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**Testimony of Klaus Philipsen, FAIA  
Before the Baltimore County Planning Board on  
Planning Staff Report on Establishing Local Open Space Waiver Fees<sup>1</sup>**

**March 19, 2015**

We want to make the following points about the Planning Staff Report:

1. **Process:** The report is not fully responsive to the council resolution it responds to and it has not been available long enough for proper vetting.
2. **Fee structure:** The suggestion of the report to maintain current zoning based fee structure and all exemptions is unacceptable because it does not resolve the conflict between incentivizing development and the needs for open space arising from development.
3. **Implementation:** The report does not address how the process of applying open space rules (fee or actual space) can become more transparent, predictable and equitable to developers, existing residents and users of the new developments.
4. **Design:** The report does not address open space design standards which are burdensome, inflexible and fraught with unintended consequences.

**Ad 1: The report falls short in addressing the Council's request** in that it fails to discuss (1) the open space needs of the County, (2) how waiver fees can be used to meet those needs, and (3) procedural changes to the waiver-fee granting process that ensure fairness and transparency.<sup>2</sup>

**Ad 2: The current fee structure and the ordinance on which it is based are problematic in that they:**

- i. **Incentivize sprawl development, given that the waiver fees tend to rise as density increases (see Exhibit 1).** A more reasonable structure would scale the fee based on density (e.g. inside the URDL, outside the URDL, and within special districts (CT, TOD, dormitories, etc.)) and take into account varying approaches to solving open space needs within each type of district;
- ii. **Fail to account for the true cost of providing quality public open space.** The County could provide no cost basis for the 2006 fee schedule and the 2013 fee schedule uses the value of raw land, even though what the local open space ordinance requires developers to provide is land that is greatly improved.

<sup>1</sup> Copies of this testimony are available at [www.neighborspacebaltimorecounty.org/page25.html](http://www.neighborspacebaltimorecounty.org/page25.html)

<sup>2</sup> The 2013 resolution asked the Planning Board to "(1) identify the open space needs of the County with the goal of using waiver fees to meet those needs, (2) recommend a method to encourage the payment of waiver fees in cases involving small lot subdivisions, (3) recommend any needed modification to the procedure that permits a waiver of standards or fees by the Director of Recreation and Park; and (4) Study the current open space waiver fee system, including the relevant provisions of the Open Space Manual, and to recommend to the County Council a comprehensive, transparent formula for the manner of establishing local Open Space wavier fees." Baltimore County Council, [Resolution 44-13](#) (May 23, 2013).

- iii. ***The suggested exemptions incentivize certain kinds of development or redevelopment (CT Districts, affordable housing, dormitories, elderly housing) that play an increasingly strong role in the market and ignore geographic discrepancies regarding needs for open space and the fact that the densest development types create the greatest additional needs.***

***Ad 3: There is no discussion of fees approved and collected since the last policy change in 2013 or how fees have been used. Further, there is no recommendation about how this process can be made more transparent going forward.*** The fees have changed twice over 9 years' time and there are no data indicating how many waivers have been granted versus acres of land provided for local open space, what amount of waiver fees have been collected, or how the funds that have been collected have been spent. How is it possible to address the Council's request without analyzing this information as a baseline?

***Ad 4: The ordinance sets a standard for providing open space that is unduly rigid and provides no incentive for creativity in meeting open space needs.*** The current standard is quite rigid requiring:

1,000 square feet of open space per dwelling unit, with 65% of the acreage having less than a 4% grade variance, and being open, dry, unencumbered, and suitable for interactive play or for gatherings of 10 or more individuals and 35% being gently sloped, open, or sparsely wooded areas with less than a 10% grade variance suitable for non-interactive recreational uses including walking, picnicking, or sitting is quite rigid.<sup>3</sup>

This standard results in undesirable environmental impacts through excessive grading and clearing and does not provide opportunities for looking at what may be able to be done on neighboring or nearby land, which might ultimately serve more of the affected community. Nor does it recognize that districts differ in how hard compliance with those standards is. For example, in an urbanized CT district, new open space design standards should allow a combination of amenities such as trails, bike& hike routes, public plazas, truly green streetscapes that act as meaningful pedestrian spaces and that improve connectivity of open spaces, walkability enhancements, and/or upgrading of existing local active or passive open spaces.

***The ordinance and fee structure also fail to provide the small parks, trails, streetscapes and other amenities needed to properly retrofit and connect the hugely fragmented suburban landscape that makes up the area inside the URDL.*** The area within Baltimore County's URDL is urban, but it is not urban in the same way that Baltimore City is urban. The difference here is that there is no green infrastructure or planned network of parks and open space even close to what was planned, and, to a large extent, currently exists, as a result of the work of the Olmsted brothers in the City in the early 20<sup>th</sup> century.

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<sup>3</sup> Baltimore County Code, Section 32-6-108.

Exhibit 1

### Various LOS Waiver Fee Structures Under Conditions of Increasing Density

