

# THE WHITE FLINT PARTNERSHIP

January 17, 2011

## **BY ELECTRONIC MAIL**

Hon. Valerie Ervin, President  
and County Council Members  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Expedited Bill 59-10  
Transportation Impact Tax—Amendments—White Flint

Dear Ms. Ervin and Council Members:

We are writing to support the pending Bill establishing a \$0 impact tax rate for the newly created White Flint Impact Tax District and to alert the Council to a potential future problem regarding impact tax credits.

The proposed Bill is fully consistent with the Council's action in late November to adopt an infrastructure financing plan for White Flint. An essential component of that compromise financing plan is the one removing transportation impact taxes in exchange for levying a special district tax, beginning this July. We fully support this Bill designating a \$0 rate for the White Flint Impact Tax District to implement the infrastructure financing plan.

We note, however, a potential future problem regarding impact tax credits. If this Council or a future Council changes its position and imposes a transportation impact tax on commercial development projects in White Flint, then it is imperative that the transportation impact tax-paying developer be entitled to obtain impact tax credits under Section 52-55 of the Montgomery County Code. Section 52-55(b) (1) requires that an impact tax credit agreement be entered into with the Department of Transportation for a particular road improvement before the applicant obtains a building permit for new development. If DOT concurs with the proposed credit, the applicant satisfactorily constructs the public road, and the completed road is certified by DOT under the agreement, then the applicant may apply that approved credit against transportation impact taxes otherwise levied on the applicant when it thereafter receives a building permit for new development.

Here, it is possible that public road improvements may be constructed by a White Flint District developer (e.g. Nebel Street extended, behind White Flint Mall, which is not a road being financed by the new financing district) prior to the time that a future Council decides to revoke the \$0 rate and charge a transportation impact tax in White Flint. That would leave the hapless developer without recourse to obtain an impact credit at the time any building permit was thereafter sought for commercial development, because the developer would not have already in place a previously approved impact tax credit agreement with DOT.

Accordingly, we ask the Council to declare in its legislative history for this Bill its intention that impact tax credit provisions of existing law be equitably amended if in the future it chooses to revoke the \$0 rate and instead impose a transportation impact tax on new development. Thank you very much for your favorable consideration.

Sincerely,

The White Flint Partnership

Combined Properties

Federal Realty Investment Trust

Gables Residential

The JBG Companies

Lerner Enterprises

The Tower Companies

cc: Michael Faden, Esq.  
Mr. Edgar Gonzalez