key steps. It requires an evidentiary hearing before a Zoning Hearing Examiner and then, in many cases, the District Council, and sometimes the Planning Board. It also requires the Planning Department to consult with other agencies then develop a Technical Staff Report, which the Planning Board must then publish on its web site prior to any hearing of that case.

Our point-by-point review of the Zoning Ordinance sections that govern normal applications for Zoning Map Amendments and property-specific zoning requests filed through the CMA process found that the CMA process allows a developer to bypass most or all of these requirements and thereby evade to the public notice, public scrutiny, and public comment generally required for applications to rezone specific properties.

As a result, if the General Assembly approves HB 980, the current CMA process could become a Trojan Horse that many developers could use to evade the Ethics Law and to intensify zoning on many properties without the normal public scrutiny, due process, transparency, accountability, or opportunity for public comment.

Concerns About the County's Lack of Transparency

We are deeply concerned that the process followed by the County Council has lacked basic and essential transparency even as the County is asking the General Assembly to weaken the Public Ethics Law.

Rather than clearly explaining to the public that ethics conflicts have compelled the Council to postpone its joint hearing on the County-wide Sectional Map Amendment, the Council has published only vague, uninformative statements, and has refused to publish relevant public records.

That lack of basic transparency and basic respect for public's right to know cripples the public's ability and the General Assembly's ability to understand the potential impacts of HB 980-2021. It also undermines the credibility of this legislative process and the Council's efforts to advance County-wide Sectional Map Amendment.

On March 29th, Council Member Todd Turner told the Prince George's County our Senate Delegation that the Council had received more than 1200 affidavits. The Council has refused to publish those public records on the Council's web site even though, by law, the Council generally must make those affidavits available for public review before any hearing on a zoning application.

Those 1200 affidavits mark a sharp increase over the past few months. We understand that by early November 2020 the Clerk of the County Council had received more than 800 Ethics Affidavits from applicants and/or agents related to the CMA.

Council members have claimed in public forums, including in testimony before the House

Environment and Transportation Committee, that the Council could not publish or release those affidavits, applications and letters from developers' agents without first receiving a written request under the Maryland Public Information Act (MPIA). To our knowledge, that is not true. These are public records that parties must file no less than 30 days prior to the Planning Board's and Council's joint public hearing on the draft CMA, and that the Council and/or Planning Board are required to make publicly available as part of the case record.

In early March, the Council finally did provide access to at least some of those files to a reporter who had requested them in early February. The County shared 25 files containing affidavits, applications, and letters from attorneys and other parties. Those files contain more than 3250 pages of scanned PDFs. In a preliminary review, we have found more than 100 instances where parties indicated they or their clients planned to, and might, seek more intense zoning on their properties. Most of those documents were letters filed by land use attorneys, and many of those letters cover multiple clients and properties.

Many of those clients are LLCs and other business entities, and many are based outside of Prince George's County. One must search the State Department of Assessment and Taxation's database and the State Board of Election's campaign finance database to begin to figure out who's who and what's what.

We respectfully request that the Committee issue an Unfavorable report on HB 980, until or unless this ill-advised bill is substantially amended to fully address the concerns raised above, in joint testimony submitted by two dozen public-interest nonprofits, and in letters sent by more than 480 Prince George's County residents to their senators.

We urge the Committee to insist that the County Council immediately:

1. Publish the following public records for review and download from the Council's website:
 - a. All Ethics Affidavits filed by applicant, agents and council members relevant to the County-wide Sectional Map Amendment (CMA).
 - b. All applications – or at a minimum the application forms and associated financial disclosure forms – to which those Ethics Affidavits apply.
 - c. All Ethics Affidavits filed by County Council members relevant to campaign contributions and/or *ex parte* communications with applicants or their agents.
 - d. A map of the properties potentially affected by those applications; and
 - e. Any review, analysis or comments developed by county staff regarding the above CMA and the above affidavits and applications.

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