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SENT VIA ELECTRONIC MAIL

April 27, 2022

Drew Vetter
Deputy County Administrative Officer
Office of County Executive
400 Washington Ave.
Towson, MD 21204

Re: Comments on AHWG Final Draft

Dear Mr. Vetter,

Thank you for the opportunity to comment on the AHWG's final draft Recommendations. Please let me know if you would like additional information or clarification of any of my comments.

I. Previously Identified Barriers & Strategies in June 2021 Analysis of Barriers

In Baltimore County's June 15, 2021 Revised Analysis of Barriers, the County identified "a number of common impediments":

1. Zoning and land use practices;
2. Zoning and land use decisions – related to affordable housing – that may appear arbitrary, and lead to viable projects not moving forward;
3. No appeal process for the developer or advocates of the affordable housing development;
4. Additional systemic and procedural barriers, including limited land dedicated to affordable housing development, community opposition and the lack of a comprehensive affordable housing strategic plan.

The County identified Strategies to address the Barriers set forth in the June 15, 2021 Analysis. As follows:

1. Engage in affordable housing strategic planning process, for which the key element which appeared to be Technical Assistance provided by Enterprise Community Partners and funded by HUD. (p.4)
2. Establish an Affordable, Housing Workgroup, which will issue Recommendations to improve affordable housing opportunities;
3. Review Local Zoning and Land Use Practices – the County has hired Public Works, LLC, a consulting firm to review the County Code, Zoning Regulations, and zoning and land use practices to determine regulatory barriers to development of affordable housing

and to provide specific recommendations for policy and practice changes to promote more inclusionary housing outcomes. (**Note**, these recommendations were to have been shared with the AHWG at our August 2021 meeting, and incorporated into the AHWG Recommendations));

4. Creation of Department of Housing and Community Development
5. Hold a Fair Housing Briefing for County Council
6. Research and Implement New Policies and Procedures to Address Existing Barriers.

Distribution of Hard Units

Discussion of Barriers

The County further recognized that it needed to address structural and procedural barriers to locating projects in areas of opportunity (pursuant to the VCA, Exhibit F) where no VCA-compliant projects have been located.

Strategies to Address Barriers

The County proposed a potentially very effective tool for addressing some barriers: to complete a comprehensive assessment of opportunities for constructing affordable units on available land by reviewing current uses and underutilized parcels.

“This assessment will create an inventory of properties that can be available for developers and nonprofit organizations to create opportunities for affordable housing.”

II. The AHWG Recommendations Lack Components Essential to Successfully Create Affordable and Accessible Hard Units as Required Under the VCA

A. Zoning & Infrastructure Subcommittee

Subcommittee Recommendations

7. Allow multifamily (MF) developments in select commercial and industrial zones.

“An analysis should be completed of the commercially and industrially zoned land to determine which properties are vacant, underutilized or underperforming to determine the availability of redevelopment for affordable housing.”

#8. Allow affordable housing developments by right (including MF) in all residential districts in opportunity areas as defined in the 2020 Analysis of Impediments to Fair Housing Choice in the Baltimore Region. The Code should also be amended to permit affordable housing by right in all residential districts in Census Tracts as defined in the Baltimore County VCA.

Comments: These recommendations are positive, but for unknown reasons the County included an analysis of land in commercial and industrial zones, but has not recommended that “an analysis of land/buildings should be completed in all residentially zoned districts within Opportunity Census Tracts to determine which properties are vacant, underutilized or

underperforming to determine the availability of redevelopment for affordable housing,” as I previously suggested be added.

In addition, as noted above, the County in its June 2021 Analysis of Barriers, indicated as a strategy that it would complete a **comprehensive** assessment of opportunities for constructing affordable units on available land by reviewing current uses and underutilized parcels, and that “This assessment will create an inventory of properties that can be available for developers and nonprofit organizations to create opportunities for affordable housing.”

Yet, this assessment has not been completed, and likely has not begun. The County should be in the final stages of assessing and/or analyzing the available land/buildings, but is instead presenting such ideas as though they are new AHWG recommendations.

The analyses referred to in #s 7 & 8, should be done in the short not medium term.

#12. Review and simplify appeal provisions that affect affordable housing developments before the Baltimore County Board of Appeals. The Board of Appeals is required to hold hearings and take testimony on any application or development proposal that is an appeal of a decision by the Administrative Law Judge. The Board of Appeals (BOA) regulations should be reviewed to clarify standing and who has appeal rights. Currently, any person or community association that is “aggrieved” can appeal to the BOA per § 32-4-281 of the Code.

Comment: Currently any “Person aggrieved or **feeling aggrieved**” has standing to appeal, not just a person who is aggrieved,” per code definition at § 32-4-281(a). Regardless, even if the standing is limited to a person “aggrieved,” it won’t necessarily prevent a development – even one that has been approved at every level of the development process – from being derailed at the last minute (i.e., Red Maple – where petitions were “aggrieved,” not “feeling aggrieved”).

#13. “Modify the application process to enable ‘administrative reviews’ for affordable housing developments. The process should include a community input meeting but be exempt from the hearing requirement, per § 32-4-106 - Limited Exemptions. An additional exemption could be made for the Hearing Officer’s Hearing but require a community input meeting and an agency development review.”

Comments: Affordable and accessible multifamily housing applications/projects should be subject to the development review process by the relevant Baltimore County agencies. If all agencies approve the development, it should not be subject to an ALJ hearing or to a BOA’s review. The County can incorporate community input into this process; however, once the agencies have made their decisions, there should not be a right to appeal.

As noted above, the County identified as a Barrier in its June 2021 Analysis of Barriers that there’s no appeal process for the developer or advocates of an affordable housing development. An appropriate change would be to remove the BOA from the development review process. Those with standing would have the option of filing a lawsuit to stop a development; as it’s more difficult and expensive to file a complaint in circuit court than to file an appeal to the

BOA, it would require more of an investment, reducing the likelihood that those without a legitimate grievance would proceed.

The BOA should not have jurisdiction over the regular development process, where the County agencies have reviewed and approved a development.

Similarly, without removing the BOA from the process, even if multifamily was permitted by right in all residential and some commercial/industrial zones (as recommended in #'s 7-8), this would not guarantee that a development would not be derailed – even after all County agencies approved the development at every level of the development process.

Red Maple – all relevant County agencies approved Red Maple to be built on the North parcel in east Towson. This parcel is zoned RAE-2 which permits high density apartment buildings **by right** (i.e., multifamily by right). It permits a density 80 units per acre *if constructed near commercial and business centers*. Thus, no matter how the code may be amended and even if affordable units can be built **by right per the code** in every residential zone, a council person can introduce sabotaging legislation, which completely undermines the by right standard, and even if an ALJ upholds the development, if it can be appealed to the BOA, and will likely be overturned.

What happened with Red Maple illustrates that no matter how the land is zoned and even if the development's received full approval by the County agencies, it can be sabotaged in the final stages. Even without a council person intervening, under the current system, an appeal to the BOA could derail an approved development.

Red Maple confirms that the BOA should not be involved with the regular development process. While recognizing problems with the BOA arrangement, the AHWG does not recommend completely removing BOA from the process.

#'s 9 –10. Good ideas.

#11. The County should consider making strategic changes in the application process for affordable housing projects – specifically pertaining to the Basic Services Map requirements.

#14. Prioritize Capital Improvement Program projects in areas where Basic Services Maps impose impediments for affordable housing developments in designated Opportunity Areas.

Comment: #s11 & 14 could be very helpful, assuming the County can resolve the issues related to BOA and other barriers keeping affordable housing from being built.

B. Incomplete Strategies and Issues being Ignored

Strategies from June 2021 Analysis of Barriers

Out of the six highlighted Strategies the County identified to address the Barriers set forth in the June 15, 2021 Analysis, set forth in Section I, above, two have been completed: establishing an AHWG and issuing Recommendations, and the creation of DHCD. While the County has received extensive TA from Enterprise, there's no evidence it has assisted the County in creating affordable and accessible housing units.

As an AHWG member, I know the County hasn't presented Public Works, LLC's touted recommendations for policy and practice changes to promote more inclusionary housing – after its review of zoning and land use practices. I've asked about this before, and am fairly certain no review has been completed, and it's likely Public Works, LLC was never hired.

Similarly, the above-referenced strategy from June 15, 2021 to “Hold a Fair Housing Briefing for County Council” has not happened, and it is now being Recommended that the County administration should proactively collaborate with the County Council.

And, if the County has engaged in the strategy of Research and Implementation of New Policies to Address Barriers (i.e., benchmarking against other jurisdictions to consider changes in County policies that would serve to affirmatively further fair housing goals and address barriers), it has not shared that with the AHWG, and hasn't informed Complainants' counsel of new policies that the County has implemented.

The County has Declined to Acknowledge or Address Special Laws or Its Purchase of Open Space in Opportunity Areas

In the midst of the County drafting its Analysis of Barriers in May 2021, the Baltimore County Council was busy zoning by legislative action, via Bill 46-21, which targeted a parcel on the southeast corner of Belair Road and Honeygo Boulevard in Perry Hall, and enacted into law a development agreement negotiated by the developer, and representatives of nearby communities. The agreement prohibited affordable family housing by purposefully allowing single-family attached dwelling units in the otherwise Business-Local zoning district, but then limiting occupancy as age-restricted (over 55).

The action illustrates continued processes by which County Council members interfere in the zoning process in disregard of their obligations under the Voluntary Compliance Agreement, fair housing and civil rights laws.

Yet, there are NO Recommendations or strategies to ensure that the County Council stops its interference with the zoning process, and altering zoning through legislation.

Another exclusionary land use practice was Baltimore County's acquisition of a parcel of more than two dozen acres of land in Lutherville-Timonium. The County Council approved the acquisition of the land in May 2021, reportedly with the support of the County Executive. Yet again, the County uses its resources to lock away more land with access to water and sewer services, and well-resourced schools, while maintaining this area as white and affluent.

The County's response, in a letter dated 7/26/201, to Complainants' Counsel regarding this purchase was: “please note that this land was never approved for use as affordable housing.”

The County apparently did not and – considering there is no recommendation related to this purchase – still does not understand that its choice not to approve the property for affordable housing is evidence of the County's continuing segregation and further demonstrates the County's failure to further fair housing.

The Education, Outreach and Engagement Subcommittee is not Prepared to Lead on Affirmatively Furthering Fair Housing

The Subcommittee's Recommendation #4: All efforts around community education, outreach and engagement should be coordinated with the County's policy priorities **and at the same time, County policies and priorities should be shaped and informed by the input received through outreach and engagement.**

The EO&E is the Subcommittee that is tasked with engaging and educating the community and stakeholders, yet remains reluctant to be honest and forthright about fair housing and policies that need to be changed and implemented.

Compare the EO&E subcommittee with the Best Practices, Policy and Legal ("BP&L") subcommittee, which clearly has a better understanding of the law and the realities the County has to confront.

I.e., the County needs to recognize and accept that "housing conditions and disparities are primarily due to historic, discriminatory patterns and practices and must be addressed. This history has denied housing opportunity, limited the opportunity to build wealth and prevented social and economic mobility." (See p.14).

Furthermore, the Best Practices, Policy and Legal Subcommittee also recognizes that "all local governments that receive federal funding have a duty under the Fair Housing Act to Affirmatively Further Fair Housing ("AFFH"). The AFFH Rule sets out the framework for how the County can take meaningful actions to address significant disparities in housing needs, overcome historic patterns of segregation, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, promote fair housing choice, foster inclusive communities that are free from discrimination and fostering and maintaining compliance with civil rights and fair housing laws.

As required by HUD, the County has a Fair Housing Action Plan incorporated into its Consolidated and PHA Plans, and is obligated to provide units in Opportunity Areas as a result of the Voluntary Compliance Agreement. The County's obligations under the VCA reinforces the required commitments to AFFH and sets out milestones and related programmatic, policy and legislative changes to achieve those goals. A discriminatory action by the County would constitute both a material breach of the VCA and a statutory violation of the Fair Housing Act.

The policies and priorities that Baltimore County and the EO&E Subcommittee must follow already exist and were included by the BP&L Subcommittee in the final draft Recommendations. The EO&E subcommittee, through its outreach, engagement, and especially education, is required to inform and engage on these laws and policies, and not to reshape these policies based on community input, which would likely seek to perpetuate the historical discrimination and segregations that the VCA and fair housing laws are meant to address.

And finally, I would recommend that the policy statement drafted by the Best Practices, Policy and Legal Subcommittee should be the Vision Statement for the AHWG.

“Baltimore County will create and preserve stable and affordable housing in all neighborhoods to promote economic mobility, provide access to quality education, health care, transit connections and that are guided by intentional strategies to dismantle a legacy of social and racial inequities.”

Respectfully submitted,

/s/

Leslie K. Dickinson