

REVIEW OF THE OFFICE OF THE PEOPLE'S COUNSEL



**OFFICE OF LEGISLATIVE OVERSIGHT
REPORT NUMBER 2008-10**

JUNE 24, 2008

**Craig Howard
Leslie Rubin
Jennifer Renkema
Sarah Downie**

EXECUTIVE SUMMARY

By law, the Office of the People's Counsel ("Office") is a legislative branch office established to "protect the public interest and promote a full and fair presentation of relevant issues" in land use cases in the County. The People's Counsel, who is appointed by the County Council, can participate as a party in certain land use cases and can provide technical assistance to residents on land use topics. Current law prohibits the People's Counsel from representing the County, a government agency, or a private party in any proceeding.

LEGISLATIVE AND FUNDING HISTORY OF THE OFFICE

The Council enacted legislation to create the Office of the People's Counsel in 1990, but did not fund the Office until 1999. Amendments to the law were adopted in 1999 and 2002. The legislative record indicates that the debate surrounding these bills focused on several recurring issues, such as the Office's role and jurisdiction. The Office's FY09 approved budget of \$250K funds a full-time People's Counsel's position and 0.8 workyears of an administrative aide position shared with the Board of Appeals.

By law, the Council can appoint a People's Counsel either as a term merit employee or a contract employee. The People's Counsel employed since 1999 is a term merit system employee who was reappointed in 2003 (to a four year term) and 2007 (to a one year term). The 2007 reappointment resolution provides that the People's Counsel serves until a successor is appointed.

ACTIVITIES OF THE OFFICE OF THE PEOPLE'S COUNSEL

The People's Counsel is authorized to participate as a party, at his discretion, in seven types of land use cases and can make motions, introduce evidence, call witnesses, cross-examine witnesses, and make arguments in these cases. In practice, the People's Counsel primarily participates in special exception and local map amendment cases. The People's Counsel estimates that he spends 30% of his time participating in cases.

The People's Counsel also is authorized by law to provide technical assistance to residents – providing general information on land use topics and guidance on effective participation in the County's land use process. The People's Counsel's activities also include mediating land use disputes and participating on Community Liaison Committees (CLCs). The People's Counsel estimates that he spends approximately 70% of his time providing technical assistance, mediating cases, and attending CLC meetings.

FEEDBACK ON THE LAW AND SERVICES OF THE OFFICE OF THE PEOPLE'S COUNSEL

OLO interviewed more than 50 government officials, staff, land use attorneys, and residents who have interacted with the People's Counsel. Most people interviewed praised the technical assistance provided by the People's Counsel. There was a wider range of opinions about the People's Counsel's case participation. Feedback from both governmental officials and non-governmental representatives also indicates that a range of views exist on the appropriate purpose and role of an Office of the People's Counsel.

OLO RECOMMENDATIONS FOR COUNCIL ACTION

#1: Revisit the purpose, duties, and structure of the Office of the People's Counsel as outlined in County law. OLO recommends that the Council structure its discussion on the People's Counsel law around five issues, which parallel many of the issues discussed 18 years ago when the law creating the Office was adopted: statutory purpose; authority and duties; party representation; technical assistance; and staffing.

#2: Postpone the personnel decision regarding reappointment of the People's Counsel until the Council completes its review and action on the law governing the Office. After determining whether any changes are needed to the job description and/or the Office's staffing, OLO recommends the Council decide whether to reappoint the incumbent People's Counsel to a new term or initiate a new selection process.

OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2008-10

REVIEW OF THE OFFICE OF THE PEOPLE'S COUNSEL

Executive Summary	i
I. Authority, Scope, and Organization of Report.....	1
II. Legislative and Funding History	3
III. Activities of the Office of the People's Counsel	17
IV. Feedback on the Current Law and Services Provided by the Office	28
V. Comparison with Similar Offices in Other Jurisdictions	38
VI. Findings.....	44
VII. Recommendations	55
VIII. Comments on Final Draft.....	60
Appendix A: General Documents	A-1 to A-24
Appendix B: Legislative History and Comparative Legislation	B-1 to B-118

*Appendix B is printed as a separate document and is also available online at
www.montgomerycountymd.gov/olo.*

LIST OF TABLES

Number	Title	Page
1	Office of the People's Counsel Expenditures, FY00-09	14
2	People's Counsel Participation by Type of Land Use Proceeding, 2002-2007	20
3	People's Counsel 2007 Case Participation and Positions Taken	21
4	Type of People's Counsel's Participation in Selected 2007 Cases	22
5	Examples of Types of Oral Arguments/Statements Made by the People's Counsel	22
6	Instances of Technical Assistance as Reported in the Annual Reports of the Office of the People's Counsel, 2002-2007	24
7	Mediation Sessions Conducted by the Office of the People's Counsel, 2002-2007	25
8	CLC Meetings Attended by the Office of the People's Counsel, 2003-2007	27
9	Summary of People's Counsel Legislation and Key Issues	46
10	People's Counsel Activities, 2002-2007	48
11	Comparison of Montgomery County's People's Counsel to Similar Offices in Other Maryland Counties	54

APPENDIX A: GENERAL DOCUMENTS

Description	Page Number
Glossary	A-1
County Code, Chapter 1A, Article II, <i>Departments and Offices</i>	A-2
County Code, Chapter 2, Article XII, <i>People's Counsel</i>	A-3
Class Specification for the People's Counsel	A-5
Original Job Announcement for the People's Counsel	A-7
Eighth Annual Report of the Office of the People's Counsel – 2007	A-9
Technical Assistance Survey	A-24

Appendix B: Legislative History and Comparative Legislation

Description	Page Number
Legislative History for Bill 11-89	
March 7, 1989 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 5. <i>Introduction: Bill 11-89, People's Counsel</i>	B-1
Legislative Request Report for Bill 11-89, People's Counsel	B-8
March 8, 1989 approved minutes from County Council Legislative Session	B-9
July 13, 1989 memorandum from Senior Legislative Attorney Faden to the Government Structure, Automation & Regulation (GSA) Committee on Agenda Item 2. <i>Worksession: Bill 11-89, People's Counsel</i>	B-13
July 13, 1989 approved minutes from GSA Committee	B-17
September 28, 1989 memorandum from Senior Legislative Attorney Faden to the GSA Committee on Agenda Item 1. <i>Worksession: Bill 11-89, People's Counsel</i>	B-23
September 28, 1989 approved minutes from GSA Committee	B-26
November 30, 1989 letter to the County Council from the League of Women Voters	B-29
January 12, 1990 memorandum from Senior Legislative Attorney Faden to the GSA and PHED Committees. <i>Bill 11-89, People's Counsel; Bill 21-89, Citizen's Land Use Information Officer – Information and Referral Services</i>	B-31
January 12, 1990 approved minutes from GSA and Planning, Housing, and Economic Development (PHED) Committees.	B-36
February 6, 1990 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 17. <i>Final Action: Bill 11-89, People's Counsel</i>	B-41
Bill 11-89 as approved on February 6, 1990	B-47
Legislative History for Bill 14-99	
July 28, 1998 memorandum from Senior Legislative Analyst Wilson to the PHED Committee. <i>Worksession – People's Counsel</i>	B-59
April 12, 1999 approved minutes from PHED Committee	B-61
May 10, 1999 memorandum from Senior Legislative Analyst Wilson to the County Council on Agenda Item 5. <i>People's Counsel – FY00 Appropriation</i>	B-63
June 28, 1999 approved minutes from PHED Committee	B-66
August 3, 1999 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 6. <i>Action: Bill 14-99, People's Counsel – Amendments</i>	B-70
August 3, 1999 Call of Bills for Final Reading. <i>Bill 14-99, People's Counsel – Amendments</i>	B-74
Bill 14-99 as approved August 3, 1999	B-78
Zoning Text Amendment No. 99004 as approved November 16, 1999	B-85

Description	Page Number
Legislative History for Bill 25-02	
October 1, 2002 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 7. <i>Action: Bill 25-02, People's Counsel – Sunset Repeal</i>	B-97
Comparative Legislation from Other Jurisdictions	
The Charter of Baltimore County § 524.1. People's Counsel	B-100
Harford County, MD People's Counsel <ul style="list-style-type: none"> The Charter of Harford County, MD § 224. Office of Council Attorney. Code of Harford County, MD §§ 4-26. People's Counsel, 4-27. People's Counsel Citizens' Advisory Board 	B-102
Code of Howard County § 16.1000. Zoning Counsel	B-105
Prince George's County, MD People's Zoning Counsel <ul style="list-style-type: none"> The Charter of Prince George's County, MD § 712. People's Zoning Counsel. Code of Prince George's County, MD §§ 27-136 to 27-139.03 April 25, 2008 memorandum from Prince George's County People's Zoning Counsel regarding Md. House Bill 928 Md. House Bill 928 	B-107

Chapter I. Authority, Scope, and Organization of Report

A. Authority

Council Resolution 16-260, *Fiscal Year 2008 Work Program of the Office of Legislative Oversight*, adopted July 31, 2007.

B. Scope and Organization of Report

This report by the Office of Legislative Oversight (OLO) responds to the Council's request to conduct a review of the Office of the People's Counsel. The County Council passed legislation to establish the Office of the People's Counsel (the "Office") in February 1990. However, the Office remained unfunded for almost a decade. In 1999, the Council amended the law, added a sunset provision, and appointed the first People's Counsel. In 2002, the Council removed the sunset provision.

The scope of OLO's review included:

- Research on the legislative and funding history of the People's Counsel;
- An assessment of the activities of the Office of the People's Counsel;
- A summary of feedback on the current law and work of the Office of the People's Counsel from interviews with governmental and non-governmental representatives who have interacted with the Office of the People's Counsel; and
- A comparison with similar offices in other Maryland counties.

Chapter II, Legislative and Funding History, summarizes the current law governing the People's Counsel; reviews the Office's legislative, funding, and staffing history; and identifies a number of relevant changes in County land use laws, programs, and practices since the Office was established.

Chapter III, Activities of the Office of the People's Counsel, reviews the People's Counsel's participation in land use proceedings; provision of technical assistance; and participation in other activities.

Chapter IV, Feedback on the Current Law and Services Provided by the Office, summarizes feedback on the Office of the People's Counsel from governmental and non-governmental individuals who have interacted with the Office.

Chapter V, Comparison with Similar Offices in other Jurisdictions, describes the work of similar offices in four other Maryland Counties: Baltimore County, Harford County, Howard County, and Prince George's County.

Chapters VI and VII present the Office of Legislative Oversight's **Findings and Recommendations**.

Chapter VIII presents **Comments on the Final Draft**.

C. Methodology

Office of Legislative Oversight staff members Craig Howard, Leslie Rubin, Jennifer Renkema, and Sarah Downie conducted this study. OLO gathered information through general research, document reviews, and more than 50 interviews with government officials, staff, and non-governmental representatives who have interacted with the Office of the People's Counsel.

D. Acknowledgements

OLO received a high level of cooperation from everyone involved in this study. OLO appreciates the significant time commitment, the information shared, and the insights provided by all the individuals who participated. In particular, OLO would like to thank Martin Klauber and Fran Hissong from the Office of the People's Counsel.

In addition, OLO would like to thank the various Montgomery County government officials and staff we spoke with in conducting this study, including: Councilmembers and Council staff; the Board of Appeals and staff; Office of Zoning and Administrative Hearings staff; Department of Permitting Services staff; the Montgomery County Planning Board and Planning Department staff.

OLO also extends its thanks to the various members of the community we received input from, including land use attorneys; representatives from special exception applicants; community members who have participated in land use cases; and individuals who received technical assistance from the Office of the People's Counsel.

Last, OLO thanks the following staff from other local jurisdictions that we spoke with: Stan D. Brown from Prince George's County; Robin Regner from Howard County; Lisa Sheehan from Harford County; and Peter Zimmerman from Baltimore County.

For a complete copy of OLO Report 2008-10, go to:
www.montgomerycountymd.gov/olo.
This document is available in alternative formats upon request.

Chapter II. Legislative and Funding History

This chapter offers an overview of the existing law governing the Office of the People's Counsel ("Office"), and reviews the Office's legislative and funding history. It is organized as follows:

- **Part A** summarizes the current County Code provisions that set forth the structure, purpose, and duties of the Office of the People's Counsel;
- **Part B** reviews three pieces of legislation considered and adopted by the Council that relate to the Office of the People's Counsel: 1990 legislation that created the Office; 1999 legislation that amended the original law and added a sunset provision; and 2002 legislation that repealed the sunset provision;
- **Part C** summarizes the Office's funding and staffing since FY00. While authorized by legislation in 1990, the Council did not appropriate funds for the Office until the FY00 operating budget; and
- **Part D** briefly describes selected changes in County land use laws, regulations, programs, and practices since the establishment of the Office of People's Counsel.

A. Overview of Current Law

Two sections of the Montgomery County Code outline the structure, purpose, authority, duties, and operations of the Office of the People's Counsel:

- Chapter 1A, Article II, *Departments and Offices*, establishes the Office of the People's Counsel in the Legislative Branch of County Government; and
- Chapter 2, Article XII, *People's Counsel*, describes the function and authority of the Office.

Appendix A contains copies of these two sections of County law beginning at A-2.

Staffing options and requirements. The County Code provides the County Council with two staffing options for hiring the People's Counsel. One option is to employ a term merit system employee as the People's Counsel.¹ The other option is to provide the service of the People's Counsel via a contract for "one or more attorneys, along with support staff, consultants, and expert witnesses." (§ 1A-204(b)(3)(A))

In either case, the law (§ 1A-204(b)(3)(B)) requires that any attorney employed or retained as the People's Counsel must:

- Be a member of the bar of the Court of Appeals of Maryland;
- Have at least five years experience in the practice or teaching of law; and
- Have substantial experience with land use legal issues and procedures.

¹ Section 1-73 of the County's Personnel Regulations define a term position as: "A type of full-time or part-time career merit system position that is created for a special term, project, or program, or a position in which the incumbent's employment terminates at the expiration of a specific period of time or term."

The law also limits the People's Counsel's outside employment, stating that any attorney employed or retained as the People's Counsel:

- Must not represent any client, other than as People's Counsel, in any matter involving land use in Montgomery or Prince George's County; and
- Must not, within one year after the attorney's service as People's Counsel ends, represent any party in any proceeding involving land use in the County.

Statutory purpose. The law that outlines the functions of the Office describes the purpose of an independent People's Counsel as follows:

Purpose. 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 citizen organizations will encourage effective participation in, and increase public understanding of and confidence in, the County land use process. (§ 2-150(a))

Authority and duties. The law (§ 2-150(b)) states that to “protect the public interest and achieve a full and fair presentation of relevant issues,” the People's Counsel may participate in a proceeding before:

- The Board of Appeals if the proceeding involves a variance or a special exception;
- The County Council (solely for oral argument) or the Hearing Examiner if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process, or a special exception; and
- The Planning Board if the proceeding involves action on an optional method development, a subdivision plan for a cluster development, or a site plan.

The law also authorizes the People's Counsel to file the following with the Board of Appeals (under § 59-G-1.3 of the County Code): a complaint alleging failure to comply with the terms of a special exception; a request for modification of a special exception; or a request for revocation of a special exception.²

The law explicitly restricts the People's Counsel from participating in “any legislative proceeding, or in any proceeding before a board or agency of any municipality in the County.” (§ 2-150(c))

² § 59-G-1.3(b) of the County Code allows “any person or government agency” to file a complaint alleging failure with the terms or conditions of a special exception with the Board of Appeals or the Department of Permitting Services (DPS). However, under § 59-G-1.3(c) and 59-G-1.3(e), the Board of Appeals may only modify or revoke a special exception based on a written notice or recommendation of DPS or at the request of the special exception holder.

Participation. The law (§ 2-150(d)) provides that the People's Counsel becomes a party in a proceeding by filing a "notice of intention to participate." After the notice is filed, the People's Counsel is entitled to receive notices and to participate in a proceeding by:

- Making motions;
- Introducing evidence;
- Calling witnesses;
- Examining and cross-examining witnesses;
- Making arguments as the law and the evidence warrant; and/or
- Filing and arguing an appeal the same as any other party to the proceeding.

The law makes the People's Counsel's participation in an eligible proceeding discretionary, allowing the People's Counsel to withdraw or decline to participate in any proceeding. The law states that the People's Counsel "is not liable to any person for participating in, or declining to participate in, any proceeding." (§ 2-150(g))

Independent Status. The law explicitly states that the People's Counsel "must not represent the County, any government agency, or any private party in any proceeding." Further, the law provides that the People's Counsel "is not subject to the authority of the County Attorney." (§ 2-150(e))

Technical Assistance. The law states that "without becoming a party to a proceeding and subject to available time and resources," the People's Counsel may provide technical assistance to any person about the land use proceedings the office may participate in. The law also states that, when providing technical assistance, the People's Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient. (§ 2-150(h))

Coordination and Annual Report. The law requires that the People's Counsel coordinate the services of its office with those offered by "land use information staff in the Council, Board of Appeals, and Planning Board, to avoid inconsistency and duplication of services, and to maximize the assistance offered to citizens." In addition, the People's Counsel must annually report to the County Council on the activities of the office. (§ 2-150(i) and (j))

B. Legislative History (1989 – 2002)

This section highlights the County Council's review and adoption of legislation related to the Office of the People's Counsel. In sum, there have been three separate bills:

- Bill 11-89, adopted in February 1990, established the Office of the People's Counsel;
- Bill 14-99, adopted in August 1999, amended the original People's Counsel's law and added a sunset provision; and
- Bill 25-02, adopted in October 2002, repealed the sunset provision on the Office of the People's Counsel.

While the Office of the People's Counsel was established in County Code in early 1990, a decade passed before the Office received any funding. The following section (beginning on page 13) tracks the funding and staffing history of the Office.

1. Bill 11-89 established the Office of the People's Counsel

The Council introduced Bill 11-89 on March 7, 1989, and deliberated for close to a year before adopting the final version of the bill on February 6, 1990. Documents used to summarize the legislative history of Bill 11-89 are attached in Appendix B, beginning at B-1.

a. Summary of the bill as introduced

The Legislative Request Report accompanying the original bill stated that the legislation was being proposed to address the following problem: "The perception by some citizens that often only narrow private property interests are represented in adjudicatory proceedings involving land use and environmental issues."

As introduced, Bill 11-89 established a People's Counsel authorized to "represent the public interest and to achieve a full presentation of relevant issues" by initiating or intervening as a party in judicial or administrative proceedings involving:

- The zoning, subdivision, use or development of land in the County, or
- The application or enforcement of a law or regulation designed to protect the environment.

The original version of the bill established a nine-member citizen advisory board (appointed by the Council) to advise the People's Counsel and recommend land use and environmental proceedings that the People's Counsel should be involved in. The parameters initially established for the People's Counsel included prohibitions from:

- Representing the County, any government agency, or any private party in any proceeding; and
- Intervening in any legislative proceeding, such as master plans, zoning text amendments, and annual growth policy resolutions.

As introduced, Bill 11-89 authorized the People's Counsel to provide technical assistance and advise any citizen of the County on that person's rights and duties in any matter that involved land use or environmental issues as described above. The introduced bill provided the People's Counsel with all rights of a party in a proceeding and the authority to employ or retain staff or expert witnesses.

At the time of introduction, reasons offered by individual Councilmembers in support of Bill 11-89 included:³

- The Office of People's Counsel will provide a degree of equity and should make the current system more effective;
- By raising issues of concern to citizens in a timely fashion, a People's Counsel will address the disparity that exists between the resources available to developers and those available to the residential community; and
- A citizen advisor will be useful because of the difficulty that citizens have in understanding land use issues.

Public hearing. On June 20, 1989, the Council held a public hearing on Bill 11-89. Subsequent worksession packets on the bill summarized the public hearing testimony as follows:

- A number of civic groups and individual residents testified in support of the bill. Several witnesses recommended that the People's Counsel be given the authority to represent individual residents and neighborhood organizations, and/or to participate in legislative proceedings.
- The League of Women Voters opposed the bill because of the very broad responsibilities and jurisdiction for land use and environmental issues included in it, and the potential difficulty for a People's Counsel to determine in any given case what is the public interest.
- Executive Branch staff representing the County Executive testified in opposition to the bill, arguing that a People's Counsel was unneeded, would cost too much, could delay essential but unpopular projects, and would encourage confrontation instead of cooperation in County government.
- The County Attorney testified that the bill could violate the County Charter because it sets up an instrumentality of County government that is not subject to the authority or legal advice of the County Attorney.

b. Council Committee worksessions

The Council's Government Structure, Automation & Regulation (GSA) Committee held two worksessions on Bill 11-89. A third worksession was held by a joint meeting of the GSA Committee and Planning, Housing, and Economic Development (PHED) Committee. Highlights of the Committee's discussion and action, organized by issue, are summarized below. The record indicates that key provisions of the legislation were changed a number of times throughout the various meetings.

³ Approved Minutes for the Montgomery County Council in Legislative Session, March 8, 1989.

July 13, 1989, GSA Committee Worksession #1. At this worksession, the Committee discussed numerous policy and legal issues, and tentatively adopted several amendments.

Statutory purpose. Councilmembers' expectations concerning the role of the People's Counsel voiced during Committee worksessions included that:

- The People's Counsel will be in a position to serve both an advocacy and informational role;
- One of the most important duties of the People's Counsel will be to assure that decision-makers are apprised of and understand all sides of the issues so that they are able to make the best decisions in the greater public interest; and
- The role of the People's Counsel will be to provide information, and in addition, to provide technical assistance and legal advice that citizens often need to present their case to the government.⁴

Authority and duties. The GSA Committee affirmed that the People's Counsel should be authorized to intervene as a party in administrative and adjudicatory proceedings. The Committee recommended that the People's Counsel's jurisdiction be defined to include land use and environmental issues. Committee members expressed their view that the People's Counsel should intervene in only the most important non-land use environmental matters, acknowledging a concern that involvement in environmental matters could consume a disproportionate amount of the People's Counsel's resources.

The Committee also recommended that the People's Counsel not be authorized to participate directly in legislative proceedings, such as Master Plan amendments and the Annual Growth Policy. This prohibition, however, was not intended to limit the People's Counsel from advising residents about their participation in such proceedings.

Party representation. The Committee recommended that rather than representing the "public interest", the People's Counsel should represent individual citizens or organizations with "standing" in the proceeding, meaning those directly aggrieved by an action or proposed action. The Committee also recommended that a potential client's ability to afford a lawyer should be a factor for the People's Counsel to consider; however, the Committee chose not to include a specific income eligibility standard.

Citizen Advisory Board. The GSA Committee approved the provision of Bill 11-89 that included appointment of a citizen advisory board. One of the primary roles of this committee would be to guide decisions of the People's Counsel with respect to who would be represented.

Term of appointment. The Committee recommended that the People's Counsel serve a four-year term that would generally coincide with the term of the Council that appoints him or her. The Committee agreed to a provision that required a two-thirds vote of the Council to remove a People's Counsel during his or her term.

⁴ Approved Minutes for the Government Structure, Automation & Regulation Committee, July 13, 1989.

September 29, 1989, GSA Committee Worksession #2. At this meeting, the Committee reviewed issues discussed at the previous worksession as well as several additional policy and legal issues.

Party representation. The Committee considered the amended language stemming from the previous worksession that provided that the People's Counsel may represent individual clients. The Committee added language that required the People's Counsel to obtain approval from the citizens advisory board before intervening in any proceeding.

Sunset provision and evaluation. The Committee discussed but opted not to add a sunset provision to Bill 11-89. However, it did recommend amending the bill to require an Office of Legislative Oversight evaluation of the People's Counsel in 1994.⁵

January 12, 1990, Joint GSA/PHED Committee Worksession. This joint Committee worksession reviewed Bill 11-89 and Bill 21-89, legislation that had been introduced to create a citizen land use information officer position within the Montgomery County Planning Board.

According to the legislative record of the worksession, representatives from the League of Women Voters discussed their recommendation that the People's Counsel be established to provide technical advice to citizens and to participate as a party in land use matters only to assure a full and complete record.

The joint Committee debated concerns raised by the County Attorney about whether creation of the office violated the County Charter, and various proposals to further refine the structure, authority, and functions of the People's Counsel.

In the end, the joint GSA/PHED Committees recommended that:

- The People's Counsel should be hired through a contract for services, rather than as a merit system employee;
- The People's Counsel should not be authorized to represent either aggrieved citizens or the public interest. Rather, the People's Counsel should assure that the decision-making body receives a full and fair presentation of relevant issues.
- The People's Counsel should not be authorized to file or intervene in any court case. The Office's jurisdiction would be limited to County administrative proceedings in which a decision is based on a written record.
- The citizens advisory board should be deleted entirely.

The Committees also asked staff to draft more specific provisions on the subject matter in which the People's Counsel could intervene and to develop language that strictly limits the People's Counsel's civil liability to dissatisfied residents.

⁵ In 1994, the Office of Legislative Oversight submitted a memorandum to the Council explaining that the Office of the People's Counsel had not yet been funded, and as a result, there was no evaluation to conduct.

c. Final Council action on Bill 11-89

The Council took final action on Bill 11-89 on February 6, 1990. The worksession packet describes the amended bill that came out of the joint GSA/PHED Committee worksession as follows:

The Committees essentially accepted an alternative presented by the League of Women Voters to limit the People's Counsel to providing technical assistance and advice, and intervening in any proceeding only to assure a complete and fair presentation of the issues.⁶

The legislation also incorporated many of the amendments recommended by the County Attorney as a result of the earlier Committee worksessions. The final version of the bill, as adopted by the Council and signed by the County Executive, included the following language to define the purpose of the "independent" Office 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 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, and increase public understanding of, the County land use process.

The adopted version of the legislation limited the authority of the People's Counsel to participate only in proceedings "before the Hearing Examiner, Board of Appeals, and Planning Board which involve issues related to matters covered under the Regional District Act." In addition, the adopted version provided that the services of the Office of the People's Counsel would be fulfilled by an independent contractor.

Appendix B contains a copy of the final version of Bill 11-89, which became law on May 17, 1990.

2. Bill 14-99 amended the People's Counsel law and added a sunset provision

Although the Council approved legislation to establish the Office of the People's Counsel in 1990, the Office was not funded until FY00, almost a full decade later. The year before the Office received its first appropriation, the Council considered and passed a number of amendments to the enabling legislation. Documents used to compile the legislative history of Bill 14-99 are attached in Appendix B beginning at B-59.

⁶ February 6, 1990 memorandum from Senior Legislative Attorney Faden to the County Council for Council Agenda Item 17. *Final Action: Bill 11-89, People's Counsel.*

Introduction of Bill 14-99. In May 1999, the Council introduced Bill 14-99, *People's Counsel – Amendments*. As introduced, Bill 14-99 included amendments that:

- Added the option of employing a People's Counsel as a term merit system employee; and
- Allowed for the People's Counsel to represent individual parties under certain conditions.

Specifically, the amendment in Bill 14-99 regarding representation proposed that:

The People's Counsel is not a party in a proceeding under subsection (b) unless the People's Counsel has agreed to represent an aggrieved party or organization which could be a party to the proceeding and which would not otherwise be effectively represented. In deciding whether to represent an aggrieved person or organization, the People's Counsel must consider:

1. The person or organization's ability to retain other counsel;
2. The relative balance of the advocacy resources of the parties to the proceeding;
3. The nature, significance, and breadth of impact of the issues in the proceeding; and
4. Any other public policy implications of the proceeding.

PHED Committee Worksession. In June, the PHED Committee held a worksession on Bill 14-99. The issues discussed and positions taken are summarized below.

Party representation. The Committee considered but voted against the amendment that would have given the People's Counsel authority to represent individual clients. The worksession packet summarized the different viewpoints on this issue as follows:

Some civic groups have urged that the People's Counsel be allowed to represent individual citizens or community organizations who have standing to participate in an adjudicatory proceeding but cannot find or afford a private lawyer....The most frequently raised objection to giving the People's Counsel this broad a function is the discretion involved – the perceived difficulty in deciding which cases or clients to take, who most needs representation (because of their lack of resources) and deserves representation (because of the merits of their position or the gravity of the issues).⁷

The Committee did, however, agree to amend the bill by adding a provision that the People's Counsel should protect the public interest. The worksession packet describes the public interest standard as one in which “the People's Counsel makes an independent decision on what result would best protect the public interest in each case.” The Committee also reaffirmed its support for language that directs the People's Counsel to “promote a full and fair presentation of relevant issues...to achieve balanced records on which sound land use decisions can be made.”

⁷ August 3, 1999 memorandum from Senior Legislative Attorney Faden to the County Council on Council Agenda Item 6. *Action: Bill 14-99, People's Counsel – Amendments.*

Authority and duties. The Committee agreed that the technical assistance function is one of the People's Counsel's two primary functions under the law in place at the time, and did not recommend any changes related that function.

The Committee agreed to amend the bill to allow the People's Counsel to request a review of existing special exceptions by the Board of Appeals. Additionally, as recommended by the County Attorney, the Committee agreed to amend the bill to clarify that the People's Counsel is intended to function as a party to a proceeding where he/she enters an appearance, instead of vaguely "participating" in the proceeding.

Council Action. The Council adopted Bill 14-99 on August 3, 1999. According to the legislative record, the Council discussion focused on whether and under what conditions the People's Counsel should be authorized to request a review of a special exception or file an appeal. The Council also discussed whether to add a sunset provision.

The final version of the bill as adopted by the Council made some changes to the purpose, authority, and duties of the People's Counsel. In sum, Bill 14-99:

- Added the phrase "protect the public interest" as part of the description of the purpose of the People's Counsel, to make the law read: "An independent People's Counsel can protect the public interest and promote a full and fair presentation of relevant issues..."
- Added to the authority of the People's Counsel the ability to initiate a review of an existing special exception by filing a complaint alleging failure to comply with special exception conditions and/or by requesting that the Board of Appeals hold a show cause hearing to consider modifying or revoking a special exception.⁸
- Amended the law to remove a restriction in the original legislation preventing the People's Counsel from filing and arguing an appeal the same as any other party to the proceeding.

The bill as adopted also made the following changes to the basic operations of the Office:

- Added a sunset provision that terminated the Office of the People's Counsel as of July 1, 2003;
- Added a provision that gave the Council the option of employing a People's Counsel either as an independent contractor or a term merit system employee; and
- Added a restriction that any attorney employed or retained as the People's Counsel must not, for one year after serving as People's Counsel, represent any party in any proceeding involving land use in the County.

⁸ According to the legislative record, at a July 26, 1999 worksession on Zoning Text Amendment (ZTA) 99004, the PHED Committee agreed to amend relevant provisions of the zoning law to reflect the People's Counsel's new role in this area. The legislative history for ZTA 99004 indicates that the amendments were recommended by the PHED Committee but were not included in the version of the ZTA as adopted by the Council. A copy of the ZTA is included in Appendix B beginning on B-85.

3. Bill 25-02 repealed the sunset provision from the People's Counsel law

At the recommendation of the PHED Committee, the County Council adopted Bill 25-02 on October 1, 2002. As introduced and passed, Bill 25-02 removed the sunset provision from the law that had been added by the Council in 1999. Documents used to compile the legislative history of Bill 25-02 are attached in Appendix B beginning at B-97.

The worksession packet for Council action states that a “public hearing was held on September 17, at which speakers, including representatives of the Planning Board, Board of Appeals, and the Office of Zoning and Administrative Hearings, enthusiastically endorsed the bill. . . . The Council also received a number of letters from civic associations and individuals who have participated in land use issues supporting the sunset repeal.”

C. Funding and Staffing History

The County Council first appropriated funds for the Office of the People's Counsel in FY00. The Office staffing initially consisted of two full-time positions: the People's Counsel and an Administrative Aide. The Administrative Aide position became part-time in FY04, and then was restored to a full-time position beginning in FY07 with a portion of the position's time (0.2 workyears) budgeted to the Board of Appeals.

The Council opted to employ a People's Counsel as a term merit system employee.⁹ The People's Counsel position was classified by the Office of Human Resources as a Grade 34; Appendix A contains a copy of the current class specification (A-5) and the original job announcement (A-7).

Following a selection process, the Council appointed the first People's Counsel by resolution on December 6, 1999; the term of the appointment was set for 3.5 years to coincide with the term of the County Council. The Council reappointed the incumbent as People's Counsel in June 2003 to a four-year term. On July 3, 2007, the Council again reappointed the incumbent, but set a term of one year. The 2007 resolution states that the current People's Counsel serves until a successor is appointed.

Table 1 on the next page shows the actual expenditures of the Office of the People's Counsel from FY00 through FY07, and the Office's approved budget for FY08 and FY09. Personnel costs have consistently accounted for around 95% of the Office's budget. Since FY00, increases in the Office's budget have been due to compensation increases for existing staff.

The total FY08 budget appropriation for the Office was \$239,130. The recently approved funding level for FY09 is \$250,170, an increase of 4.6%.

⁹ As noted in Section A, the County Code (§ 1A-204) provides the County Council with the option to hire the People's Counsel as a term employee or as a contractor.

Table 1. Office of the People's Counsel Expenditures, FY00-09				
Fiscal Year	Expenditure Category		Total	Workyears
	Personnel	Operating		
FY00	\$75,717	\$28,289	\$104,006	2
FY01	\$159,848	\$21,528	\$181,376	2
FY02	\$171,532	\$9,199	\$180,731	2
FY03	\$192,684	\$15,482	\$208,166	2
FY04	\$179,555	\$7,699	\$187,254	1.8
FY05	\$181,974	\$10,364	\$192,338	1.8
FY06	\$201,905	\$7,600	\$209,505	1.8
FY07	\$217,994	\$4,837	\$222,831	1.8
FY08 Budgeted	\$225,000	\$14,130	\$239,130	1.8
FY09 Budgeted	\$237,780	\$14,390	\$250,170	1.8

Source: Montgomery County Operating Budgets, FY00-FY09

D. Related Issues

As reviewed earlier in this chapter, the Council adopted the initial legislation that established the Office of the People's Counsel in 1990. Over the course of the past 18 years, there have been many changes in County laws, regulations, programs, and practices. This section briefly describes a number of these changes that relate directly to issues discussed at the time the Office of the People's Counsel was established.

1. Special exceptions hearings and inspections

Special exception hearings. When the Council adopted the law to establish the Office of the People's Counsel, public hearings on special exception petitions¹⁰ were conducted almost exclusively by the Board of Appeals (BOA). At that time, the BOA only rarely exercised its discretion (allowed under the law upon approval of three of its members) of assigning special exception hearings to the Hearing Examiner.

Current Practice. In 2003, the Council amended the Zoning Ordinance (Section 59-A-4.125) to assign all special exception hearings to the Hearing Examiner. In particular, ZTA 04-03 established that the Hearing Examiner has responsibility for scheduling and conducting public hearings on all special exception petitions. The law requires the Hearing Examiner to render a written report with recommendations to the Board of Appeals, who retained authority for final action.

¹⁰ Applications for special exceptions are commonly referred to as "petitions." OLO uses the terms "application" and "petition" interchangeably when referring to requests for special exceptions.

Inspection/enforcement of special exception conditions. When the Council adopted the law to establish the Office of the People's Counsel, the Department of Permitting Services' inspection of special exception conditions was primarily complaint driven. In other words, DPS' general practice was to inspect special exceptions for compliance with conditions when a complaint was filed alleging a violation.

Current Practice. Since the late 1990's, the Department of Permitting Services has operated a small staff unit (two inspectors) that is dedicated to conducting inspections of special exceptions. In addition to responding to complaints, DPS' current practice is to inspect all special exceptions on a rotating basis. The purpose of DPS' routine inspections is to ensure compliance with any conditions placed on approval, regardless of whether a complaint has been filed.

2. Disseminating information to the public about land use laws and proceedings

Greater use of information technology. When the Council adopted the law to establish the Office of the People's Counsel, the County's practices for disseminating information to residents did not include widespread use of the Internet. At the time, agency staff answered questions and provided information through a combination of written material, telephone communication, and face-to-face meetings.

Current Practice. The public's access to information about the County's land use laws and proceedings is significantly different in 2008 than it was in 1990. Today, it is routine practice for County agencies to post information on websites and to answer questions via email. The County Code (including the Zoning Ordinance) is accessible online, and Council and Planning Board meetings are available for viewing from residents' home computers.

Land use information that is now Internet accessible include a document titled *Rules of Procedure for Applications for Local Map Amendments and Petitions for Special Exceptions* posted on the Hearing Examiner's website and a document titled *What is a Variance?* posted on both the Board of Appeals' and People's Counsel's websites. Examples of documents and other information posted on the Montgomery County Planning Department website include:

- The *Manual of Development Review Procedures*, which contains the agency's administrative standards for timely and comprehensive review of and compliance with plans submitted pursuant to the Subdivision Regulations and Zoning Ordinance;
- Drafts of different types of applications, e.g., forest conservation, project plan, site plan;
- A description of services offered at agency's Information Counter; and
- Links to Planning Board agendas, staff reports, and decisions (both current and archives).

3. Planning Department's Management Improvement Plan

In 2006, the Montgomery County Planning Department (then the Department of Park and Planning) adopted a Management Improvement Plan to address an acknowledged "underperformance of the development review process." The beginning section of the Management Improvement Plan contains the following background summary:

In August 2004, residents of the new Clarksburg Town Center development brought to the attention of Park and Planning their concerns regarding compliance of the emerging development with approved site plans. Since that time, research by the residents, and follow-up action by staff of Park and Planning and other agencies, have resulted in official findings of violations.

The Management Improvement Plan, which was prepared at the direction of the County Council, provides a framework to guide the Planning Department's efforts to improve the regulatory process.

One of the four main areas targeted for improvement is titled "Resident Participation." The Plan sets forth a number of specific strategies aimed to: "Expand opportunities for residents to be aware of and follow the decision-making process for all new development, to participate in this process in a timely and meaningful way, and to obtain persuasive evidence of strong stewardship of the public interest by Park and Planning personnel."

A number of objectives identified in the Management Improvement Plan (dated January 17, 2006) relate directly to improving how land use information is provided to residents and to improving accountability and transparency. Examples include:

- Add a community liaison officer to assist the public with access, information, and obtaining timely and consistent agency responses on pending or approved development review cases;
- Set and implement policy regarding response to residents for documents and information;
- Publish development applications, opinions, drawings, and other project documents on the Internet; and
- Improve file management and hearing management by implementing a protocol for numbering exhibits.

Planning Department staff provided an update to the Council on implementation of the Management Improvement Plan in February 2007. In sum, Planning staff had made progress on some but not all of the objectives related to the overall goal of improving "Resident Participation."

Chapter III. Activities of the Office of the People's Counsel

As outlined in Chapter II, County law assigns two primary functions to the People's Counsel: to participate in certain types of land use proceedings and to provide technical assistance to County residents related to those proceedings. This chapter reviews the activities of the Office as follows:

- **Part A** reviews the People's Counsel's participation in land use proceedings;
- **Part B** reviews the People's Counsel's provision of technical assistance; and
- **Part C** reviews the People's Counsel's participation in other mediations and Community Liaison Committees.

While noting that it can vary from year to year, the current People's Counsel estimates dividing his time 30/70 as follows: 30% of his time is spent attending and participating in land use proceedings; the other 70% is spent providing technical assistance, conducting mediations, and attending Community Liaison Committee meetings.

A. Participation in Land Use Proceedings

County law authorizes the People's Counsel to participate in the following types of land use proceedings:

- Variance and special exception proceedings before the Board of Appeals;
- Local map amendment, development or schematic development plan approvals, and special exception proceedings before the Hearing Examiner or County Council; and
- Optional method development, subdivision plan, and site plan action proceedings before the Planning Board.

This section describes the People's Counsel's process for participating in specific types of land use proceedings, reviews the number and types of cases the People's Counsel has participated in since 2002, and includes a detailed review of the People's Counsel's participation in special exception and local map and development plan amendment cases during calendar year 2007.

1. Description of process for participating

The law provides the People's Counsel total discretion to participate in or decline to participate in any eligible type of proceeding. In its 2007 Annual Report, the People's Counsel lists eight factors he uses when reviewing particular cases to determine whether or not he will participate as a party of record in a land use public hearing:

- Impact on the public;
- Effect on the public health, safety, and welfare;
- Establishment of a future precedent;

- Existence of significant legal issues;
- Effect on public policy;
- Need to assist an applicant during a public hearing;
- Need to assist citizens during a public hearing; and
- Possibility of resolving outstanding issues through mediation.

The People's Counsel's participation in different types of cases is described below.

Local Map Amendments, Development Plan Amendments, and Special Exceptions.

By law, all applications for local map and development plan amendments are heard by the Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH), who renders a report and recommendation to the County Council for decision. Since 2003, the Hearing Examiner also hears all applications for special exceptions. With special exception cases, the Hearing Examiner's report and recommendation is submitted to the Board of Appeals (BOA) for decision.¹¹

As a matter of practice, the Office of the People's Counsel receives a copy of all local map amendment and special exception applications. After receiving an application, the People's Counsel formally fills out a Notice of Intention to Participate for each case. The People's Counsel files the Notice both with OZAH and the applicant(s)' legal counsel. As a result, the People's Counsel receives copies of all the information, exhibits, and notices filed for all applications.

The People's Counsel reports that he attends most special exception hearings, but that the type and level of his involvement at each hearing varies based on the specifics of each case. The People's Counsel generally does not participate in special exception cases for accessory apartments or monopoles (cell phone towers).

By law, the Planning Board or its technical staff must submit a report reviewing any petition for a special exception or local map amendment prior to the OZAH hearing on the application. In most cases, Planning Board staff produce a Technical Staff Report, which is followed by a public hearing and written recommendation from the Planning Board. The People's Counsel reports that he often looks to the analysis provided in the Technical Staff Report as well as testimony given at the Planning Board's hearing to determine whether there are "public interest" issues that should be pursued.

The People's Counsel reports that he is less likely to participate in a case when community participants are represented by legal counsel. According to the People's Counsel, when both sides have legal counsel, the relevant "public interest" issues are usually aired at the public hearing. When this occurs, there is less need for the People's Counsel to participate in order to achieve a balanced record.

¹¹ Chapter II, page 14, describes the change in how special exceptions are heard that occurred in 2003.

Variances. By law, the BOA hears and acts on requests for variances. A variance is a relaxation of an applicable zoning regulation granted when the Board determines that application of the zoning regulation would result in peculiar or unusual practical difficulties to a property owner.

The People's Counsel reports that he generally keeps track of applications filed for variances. However, due to the routine nature of most variance requests, the People's Counsel does not become a party to all cases, or attend all variance hearings. The People's Counsel rarely received requests to participate in a variance hearing.

According to the People's Counsel, he tends to participate more on the "front-end" of variance cases, by providing information and guidance on effective participation to individuals who are interested in applying for a variance. For example, he will explain the entire variance application process, discuss and provide samples of results of applications for similar variances, and review the types of questions the applicant will likely have to answer and the types of information they will need to provide.

Subdivision/Site Plans. By law, the Planning Board hears and acts on all applications for subdivision and site plan approval. The People's Counsel reports that he reviews all subdivision and site plan applications, along with Planning Board staff recommendations, when they appear on the Planning Board's agenda. According to the People's Counsel, the Planning Board staff's reports usually "identify most if not all of the public interest issues" in a case. And in practice, the People's Counsel has found this decreases the need for his involvement in order to balance the record.

As with variances, the People's Counsel reports that his work related to subdivision and site plan cases is most often on the "front-end." In particular, the People's Counsel becomes involved by providing information to residents about the application, review, and approval process, and by providing guidance on how to participate effectively in Planning Board proceedings.

2. Number and type of proceedings participated in since 2002

The People's Counsel tracks and annually reports the number and types of land use proceedings that he participates in. The Office tallies the People's Counsel's participation in front of the Planning Board, Hearing Examiner, and Board of Appeals as separate events, even when the participation is for the same case.

For example, a case in which the People's Counsel appeared in a Planning Board proceeding and also in a Hearing Examiner proceeding is recorded as two incidents of participation. As a result, the Office of the People's Counsel's data on proceedings that he participated in and OZAH data on annual hearings differ.

Table 2 summarizes the People's Counsel's data on the number and type of land use proceedings that he participated in between 2002 and 2007. According to the Office's annual reports, the People's Counsel participated in a total of 267 proceedings over the six-year period examined.

The data show that the People's Counsel participated in an average of 44 proceedings per year; the lowest number was 28 (in 2007) and the highest number was 76 (in 2002). Of the proceedings that the People's Counsel reports participating in, special exceptions consistently accounted for the largest number and percent, followed by local map amendments.

Table 2. People's Counsel Participation by Type of Land Use Proceeding, 2002-2007							
Proceeding	2002	2003	2004	2005	2006	2007	Total
Special Exception	62	22	37	31	16	16	184
Local Map Amendment	8	10	13	7	15	7	60
Subdivision Plan	2	1	1	3	1	2	10
Development Plan Amendment	3	--	--	4	--	2	9
Site Plan	1	--	1	--	1	1	4
Variance	--	--	--	--	--	--	0
Total	76	33	52	45	33	28	267

Source: Annual Reports of the Office of the People's Counsel, 2002-2007

3. Detailed review of case participation in 2007

To learn more about the types of activities the People's Counsel undertakes when participating in proceedings, OLO conducted a more detailed review of special exception and local map amendment cases in which the People's Counsel participated during 2007.¹² OLO compiled the information presented below by reviewing a combination of OZAH and Board of Appeals public hearing transcripts and Hearing Examiner's reports.

Participation and positions taken. In 2007, the Hearing Examiner held hearings on 25 special exception cases and ten local map amendment cases. Almost half (12 out of the 25) of the special exception cases were accessory apartment petitions, in which the People's Counsel generally does not participate. Of the other 13 special exception cases heard by OZAH during 2007, the record shows that the People's Counsel did participate in 12 (or 92%). In addition, the People's Counsel participated in four of the ten local map amendment cases.

When the People's Counsel participates in a land use proceeding about a specific case, he can appear in support of the petition, in opposition to the petition, or as a neutral party.

¹² The People's Counsel's case participation numbers in this section differ slightly from the data presented in Table 2 because the data in Table 2 includes participation in Planning Board proceedings.

The table below shows what position the People's Counsel took in the 16 special exception and local map amendment cases he participated in before the Hearing Examiner during 2007. The data indicate the People's Counsel most often appeared in support of an application or remained neutral.

Table 3. People's Counsel 2007 Case Participation and Positions Taken				
Type of Proceeding	2007 Participation	People's Counsel Position Taken		
		Supported	Opposed	Neutral
Special Exceptions	12	7	0	5
Local Map Amendments	4	0	1	3
Total	16	7	1	8

Source: Public hearing transcripts and Hearing Examiner's Reports provided by the Board of Appeals and OZAH.

OLO also reviewed how the People's Counsel's participation and position related to the voicing of community opposition. OLO found that:

- Of the seven applications supported by the People's Counsel, two had formal opposition and one had formal support from community members.
- Of the eight applications where the People's Counsel remained neutral, two had formal opposition and one had both formal opposition and support from community members.
- The one application opposed by the People's Counsel also had formal opposition from community members.
- For the 19 special exception and local map amendment cases in which the People's Counsel did not participate, two had formal support from community members (both local map amendment cases) and seven had formal opposition from community members (all accessory apartment special exception cases).

Type of participation. When participating in a land use proceeding, the County Code authorizes the People's Counsel to make motions, introduce evidence, call witnesses, examine and cross-examine witnesses, and make arguments as the law and evidence in the proceeding warrant. OLO examined the transcripts from the 16 hearings in which the People's Counsel participated to review the People's Counsel's type of participation.

As summarized on the next page, the cases reviewed by OLO showed that the People's Counsel primarily made oral arguments/statements and cross-examined witnesses. In sum, the People's Counsel:

- Made oral arguments or other statements in 15 cases;
- Cross-examined witnesses in 11 cases;
- Introduced evidence in three cases; and
- Did not file written motions or call witnesses in any case.

Table 4. Type of People's Counsel's Participation in Selected 2007 Cases

Type of Proceeding and Number of Cases	Made Oral Arguments	Cross-Examined Witness	Introduced Evidence	Filed a Motion*	Called Witness
Special Exception (12 cases)	12	8	1	0	0
Local Map Amendment (4 cases)	3	3	2	0	0
Total	15	11	3	0	0

*According to the People's Counsel and OZAH staff, it is uncommon for participants in administrative proceedings before the Hearing Examiner to file written motions. Certain types of oral arguments or statements made by the People's Counsel or other participants could be categorized as motions in a more formal setting. Source: Public hearing transcripts provided by the Board of Appeals and OZAH.

OLO also classified the types of oral arguments/statements made by the People's Counsel into four categories: General Comments, Statements of Law, Improvement Suggestions, and Objections or Arguments. Table 5 offers examples of statements from each category based on the review of transcripts from the 16 cases.

Table 5. Examples of Types of Oral Arguments/Statements Made by the People's Counsel

General Comments
<ul style="list-style-type: none"> • Commented on the procedure for public notice and entering exhibits into the record. • Provided background information on the geographic location of property in a case. • Discussed the concepts of "neighborhood" and "surrounding area."
Statements of Law
<ul style="list-style-type: none"> • Referenced a precedent set in previous cases heard by the Board of Appeals. • Commented on the applicability of State law to qualifying an individual as an expert witness. • Referenced the County's sign requirements administered by DPS. • Referenced the application of the County's Zoning Ordinance and Noise Ordinance. • Raised concerns about the legality of approval conditions proposed in the technical staff report.
Improvement Suggestions
<ul style="list-style-type: none"> • Suggested a special exception condition to require the submission of a long-range strategic plan. • Requested additional information to be added to the official record. • Requested corrections/changes to exhibits already included in the record. • Suggested adding a Transportation Management Plan condition to a special exception. • Suggested adding a Community Liaison Committee condition to a special exception.
Objections or Arguments
<ul style="list-style-type: none"> • Objected to lines of questioning that went beyond the scope of the proceedings. • Objected to designating an expert witness for the applicant based on insufficient qualifications. • Provided arguments that defined the "public interest" in the case and how the "public interest" was best served. • Provided arguments that qualified what actions needed to be taken for the People's Counsel to support the project.

B. Providing Technical Assistance

In addition to participating in certain hearings, the law authorizes the People's Counsel to provide technical assistance to residents about land use proceedings. According to the People's Counsel, in practice, providing technical assistance can be categorized into three types of activities:

- Providing general information and assistance on land use topics, e.g., explaining what a special exception is and how the process works;
- Providing guidance on effective participation in the County's land use process, e.g., offering advice and guidance on testifying at a land use proceeding; and
- Providing technical advice and support to government officials on land use issues and participating in the zoning text amendment advisory group.

Providing general information and assistance. The People's Counsel reports that this type of technical assistance usually occurs in response to requests from individual residents who contact the Office via phone, e-mail, or in-person. The People's Counsel reports that the topic of these requests varies widely. For example, the People's Counsel receives general inquiries related to how the County's land use and zoning process works as well as specific questions about land use proceedings. Also, upon request, the People's Counsel speaks at community meetings on land use issues.

Providing guidance and advice on effective participation. The People's Counsel reports that technical assistance about effective participation also occurs in response to requests from individual residents; however, it can occur when the People's Counsel initiates contact with one or more residents before, during, or after a proceeding. According to the People's Counsel, the intent of this type of technical assistance is to help residents (either in support of or opposed to an application) participate in proceedings in a manner that will help lead to a "full and fair presentation of relevant issues."

Examples cited by the People's Counsel as ways he supports effective participation include:

- Meeting with individuals to explain the special exception process, such as how various hearings are structured, who can speak at a hearing and for how long, etc.;
- Providing samples of materials and information from similar cases to a prospective applicant or case participant;
- Types of questions applicants for a variance should be prepared to answer at their public hearing;
- Explaining how Zoning Ordinance requirements apply to facts of specific zoning reclassification, special exception, variance, and subdivision cases; and
- Providing guidance on how to offer relevant evidence and structure arguments when appearing in a land use proceeding.

Providing technical advice and support. The People's Counsel reports that he provides technical advice and support on a variety of land use issues to government officials as needed or requested, including Councilmembers and Council staff, Planning Board members and Planning Department staff, Board of Appeals members and staff, OZAH staff, Department of Permitting services staff, and Department of Housing and Community Affairs staff. The People's Counsel also participates on a zoning text amendment advisory group.

1. Number and types of technical assistance and information provided since 2002

The Office tracks and annually reports the types and number of instances of technical assistance provided. According to these statistics, between 2002 and 2007, the Office provided over 18,000 instances of technical assistance covering 135 subjects.

The Office defines the provision of technical assistance as each instance where an Office staff member provided information or assistance on a land use issue. As a result, the technical assistance numbers capture the total number of interactions. For example:

- Five contacts with an individual on the same topic would be counted as five separate instances of technical assistance;
- One contact with an individual on two topics would be counted as two separate instances of technical assistance; and
- One meeting with 100 individuals on one topic would be counted as 100 separate instances of technical assistance.

The 135 subject categories vary widely, ranging from broad issues (e.g., parking, environment) to specific special exception types or cases (e.g., landscape contractor special exception, Holton-Arms special exception modification). A complete list of subject categories is available in the Office's most recent annual report, included in Appendix A beginning on A-9.

Table 6. Instances of Technical Assistance as Reported in the Annual Reports of the Office of the People's Counsel, 2002-2007							
	2002	2003	2004	2005	2006	2007	Totals
Instances of Technical Assistance	645	1,071	1,889	3,140	3,982	7,554	18,281
Number of Subjects Each Year	32	43	53	70	94	99	135*

* This number does not represent the sum of the numbers in this row. It represents the total number of subjects on which Office provided technical assistance from 2002 to 2007.

Source: Eighth Annual Report of the Office of the People's Counsel – 2007

2. Publication of brochures and information

Since its inception, the Office has produced written brochures and information on land use proceedings and issues. All brochures are available for pick-up in the Office of the People's Counsel, the Board of Appeals, and the Office of Zoning and Administrative Hearings, and at the Planning Board; some brochures are also available for download (in PDF format) from the Office's website.

Specific examples of informational materials initiated by the Office include brochures on variances, the special exception process, and the zoning of land in Montgomery County.

The People's Counsel worked with the Montgomery County Department of Planning to develop brochures on how to participate effectively in the subdivision process, how to participate effectively in the site plan process, and a soon to be published brochure on how to participate effectively in reviewing development applications. In addition, the People's Counsel is working with Planning Department staff to develop a brochure as well as an introduction and glossary on how to use the recently published *Manual of Development Review Procedures*.

The People's Counsel has also developed an information packet and brochure describing the Office and its functions, as well as a brochure advertising the various land use topics, procedures, and regulations on which the Office can provide information or assistance.

C. Other Activities of the People's Counsel

There are two other activities that the People's Counsel engages in that account for a notable amount of his time: mediating land use disputes and participating on Community Liaison Committees. Although neither one of these activities is explicitly referenced in the law establishing the Office of the People's Counsel, the Office has formally notified the County Council of its participation in these activities each year through its quarterly and annual reports.

1. Mediation

In certain instances, the People's Counsel offers to mediate land use disputes to resolve outstanding issues between community members and special exception and/or rezoning applicants. The People's Counsel established a land use mediation process in 2002, and reports having conducted 47 mediation sessions during the past five years. However, as shown in Table 7, the majority of those mediation sessions (31 or 66%) occurred in 2002 and 2003.

Table 7. Mediation Sessions Conducted by the Office of the People's Counsel, 2002-2007							
	2002	2003	2004	2005	2006	2007	Total
Number of Mediation Sessions	15	16	6	3	6	1	47

Source: Annual Reports of the Office of the People's Counsel, 2002-2007

The People's Counsel reports that mediation sessions have occurred as the result of:

- A request from one or both of the parties;
- A request from the Hearing Examiner; or
- The People's Counsel's belief that a mediation session may be successful in resolving outstanding issues.

The People's Counsel reports that he will not conduct a mediation session unless both of the sides voluntarily agree to participate.

In most cases, the People's Counsel reports that a mediation session occurs before an issue goes to a formal hearing. However, sometimes mediations are held based on a recommendation by the Hearing Examiner during a public hearing. Participation in a mediation session and any agreement on outcomes is completely voluntary for both sides. The People's Counsel reports that the results of the mediation sessions have been mixed, with some resulting in agreements and others not leading to agreement.

The People's Counsel suggested that fewer mediations have been conducted in recent years for a number of reasons. First, the People's Counsel has increased his less formal mediation efforts – for example, helping to seek a solution by bringing ideas back and forth between two sides without formally bringing the groups together face-to-face. The People's Counsel reports that, depending on the issue and the level of emotion involved, this process can more effectively gain agreement than a mediation session.

A second reason for fewer mediations may be the increase in the number of Community Liaison Committees (described below). The People's Counsel reports that these committees have helped solve community disputes related to special exception cases before they rise to a level requiring mediation.

2. Community Liaison Committee (CLC) participation

Since 2001, the People's Counsel has been participating in CLCs. CLCs are groups formally established through a Board of Appeals condition on a special exception. The Board established the first CLC in 2001, at the recommendation of the People's Counsel, as a condition on the Holton-Arms private school special exception. The People's Counsel reports that the use of CLC's as a formal special exception condition is unique to Montgomery County.

CLCs were developed as a new element to facilitate the review of the operations of a special exception after it has been granted. The intent of a CLC is to foster communication between the special exception holder and the surrounding community and to prevent potential problems from rising up to the enforcement level. The inclusion of a CLC as a special exception condition is now recommended in many cases by the Hearing Examiner, the People's Counsel, the Planning Board, and/or the Board of Appeals.

CLC's are "permanent" entities that must meet a certain number of times per year, with mandated membership from both the special exception holder and representatives of the surrounding community. Most CLCs require the People's Counsel to attend CLC meetings as an "ex officio" member.

The People's Counsel reports that his role at the CLC meetings is to facilitate and mediate the meeting, and that he often helps the CLC participants access other offices in County Government as needed, e.g., the Department of Transportation or the Department of Environmental Protection. The People's Counsel also reports that:

- Some CLC meetings are contentious, requiring a higher degree of facilitation between the sides, while others are very collegial;
- One of the benefits of a CLC is that many issues do not come to light until the use (after being granted) becomes operational; and
- In many instances, CLC meetings have successfully transformed adversaries into co-operating neighbors.

There are currently about 28 CLCs in the County in which the People's Counsel participates. Table 8 shows that the number of CLC meetings the People's Counsel participated in has been increasing since 2003.

Table 8. CLC Meetings Attended by the Office of the People's Counsel, 2003-2007						
	2003	2004	2005	2006	2007	Total
Community Liaison Committee Meetings	20	24	24	29	44	141

Source: Annual Reports of the Office of the People's Counsel, 2002-2007

Chapter IV. Feedback on the Current Law and Services Provided by the Office

In order to obtain feedback on the current law and services provided by the Office of the People's Counsel, OLO conducted interviews with a selected sample of government and non-government representatives. In total, OLO staff spoke with approximately 50 individuals who shared their views based upon their own knowledge of the law and/or their personal experience(s) with the People's Counsel during the past several years.

This chapter summarizes the feedback that OLO obtained through these interviews. In order to promote a candid sharing of opinions, OLO promised those interviewed that specific comments would not be attributed to individuals. As a result, this chapter is written with an emphasis on the recurring themes that OLO heard voiced by those interviewed. The text explicitly notes when a particular observation was offered by a single person.

In sum, a majority of those interviewed expressed support for maintaining an office in Montgomery County that is dedicated to providing information and assistance to residents that is related to the County's complex process of making land use decisions. Individuals' subjective assessment of their personal interactions with the Office of the People's Counsel range from extremely positive to neutral to somewhat negative. Some interviewees offered specific recommendations for changes to the law and/or adjustments to the types of services available from the Office of the People's Counsel.

The balance of this chapter reviews the feedback received in two parts:

- **Part A** summarizes the feedback from OLO's interviews with government representatives from the County Council, the Planning Board, the Office of Zoning and Administrative Hearings, the Board of Appeals, and the Department of Permitting Services; and
- **Part B** summarizes the feedback from OLO's interviews with land use attorneys, special exception holders, community members who have participated in land use proceedings, and a random sample of 27 residents who received technical assistance from the People's Counsel between January 2007 and April 2008.

A. Feedback from Interviews with Government Representatives

When assigning this project, the County Council asked OLO to obtain feedback on the law and work of the Office from Councilmembers and Council staff as well as from other local government offices that frequently interact with the Office of the People's Counsel, i.e., Planning Board, Board of Appeals, Office of Zoning and Administrative Hearings, and Department of Permitting Services. The summary below highlights the recurring observations and comments expressed to OLO during the course of approximately 25 interviews held with government representatives during April and May 2008.

1. Opinions on the function of the Office of the People's Counsel in general

Almost all of the government representatives interviewed hold the view that Montgomery County's land use process is so complex that residents need ready access to informational resources such as the Office of the People's Counsel. Many of those interviewed indicated that they have referred people with questions about specific land use matters to the People's Counsel for assistance. Common reasons cited for making referrals to the People's Counsel were that:

- The People's Counsel has knowledge of the County's laws and familiarity with the processes surrounding approvals for variances, special exceptions, and local map amendments; and
- The People's Counsel can answer questions about pending cases, whereas the law prohibits certain government officials – including Councilmembers, the Hearing Examiner, and members of the Board of Appeals – from discussing specific cases outside of a formal government hearing.

Several of the government representatives interviewed reported that they refer people with questions to other government offices – in addition to the People's Counsel – for technical assistance. Examples of other sources of information about land use laws and the decision-making process are staff from: Park and Planning, the Board of Appeals, the Office of the County Attorney, and the Department of Permitting Services (DPS).

When asked about the role of the People's Counsel, a majority of the government representatives interviewed supported the continuation of the Office of the People's Counsel as a neutral party who represents the “public interest.” Reasons for preferring this role include that a People's Counsel who argued during land use proceedings in favor of one side or the other of a particular application could be criticized for being “unfair” or “too political.”

However, some of the government representatives interviewed would like the People's Counsel to more affirmatively advocate for people in opposition to development applicants. One individual even expressed the view that the law, as currently written, already requires the People's Counsel to advocate on behalf of residents opposed to development projects in order to “balance the record.”

2. Opinions on the services of the Office of the People's Counsel

Case participation. The general consensus among the government representatives interviewed is that the People's Counsel primarily participates in special exception and local map amendment cases; and rarely participates in variance, site plan, or subdivision cases.

Government representatives interviewed expressed a range of opinions about the benefit of the People's Counsel's participation in special exception and local map amendment cases. Specific observations included:

- The People's Counsel's expertise on the history of land use decisions in Montgomery County adds value to the decision-making process;
- The People's Counsel provides a different perspective and/or different information for the record that is not offered by an applicant or other community members;
- By asking questions and cross-examining witnesses, the People's Counsel draws added attention to certain issues, such as traffic or development compatibility; and
- The People's Counsel tends to focus on procedural as opposed to substantive issues.

Providing technical assistance and information. The People's Counsel responds to requests for technical assistance and information about land use issues. This assistance often includes providing guidance to individuals about how they can participate "effectively" in land use proceedings, e.g., hearings on variances, special exceptions, or zoning map amendments.

Some of the government representatives interviewed cited specific examples where the People's Counsel's efforts to help individuals participate in land use proceedings has had a beneficial effect on the process. Examples of reported benefits include:

- The People's Counsel explains the land use decision-making process before the hearing takes place, which better prepares residents who want to participate;
- The People's Counsel's involvement helps residents present testimony that includes relevant and legally-significant topics; and
- The People's Counsel helps residents develop suggestions that sometimes influence the final design and/or conditions placed on land use approvals.

Several government representatives commented on the usefulness of having someone to whom they can refer residents for information who is not a "decider" in a case. The People's Counsel can speak to any party at any time about any issue in a case without violating *ex parte* rules. Some of the government representatives interviewed voiced their opinion that County residents appreciate the availability of the services that the Office of the People's Counsel provides.

Community Liaison Committees (CLCs). The People's Counsel serves as an *ex officio* member of many CLCs, which are groups appointed as a condition of some special exception approvals. A CLC typically consists of representatives from the special exception holder and surrounding residents; the group generally convenes at regular intervals during the year to address issues created by the special exception.

Government representatives familiar with various CLCs praise their establishment. The consensus view is that CLCs facilitate the resolution of disagreements in special exception cases without the need for enforcement action by DPS.

Most, but not all, individuals interviewed (who had some experience with CLCs) commented that having a government official on the CLCs enhanced the CLCs' work. Several government representatives specifically support the People's Counsel's presence on the CLCs because he is a "neutral" government party. These representatives stated that neither staff from the Council nor from DPS could perform the same role as the People's Counsel on a CLC because Council staff are "political" representatives and DPS staff have enforcement authority over special exceptions.

Observations offered on the People's Counsel's participation on CLCs included the following:

- The People's Counsel levels the playing field among the participants and brings legitimacy to the process;
- The People's Counsel's presence makes special exception holders listen more carefully to residents' concerns;
- The legal experience of the People's Counsel can be beneficial for residents participating in CLCs; and
- Sometimes the People's Counsel's participation in CLC meetings does not add any substantive benefit to the meeting.

Mediation. At times, the People's Counsel "mediates" issues between residents and applicants – either at the request of a Hearing Examiner or at his own initiative. Some government representatives expressed the belief the People's Counsel's mediation efforts improve some government hearings by facilitating agreements prior to the hearings.

3. Suggestions offered for improvements

Several of the government representatives interviewed suggested "improvements" to the structure and/or work of the Office of the People's Counsel. Suggestions for legislative changes were to:

- Amend the law to specifically allow the People's Counsel to assist and facilitate implementation of Community Liaison Committees;
- Amend the law to specify a supervisor for the People's Counsel, e.g., the Council Staff Director or the Council's PHED Committee; and
- Amend the law to clarify that the People's Counsel can and should advocate on behalf of the position held by community representatives during land use proceedings such as special exception, local map amendment, site plan, and subdivision hearings.

A number of government representatives interviewed weighed in on the issue of providing the People's Counsel with funds to hire expert witnesses to testify in cases. One point of view is that this would be valuable because of the additional information that could be provided at land use hearings to support residents' or the People's

Counsel's concerns about complex and technical issues, such as traffic impact. The alternative view is that allowing the People's Counsel to hire expert witnesses could conflict with the role of the Office to argue for the "public interest."

B. Feedback from Non-Governmental Representatives

The Council's assignment to OLO included a request to solicit opinions about the law and services of the Office of the People's Counsel from a sample of non-governmental representatives, to include residents, applicants for land use approvals, and land use attorneys.

This section includes two components. The first component summarizes feedback on the function and services of the Office from OLO's interviews with a sample of non-governmental representatives who participated in land use proceedings in the past several years that involved the People's Counsel or who received technical assistance or information from the People's Counsel.¹³

The second component summarizes feedback from a randomly-selected sample of 27 residents who received technical assistance from the Office of the People's Counsel between January 2007 and April 2008.

FEEDBACK BASED ON PARTICIPATION IN LAND USE PROCEEDINGS

• Opinions on the function of the Office of the People's Counsel

With few exceptions, the non-governmental individuals who spoke with OLO support the function of the Office of the People's Counsel. Different individuals, however, supported different aspects of the work of the People's Counsel to varying degrees.

The land use attorneys interviewed reported interacting with the People's Counsel in a variety of ways. Some participated with the People's Counsel in hearings before the Hearing Examiner or the Board of Appeals. Others have clients that serve on Community Liaison Committees.

A general consensus among the non-governmental representatives interviewed is that the People's Counsel serves a useful function by educating residents about the County's complex land use decision-making process. Several attorneys commented that residents who meet with the People's Counsel are better educated about the process and that the People's Counsel's efforts make the land use process work more smoothly. One even offered the compliment that the People's Counsel is the "best source of land use information for residents available throughout the County Government."

There is a greater split of opinion, however, with respect to the People's Counsel additional functions. Some of the residents and land use attorneys interviewed believe that the People's Counsel should not remain a neutral party during land use proceedings but

¹³ The People's Counsel provided OLO with a list of individuals with whom he has interacted over the past several years.

should, instead, “affirmatively advocate” on behalf of residents to oppose an applicant’s requested land use approvals. These individuals expressed the following views:

- Residents expect that the People’s Counsel will “represent” them in cases and get frustrated when they learn that is not a function explicitly assigned to the People’s Counsel under the law; and
- The current structure of the law establishing the People’s Counsel limits how beneficial the Office of the People’s Counsel can be to residents who want help from the County Government to oppose changes in land use.

On the other hand, other non-governmental representatives interviewed strongly support the current structure of the law, which allows the People’s Counsel to participate in land use proceedings, but on behalf of the generic “public interest” as opposed to advocating for one particular side or the other. These individuals would oppose an amendment to the law that required the People’s Counsel to “represent” individuals, either in favor of or opposed to a land use change.

2. Opinions on the services of the Office of the People’s Counsel

Case participation. The land use attorneys interviewed expressed a variety of opinions about the People’s Counsel’s participation in land use proceedings. Most of the examples were of the People’s Counsel’s participation in hearings held by the Hearing Examiner on special exception and/or local map amendment applications. The positive comments included that:

- The People’s Counsel is diligent in his efforts to facilitate a complete record;
- The People’s Counsel has a moderating influence on people during the hearings and his participation helps to keep the hearing focused; and
- The time that the People’s Counsel spends with residents to educate and prepare residents prior to hearings make the proceedings go more smoothly.

The less positive comments included that the People’s Counsel sometimes offers compromises during land use proceedings that are not perceived by residents as in their best interest and that it is unclear in some cases how the People’s Counsel defines the “public interest.” One land use attorney shared the view that the law should explicitly define the People’s Counsel’s participation in the “public interest” as meaning defense of the County’s Zoning Ordinance and adopted master plans.

Providing technical assistance and information. Almost all of the non-governmental representatives interviewed had high praise for the technical assistance and other information that the People’s Counsel provides to residents. Even those individuals who openly question why the People’s Counsel cannot or does not affirmatively represent residents in their opposition to land use applications support the work of the People’s Counsel to educate residents about the land use process.

Comments from non-governmental representatives interviewed about the technical assistance provided by the People's Counsel included:

- The People's Counsel's advice helps residents to better understand the County's complex land use process;
- The People's Counsel is one of the best resources available for educating the public about special exceptions and local map amendments;
- The People's Counsel is helpful and tough, but fair-minded; and
- The People's Counsel can be very patient when working with people who are new to the land use process in the County.

While acknowledging the value of information provided by the People's Counsel, a number of the residents and attorneys who were interviewed commented that the demeanor of the People's Counsel can at times be "brusque" or "dismissive."

Community Liaison Committees. Some of the non-governmental representatives interviewed – attorneys, special exception holders, and residents – have interacted with the People's Counsel within the context of one or more of the Community Liaison Committees. The majority of comments about the People's Counsel's involvement in CLCs was positive, with a few negative comments.

Most individuals shared the view that the People's Counsel's participation on CLCs was helpful. Specific examples are that the People's Counsel facilitates greater discussion and resolution of issues in a constructive way; helps to find a balanced solution to problems; and explains the "reality" of situations to all parties. The only negative feedback was that the People's Counsel's participation can, on occasion, prolong CLC meetings without helping to resolve outstanding issues. One individual stated a perception that the People's Counsel insists that he be appointed to CLCs.

Mediation. Only a few of the land use attorneys interviewed had interacted with the People's Counsel in a mediation context, and those individuals comments were mixed. These included:

- The People's Counsel is fair in mediation meetings and tries to get something for citizens who do not know how to do it themselves;
- The People's Counsel was helpful in presenting a realistic idea of the possible outcome in a particular case;
- The People's Counsel at times "interferes" in mediations where both sides are represented by attorneys – sometimes undermining an attorney's request on behalf of a client when the other side is willing to comply with the request; and
- The People's Counsel seeks to participate in all mediations, even when all parties are represented by attorneys and arrange to meet on their own.

3. Suggestions offered for improvements

Some non-governmental representatives offered suggestions for making improvements to the Office of the People's Counsel. A recurrent suggestion – based on the perception that the workload of the People's Counsel is too much for one person – was to increase the number of staff in the Office. Other suggested changes included amending the law to:

- Clarify the meaning of the “public interest;” and
- Allow the People's Counsel to hire consultants or experts on contract to assist with specific cases.

FEEDBACK BASED ON RECEIPT OF TECHNICAL ASSISTANCE

OLO solicited feedback from a randomly-selected sample of residents who had contacted the Office of the People's Counsel for technical assistance. This section describes OLO's methodology for selecting individuals for interview and summarizes their comments.

Survey methodology. The Office of the People's Counsel maintains a database with the names of individuals that contact the Office for technical assistance, the date of the contact, and basic information about the topic of assistance.

At OLO's request, the Office generated a list of all individuals who had contacted the Office of the People's Counsel for technical assistance between January 2007 and April 2008. From this list, OLO randomly selected individuals to contact for telephone interviews. OLO ultimately interviewed 27 individuals. OLO's telephone survey solicited respondents' views on the following issues:¹⁴

- How residents learned of the Office of the People's Counsel and what was their understanding of the services available through the Office;
- What was the nature of the residents' interactions with the Office, including the type of land use issue; how many times a resident interacted with the Office; and where the interaction had occurred;
- Whether the services received from the Office had met their expectations;
- How the residents' interaction with the People's Counsel had influenced their ability to participate in the County's land use process; and
- Whether participants would recommend the services of the Office to other residents.

Services received by survey participants. Twenty-two of the 27 survey respondents had contact with the Office of the People's Counsel regarding a specific case. Interactions related to a variety of issues, including special exceptions, local map amendments, master plans, and variances. Additionally, several respondents interacted with the People's Counsel as a member of a CLC or other community group.

¹⁴ Because OLO conducted phone interviews, OLO requested that the list omit individuals who had not provided a telephone number. A complete list of survey questions asked is included in Appendix A at A-24.

A majority of survey respondents reported being referred to the People's Counsel at a community meeting or from the Board of Appeals' staff. Others learned of the Office through the County's website, a Councilmember's office, or one of the County's Regional Services Centers. Most of those surveyed met with the People's Counsel in person (about half met with the People's Counsel in a community setting); the balance consulted with the People's Counsel over the telephone.

Most of those surveyed reported that they interacted with the People's Counsel multiple times. Ten of the 27 survey respondents said they had current, ongoing interactions with the Office. Although OLO only contacted people who interacted with the Office between January 2007 and April 2008, several people reported that their initial interaction with the People's Counsel was before January 2007.

Feedback on Services of the Office. This section describes themes from the telephone survey that OLO conducted.

1. Most survey respondents expressed satisfaction with the services they received from the Office of the People's Counsel.

About two-thirds of survey respondents (17 out of 27) reported general satisfaction with the services they received from the People's Counsel, agreeing with the statement that the services provided had "met their expectations." About 75% (20 out of 27) reported that the services they received positively influenced their participation in the County's land use process. More than 80% (22 out of 27) of those surveyed indicated that they would recommend the services of the People's Counsel to other County residents.

Recurring observations from respondents who reported a positive experience with the People's Counsel include that the People's Counsel is:

- A resource for residents to get accurate information about the County's land use process without needing to hire a private attorney;
- Knowledgeable about land use proceedings in the County and able to offer suggestions about how to meet legal requirements; and
- One of the rare places where residents can get information and technical assistance about the County's land use laws and proceedings.

2. Some respondents reported being dissatisfied with the services received from the Office of the People's Counsel.

A minority of those surveyed (5 out of 27) reported experiences with the Office of the People's Counsel that did not meet their expectations. The disappointment expressed by survey respondents concerned either the demeanor of the People's Counsel and/or a general frustration that the services received were inadequate.

Several people who reported experiences with the People's Counsel that did not meet their expectations had negative comments about the People's Counsel's demeanor. Another criticism expressed was a perception that the People's Counsel had not made a sufficient effort to assist them. Two respondents believed that they could not trust the People's Counsel because it appeared to them that he favored the other party in a proceeding.

3. There are varying perceptions and some apparent confusion in the community about the role of the People's Counsel.

Those surveyed expressed different perceptions and some confusion about the role the People's Counsel is "supposed" to be playing in County land use proceedings. About one-fourth of those surveyed (7 out of 27) stated that they were "unsure" of the roles of the People's Counsel. Others described the People's Counsel in different ways, e.g., as an informational resource, a mediator, an advocate for neighborhoods, and/or a legal advisor.

About half of those surveyed (13 out of 27) stated their understanding of the People's Counsel as someone who can provide guidance, advice, and information regarding the County's land use processes, laws, and regulations. Five of those surveyed viewed the People's Counsel's primary role as a mediator between parties involved in land use proceedings.

Five others stated their understanding that the People's Counsel's role was to be an advocate for citizens or a neighborhood. Three respondents expressed their belief that the People's Counsel can provide legal advice or representation as an alternative to hiring private counsel.

4. Suggestions offered for improvement.

In sum, survey respondents offered the following suggestions for "improvements" to the structure and/or work of the Office of the People's Counsel:

- Greater definition of the role that the People's Counsel is expected to play;
- Improved publicity about the Office and its services; and
- Expanded staff to enhance the services that could be offered.

In contrast, two survey respondents expressed their opinion that the Office of the People's Counsel was unnecessary because there are other places in the County that provide land use information.

Chapter V. Comparison with Similar Offices in Other Jurisdictions

Four other Maryland counties have established offices similar to Montgomery County's Office of the People's Counsel. Like the Office of the People's Counsel, these offices participate in land use cases on behalf of the "public interest." Several of the offices also provide technical assistance to the public on certain land use matters.

This chapter summarizes the four related offices as follows:

- **Part A** describes the People's Counsel in Baltimore County;
- **Part B** describes the People's Counsel in Harford County;
- **Part C** describes the Zoning Counsel in Howard County; and
- **Part D** describes the People's Zoning Counsel in Prince George's County.

Legislation authorizing these four offices is included in Appendix B (B-100 to B-118).

The District of Columbia and the State of Maryland have offices "of the People's Counsel" with different missions – these offices represent local utility ratepayers before state and federal regulatory agencies and educating consumers about their utility rights.

A. Baltimore County's People's Counsel

Baltimore County voters adopted a County Charter amendment to create a People's Counsel in 1974 and expanded the position's duties in 1978. (Baltimore County Charter § 524.1)

Structure and staffing. Organizationally, the People's Counsel staff are located within the County's Office of Planning and Community Conservation. The staff include three full-time, non-merit positions – the People's Counsel (position authorized in the Charter), the Deputy People's Counsel, and a legal secretary. The County Executive appoints and the County Council confirms the People's Counsel and Deputy People's Counsel. The Office's approved budget for FY08 was \$183,340.¹⁵

Participation in zoning cases. Under the Baltimore County Charter, the People's Counsel represents the public interest in zoning matters by defending approved master plans and/or comprehensive zoning maps. Specifically, the Charter states that the People's Counsel:

Shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding ... involving zoning reclassification and/or variance from or special exception under Baltimore County Zoning Regulations...in which he may deem the public interest to be involved. (§ 524.1(a)(3)(A))

¹⁵ Baltimore County FY08 Budget, pg. 95.

The People's Counsel may also participate in or initiate proceedings on matters involving the preservation of the air, land, and water resources of the County and may conduct investigations, have full access to the records of all county agencies, and employ experts as necessary.

According to the current People's Counsel, he and/or his Deputy review every filed zoning case – zoning reclassifications, variances, or special exceptions – case to determine appropriate legal involvement. In some cases, the People's Counsel appeals the zoning commissioner's decision to the County Board of Appeals or in courts, while in other cases the People's Counsel defends the zoning commissioner's decision in an appeal filed by another party.

According to the Baltimore County budget, the following criteria guide the People's Counsel's decision regarding involvement in a case:

- The possibility of broad public impact;
- Adverse effect on public health, safety, or welfare;
- The establishment of important precedent; and
- The existence of significant legal issues.¹⁶

In zoning case appeals, the People's Counsel reports that he bases his litigation position on the County's zoning laws (including comprehensive zoning maps) and considers the master plan and public input.

Technical assistance. The Baltimore County Charter does not include technical assistance as a duty of the People's Counsel. However, the People's Counsel reports that he does provide information on zoning procedures to members of the public who contact him with questions.

B. Harford County People's Counsel

In 1976, Harford County voters adopted a Charter amendment to create a People's Counsel. (Harford County Charter § 224) Subsequent local legislation further outlined the powers and duties of the position. (Harford County Code § 4-26)

Structure and staffing. Harford County law authorizes the County Council's Attorney to employ a People's Counsel and "such assistants as may be necessary," subject to approval by the County Council. (§ 4-26) Currently, Harford County employs on a contractual basis both a People's Counsel and an Associate People's Counsel. The Office's approved FY08 budget was \$72,408.¹⁷

¹⁶ Baltimore County FY08 Budget, pg. 95.

¹⁷ Harford County Approved Annual Operating Budget, Fiscal Year 2007-2008, pg. 858.

Harford County law also establishes a People's Counsel Citizens' Advisory Board. The Advisory Board has seven County Council-appointed members who "shall be broadly representative of all segments of the county's population." (§ 4-27A) The law authorizes the Advisory Board to:

- "Provide guidance to and make recommendations to the People's Counsel regarding any matter referred to it by the People's Counsel, County Council, or as requested by any citizen or group of citizens;" (§ 4-27C) and
- "By a majority vote of the entire membership, direct the People's Counsel to enter his appearance in a particular matter, case, or proceeding to protect the interest of the public in general." (§ 4-27D)

Participation in zoning cases. Under County law, the People's Counsel may "represent the interest of the public in all matters and proceedings preliminary to, arising out of or affecting the zoning classification or reclassification of land in the County." (§ 4-26A) Specifically, the law states that the People's Counsel:

- May appear as a party before any government agency, any state or federal court, the Zoning Hearing Examiners, Board of Appeals, and the County Council on behalf of the citizens of the county in planning, zoning, and other land use and development related matters and proceedings; (§ 4-26D)
- May hire expert witnesses as necessary for specific proceedings; and
- May not represent or protect the interests of private parties "insofar as those interests are different from the general public's interest." (§ 4-26D)

According to Harford County's People's Counsel, she primarily participates in re-zoning, variance, and special exception cases at the recommendation of the People's Counsel Citizens' Advisory Board. The People's Counsel reports that the Advisory Board generally recommends the People's Counsel's involvement in a case only when there is opposition to an application.

The People's Counsel reports that when she gets involved in a case, she meets with neighbors opposed to an application, conducts any necessary investigation, and, if necessary, interviews and retains experts. The People's Counsel does not advocate for any specific party, but rather for the general public's interest by determining the impact a certain case will have on the community at large.

The Advisory Board meets monthly to review zoning cases and decide whether to direct the People's Counsel to appear in a particular case. The People's Counsel attends the Advisory Board meetings to provide monthly updates on the status of her cases.

Technical assistance. Harford County law does not include technical assistance as part of the job functions of the Harford County People's Counsel.

C. Howard County Zoning Counsel

Howard County enacted legislation in 2000 to establish a Zoning Counsel position to participate in “piecemeal zoning map amendments.” The Howard County Code outlines the structure, powers, and duties of the position. (§ 16.1000)

Structure and staffing. Under the law, the Zoning Counsel is a part-time, contractual position employed by the County Council. (§ 16.1000a) The single position is funded through the County Council’s budget at a rate of \$100 per hour.

Participation in piecemeal zoning cases. The law requires that “the Zoning Counsel shall appear at all zoning board hearings on requests for piecemeal zoning map amendments for the purposes of producing evidence and testimony supporting comprehensive rezoning and facilitating the compilation of a complete record.” (§ 16.1000c) While participating in these hearings, the Zoning Counsel may:

- Present evidence and witnesses;
- Examine and cross-examine witnesses;
- Present arguments; and
- Retain expert witnesses. (§§ 16.1000d-1000f)

Under the law, the Zoning Counsel does not represent the County, any government agency, or any private party; is not a party in a case; and “does not have a right of appeal in connection with any case before the Board of Appeals.” (§ 16.1000i)

According to Howard County Zoning Board staff, the Zoning Counsel’s workload varies based on several factors, including the length of time since the last comprehensive rezoning (which occurs approximately every ten years). The Zoning Board applies a “change or mistake rule” to zoning map amendment requests, where the Zoning Board approves a request only if a “substantial change in the character of the neighborhood has occurred since the last Comprehensive Zoning or [] a mistake was made during the last Comprehensive Zoning in zoning the subject property.”¹⁸ Zoning Board staff report that after a comprehensive rezoning, there are (at least temporarily) fewer zoning map amendment requests.

Technical assistance. The Howard County Code states that “the Zoning Counsel shall be available to any person interested in any zoning matter to advise as to the procedures before a County agency or board.” The Zoning Counsel also can speak to community groups about zoning procedures although, according to Zoning Board staff, this occurs infrequently. The Zoning Counsel is prohibited from providing legal advice on individual cases. (§16.1000g)

¹⁸ Howard County Department of Zoning and Planning web site, accessed May 14, 2008.

D. Prince George's County People's Zoning Counsel

The Prince George's County's People's Zoning Counsel was established in 1973 in the County Charter (§ 712) and the positions' duties are further outlined in County law. The law was amended most recently in 2003. County law outlines the structure, powers, and duties of the position, and includes the following purpose statement: "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." (§ 27-136)

Structure and staffing. Under County law, the County Council appoints one or more attorneys to serve as People's Zoning Counsel and Deputy People's Zoning Counsel for four-year terms. The People's Zoning Counsel is a part-time, contract position; Prince George's County does not currently have a Deputy People's Zoning Counsel. The FY08 budget for the People's Zoning Counsel services is \$140,000.

Participation in zoning cases. The law authorizes the People's Zoning Counsel to "appear on behalf of the interests of the public in general, to defend any General Plan, Master Plan, or comprehensive zoning maps as adopted by the District Council, and in any matter involving zoning reclassification or any Special Exception." (§ 27-139.01) In performing these duties, the People's Counsel may appear as a party of record before:

- The Zoning Hearing Examiner or the District Council in a zoning case;
- The Planning Board in a matter involving a comprehensive design plan, or
- The Board of Appeals in a matter involving a variance.

The law also allows the People's Zoning Counsel to "prosecute an application before any state or federal court for injunctive or other relief incidental thereto, to enjoin violation of any zoning map or Master Plan or as specifically authorized by the District Council." (§ 27-139.01b)

According to the Prince George's People's Zoning Counsel, he participates in all cases in which he has the right to be involved to ensure a complete record and the presentation of all relevant information. The People's Zoning Counsel does not represent any side and may argue for or against the application or the opposition in any zoning case.

In April, the Maryland General Assembly passed legislation authorizing the Prince George's County People's Zoning Counsel to appeal final actions on an application for a subdivision of land, special exception, variance, or site plan on behalf of a citizens' association, if the People's Counsel "reasonably believes" that the final action is "arbitrary and capricious." (House Bill 928) According to Prince George's People's Counsel, this State law may conflict with County law, which only gives the People's Counsel the right to appear on behalf of the public interest and which does not authorize the People's Counsel to appear in subdivision case hearings before the Planning Board.¹⁹

¹⁹ See Appendix B at B-111 to B-118 for a memo from the Prince George's People's Counsel and a copy of House Bill 928.

Technical assistance. Legislation passed in 2003 authorizes the Prince George's County People's Zoning Counsel to provide technical assistance on zoning procedures to any person without becoming a party to any judicial or administrative proceeding. When providing technical assistance, the Zoning Counsel must inform people that he or she is not and cannot act as their personal attorney. The law also states that the People's Zoning Counsel shall be available to any civic association, homeowners association, or other similar groups to talk about the zoning process. (§ 27-139.02) According to the Prince George's County Counsel, this function occupies approximately 25% of his time.

Chapter VI. Findings

This chapter summarizes the findings of the Office of Legislative Oversight's (OLO) review of the Office of the People's Counsel ("Office"). The presentation of OLO's findings parallels the structure of the report, organized into the following categories:

- Legislative and funding history;
- Activities of the People's Counsel;
- Feedback on the current law and services provided by the Office; and
- Comparison to similar offices in other Maryland counties.

LEGISLATIVE AND FUNDING HISTORY

Finding #1. The purpose of the People's Counsel is to "protect the public interest," "promote a full and fair presentation of relevant issues," and provide technical assistance to "encourage effective participation in ... the County land use process."

The County Code sets forth the purpose of the Office of the People's Counsel as follows:

Purpose. 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 citizen organizations will encourage effective participation in, and increase public understanding of and confidence in, the County land use process. (§ 2-150(a))

By law, the County Council appoints the People's Counsel, and can do so either as a term merit employee or a contract employee. Either way, the People's Counsel is authorized to accomplish the stated purpose of the Office in the following ways:

- **Participate as a party in proceedings concerning: variances, special exceptions, local map amendments, development plan amendments, optional method development applications, subdivision plans, and site plans.** The People's Counsel is authorized to make motions, introduce evidence, call witnesses, cross-examine witnesses, make arguments as the law and evidence warrant, and file and argue an appeal.
- **Provide technical assistance to any person about the land use proceedings the office may participate in.** The People's Counsel is, however, not allowed to act as a personal attorney for the recipient of technical assistance.

The law prohibits the People's Counsel from representing the County, any government agency, or any private party in any proceeding; and explicitly provides that the People's Counsel is not subject to the authority of the County Attorney.

Finding #2. The County Council considered and passed three bills legislation over a 12-year period related to the Office of the People's Counsel. Debate surrounding these bills focused on several recurring issues.

Between 1990 and 2002, the County Council adopted three pieces of legislation related to the Office of the People's Counsel:

- Bill 11-89, passed in February 1990, created the Office of the People's Counsel;
- Bill 14-99, passed in August 1999, amended the original People's Counsel's law and added a sunset provision; and
- Bill 25-02, passed in October 2002, repealed the sunset provision on the Office.

The legislative record indicates that the Council's worksessions on these three bills included a number of recurring debates on several issues, including but not limited to the Office's role, subject matter jurisdiction, and staffing structure.

Table 9 on the next page summarizes several issues that the Council discussed. The first column lists key provisions that were eventually adopted; the second column lists other provisions or amendments that were discussed but not approved in the final legislation.

Finding #3. The law creating the Office of the People's Counsel was passed in 1990, but the Office remained unfunded for almost ten years. The FY09 approved budget for the Office is \$250,170.

The County Council first appropriated funds to the Office of the People's Counsel in fiscal year 2000 – almost a decade after the Council passed legislation to establish the Office. Before funding the Office, the Council also passed some amendments to the People's Counsel's law. (See Finding #2 and the table on the next page.)

The Office was initially funded to support two positions: the People's Counsel and an Administrative Aide. Since FY07, 20% of the Administrative Aide's time has been allocated to (and funded by) the Board of Appeals. All but a small percent of the Office's total budget has consistently been for personnel costs. Increases in appropriations for the Office since FY00 have been to cover compensation adjustments for existing staff.

Table 9. Summary of People's Counsel Legislation and Key Issues

Issue	Key Provisions of the Law as Passed	Provisions/Amendments Considered but Not Adopted
Bill 11-89 (adopted in February 1990)		
Statutory Purpose	The People's Counsel should: <ul style="list-style-type: none"> • Ensure a full and fair presentation of the relevant issues. • Provide technical assistance and advice. 	The People's Counsel should represent the public interest.
Party Representation	The People's Counsel must not represent the County, any government agency, or any private party in any proceeding.	The People's Counsel should be authorized to represent private parties.
Authority and Duties	The People's Counsel may participate in certain administrative land use proceedings before the Hearing Examiner, Board of Appeals, and Planning Board in which a decision is based on a written record.	The People's Counsel should be able to initiate or intervene as a party in: <ul style="list-style-type: none"> • Certain judicial or administrative land use proceedings; and • Proceedings involving application or enforcement of environmental laws.
Staffing Structure	The Council may only hire a People's Counsel as an independent contractor.	The Council should hire a People's Counsel as a term merit employee.
Citizen Advisory Board		The Council should appoint a citizen advisory committee to advise the People's Counsel and recommend cases that the People's Counsel should be involved in.
Bill 14-99 (adopted in August 1999)		
Statutory Purpose	Added that the People's Counsel should protect the public interest.	
Party Representation	No change made to the law adopted in 1990.	The People's Counsel should be authorized to represent private parties under certain conditions.
Authority and Duties	Added that the People's Counsel may: <ul style="list-style-type: none"> • Request a review of special exceptions by the Board of Appeals; and • File and argue an appeal of a case 	
Staffing Structure	Added the option of hiring a People's Counsel as a term merit employee.	
Sunset Provision	Added a sunset provision terminating the Office as of July 1, 2003.	
Bill 25-02 (adopted in October 2002)		
Sunset Provision	Amended the law to remove the sunset provision.	

Finding #4. Current law provides that the Council can employ a People's Counsel either as a term merit employee or a contract employee. The People's Counsel employed since 1999 is a term merit employee.

The law adopted in 1990 to create the Office of the People's Counsel established the position of People's Counsel as an employee under contract to the Council. Before the first People's Counsel was hired, the Council amended the law (in 1999) to provide the Council with the option of hiring the People's Counsel as a term merit employee.

In December 1999, the Council appointed the first People's Counsel as a term merit system employee for a 3.5-year term to coincide with the Council's term. The Council reappointed the incumbent in June 2003 to a full four-year term. On July 3, 2007, the Council again reappointed the incumbent, but set a term of one year. The 2007 resolution states that the appointed People's Counsel serves until a successor is appointed.

Under law, the People's Counsel is appointed by the Council, but operates independently on a daily basis. Historically, the Council's oversight of the Office has consisted of receipt of the Office's annual report (see example in Appendix A) and annual review of the Office's budget.

Finding #5. Some notable changes in recent years directly relate to the issues discussed at the time the People's Counsel was created.

Many changes in County laws, programs, and practices have occurred since the Council passed legislation to establish the Office of the People's Counsel in 1990. Some changes that relate directly to the issues discussed during the legislative debates about the People's Counsel are listed below.

- **Change in who holds public hearings on special exceptions.** In 2004, the Council passed legislation to shift the legal responsibility for holding public hearings on special exception petitions from the Board of Appeals to the Hearing Examiner.
- **Change in practice of inspecting special exceptions.** Inspections by the Department of Permitting Services for compliance with special exception conditions used to be primarily complaint-driven. In addition to responding to complaints, the current practice now includes routine inspections by two full-time inspectors.
- **Changes in how government disseminates information.** Government communication with the public has undergone significant transformation in recent years. The Internet has created many new communication opportunities with the public – beyond printed materials, the telephone, and in-person meetings – that were not available when the Office of the People's Counsel was established.
- **Changes in how the Planning Department manages the development review process.** In 2006, M-NCPPC adopted a Management Improvement Plan that outlines significant changes to how the agency is organized and managed. One of the four main areas targeted for change is titled "Resident Participation;" the objectives for improvement in this area include how land use information is provided to residents.

ACTIVITIES OF THE PEOPLE'S COUNSEL

Finding #6. The People's Counsel estimates that he spends around 30% of his time participating in land use proceedings; the other 70% is spent providing technical assistance, conducting mediations, and attending Community Liaison Committee meetings.

Table 10 summarizes the People's Counsel's activity data between 2002 and 2007.

According to the Office's annual reports, the People's Counsel participated in a total of 267 proceedings over the six-year period examined. Of the proceedings that the People's Counsel reports participating in, special exceptions consistently accounted for the largest number and percent, followed by local map amendments.

In addition, OLO's review of public hearing records shows that the People's Counsel participated in 92% of special exception cases (excluding accessory apartment petitions, which the People's Counsel generally does not participate in) and 40% of local map amendment cases heard by the Hearing Examiner in 2007.

The data show an increase in the instances of technical assistance provided annually by the People's Counsel. The Office defines the provision of technical assistance as each instance where an Office staff member provided information or assistance on a land use issue. As a result, the technical assistance numbers capture all interactions with the Office.

Table 10. People's Counsel Activities, 2002-2007							
Type of Activity	2002	2003	2004	2005	2006	2007	Total
Land Use Proceedings							
Special Exception	62	22	37	31	16	16	184
Local Map Amendment	8	10	13	7	15	7	60
Subdivision Plans	2	1	1	3	1	2	10
Development Plan Amendment	3	--	--	4	--	2	9
Site Plan	1	--	1	--	1	1	4
Variance	--	--	--	--	--	--	0
Total Number of Proceedings	76	33	52	45	33	28	267
Technical Assistance							
Instances of Technical Assistance	645	1,071	1,889	3,140	3,982	7,554	18,281
Number of Subjects Each Year	32	43	53	70	94	99	135*
Mediations							
Number of Mediation Sessions	15	16	6	3	6	1	47
Community Liaison Committee (CLC) Meetings							
Number of CLC Meetings Attended	--	20	24	24	29	44	141

* This number does not represent the sum of the numbers in this row. It represents the total number of subjects on which Office provided technical assistance from 2002 to 2007.

Source: Annual Reports of the Office of the People's Counsel, 2002-2007

Finding #7. By law, the People's Counsel is authorized to decide which cases to participate in.

The People's Counsel reviews all special exception, local map amendment, development plan amendment, subdivision plan, and site plan applications. The Office's 2007 Annual Report lists eight factors that the People's Counsel considers when deciding whether to participate in a land use proceeding:

- Impact on the public;
- Effect on the public health, safety, and welfare;
- Establishment of a future precedent;
- Existence of significant legal issues;
- Effect on public policy;
- Need to assist an applicant during a public hearing;
- Need to assist citizens during a public hearing; and
- Possibility of resolving outstanding issues through mediation.

The People's Counsel reports that he also assesses the need for a third party "to pursue the public interest" and/or the need "to achieve a balanced record."

The People's Counsel generally attends all special exception hearings except for cases concerning accessory apartments or cell phone towers. To determine whether there are "public interest" issues he wants to pursue in these cases, the People's Counsel reports that he also consults the analysis provided by Planning Board staff and the testimony and evidence presented at the Planning Board's hearing.

Other comments from the People's Counsel about participating in land use proceedings included that:

- When an applicant and any opposition in a case are both represented by legal counsel, the relevant "public interest" issues tend to be advanced by the two sides, which in turn reduces the need for the People's Counsel involvement;
- In subdivision plan and site plan cases, the Planning Board staff usually "identify most if not all of the public interest issues," which also reduces the need for the People's Counsel involvement to ensure a balanced record; and
- For variance, subdivision plan, and site plan cases, the People's Counsel tends to participate more on the "front-end" of cases by providing information and guidance on effective participation to individuals involved.

Finding #8. The position that the People's Counsel takes in land use proceedings is sometimes, but not always, aligned with the position voiced by community members.

When the People's Counsel participates in a land use proceeding about a specific petition (e.g., application for special exception, local map amendment), he can appear in support of the petition, in opposition to the petition, or as a neutral party.

OLO's detailed review of the People's Counsel's involvement in 16 special exception and local map amendment cases during 2007 found that: the People's Counsel appeared in support of seven petitions; appeared in opposition to one petition; and remained neutral in the other eight cases.

The record shows that the People's Counsel's participation sometimes, but not always, aligned with a formal position taken by community members on the petition. For example:

- Two applications supported by the People's Counsel had formal opposition from the community and one had formal support from community members;
- Two applications where the People's Counsel remained neutral had formal opposition and one had both formal opposition and support from community members; and
- In the one application that the People's Counsel opposed, there was formal opposition from community members.

Finding #9. The People's Counsel's participation in land use proceedings primarily consists of making oral arguments and cross-examining witnesses.

When participating in a land use proceeding, the County Code authorizes the People's Counsel to make motions, introduce evidence, call witnesses, examine and cross-examine witnesses, and make arguments as the law and evidence in the proceeding warrant.

In the 16 cases reviewed by OLO, the People's Counsel primarily made oral arguments/statements and cross-examined witnesses. In sum, the People's Counsel:

- Made oral arguments or other statements in 15 cases;
- Cross-examined witnesses in 11 cases;
- Introduced evidence in three cases; and
- Did not file written motions or call witnesses in any case.

According to the People's Counsel and OZAH staff, it is uncommon for participants in administrative proceedings before the Hearing Examiner to file written motions. Certain types of oral arguments or statements made by the People's Counsel or other participants could be categorized as motions in a more formal setting.

Finding #10. The People's Counsel's technical assistance consists of providing general information on land use topics and guidance on effective participation in the County's land use process.

By law, the People's Counsel is authorized to provide technical assistance to residents about land use proceedings. The law includes the caveat that this assistance is "subject to available time and resources." The People's Counsel categorizes the technical assistance that he provides into three types:

- General information and assistance on land use topics;
- Guidance on effective participation in the County's land use process; and
- Technical advice and support for government officials and staff.

Technical assistance often occurs in response to requests from individual residents who contact the Office, but guidance on effective participation also occurs when the People's Counsel initiates contact with residents before, during, or after a land use proceeding.

According to the People's Counsel, the intent of offering guidance on effective participation is to help residents (either in support of or opposed to a petition) get involved in a way that helps lead to a "full and fair presentation of relevant issues." Examples of guidance on effective participation include:

- Explaining the special exception process, how various hearings are structured, who can speak at a hearing and for how long, etc.;
- Providing samples of materials and information from similar cases to a prospective applicant or case participant; and
- Providing guidance on how to offer relevant evidence and structure arguments when appearing in a land use proceeding.

Finding #11. The People's Counsel's activities also include mediating land use disputes and participating on Community Liaison Committees.

The People's Counsel's annual reports to the County Council have included mention of his participation in mediation sessions and Community Liaison Committee (CLC) meetings, as shown in the table below. These activities are not explicitly identified in the law as ways the People's Counsel is authorized to "participate" in land use proceedings. Data on the number of mediation session provided and the number of CLC meetings attended between 2002 and 2007 are included in Finding #6 on page 48.

Mediation. The People's Counsel offers to mediate land-use disputes to resolve outstanding issues between the community and special exception and/or rezoning applicants. According to the People's Counsel, mediations are conducted only if both of the sides voluntarily agree to participate. Agreement on the outcome is also voluntary.

The People's Counsel conducted 47 mediation sessions during the past five years. The majority of those mediation sessions occurred in 2002 and 2003. Some of the mediation sessions have resulted in agreement, while others have not.

Community Liaison Committee (CLC) participation. Community Liaison Committees are groups formally established as part of a Board of Appeals' condition on a special exception. A CLC typically consists of representatives from the special exception holder and surrounding residents who convene at regular intervals during the year. The goal of CLCs is to foster communication between a special exception holder and the surrounding community and to prevent potential problems from rising up to the enforcement level.

Since 2003, the People's Counsel has participated in CLCs, most often as an "ex officio" member whose role is to help facilitate the CLC meeting. There are currently 28 CLCs that the People's Counsel participates in.

FEEDBACK ON THE CURRENT LAW AND SERVICES PROVIDED BY THE OFFICE

Finding #12. While most people who have worked with the Office of the People's Counsel express support for the Office, there is a range of views about what the role and services of the People's Counsel "should" be.

To obtain feedback about the function and services of the Office of the People's Counsel, OLO conducted more than 50 interviews with government officials, staff, and non-governmental representatives who have interacted with the Office. The common views expressed by those interviewed are summarized below.

Opinions on the Function of the People's Counsel. There is a mix of opinions about the current role of the People's Counsel as a party in land use cases who represents only the "public interest." A majority of government representatives interviewed support the People's Counsel's current role, while a few believe the People's Counsel should more vigorously advocate for community residents in opposition to development applications.

Non-government representatives were split on whether the People's Counsel should retain his current neutral role or assume more of an advocacy role. OLO's interviews with residents also found varying perceptions and some apparent confusion about the role of the People's Counsel.

Opinions on the Services of the People's Counsel. A majority of the government representatives interviewed commented that the People's Counsel's participation in land use proceedings added value. With few exceptions, the governmental and non-governmental individuals also praised the technical assistance and information provided to residents by the People's Counsel. The majority of residents interviewed indicated they would recommend the People's Counsel to other County residents.

Non-governmental representatives expressed a wider range of opinions about the People's Counsel's participation in proceedings – from complimenting his efforts to facilitate a more complete record to questioning how the People's Counsel determines the meaning of the “public interest.” Some individuals also expressed mixed views of the People's Counsel's mediation efforts.

Suggestions offered for improvement to the Office of the People's Counsel. OLO heard many suggestions for improvements to the Office of the People's Counsel. Suggestions included amending the People's Counsel law to:

- Create a different supervisory and/or reporting structure for the People's Counsel;
- Direct the People's Counsel to advocate for residents' positions in land use cases;
- Explicitly authorize the People's Counsel to participate on Community Liaison Committees; and
- Clarify the meaning of the “public interest.”

Other suggestions include increasing the Office's staff, allowing the People's Counsel to hire contract consultants or experts, and improving publicity about the Office.

COMPARISON TO SIMILAR OFFICES IN OTHER MARYLAND COUNTIES

Finding #13. Four other Maryland counties have offices that are comparable, but not identical to, Montgomery County's Office of the People's Counsel.

The table on the next page compares key characteristics of Montgomery County's Office of the People's Counsel to those of similar offices in Baltimore County, Harford County, Howard County, and Prince George's County. As the comparative information shows, the type of land use activity that each office focuses on varies.

Compared to the other offices, Montgomery County's People's Counsel also spends more time providing technical assistance. In addition, Montgomery County's People's Counsel is the only jurisdiction to fill the position with a term merit system employee (the others either use contract or non-merit employees), and Montgomery County's office has the largest annual budget.

Table 11. Comparison of Montgomery County's People's Counsel to Similar Offices in Other Maryland Counties

	Montgomery County	Baltimore County	Harford County	Howard County	Prince George's County
Authority	County Code	County Charter	County Charter and County Code	County Code	County Charter and County Code
Title	People's Counsel	People's Counsel	People's Counsel	Zoning Counsel	People's Zoning Counsel
Year established	1990	1974	1976	2000	1973
Staffing	1 full-time attorney 1 part-time office admin.	2 full-time attorneys 1 full-time legal secretary	2 part-time attorneys	1 part-time attorney	1 part-time attorney
County employees or hired on contract?	County employees (merit with specified term)	County employees (non-merit)	Hired on contract	Hired on contract	Hired on contract
FY08 Budget	\$239,130	\$183,340	\$72,408	\$100/hour (funds in Council budget)	\$140,000
Primarily participates in these types of land use cases	<ul style="list-style-type: none"> • special exceptions • local map/development plan amendments • site/subdivision plans 	<ul style="list-style-type: none"> • zoning reclassifications • variances • special exceptions 	<ul style="list-style-type: none"> • zoning reclassifications • variances • special exceptions 	<ul style="list-style-type: none"> • piecemeal zoning map amendments 	<ul style="list-style-type: none"> • zoning reclassifications • special exceptions • comprehensive design plans • variances
Law assigns responsibility to provide technical assistance?	Yes	No	No	Yes	Yes
How is involvement in cases determined by law?	People's Counsel decides.	People's Counsel decides.	The People's Counsel decides or the People's Counsel Citizens' Advisory Board decides by majority vote.	The People's Counsel must appear at all zoning board hearings on requests for piecemeal zoning map amendments.	People's Counsel decides.

Chapter VII. Recommendations

By law, the Office of the People's Counsel is housed in the Legislative Branch of County Government – the County Council appoints the People's Counsel. As such, the Council has both the authority and the responsibility to decide the purpose, function, and expectations for the Office. Consistent with this mandate, the County Council asked the Office of Legislative Oversight (OLO) to conduct a review of the Office of the People's Counsel based on:

- Research on the legislative and funding history of the Office;
- An assessment of the activities of the Office;
- Feedback on the current law and work of the Office; and
- A comparison with similar offices in other jurisdictions.

This chapter summarizes OLO's recommendations for Council action. In sum, OLO recommends that the Council first revisit the law establishing the Office of the People's Counsel. After making its decisions regarding changes to the purpose, duties, and/or structure of the Office of the People's Counsel, the Council will be better positioned to make decisions regarding the future budget and staffing of the Office.

Recommendation #1: Revisit the purpose, duties, and structure of the Office of the People's Counsel as outlined in County law.

The County Council established the Office of the People's Counsel by law in 1990. In 1999, the Council amended the law, funded the Office for the first time, and appointed the first People's Counsel. Based on the information compiled in this report, OLO recommends the Council revisit the law that established the People's Counsel, paying particular attention to whether the purpose, duties, and staffing structure of the Office meet the Council's current priorities and expectations for the People's Counsel.

OLO recommends that the Council structure its discussion on the People's Counsel law around the five issues outlined below. These five issues largely parallel the issues discussed 18 years ago when the law creating the Office was adopted:

- Statutory purpose;
- Authority and duties;
- Party representation;
- Provision of technical assistance; and
- Staffing structure.

In addressing each of these issues, OLO recommends the Council consider changes in laws and practices that have occurred since the original law establishing the Office of the People's Counsel was enacted. Issues of particular relevance include changes in special exception hearings and inspections, changes in how government agencies disseminate information to the public, and changes underway at the Planning Department to improve public participation in the development review process.

ISSUE A: STATUTORY PURPOSE

The People's Counsel law, as currently written, establishes three primary purposes for the Office. These are:

1. To protect the public interest;
2. To promote a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records; and
3. To provide technical assistance to encourage effective participation in, and increase public understanding and confidence of, the County land use process.

OLO's review of the legislative history found that previous Councils debated the role and purpose of the People's Counsel. Current feedback from both governmental officials and non-governmental representatives indicates that a range of views continues to exist on the appropriate purpose and role of an Office of the People's Counsel.

The legislative records shows that numerous discussions held by the Council have centered on the People's Counsel's duty to "protect the public interest." The primary argument made for including this purpose statement was that "only narrow private property interests are represented or discussed in land use proceedings." The main arguments voiced against including this purpose statement in the law were: (1) how difficult it can be to determine the public interest in any given case; and (2) the possibility of competing public interests.

OLO's review of the legislative record indicates that the two other purpose statements – promoting a full and fair presentation of issues and encouraging effective participation through technical assistance – were not discussed to the same degree as the "public interest" purpose statement. To the extent they were discussed, the record shows general agreement about including them both in the law.

OLO recommends that the Council discuss and decide whether to affirm or amend the three primary statements of purpose of the Office of People's Counsel established in law.

ISSUE B: AUTHORITY AND DUTIES

Under the current law, the People's Counsel may participate in certain land use proceedings, provide technical assistance, and request reviews of existing special exceptions. The law authorizes the People's Counsel to participate in: special exceptions, local map amendments, development plan amendments, variances, subdivision plans, and site plans.

OLO's review of the People's Counsel's activities shows that, in practice:

- The People's Counsel's participation in land use proceedings is primarily in special exception and local map amendment cases;
- The People's Counsel provides technical assistance to residents that includes both general information and guidance on effective participation in the land use process; and
- The People's Counsel has not used his authority to request special exception reviews.

OLO's review also found that two other activities account for a sizeable amount of the People's Counsel's time, but are not explicitly authorized in the law: participating on Community Liaison Committees and mediating land use disputes.

OLO recommends that the Council discuss and decide whether to maintain, add to, eliminate, or modify the People's Counsel's authorities established in law.

ISSUE C: PARTY REPRESENTATION

The current law provides for an "independent" People's Counsel that "must not represent the County, any government agency, or any private party in any proceeding." OLO's review of the 1990 and 1999 legislative records found that previous Councils debated *who the People's Counsel should represent* – and in particular, whether the People's Counsel should represent individual parties.

The primary argument offered in favor of authorizing the People's Counsel to represent individual parties was that it would "even the playing field" for individuals or community groups who oppose an application but cannot find or afford a private lawyer. The argument made against giving the People's Counsel this function was the potential difficulty in deciding which cases or clients to take, i.e., who most needs representation (because of their lack of resources) and deserves representation (because of the merits of their position or the gravity of the issues).

Current feedback from both governmental officials and non-governmental representatives indicates that a range of views continues to exist on questions related to the appropriate type of representation by the People's Counsel.

OLO recommends that the Council discuss and decide whether to maintain or change the current law on who the People's Counsel represents in a land use proceeding.

ISSUE D: PROVISION OF TECHNICAL ASSISTANCE

The current law provides that the People's Counsel may provide technical assistance "subject to available time and resources." At the same time, OLO's review of the legislative record repeatedly indicates that providing technical assistance was viewed as one of the Office's "primary functions."

In practice, the current People's Counsel estimates that he spends approximately 70% of his time on technical assistance and related activities, including providing general information on land use issues and offering guidance on effective participation in specific land use proceedings.

OLO recommends that the Council discuss and decide whether to further clarify in law what is expected from the People's Counsel in terms of technical assistance. Specific issues to address include the Council's expectations regarding: the priority to place on this function, coordination with other agencies that provide information on land use issues, and use of technology for disseminating information to the public.

ISSUE E: STAFFING STRUCTURE

The current law provides the Council with the option to employ a People's Counsel as a term, merit system employee or as a contract employee. OLO's comparative research found that three of the four other Maryland counties that have a similar office fill the position using contract employees; the fourth employs full-time, non-merit staff.

Historically, the Council's oversight of the Office of the People's Counsel has consisted of receipt of the Office's annual report (required by law) and the annual review of the Office's budget. One of the recurring pieces of feedback on the law and structure of the Office was a suggestion to create a different supervisory and/or accountability structure for the Office within the Legislative Branch.

OLO recommends that the Council discuss and decide whether to maintain, change, or modify the Council's options for filling the position of People's Counsel. OLO also recommends the Council consider different approaches to structuring the Council's supervision/oversight of the Office.

Recommendation #2: Postpone the personnel decision regarding reappointment of the People's Counsel until the Council completes its review and action on the law governing the Office.

On July 3, 2007, the Council reappointed the incumbent People's Counsel for a term of one year. The 2007 resolution states that the current People's Counsel serves until a successor is appointed. In May 2008, the Council approved FY09 funding for the Office totaling \$250,170.

Before taking further action on reappointment of the People's Counsel or future funding of the Office, OLO recommends that the Council address three staffing and budget issues.

ISSUE A: JOB DESCRIPTION OF THE PEOPLE'S COUNSEL

The job description for the position of People's Counsel is based on the current law. If the Council decides to change any significant aspects of the law, then this will require corresponding changes to the formal job description.

Even if no changes are made to the law, OLO recommends that the Council review the job description to determine if it needs updating to reflect changes in law, changes in policies or practices, and/or advances in the dissemination of information to the public through technology.

ISSUE B: STAFFING TYPES AND LEVELS

If the Council maintains the two options in the law for employing a People's Counsel, the Council should decide whether it prefers to stay with the current practice of employing a term merit employee, or whether to change its practice and fill the position by contract. The Council should also determine, given any changes to the authority, duties, or expectations of the Office, the appropriate level of staffing/funding needed to fulfill the Office's mission.

ISSUE C: DECIDE HOW TO PROCEED WITH FILLING THE POSITION

After determining any changes to the job description and/or the Office's staffing, the Council should decide whether to:

- Reappoint the incumbent People's Counsel to a new term; or
- Initiate a new selection process for the position of People's Counsel.

Chapter VIII. Comments on Final Draft

The Office of Legislative Oversight circulated a final draft of this report to the Office of the People's Counsel and drafts of relevant chapters to the Board of Appeals and the Office of Zoning and Administrative Hearings. OLO appreciates the time taken by the People's Counsel and BOA and OZAH staff to review the drafts and provide comments. OLO's final report incorporates technical corrections provided by these staff.

The People's Counsel intends to provide written comments on the report in advance of the Planning, Housing & Economic Development Committee's scheduled discussion of the report.

APPENDIX A: GENERAL DOCUMENTS

Description	Page Number
Glossary	A-1
County Code, Chapter 1A, Article II, <i>Departments and Offices</i>	A-2
County Code, Chapter 2, Article XII, <i>People's Counsel</i>	A-3
Class Specification for the People's Counsel	A-5
Original Job Announcement for the People's Counsel	A-7
<i>Eighth Annual Report of the Office of the People's Counsel – 2007</i>	A-9
Technical Assistance Survey	A-24

GLOSSARY

This glossary defines key terms related to the work of the Office of the People's Counsel and land use proceedings in Montgomery County. It includes definitions from the Zoning Ordinance or from the Planning Board and Department of Planning websites.

Development Plan Amendment	A plan required to be submitted as a part of an application for the reclassification of land into certain zones. (Zoning Ordinance, § 59-A-2.1. Definitions)
Local Map Amendment	A change of zoning, normally sought by a property owner or other person having a proprietary interest. A local map amendment can include more than one tract of land. Land can be combined for the purpose of rezoning. (Glossary of Community Based Planning Terms, Planning Department website)
Special Exception	The grant of a specific use that would not be appropriate generally or without restriction, which must be based on a finding that certain conditions governing special exceptions as detailed in Article 59-G exist, and that the use is consistent with the applicable master plan and is compatible with the existing neighborhood. (Zoning Ordinance § 59-A-2.1. Definitions)
Site Plan	A detailed plan required in certain zones as the basis for the issuance of building permits. (Zoning Ordinance, § 59-A-2.1. Definitions)
Subdivision Plan	A Subdivision Plan, also known as a Preliminary Plan, is a review of the general scheme of the proposed development and is required when subdividing or resubdividing land. (About Locator Wizard Development Activity Information, Planning Board website)
Variance	Relief granted by the Board of Appeals to a property owner from the requirements of the Zoning Ordinance regarding frontage, setbacks, and in certain circumstances, building height limits. The property owner must demonstrate that strict application of the zoning regulations would result in unusual practical difficulties or undue hardship because of exceptional conditions of shape, topography or other situations peculiar to the property. (Glossary of Community Based Planning Terms, Planning Department website)

Chapter 1A, Article II. Departments and Offices.

Sec. 1A-203. Establishing other offices.

(b) *Legislative Branch.* These are the offices of the Legislative Branch:

Office of the County Council [Charter section 101 et seq.]

Office of the Inspector General

Office of Legislative Oversight [section 29A-5]

Office of the People's Counsel

Office of Zoning and Administrative Hearings

(c) *Internal offices.* For purposes of organization, there may also be offices within departments and principal offices. This article does not apply to them.

Sec. 1A-204. Supervision of offices and appointment of heads.

(b) *Legislative Branch.*

(3) Office of the People's Counsel.

(A) The County Council may employ, as a term merit system employee, a People's Counsel. The Council may, by a resolution adopted by an affirmative vote of 6 Councilmembers, remove a People's Counsel during the Counsel's term for good cause. Alternatively, the County Council may retain as an independent contractor one or more attorneys, along with support staff, consultants, and expert witnesses, to provide the services of the People's Counsel under Section 2-150. The contract may be canceled at any time by a resolution adopted by an affirmative vote of 6 Councilmembers.

(B) Any attorney employed or retained as the People's Counsel must:

- (i) be a member of the bar of the Court of Appeals of Maryland;
- (ii) have at least 5 years experience in the practice or teaching of law; and
- (iii) have substantial experience with land use legal issues and procedures.

(C) Any attorney employed or retained as the People's Counsel must not represent any client, other than as People's Counsel, in any matter involving land use in Montgomery or Prince George's County.

(D) Any attorney employed or retained as the People's Counsel must not, within one year after the attorney's service as People's Counsel ends, represent any party in any proceeding involving land use in the County.

Chapter 2, Article XII. People's Counsel.

Sec. 2-150. People's Counsel-Functions.

(a) *Purpose.* 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, and increase public understanding of and confidence in, the County land use process.

(b) *Authority; duties.* To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:

(1) the Board of Appeals if the proceeding involves a variance or a special exception;

(2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process or a special exception; and

(3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

The People's Counsel may also file a complaint under Section 59-G-1.3(b) alleging failure to comply with a special exception, or may seek a modification of a special exception under Section 59-G-1.3(c) or a revocation of a special exception under Section 59-G-1.3(e).

(c) *Restrictions.* The People's Counsel must not participate in any legislative proceeding, or in any proceeding before a board or agency of any municipality in the County.

(d) *Participation.* The People's Counsel is a party in a proceeding under subsection (b) once the People's Counsel files a notice of intention to participate. After the notice is filed, the People's Counsel 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 the evidence in the proceeding warrant. The People's Counsel may file and argue an appeal the same as any other party to the proceeding.

(e) *Independent status.* The People's Counsel must not represent the County, any government agency, or any private party in any proceeding. The People's Counsel is not subject to the authority of the County Attorney.

(f) *Notice.* If the People's Counsel intends to participate in a proceeding, the People's Counsel must give all parties a notice of intention to participate.

(g) *Discretion.* In the People's Counsel's discretion, the People's Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate under subsection (b). The People's Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.

(h) *Technical assistance.* Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Counsel may provide technical assistance to any person about a proceeding listed in subsection (b). When providing technical assistance under this subsection, the People's Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient.

(i) *Coordination.* The People's Counsel must coordinate the services of its office with those offered by land use information staff in the Council, Board of Appeals, and Planning Board, to avoid inconsistency and duplication and to maximize the assistance offered to citizens.

(j) *Annual report.* The People's Counsel must annually report to the Council on the activities of the office. (1990 L.M.C., ch. 22, § 2.; 1999 L.M.C., ch. 19, §§ 1 and 2; 2002 L.M.C., ch. 28, § 1)

MONTGOMERY COUNTY GOVERNMENT Code No. 0098

ROCKVILLE, MARYLAND Grade 34

CLASS SPECIFICATION

***PEOPLE'S COUNSEL,
Office of the People's Counsel**

DEFINITION OF CLASS:

This is advanced legal counsel work requiring handling of complex legal matters which involves both technical and specialized areas of law, specifically land use. Contacts are with high-ranking legislative, quasi-judicial, and executive officials within County Government, citizen groups and individual County residents. The purpose of the contacts is to appear in proceedings to promote full and fair presentation of issues and to assure sound land use decisions are made, coordinate services, and provide technical assistance and education to citizens in land use process.

An employee in this class participates in proceedings before the County Council, Board of Appeals, Montgomery County Planning Board, or Hearing Examiner regarding certain land use issues in addition to providing technical assistance in order to protect the public interest and achieve a full and fair presentation of relevant issues. Parameters of the job are broadly stated and set forth in the Montgomery County Code. The incumbent will have full latitude to develop guidelines used to perform the functions mandated by County law. Work can be self-initiated, can be in response to requests from citizens or citizen organizations, or can be in response to issues raised by the County Council, Board of Appeals, Montgomery County Planning Board, or the Hearing Examiner. The work of the Office of the People's Counsel is publicly reviewed by the County Council upon submission of the legally-mandated annual report and community feedback to the People's Counsel and the County Council. Effectiveness of the Office will be under continuous scrutiny by the public it serves. The work is primarily sedentary, performed in a typical office setting, and subject to common everyday risks.

EXAMPLES OF DUTIES: (Illustrative Only)

Participates in proceedings before the County Council, Board of Appeals, Planning Board, and Hearing Examiner and court appeals.

Serves as community resource on land use issues.

Explores complex factual and legal issues to assure informed public actions on land use matters.

Coordinates services of the Office with services offered by land use information staff in the Council, Board of Appeals and Planning Board, to avoid inconsistency and duplication and to maximize the assistance offered to citizens.

Files complaints alleging failure to comply with a special exception grant; seeks modification or revocation of special exceptions when such action is necessary.

Prepares annual report to County Council on activities of the Office of the People's Counsel.

Performs other related duties as required.

MINIMUM QUALIFICATIONS:

Experience:

Considerable (5 years) experience in the practice or teaching of law, with concentration in land use legal issues and procedures.

Education:

Graduation from an accredited law school and membership in the bar of the State of Maryland.

Knowledge, Skills and Abilities:

Considerable knowledge of land use law, theory, and practice.

Considerable experience participating in administrative proceedings involving special exceptions, zoning reclassifications, subdivision, master plans, and other land use matters.

Skill in legal research and analysis.

Skill and ability in oral and written communication sufficient to explain complex land use or other legal issues to lay audiences, orally and in writing.

Skill in dealing tactfully, courteously, and effectively with people.

Ability to assimilate and analyze various complex facts, issues and problems, and to render a fair and impartial decision.

Ability to attend meetings or perform work at locations outside the office, if necessary.

LICENSE:

Membership in the Maryland State Bar.

PROBATIONARY PERIOD:

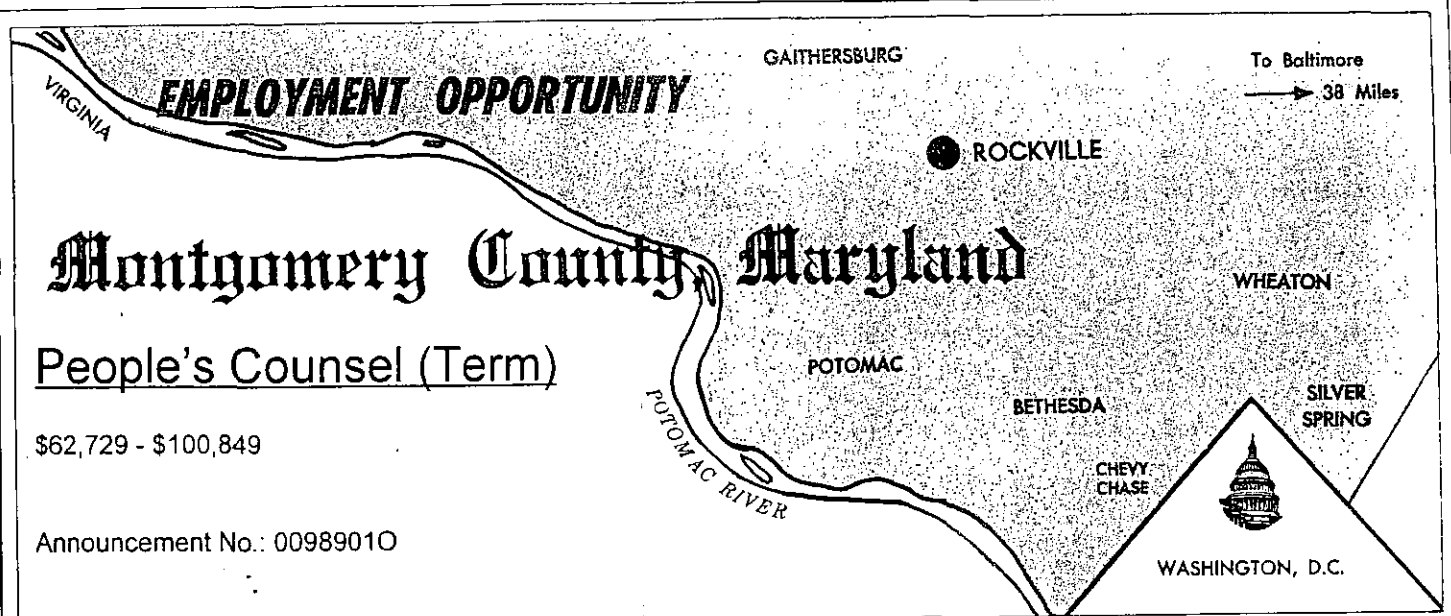
Individuals appointed to a position in this class will be required to serve a probationary period of twelve months and, if promoted to a position in this class, will be required to serve a probationary period of six months. Performance will be carefully evaluated during the probationary period. Continuation in this class will be contingent upon successful completion of the probationary period.

MEDICAL PROTOCOL:

Medical History Review

Class Established: September, 1999

***NOTE: This is a term position - The law establishing the Office terminates in 2003, and will be reviewed at that time to determine whether the law will be extended.**



Office of the People's Counsel
100 Maryland Avenue
Rockville, Maryland

Closing Date: October 27, 1999

NOTE: The initial term of appointment expires July 1, 2003. Employment beyond that date, while not guaranteed, may continue if the People's Counsel law is re-authorized. The law restricts other legal work the employee may perform during and after service in this position.

This position carries benefits.

Employee will be responsible for protecting the public interest and promoting a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records for sound land use decisions. Employee will participate in certain proceedings before the County Council, Board of Appeals, Planning Board, and Hearing Examiner and court appeals as necessary. More broadly, the employee will serve as a community resource on land use issues. Duties will include: exploring complex factual and legal issues to assure informed public actions on land use matters; filing complaints alleging failure to comply with a special exception grant; seeking modification or revocation of special exceptions when such action is necessary; preparing annual report to County Council. Ability to work cooperatively with decision-makers, citizens, other attorneys, and planners.

MINIMUM QUALIFICATIONS: Member of the Maryland bar; five years experience in the practice or teaching of law, and must have experience with land use legal issues and procedures.

SELECTION PROCESS: Applications meeting the minimum qualifications will be reviewed to determine extent & relevancy of trng. & exper. in the following areas: knowledge of land use law, theory, and practice, exp. in analyzing land use issues and proposing sound solutions, written and oral advocacy, preferably on land use and related issues, explaining complex land use or other legal issues to lay audiences, orally and in writing, participating in administrative proceedings involving special exceptions, zoning reclassifications, subdivision, master plans, and other land use matters, preparing documents and background materials for consideration by administrative agencies.

As a result of this process, candidates may be rated "Outstanding," "Well Qualified," or "Qualified" as appropriate. Selected applicants may be required to provide writing samples. Filing a financial disclosure form will be required of individual selected for the position.

(See reverse side for application procedure)

GENERAL INFORMATION AND INSTRUCTIONS

APPLICATION PROCEDURE: Applicants must submit a Montgomery County application form, which is available at the Executive Office Building, all County libraries, or by telephoning (240) 777-5120 [TTY/TDD for the Hearing Impaired, (240) 777-5126] or through our Internet website at: <http://www.co.mo.md.us/services/ohr>.

NOTE: It is the policy and practice of Montgomery County to select new employees and to promote current employees based on qualifications only, without regard to race, religion, color, national origin, sex, marital status, age, sexual orientation or disability. Individuals with disabilities are encouraged to apply for announced positions. Accommodation is provided in recruitment, testing and placement. For assistance, please call (240) 777-5000.

Office of Human Resources
Executive Office Building
101 Monroe Street, 7th Floor
Rockville, Maryland 20850

BENEFITS

Montgomery County currently provides most employees with such benefits as:

Annual Leave
Personal Leave (2 days per year)
Dental Insurance
Health Insurance
Holidays (9 days per year)
Life Insurance
Long-Term Disability Insurance

Periodic Pay Increases
Retirement Plan
Sick Leave
Training and Development Opportunities
Tuition Assistance
Vision Care

Benefits are subject to change.

AN EQUAL OPPORTUNITY EMPLOYER COMMITTED TO WORKFORCE DIVERSITY
M/F DISABLED

pser4\flyers\People'sCounseoflyer(9-99)
flyers3




MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

January 23, 2008

TO: Michael Knapp, President
Montgomery County Council

FROM: Martin Klauber, People's Counsel 
Office of the People's Counsel

SUBJECT: Eighth Annual Report of the Office of the People's Counsel - 2007

Attached is our annual report describing the activities undertaken by this Office in 2007. If you have any questions or comments, please do not hesitate to contact me.

MK:fh

Attachment

cc: Amanda Mihill, Legislative Analyst
Helen Vallone, Management & Budget Specialist III

EIGHTH ANNUAL REPORT
OF THE
OFFICE OF THE PEOPLE'S COUNSEL
2007

INTRODUCTION

The Office of the People's Counsel has two basic functions:

- To protect the public interest in land use hearings by promoting a full and fair presentation of relevant issues to achieve balanced administrative records.
- To provide technical assistance to residents and citizen associations so they can effectively participate in the County's land use process.

BACKGROUND

On February 6, 1990, the Council enacted Bill 11-89, establishing the Office of the People's Counsel. Though enacted, the Office was not funded.

On April 10, 1998, the Montgomery Civic Federation and the Allied Civic Group submitted "A Critique and Recommendation for Reform" on Special Exceptions to the Council.

On August 3, 1999, the Council enacted Bill 14-99, which amended the prior legislation and established the Office of the People's Counsel as it now exists. The relevant sections of the County Code are contained in the information packet, which is Attachment A to this report.

It is interesting to note that the first incumbent of this Office was appointed by the Council on December 6, 1999, the same day that Zoning Text Amendment No. 99004 became effective establishing new standards for evaluation of special exceptions and new general conditions relating master plans to the Board of Appeals' consideration of special exceptions.

On October 1, 2002, the Council enacted Bill 25-02, which repealed the July 1, 2003 sunset date for the position and the Office of the People's Counsel, making the Office a permanent agency of the Montgomery County government.

This report is transmitted to the Council in fulfillment of the requirement in Chapter 2, Article XII, Section 2-150(j) of the County Code that this Office submit an annual report on its activities.

CASE PARTICIPATION

After reviewing the legislation that established the People's Counsel in Baltimore, Hartford, and Prince Georges Counties, the legislative histories of Council Bill Nos. 11-89 and 14-99, in consultation with Ralph D. Wilson, Senior Legislative Analyst of the Council Staff, and based on the experience gained by the incumbent People's Counsel, the following criteria have been established to determine if this Office will participate as a party of record in a land use public hearing:

- impact on the public;
- effect on the public health, safety, and welfare;
- establishment of a future precedent;
- existence of significant legal issues;
- effect on public policy;
- need to assist an applicant during a public hearing;
- need to assist citizens during a public hearing; and
- possibility of resolving outstanding issues through mediation.

During 2007, this Office entered 28 zoning cases. The following is a subject-matter break down of those cases:

<u>Type</u>	<u>Number Entered</u>
Development Plan Amendment	2
Local Map Amendment	7
Site Plans	1
Special Exception	16
Subdivision	2

TECHNICAL ASSISTANCE

Executive Administrative Aide

Technical Assistance to the public was provided by the Executive Administrative Aide in 62 instances.

People's Counsel

During 2007, the People's Counsel provided technical assistance in 7,554 instances.

Examples of Technical Assistance that have been provided are: developing relevant issues to be presented by residents and associations in public hearings, help in developing written materials to be presented to the Board of Appeals, Planning Board, and Office of Zoning and Administration Hearings, providing techniques and criteria for the evaluation of site and subdivision plans, and explaining how Zoning Ordinance requirements apply to the facts of specific zoning reclassification, special exception, variance, and subdivision cases.

Attachment B to this report is a break down of Technical Assistance by subject matter.

ACTIVITIES AND INITIATIVES

- Participated in 49 public hearings and meetings.
- Attended 23 meetings of community associations.
- Conducted 1 mediation session to resolve disputes in a special exception case.
- Participated in 44 meetings of community liaison councils established by the Board of Appeals in special exception cases.
- Participated in 24 meetings with attorneys.
- Participated in 28 government meetings.
- Continued efforts to improve quality of M-NCPPC Technical Staff Reports in special exception and rezoning cases by facilitating contacts and meetings between the Board of Appeals, Office of Zoning and Administrative Hearings and M-NCPPC staff.
- Met with representatives of the Fire Marshall's Office in order to establish a working relationship between the Office of the People's Counsel and that office.
- Continued revision of the subdivision site plan review brochures.
- Spoke at a luncheon meeting of the Rockville Rotary Club.
- Developed a process for the Fire Marshall to submit a report to the Office of Zoning and Administrative Hearings in evidence rezoning cases.
- Revised form letter sent from Office of Zoning and Administrative Hearings providing notice in rezoning cases.
- Issued new public information brochure entitled "Special Exceptions & Special Exception Modifications."

Respectfully submitted,



Martin Klauber
People's Counsel

January 23, 2008

Attachments (2)



OFFICE OF THE PEOPLE'S COUNSEL INFORMATION PACKET

This packet, which has been created to provide you with some basic information about the Office of the People's Counsel, consists of a brief biography and the two sections of the County Code that relate to this office.

If you've received assistance from us, we'd really appreciate your input about how we've done. Please fill out our Satisfaction Survey on the last page of this packet or go to www.montgomerycountymd.gov/peoplescounsel to complete our on-line survey.

We are located in the Council Office Building in Rockville, so if you are in the area, please drop by and say hello.

The People's Counsel



MONTGOMERY COUNTY, MARYLAND

MARTIN KLAUBER
The People's Counsel

Land Use Law Experience

First People's Counsel of Montgomery County, since January 3, 2000

Hearing Examiner, Montgomery County, Maryland 1979-1991

Associate General Counsel, National Capital Planning Commission 1971-1973

Executive Secretary and Counsel of Zoning Commission and Member and Counsel of Board of Zoning Adjustment, Washington, D.C. 1973-1976

Special Assistant Corporation Counsel, Washington, D.C. 1976

Counsel to Chilean Minister of Housing and Urban Affairs, Counsel to Urban Planning Institute of the Catholic University of Chile 1976-1978

Legal Consultant to Commissioners of Charles County, Maryland 1992-1993

Education

L.L.B., George Washington University School of Law, Washington, D.C.

B.A., Rutgers College, New Brunswick, New Jersey

George Washington University Graduate School of Public Administration

Professional Activities

Co-founder and Chair, the Maryland Land Use Round Table.

Guest Lecturer at George Washington University School of Law, Catholic University of America School, and University of Baltimore School of Law.

Urban Development and Land Use Law in Chile, Chilean Ministry of Housing and Urban Affairs, 1978.

Personal

Resident of Montgomery County since 1978.

Married to Hope Sukin of the United States Agency for International Development, since 1976.
Two children, Rachel and David.

Attachment A

MONTGOMERY COUNTY CODE
Chapter 1A

- b. The Director is not a merit system employee.
 - c. Beginning on January 1, 1988, the term of the Director is 4 years. There is no limit to the number of terms that a Director may serve. If the County Council has not appointed a successor when a Director's term expires, the Director continues to serve until an appointed successor assumes office. The successor serves for the unexpired part of the term.
 - d. The County Council may dismiss the Director for good cause before the end of the Director's term. Before doing so, the Council must tell the Director the Council's reasons for the dismissal. If the Director requests a hearing, the Council must hold one and then issue a written decision to the Director.
 - e. The Director appoints and supervises all merit system employees of the Office. The Office and the employees operate independently of the Council's staff.
- (3) Office of the People's Counsel.
- (A) The County Council may employ, as a term merit system employee, a People's Counsel. The Council may, by a resolution adopted by an affirmative vote of 6 Councilmembers, remove a People's Counsel during the Counsel's term for good cause. Alternatively, the County Council may retain as an independent contractor one or more attorneys, along with support staff, consultants, and expert witnesses, to provide the services of the People's Counsel under Section 2-150. The contract may be canceled at any time by a resolution adopted by an affirmative vote of 6 Councilmembers.
 - (B) Any attorney employed or retained as the People's Counsel must:
 - (i) be a member of the bar of the Court of Appeals of Maryland;
 - (ii) have at least 5 years experience in the practice or teaching of law; and
 - (iii) have substantial experience with land use legal issues and procedures.
 - (C) Any attorney employed or retained as the People's Counsel must not represent any client, other than as People's Counsel, in any matter involving land use in Montgomery or Prince George's County.

MONTGOMERY COUNTY CODE
Chapter 2

through absence and must explain any known extenuating circumstances. The presiding officer should send a copy of the notice to each member of the committee.

- (3) The appointing authority may waive the resignation for illness, emergency or other good cause. The appointing authority must notify the member whether a waiver has been granted.
- (4) If a waiver has not been granted, the appointing authority must appoint a successor to complete the unexpired term, subject to Council confirmation if the original appointment was subject to Council confirmation. (1979 L.M.C., ch. 22, § 1; FY 1991 L.M.C., ch. 9, § 1.)

Sec. 2-149. Procedures at meetings.

Unless a committee meeting is subject to Chapter 2A, a meeting may be conducted informally. The parliamentary procedures of Robert's Rules of Order govern when it is necessary to take formal action or decide controversial matters. Committee meetings must be open to the public in accordance with the state open meetings law. (1979 L.M.C., ch. 22, § 1; FY 1991, L.M.C., ch. 9, § 1.)

ARTICLE XII. PEOPLE'S COUNSEL.**Sec. 2-150. People's Counsel—Functions.**

- (a) *Purpose.* 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, and increase public understanding of and confidence in, the County land use process.
- (b) *Authority; duties.* To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:
 - (1) the Board of Appeals if the proceeding involves a variance or a special exception;
 - (2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process or a special exception; and

MONTGOMERY COUNTY CODE
Chapter 2

- (j) *Annual report.* The People's Counsel must annually report to the Council on the activities of the office. (1990 L.M.C., ch. 22, § 2.; 1999 L.M.C., ch. 19, §§ 1 and 2; 2002 L.M.C., ch. 28, § 1)

SATISFACTION SURVEY

1. Did the Assistance provided to you by the Office of the People's Counsel help you participate effectively in the County's land use process?

Yes ☐ No ☐ Somewhat ☐

2. Did the assistance provided to you by the Office of the People's Counsel increase your understanding of the County's land use process?

Yes ☐ No ☐ Somewhat ☐

3. Were you satisfied with the assistance that the Office of the People's Counsel provided to you?

Yes ☐ No ☐ Somewhat ☐

4. Was the information/assistance provided to you by the Office of the People's Counsel understandable?

Yes ☐ No ☐ Somewhat ☐

2007 Annual Report

Technical Assistance

Technical Assistance Topics	2000	2001	2002	2003	2004	2005	2006	2007
Abandonment of County Land						2		
Accessory Apartment Special Exception	1		4		5	6	9	55
Adequate Public Facilities	1							10
Administrative Appeal	13	7	11	21	14	15	40	30
Administrative Procedure				4	2		35	56
Administrative SEM								18
Alternate Review Committee								3
Amendment to Sandy Spring/Ashton Overlay Zone	5							
Animal Boarding Place SE							14	
Appellate Litigation	1						3	
Ashton Meeting Place Case							24	22
Associations	3	3	28	13	35	17	49	32
Automobile Filling Station Special Exception						14	1	22
Beech Avenue Group							34	49
Board of Appeals			2		21	15	38	75
C&O Canal	1							
Cable TV	1							
Cell Tower Special Exception					4	1	8	
Child Care	2							66
Child Care Special Exception					71	29	21	
Church Parking	3							
Clarksburg Site Plans							3	
Clarksburg Town Center Site Plans						62	2	
Cloverly Golf Course Residential Community				4				
Community Liaison Council			1	82	141	225	138	350
Community Swimming Pool SEM							64	9
Construction Noise	1							
Consumer Affairs					2	1	3	3
Country Club SEM							21	7
County Attorney						3	23	9
County Right-of-Way	1	1						
County's Land Use Control Process		30	51	40	93	129	199	141
DEP-Noise		1		1				3
Dept of Economic Development					2	3		
Dept of Environmental Protection		7	4	1	5	9	1	
Dept of Health and Human Services	1			1	1		1	
Dept of Housing and Community Affairs	2	10	10	11	7	7	8	8
Dept of Permitting Services	1	27	15	20	50	55	65	97
Dept of Public Works and Transportation					10	12	119	166
Development Plan							97	116
Development Plan Amendment		1	5	4	16	10	34	45
Development Review Committee						1	3	
DPWT Issues	4	12	15	15	4	11		
Drive-In Restaurant Special Exception							25	1

2007 Annual Report Technical Assistance

Technical Assistance Topics	2000	2001	2002	2003	2004	2005	2006	2007
Effective Participation					57	355	222	264
Enforcement of Special Exception Conditions	5	2	1	4		36	40	129
Enforcement of Variance	1							
Enforcement of Zoning		2	1	2		12	1	
Environment							2	86
Ethics	1			1	3	1		
Ex Parte								4
Facilitation							11	282
Fairland Golf Course Residential Community				8				
FASEB Special Exception Modification				8		1		6
Federal Land Use Planning		1			7	2	5	30
Fence								22
Fire Marshall								1
Fire Station Relocation	1							
FOIA	1	1				2	1	1
Funeral Home Special Exception				53	2			
General Citizens Association Issues						10		
Golf Course SEM							17	18
Group Home Special Exception							14	
Historic Preservation	6	3		7	20	4	9	9
2	1							4
Holton Arms Special Exception Modification	30	12	1	1		54	26	45
Holy Cross Hospital Issues								63
Home Occupation Special Exception		1			4	15	16	5
Hospitals					34	16	103	116
Human Relations	1							
Indian Spring Development							10	
Inspector General							1	1
Johnson Garden Center SEM						111		
Labquest	1							
Landlord-Tenant Issues	1					1	2	1
Landscape Contractor Special Exception						40	1	58
Landscape Plan							42	241
Legacy Open Space				1			15	5
Lighting Plan							24	64
Mansionization					13	3	22	28
Master Plan							25	114
Master Plan Questions/Issues	29	16	6	5	16	103	56	22
MCPS	1	1	2	1			12	6
Mediation of Disputes			2	9	58	124	80	37
Miscellaneous		3	3	4	22	8	23	7
ICPPC		4	7	30	59	122	55	54
Monopoles	2	3	1					
Montrose Parkway	2				1			

2007 Annual Report Technical Assistance

Technical Assistance Topics	2000	2001	2002	2003	2004	2005	2006	2007
MPDU						14	3	6
National Park Seminary					80	43	3	
NIH			9	4				
Noise Mitigation								3
Noise Ordinance							12	3
Non-Resident Medical Practitioner SE							10	3
North Hills of Sligo Sign	7							
Office of the People's Counsel						63	43	41
Office of Zoning & Administrative Hearings						39	7	8
Open Meetings Law								1
Optional Method of Application					13	23	45	14
Optional Method of Development	1			1				
Oral Argument								51
Overlay Zone						1	9	11
Parking	1						26	128
Parks			2					28
Pedestrian Safety							1	58
Posting of Building Permits	1	1						
Private Family Cemetery	1						1	
Private School Special Exception						18	126	176
Productivity Housing						2		
Project Open Space								3
Public Information Document							44	7
Public Utility					11	1		
Real Estate		4		4	8	6	9	8
Real Estate Assessment		2						
Rezoning		4	54	121	233	167	286	338
Riding Stable SE								3
Roads							24	30
Road/Traffic	2					2	40	
Rockville Pike Planning Issues	1							
Rural Rustic Road								20
Sale of County Land	2							
Schematic Development Plan							11	4
Section Map Amendment							2	
Sediment Control	2	1				1		
Senior Care SE						43	69	87
Sidewalks	3	3				1	8	26
Signage								28
Senior Housing Special Exception					1			
Site Plan Review Process	16	33	33	31	10	83	52	98
Special Exception	1							
Special Exception Modification	64	94	172	158	52	153	247	158
	29	43	113	120	33	245	219	288

2007 Annual Report

Technical Assistance

Technical Assistance Topics	2000	2001	2002	2003	2004	2005	2006	2007
State Highway Administration	2			3	2	4		18
Storm Water Management					6	44	40	81
Streets	1				1		13	
Subdivision	32	66	39	65	58	238	47	65
Suburban Hospital							55	164
Suburban Hospital's SEM								3
Sycamore Island Club					10			
Symphony Park Subdivision						11		
Tobytown	1							
Toler Funeral Home				14	1			
Traffic							36	63
Traffic Impact Analysis								256
Transportation Management Plan						18	154	1693
Tree Save Ordinance							20	
Use of Surplus Public School Sites by Private Schools	6	5				58	75	59
Variance	16	30	15	40	51	60	61	98
Veterinary Hospital Special Exception							39	3
Washington Adventist Hospital Com. Liaison Council				96	13			
Washington Adventist Hospital Special Exception Mod.					2			
Water Run-off	1	1					1	
Work Force Housing						2		23
WSSC Issues	3	2	2	3	4			1
Zoning	28	22	10	2	15	49	80	84
Zoning Ordinance Interpretations		17	12	39	44	37	107	189
Zoning Text Amendment	10	3	14	19	51	41	67	9
TOTAL	355	479	645	1071	1478	3112	4009	7554

TECHNICAL ASSISTANCE SURVEY QUESTIONS

OLO used the following questions for the survey of community members who received technical assistance from the Office of the People's Counsel in 2007.

1. How did you learn about the Office of the People's Counsel?
2. How were the available services of the office described to you? What is your understanding of the services of the People's Counsel?
3. Can you briefly describe the nature of your interaction(s) with the Office of the People's Counsel (e.g., general information, specific case, Community Liaison Council)?
4. When did you first contact the Office of the People's Counsel, and how many times have you worked with the office?
5. What type of interaction did you have with the People's Counsel (e.g., in person, by phone, group setting, community setting)?
6. Did your interactions with the Office of the People's Counsel meet your expectations? Please explain why or why not.
7. Did your interaction with the People's Counsel positively influence your participation in the County's land use process? If so, how?
8. Would you recommend the services of the People's Counsel to other residents? Why or why not?
9. Do you have any other feedback on the work of the People's Counsel or suggestions for improving the services provided by the Office?

REVIEW OF THE OFFICE OF THE PEOPLE'S COUNSEL

OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2008-10

JUNE 24, 2008

APPENDIX B: LEGISLATIVE HISTORY AND COMPARATIVE LEGISLATION

Description	Page Number
Legislative History for Bill 11-89	
March 7, 1989 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 5. <i>Introduction: Bill 11-89, People's Counsel</i>	B-1
Legislative Request Report for Bill 11-89, People's Counsel	B-8
March 8, 1989 approved minutes from County Council Legislative Session	B-9
July 13, 1989 memorandum from Senior Legislative Attorney Faden to the Government Structure, Automation & Regulation (GSA) Committee on Agenda Item 2. <i>Worksession: Bill 11-89, People's Counsel</i>	B-13
July 13, 1989 approved minutes from GSA Committee	B-17
September 28, 1989 memorandum from Senior Legislative Attorney Faden to the GSA Committee on Agenda Item 1. <i>Worksession: Bill 11-89, People's Counsel</i>	B-23
September 28, 1989 approved minutes from GSA Committee	B-26
November 30, 1989 letter to the County Council from the League of Women Voters	B-29
January 12, 1990 memorandum from Senior Legislative Attorney Faden to the GSA and PHED Committees. <i>Bill 11-89, People's Counsel; Bill 21-89, Citizen's Land Use Information Officer – Information and Referral Services</i>	B-31
January 12, 1990 approved minutes from GSA and Planning, Housing, and Economic Development (PHED) Committees.	B-36
February 6, 1990 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 17. <i>Final Action: Bill 11-89, People's Counsel</i>	B-41
Bill 11-89 as approved on February 6, 1990	B-47
Legislative History for Bill 14-99	
July 28, 1998 memorandum from Senior Legislative Analyst Wilson to the PHED Committee. <i>Worksession – People's Counsel</i>	B-59
April 12, 1999 approved minutes from PHED Committee	B-61
May 10, 1999 memorandum from Senior Legislative Analyst Wilson to the County Council on Agenda Item 5. <i>People's Counsel – FY00 Appropriation</i>	B-63
June 28, 1999 approved minutes from PHED Committee	B-66
August 3, 1999 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 6. <i>Action: Bill 14-99, People's Counsel – Amendments</i>	B-70
August 3, 1999 Call of Bills for Final Reading. <i>Bill 14-99, People's Counsel – Amendments</i>	B-74
Bill 14-99 as approved August 3, 1999	B-78
Zoning Text Amendment No. 99004 as approved November 16, 1999	B-85

Description	Page Number
Legislative History for Bill 25-02	
October 1, 2002 memorandum from Senior Legislative Attorney Faden to the County Council on Agenda Item 7. <i>Action: Bill 25-02, People's Counsel – Sunset Repeal</i>	B-97
Comparative Legislation from Other Jurisdictions	
The Charter of Baltimore County § 524.1. People's Counsel	B-100
Harford County, MD People's Counsel <ul style="list-style-type: none"> • The Charter of Harford County, MD § 224. Office of Council Attorney. • Code of Harford County, MD §§ 4-26. People's Counsel, 4-27. People's Counsel Citizens' Advisory Board 	B-102
Code of Howard County § 16.1000. Zoning Counsel	B-105
Prince George's County, MD People's Zoning Counsel <ul style="list-style-type: none"> • The Charter of Prince George's County, MD § 712. People's Zoning Counsel. • Code of Prince George's County, MD §§ 27-136 to 27-139.03 • April 25, 2008 memorandum from Prince George's County People's Zoning Counsel regarding Md. House Bill 928 • Md. House Bill 928 	B-107

Agenda Item 5
March 7, 1989

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: Introduction: Bill 11-89, People's Counsel

Bill 11-89, People's Counsel, sponsored by Council President Pro Tem Leggett and Councilmember Adams, is scheduled to be introduced on March 7, 1989.

Bill 11-89 establishes the Office of the People's Counsel and authorizes the County Council to appoint and remove a People's Counsel. It authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens of the County on land use and environmental matters. The People's Counsel could not represent any private citizen or citizens' group, or the County or any government agency. The People's Counsel cannot intervene in any legislative proceeding (such as Master Plans, zoning text amendments, annual growth policy resolution), or any municipal proceeding.

Bill 11-89 also establishes a Citizens Advisory Board to the People's Counsel. The Advisory Board would nominate one or more candidates for the County Council to appoint as People's Counsel and advise the Counsel on priorities and issues to intervene in.

This packet contains:

	<u>Circle</u>
Bill 11-89	1
Legislative Request Report	7

Bill No. 11-89
Concer. : People's Counsel
Draft No. & Date: 4 3/2/89
Introduced: March 7, 1989
Expires: September 7, 1990
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. , Laws of Mont. Co., FY

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Pro Tem Leggett and Councilmember Adams

AN ACT to:

- (1) establish the Office of the People's Counsel and authorize the County Council to appoint and remove a People's Counsel;
- (2) authorize the People's Counsel to initiate or intervene on behalf of the public interest in certain judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens of the County on certain matters;
- (3) establish a Citizens Advisory Board to the People's Counsel, and define the Board's powers and duties; and
- (4) generally create an independent body to represent the public interest in certain judicial and administrative proceedings.

By amending

Montgomery County Code
Chapter 1A, Establishing the Structure of County Government
Sections 1A-203, 1A-204

By adding

Chapter 2, Administration
Article XII, People's Counsel
Sections 2-150, 2-151

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

1

1 Sec. 1. Sections 1A-203 and 1A-204 are amended as follows:

2 1A-203. Establishing other offices.

3 (a) Executive branch. * * *

4 (b) Legislative branch. These are the offices of the
5 Legislative Branch.

6 Office of the County Council

7 Office of Legislative Oversight

8 Office of the People's Counsel

9 Office of Zoning and Administrative Hearings

10 (c) Internal offices. * * *

11 1A-204. Supervision of offices and appointment of heads.

12 (a) Executive branch.

13 * * *

14 (b) Legislative branch.

15 * * *

16 (3) Office of the People's Counsel.

17 (A) Under the merit system laws, the County
18 Council appoints the People's Counsel by a
19 resolution approved by a majority of
20 Councilmembers in office from a list of one
21 or more names submitted by the Citizens
22 Advisory Board. The Council may reject all
23 names submitted by the Board and ask the
24 Board for another set of names.

25 (B) The People's Counsel serves a term of 3
26 years. If the Council has not appointed a
27 successor when a term expires, the People's

Counsel serves until a successor takes office
and the successor serves the rest of the
unexpired term.

(C) The Council may remove the People's Counsel
by a resolution approved by two-thirds of the
Councilmembers in office after following all
procedures required under merit system laws
and regulations.

(D) When appointed, the People's Counsel must:

(i) be a member of the bar of the Court of
Appeals of Maryland;

(ii) have at least 5 years experience in the
practice or teaching of law; and

(iii) have substantial experience with land
use or environmental legal issues.

(E) The People's Counsel serves full time in that
position and must not engage in any other
practice of law.

(F) The People's Counsel appoints and supervises
the merit system employees of the office.

[(3)](4) Office of Zoning and Administrative Hearings.

* * *

Sec. 2. Sections 2-150 and 2-151 are added to Chapter 2:

Article XII. People's Counsel.

2-150. People's Counsel.

(a) To represent the public interest and to achieve a full
presentation of relevant issues, the People's Counsel may

1 initiat : intervene as a party in any icial or
2 administrative proceeding before any federal, state or
3 County court, board, or agency, including the County
4 Council, if the proceeding involves:

5 (1) the zoning, subdivision, use, or development of
6 land in the County; or

7 (2) the application or enforcement in the County of any
8 federal, state or County law or regulation designed
9 to protect the environment.

10 (b) The People's Counsel must not represent the County, any
11 government agency, or any private party in any
12 proceeding. The People's Counsel is not subject to the
13 authority of the County Attorney. Section 411 of the
14 Charter does not apply to participation by the People's
15 Counsel in any proceeding under subsection (a).

16 (c) The People's Counsel has all powers necessary to carry
17 out the functions assigned under subsection (a),
18 including:

19 (1) all rights of a party to any proceeding under
20 subsection (a);

21 (2) the authority to employ or retain staff or expert
22 witnesses, subject to appropriation;

23 (3) the authority to investigate any matter relevant to
24 a proceeding under subsection (a); and

25 (4) the authority to appeal any judgment or order of a
26 court, board, or agency if the public interest
27 requires an appeal.

1 (d) hout becoming a party to any official or
2 administrative proceeding, the People's Counsel may
3 provide technical assistance, and advise any citizen of
4 the County on that person's rights and duties, in any
5 matter that involves:

6 (1) the zoning, subdivision, use, or development of
7 land in the County; or

8 (2) the application or enforcement in the County of any
9 federal, state or County law or regulation designed
10 to protect the environment.

11 (e) The People's Counsel must annually report to the Council
12 on the activities of the office.

13 2-151. Citizens Advisory Board to the People's Counsel.

14 (a) The County Council must appoint a Citizens Advisory Board
15 to the People's Counsel.

16 (b) The Board consists of 9 members, appointed by the Council
17 on the recommendation of certain civic and community
18 organizations designated in a resolution adopted by the
19 Council. The Council must designate one member as chair
20 and one member as vice-chair.

21 (c) Each member of the Board serves a 3-year term. Initial
22 appointments must be staggered so that 3 members' terms
23 expire each year. A member appointed to fill a vacancy
24 serves the rest of the unexpired term.

25 (d) The duties of the Board are to:

26 (1) advise the County Council and the People's Counsel
27 on the policies, operations and priorities of the

Office of the People's Counsel;

- (2) evaluate current land use and environmental issues
and proceedings, and recommend those in which the
People's Counsel should be involved;
- (3) when the position of People's Counsel is vacant or
is about to be vacant, evaluate candidates for the
position and submit one or more names to the
Council for appointment.

Approved:

Michael L. Gudis, President, County Council

Date

Approved:

Sidney Kramer, County Executive

Date

This is a correct copy of Council action.

Kathleen A. Freedman, CMC

Date

Secretary of the Council

LEGISLATIVE REQUEST REPORT

Bill 11-89
People's Counsel

DESCRIPTION: Establishes the Office of the People's Counsel and authorizes the County Council to appoint and remove a People's Counsel. Authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens of the County on land use and environmental matters. Does not authorize the People's Counsel to represent any private citizen or citizens' group, or the County or any government agency. Does not authorize the People's Counsel to intervene in any legislative proceeding (such as Master Plans, zoning text amendments, annual growth policy resolution). Establishes a Citizens Advisory Board to the People's Counsel, to nominate one or more candidates for the County Council to appoint as People's Counsel and to advise the Counsel on priorities and issues to intervene in.

PROBLEM: Perception by some citizens that often only narrow private property interests are represented in adjudicatory proceedings involving land use and environmental issues.

GOALS AND OBJECTIVES: To create an independent office to represent the public interest and assure a complete record in adjudicatory proceedings involving land use and environmental issues.

COORDINATION: The People's Counsel will be an independent office, placed within the legislative branch of County government only for organizational and budget purposes.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Harford, Baltimore and Prince George's Counties have People's Counsels with similar purposes.

SOURCE OF INFORMATION: Michael Faden, Ben Bialek, Council staff, 217-7905

APPLICATION WITHIN MUNICIPALITIES: Not directly applicable. People's Counsel cannot initiate or intervene in municipal adjudicatory proceedings.

PENALTIES: None

6972

B 11-89
COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION

Wednesday, March 8, 1989 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:10 A.M. on Wednesday, March 8, 1989.

PRESENT

Michael L. Gudis, President	William E. Hanna, Jr., Vice President
Isiah Leggett, President Pro Tem	Neal Potter
Michael L. Subin	Rose Crenca
	Bruce Adams

The President in the Chair.

INTRODUCTION OF BILLS

SUBJECT: Bill No. 11-89, to Establish a People's Counsel

Councilmember Leggett explained the purpose of the bill in accordance with a memorandum from Senior Legislative Attorney Faden, dated March 7, 1989. He said that this office would provide a degree of equity and should make the current system more effective. He noted that Councilmember Adams is co-sponsoring the bill and that Councilmembers Potter and Crenca contributed information that was used in drafting the legislation. He noted that a similar bill sponsored by Councilmember Crenca will be introduced in the near future, and recommended that the hearings on the bills be held together and that the bills be considered in the FY90 budget.

Councilmember Adams, commenting on the disparity that exists between the resources available to developers and those available to the residential community, expressed the view that a People's Counsel will help raise issues of concern to citizens in a timely fashion.

Councilmember Potter indicated that he will support the bill and requested that additional backup material be provided before the hearing is held. Referring to page 2, lines 17 through 22, Councilmember Potter noted the need for clarification regarding the reference made to the merit system

laws. Councilmember Leggett said that the language is an attempt to be more consistent with the merit system protection laws, as well as provide more independence. Councilmember Potter commented on a previous Council which he believes exercised too much independence, indicating that he would like a citizens advisory board included in the system which would be appointed from a list of civic organizations. If this bill is enacted, he would prefer that additional authority be provided to citizens to make certain that their issues are represented. He indicated his intention of drafting an amendment to the legislation before the public hearing.

Councilmember Hanna expressed the view that the People's Counsel should not be a merit system position, and noted his desire to have all of the issues discussed in full.

President Gudis suggested that the Council rather than a Council committee meet in worksession on this bill because of the policy questions involved. On the issue of whether the worksessions would be held before or after the budget is adopted, because of the fiscal implications, Councilmember Gudis pointed out that a supplemental appropriation to fund the legislation would be possible.

Councilmember Grenca, referring to her experience as a citizen activist, expressed the view that a citizen advisor would be useful because of the difficulty that citizens have in understanding land use issues. When she suggested this previously, citizens were concerned about trusting a government employee to represent them. She said that she is having a bill drafted for introduction that is similar to this bill but calls for the establishment of a position of citizen land use advisor. She hopes that a joint public hearing can be held on the two bills.

ACTION: Introduced Bill No. 11-89, Draft No. 4, dated March 2, 1989, sponsored by Council President Pro Tem Leggett and Councilmember Adams.

SUBJECT: Bill No. 12-89, Property Tax - Quarter-Year Levy

ACTION: Introduced Draft No. 2, dated March 1, 1989, sponsored by the Council President at the request of the County Executive.

SUBJECT: Bill No. 13-89, Historic Preservation Tax Credit - Revision

ACTION: Introduced Draft No. 1, dated March 7, 1989, sponsored by the Councilmember Hanna.

SUBJECT: Bill No. 14-89, Land Disturbing Activities - Permits

ACTION: Introduced Draft No. 2, dated February 27, 1989, sponsored by Council President at the request of the Planning Board.

SUBJECT: Bill No. 15-89, Office of Procurement--Establishment

Councilmember Leggett noted his support for the subject legislation and commented on the establishment of a task force to examine a contractual problem that led to the drafting of the subject legislation. He expressed the view that many of the functions that are being provided in a decentralized way could be centralized without increasing substantially the resources currently used for this purpose. He noted that additional personnel are not being requested so he does have some questions about whether personnel currently performing the procurement functions could be shifted to the new office. It is important to have people who are well-trained and who understand the procurement process in order to safeguard the public interest.

Councilmember Gudis said that one of his concerns about transferring staff from the Finance Department to the new office would be the need to retain a certain amount of expertise in the Finance Department to draft requests for proposals. However, he is certain some personnel will be shifted from the Finance Department if the new office is established. He noted the possible need for legislation involving the hiring of consultants.

Councilmember Potter commented on problems that the County has had with the procurement function over the years. He expressed the belief that a new office independent from the Finance Department will add to the Executive Branch and he is not certain whether it will resolve the problem. He would like to have a serious cost/benefit analysis performed.

Councilmember Hanna stated that the proposal to make this a principal office represents increased funds for additional personnel. It does not appear to him that there is anything in the legislation that will help improve the procurement process. He will support the introduction of the legislation but will not vote to enact it until he sees how the improvements to the procurement process will be accomplished. He expressed the view that the bill should be returned to the County Executive with the questions about how the process can be improved.

Councilmember Potter pointed out that the bill could be introduced without holding a public hearing until responses are obtained to some of the questions raised.

Assistant County Attorney Hansen noted that the Procurement Regulations are being revised by staff this year in accordance with the quadrennial review schedule for executive regulations.

Council Staff Director Spengler reminded the Council of actions that it took with respect to procurement two years ago. He expressed the view that some of the issues raised by Councilmembers could be examined by Council staff and proposals could be drafted to address the problems. Councilmember Adams said that some of the problems might be resolved by holding a public hearing on the subject bill and discussing the various issues. Councilmember Gudis expressed the hope that the County Executive will respond to some of the concerns raised. Councilmember Subin noted that he is opposed to the subject bill for fiscal reasons.

ACTION: Introduced Bill No. 15-89, Draft No. 2, dated February 13, 1989, sponsored by Council President at the request of the County Executive.

SUBJECT: Emergency Bill 16-89, Drug Enforcement Forfeitures Fund - Extension

ACTION: Introduced Draft No. 1, dated March 1, 1989, sponsored by Councilmember Crenca.


SUBJECT: Bill No. 17-89, Office of County Arborist--Establishment

Councilmember Crenca explained the purpose of the bill in accordance with the memorandum from Mr. Bialek, Senior Legislative Attorney, dated March 7, 1989.

ACTION: Introduced Draft No. 2, dated March 7, 1989, sponsored by Councilmember Crenca.

The meeting adjourned at 9:50 P.M.

This is an accurate account of the meeting:


Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar
Senior Assistant Secretary

MEMORANDUM

TO: GSA Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: Worksession: Bill 11-89, People's Counsel

Bill 11-89, People's Counsel, sponsored by Council President Pro Tem Leggett and Councilmember Adams, was introduced on March 7, 1989. A public hearing was held on June 20, 1989, on this bill and Bill 21-89, Citizen's Land Use Information Officer -- Information and Referral Services. Bill 21-89 has been assigned to the Planning, Housing, and Economic Development Committee.

Bill 11-89 establishes the Office of the People's Counsel and authorizes the County Council to appoint and remove a People's Counsel. It authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens on land use and environmental matters. The People's Counsel could not represent any private citizen or citizens' group, or the County or any government agency. The People's Counsel is not authorized to intervene in any County legislative proceeding (such as a Master Plan revision, zoning text amendment, or annual growth policy resolution), or any municipal proceeding.

Bill 11-89 also establishes a Citizens Advisory Board to the People's Counsel. The Advisory Board would have 9 members, serving for 3-year terms. The County Council would appoint the Advisory Board after receiving recommendations from various civic and community organizations that it has specified by resolution. The Advisory Board would nominate one or more candidates for the County Council to appoint as People's Counsel and advise the People's Counsel on priorities and issues to intervene in.

Public Hearing

At the public hearing the County Executive opposed Bill 11-89 because it is unneeded, would cost too much, could delay "essential but unpopular projects", and "would encourage confrontation instead of cooperation in County government".

The County Attorney testified that, in his opinion, the Bill violates the County Charter because it intrudes into the Executive function of enforcing the laws, and because it sets up an "instrumentality" of County government that is not subject to the "authority or legal advice" of the County Attorney. The County Attorney advised that the goals of Bill 11-89 could be achieved only through a Charter amendment. The County Attorney also raised several Merit System issues.

The Planning Board did not testify at the hearing and has not taken a position on the bill, but expects to do so soon.

Almost all the civic groups and individual citizens who testified (except the League of Women Voters) supported the bill. Several witnesses wanted to strengthen it by, among other things, allowing the People's Counsel to participate in legislative proceedings or giving the Counsel discretion to represent individual citizens and neighborhood organizations.

A comparative chart summarizing the laws creating People's Counsels in other jurisdictions, prepared by Ben Bialek (when he had time for other things besides the loophole bills), is on circle 9-10.

I suggest that the Committee discuss the central policy issues first and draw some (at least tentative) conclusions. Then the staff can more fully explore the legal issues raised by the County Attorney; this memo treats them in summary fashion. Our preliminary view is that Bill 11-89 as drafted can withstand legal challenges.

Policy Issues

1) Functions: advocacy v. information. Should the People's Counsel have any function beyond providing information to citizens and groups? More specifically, should the People's Counsel ever be a party in administrative proceedings or litigation? The Executive argues that adding another party would provoke needless confrontation and delay decision-making. Citizens argue that, under the present system, those who can't afford expensive lawyers don't have their interests fully represented before the decision-makers in what are supposed to be adversary proceedings. yes

2) Who does the People's Counsel represent? If the People's Counsel can take an advocacy role, who should the Counsel represent? The bill says the People's Counsel cannot represent the County, any government agency, or any private party. Instead, the Counsel is directed to "represent the public interest and ... achieve a full presentation of relevant issues". This raises several questions.

First, should the People's Counsel be able to represent individual citizens, nonprofit groups, or businesses in appropriate cases -- e.g. when they are raising meritorious issues and cannot afford or find adequate legal representation? — only

ability to afford legal rep. will be weighed in priority setting factor

Second, if the People's Counsel only represents the "public interest", who decides what that is? The Executive argues that the County's elected officials are ultimately responsible for deciding where the public interest lies. The League of Women Voters pointed out the difficulty of deciding between different views of the "public interest", such as when citizens or organizations disagree with one another. Bill 11-89 attempts to resolve this problem by creating a broad-based Citizens Advisory Board to advise the People's Counsel on specific cases. Is this the best approach? Should the Board be given more power -- e.g. should it approve all court actions or appeals? — NO

3) Subject-matter jurisdiction. Bill 11-89 gives the People's Counsel jurisdiction to "initiate or intervene as a party in any judicial or administrative proceeding before any federal, state or County court, board, or agency, including the County Council, if the proceeding involves:

- (1) the zoning, subdivision, use, or development of land in the County; or
- (2) the application or enforcement in the County of any federal, state or County law or regulation designed to protect the environment."

The People's Counsel is not authorized to intervene in any County legislative proceeding (such as a Master Plan revision, zoning text amendment, or annual growth policy resolution), or any municipal proceeding.

Should the scope of the People's Counsel's jurisdiction be broadened, as some citizen witnesses suggested, to include legislative proceedings, especially Master Plans and the annual growth policy?

Conversely, should the Counsel's jurisdiction be narrowed to exclude any of the elements listed in the bill? Or should the Counsel be restricted in other ways -- for example, not be allowed to sue the County for damages (it is unclear that the Counsel can do that as the bill is now drafted), or not bring any action that would interfere with the County's ability to deal with an emergency?

4) Appointment. Under Bill 11-89, the People's Counsel is a merit system position, with the County Council being the appointing authority upon the recommendation of the Citizens Advisory Board. Applicants for the position would pass through the normal merit system hiring process. (People's Counsels in Baltimore and Prince George's Counties are appointed by the Executive and confirmed by the Council; in Harford County, the Council approves the appointment of a People's Counsel employed by the Council Attorney.)

The Executive objects that the People's Counsel would exercise an Executive function: enforcing and interpreting the laws; thus the Counsel should be an Executive appointee unless the Charter is amended to facilitate a Council appointment. We don't agree with this Charter interpretation, because the People's Counsel simply does not have any law enforcement or decision-making responsibilities. Rather the Counsel would function as an adjunct of the County Council, analogous to the Office of Legislative Oversight, to help see that those who do have the authority to enforce and implement the laws do so properly.

In a related argument, the County Attorney asserts that the appointment of a legal officer outside the office of the County Attorney violates Section 213 of the Charter, because that section makes the County Attorney the only legal advisor to the "departments, and other instrumentalities" of County government. In our view, this argument misses at least two salient points: First, the People's Counsel is an adjunct to the County Council, and the County Attorney under the Charter is not the only legal advisor to the Council. Second, the People's Counsel would not offer legal advice to any County agency, or represent the County or any agency in court. Rather, the People's Counsel, in its substantive functions, cannot bind the County or obligate the County. Only if the People's Counsel were sued for damages in an official capacity would the County Attorney have a role to play, just as he does if the County Council is similarly sued.

5) Term. Under Bill 11-89, the People's Counsel is appointed for a term of 3 years. The County Attorney objects that appointment for a fixed term is inconsistent with the merit system. He cites nothing in support of this assertion, which is not surprising because if taken seriously it would preclude the County from ever hiring a temporary employee.

4 yrs
limit on
reappointment
N

Some citizens suggested lengthening the term to 5 years or longer.

6) Removal. Under Bill 11-89, the County Council can remove the People's Counsel by a 2/3 vote after following merit system procedures. Several citizens suggested limiting the Council's power to remove the Counsel or the grounds for which the Counsel can be removed, in order to make removal more difficult and to insulate the Counsel from political pressures

✓

7) Alternatives. Some witnesses suggested other ways to bolster citizens' ability to participate in land use decisions. These included giving funds to citizen groups to hire lawyers in appropriate cases, or reimbursing citizens who win court cases involving land use issues. Does the Committee want to explore any of these ideas?

This packet contains:

	<u>Circle</u>
Bill 11-89	1
Legislative Request Report	7
OLO evaluation	8
Comparative chart - other jurisdictions	9
OMB Fiscal impact statement	11
Executive testimony	14
County Attorney testimony	16

B 11-89
COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
GOVERNMENT STRUCTURE, AUTOMATION & REGULATION COMMITTEE

Thursday, July 13, 1989
2:03 P.M. - 4:05 P.M.
Council Hearing Room

PRESENT

Bruce Adams, Chairman
Neal Potter Isiah Leggett

OTHER COUNCILMEMBER PRESENT

Rose Crenca

SUBJECT: Status Report on Implementation of Bill No. 23-88, Alarms

The Committee noted receipt of a memorandum from Legislative Attorney Beninger, dated July 13, 1989, summarizing the amendments made to the nonresidential alarm law by Bill No. 23-88, effective January 1, 1989. Ms. Beninger noted that, in response to industry concerns, the GSA Committee agreed to review the experience with the revised law after the first six months. The Office of Consumer Affairs (OCA) has submitted the status report by memorandum to the Council from Norma C. Beaubien, Program Specialist, OCA, dated July 11, 1989.

SUBJECT: Bill No. 11-89, People's Counsel

The Committee reviewed the memorandum from Senior Legislative Attorney Faden, dated July 13, 1989, setting forth information on Bill No. 11-89 and policy issues to be addressed by the Committee.

A discussion was held concerning the responsibility of the People's Counsel beyond the provision of information to citizens. Mr. Potter stated that one of the most important duties of the People's Counsel will be to assure that the decision makers are apprised of and understand all sides of the issues so that they are able to make the best decisions in the greater public interest. Mr. Leggett stated that he believes the role of the People's Counsel is to provide information, and in addition, to provide the technical assistance and legal advice that citizens often need to present their case to the government. He noted that a companion bill has been introduced, Bill No. 21-89, Appointment of a Citizen's Land Use Information Officer, the function of which is solely the provision of information. He does not see a distinction between an advocacy and information role for the People's Counsel; both functions should be provided. Mr. Leggett expressed the view that the government should not be overly concerned about adversarial proceedings with knowledgeable, well-informed citizens; whatever confrontations result will be improved for having had the assistance of the People's Counsel.

Ms. Riesett, Director, Office of Planning Policies, disagreed with the idea that a person can play both an advocacy and information role and not get the two confused, either from the perspective of the People's Counsel or the person who is seeking assistance, and related her experiences in this regard while Director of the Wheaton Community Services Center. She stated that to play both roles will give the expectation that the People's Counsel will pursue a particular issue all the way through the courts, and that the Executive Branch objects to a People's Counsel who can proceed to court against the government in pursuing what he believes is the public interest. She noted that the bill authorizes the People's Counsel to pursue the public interest in court; however, it is the County Council which defines "the public interest."

Mr. Leggett expressed the view that what is deemed to be in the public interest is, in reality, much broader than what the Council defines it to be.

Acknowledging Ms. Riesett's concern about "the public interest," Mr. Adams suggested that the bill be amended to delete references to "the public interest" and replace it with a phrase such as, "if there is a substantial public interest that needs to be considered." He agreed that there are a variety of substantial public interests and "the" public interest will best be served by bringing out all of the competing interests and having them well represented in the proceedings. The People's Counsel will serve the public interest by helping to develop a full and complete public record. He added that, theoretically, the public interest emerges from the dialogue and debate on the issues.

ACTION: Amended Bill No. 11-89 to redefine "the public interest" in a broader context, as suggested by Mr. Adams.

Mr. Leggett pointed out that this bill does not add to or take away the rights and privileges that citizens already have to challenge government. The provision of a People's Counsel will allow greater access to the government.

Ms. Riesett expressed concern that the People's Counsel can exercise the initiative to intervene in judicial or administrative proceedings at the Federal, State, and County level. Senior Assistant County Attorney Hansen stated that he shares Ms. Riesett's concern and is also concerned that the creation of a People's Counsel will result in another system of checks and balances, and about the use of tax funds to challenge decisions made by the government in the public interest. Ms. Riesett agreed that it is contradictory for the government to pay to take itself to court.

Mr. Leggett suggested that the bill could be amended to provide that the People's Counsel cannot go to court unless he has standing to do so. Mr. Adams agreed that the People's Counsel should be required to have a client in order to proceed to court.

Mr. Potter stated that the resources available to the People's Counsel will be an important element in determining which issues to pursue, and that any free services offered by the government are apt to be very limited. He expressed the view that the advisory committee should guide the use of the People's Counsel's resources to assist those citizens who do not have access to funds to the same degree as others.

Mr. Adams agreed that safeguards and constraints on the system will result from the existence of a limited budget and an advisory committee. He believes that the People's Counsel should focus attention on major issues.

Mr. Leggett agreed that the nine-member advisory committee will guide the allocation of resources and noted that, because the People's Counsel will be a single individual, the number of issues which can be pursued will be limited.

ACTION: Agreed that the People's Counsel should have the full ability to participate in administrative proceedings and to pursue litigation.

Agreed that, in order to pursue an issue, the People's Counsel must represent a person or group who would have standing to initiate the matter, and cannot act on his own initiative.

Mr. Hansen stated that an attorney/client relationship will be created between the People's Counsel and the group represented. In his opinion, this will place the Counsel in an awkward position because he will have budgetary constraints and also be compelled to carry out his professional responsibility to represent his client to the fullest extent possible. Mr. Leggett stated that the Counsel and advisory committee are in a position to determine the extent to which a case will be pursued.

ACTION: Agreed that, if the client wants to proceed in a manner that the People's Counsel believes is inappropriate, the People's Counsel can withdraw from a case.

Agreed that a potential client's ability to afford legal representation would be an element to be considered in the process of setting priorities for the People's Counsel's time, but there would not be a requirement to meet an income eligibility standard.

With respect to the issue as to whether the scope of the People's Counsel's jurisdiction should be broadened to include legislative proceedings, such as master plans or legislation, Mr. Leggett expressed the view that citizens have adequate access to Councilmembers in formulating master plans and laws. If the People's Counsel's jurisdiction is broadened to include legislative proceedings, that will take away resources from other areas that need attention. Mr. Faden pointed out that the People's Counsel will still be able to give advice to people in master plan and legislative proceedings, but not represent people before the Council in such proceedings.

Mr. Potter suggested that the People's Counsel have authority to intervene before the Council when it is considering land use environmental issues, stating that many of the environmental requirements and standards are vague and subject to interpretation. Mr. Leggett stated that he would not anticipate the People's Counsel using too many resources on environmental matters. However, if there is a unique case which is believed to be very important, the People's Counsel should have the flexibility to intervene. If language could be developed to narrowly define such issues, he would not be opposed to including it in the bill.

ACTION: Instructed Mr. Faden to draft language to amend the bill to broaden the scope of the People's Counsel as suggested above.

In response to Ms. Riesett's inquiry as to whether the People's Counsel will be permitted to challenge site selection decisions by the government, such as for a new landfill or detention center, Mr. Adams stated that he would permit such challenges until the Council finds that the authority is being abused. Mr. Leggett stated that the People's Counsel will be most effective when arguing issues on which there is a general public consensus. On site selection and issues such as the light rail transit line, often there is not a clear public consensus. Mr. Adams stated that, in such situations, the People's Counsel would consider whether a principle is at stake or whether the government failed to follow the proper processes.

A discussion was held concerning the appointment process. Mr. Adams suggested that the most appropriate approach might be to amend the Charter to authorize the County Council to appoint a People's Counsel. This would avoid problems with the Merit System and the necessity to have a contractual employee.

Mr. Leggett expressed the view that, since the People's Counsel would be an employee of the Legislative Branch, it may be necessary to amend the Charter to give him authority to pursue issues to court. However, he does not believe it is needed generally. He suggested that the portions of the law which do not require a Charter amendment could be enacted now, and the portions relating to the authority to take issues to court could be enacted following a referendum on a Charter amendment.

Mr. Adams questioned the desirability of enacting a law now and establishing the office with less than its full authority, pending a Charter amendment.

With respect to the issue of whether the People's Counsel should be a Merit System employee, Mr. Leggett discussed the various options available, and suggested that the Committee address this issue and the question of whether a Charter amendment is needed after the Committee has had an opportunity to consider the issues further.

ACTION: Requested preparation of a draft Charter amendment to authorize the establishment of a People's Counsel, with an appointment clause, a removal clause, and a broad function clause which includes the ability to take issues to court.

With respect to the issue of taking matters to court, Mr. Leggett proposed that the People's Counsel be required to have the authorization of a two-thirds vote by the citizens advisory committee before proceeding to court. Such a requirement will assure that the People's Counsel is serving the public interest, give the case greater weight, and be an inducement against people attempting to abuse the office. This ability should be used rarely, and carefully considered.

Mr. Adams stated that he did not envision that the People's Counsel would have to have authorization for every single case. He cited the example of having an emergency situation in which it is necessary to go to court to obtain a temporary injunction; it would not be practical to convene a meeting of the citizens advisory committee and request a two-thirds vote. Mr. Leggett stated that rules and regulations can be established in such a way to allow for emergency situations.

Mr. Potter expressed agreement with the requirement of the bill that a two-thirds vote of the Council be required for removal of the People's Counsel. He believes that the People's Counsel must feel free to pursue issues despite some official opposition.

Mr. Hansen proposed that the County Executive be authorized to appoint some members of the citizens advisory committee in order to have some influence on the appointment and actions of the People's Counsel. Mr. Leggett stated that, under the provisions of the bill, the appointments will be made by designated organizations. Mr. Adams stated that he does not support that method of appointment.

With regard to the length of term of the People's Counsel, Mr. Leggett proposed that it be four years, that it coincide with the term of the County Council, and that there be a limit on the number of terms an individual can serve.

Mr. Adams expressed support for a four-year term, and stated that, if it is to coincide with the term of the Council, establishment of the office should await the Charter amendment. He believes that a wise People's Counsel will serve no more than two terms, but he does not believe the law should contain a limit on the number of terms. Mr. Potter agreed.

ACTION: Amended the bill to provide a four-year term for the People's Counsel.

With respect to the concern of Mr. Hansen that Merit System employees cannot be appointed for a specific term, Mr. Leggett pointed out that the Committee has not addressed the issue of Merit System vs. non-Merit System. Mr. Faden disagreed with the idea that Merit System employees cannot be appointed for a specific term, and cited the example of temporary employees in the Merit System. Mr. Adams requested that the staff consider this issue, and noted that the issue may necessitate a Charter amendment.


ACTION: Endorsed the provision of the bill which requires a two-thirds vote of the County Council to remove the People's Counsel; agreed that an appointment to fill a vacancy will be for the unexpired portion of the term so that the terms will continue to coincide with the terms of the County Council.

Requested that staff prepare the bill as amended by the Committee, including the alternative approaches to the method of appointment and Charter amendment, and schedule the bill for further consideration by the Committee.

SUBJECT: Tour of the Department of Information Systems and Telecommunications (DIST)

The Committee toured offices and facilities of DIST in the Council Office Building.

This is an accurate account of the meeting:


Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Kathleen A. Freedman, CMC

MEMORANDUM

TO: GSA Committee

FROM: *MT* Michael Faden, Senior Legislative Attorney

SUBJECT: Worksession: Bill 11-89, People's Counsel

Bill 11-89, People's Counsel, sponsored by Council President Pro Tem Leggett and Councilmember Adams, was introduced on March 7, 1989. A public hearing was held on June 20, 1989, on this bill and Bill 21-89, Citizen's Land Use Information Officer -- Information and Referral Services. Bill 21-89 has been assigned to the Planning, Housing, and Economic Development Committee.

Bill 11-89 establishes the Office of the People's Counsel *in the legislative branch of County* and authorizes the County Council to appoint and remove a People's Counsel. It authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens on land use and environmental matters. The People's Counsel could not represent any private citizen or citizens' group, or the County or any government agency. The People's Counsel is not authorized to intervene in any County legislative proceeding (such as a Master Plan revision, zoning text amendment, or annual growth policy resolution), or any municipal proceeding.

Bill 11-89 also establishes a Citizens Advisory Board to the People's Counsel. The Advisory Board would have 9 members, serving for 3-year terms. The County Council would appoint the Advisory Board after receiving recommendations from various civic and community organizations that it has specified by resolution. The Advisory Board would nominate one or more candidates for the County Council to appoint as People's Counsel, and would advise the People's Counsel on priorities and issues to intervene in.

Public Hearing

At the public hearing the County Executive opposed Bill 11-89 because it is unneeded, would cost too much, could delay "essential but unpopular projects", and "would encourage confrontation instead of cooperation in County government".

The County Attorney testified that, in his opinion, the Bill violates the County Charter because it intrudes into the Executive function of enforcing the laws, and because it sets up an "instrumentality" of County government that is not subject to the "authority or legal advice" of the County Attorney. The County Attorney advised that the goals of Bill 11-89 could be achieved only through a Charter amendment. The County Attorney also raised several Merit System issues.

The Planning Board did not testify at the hearing and has not taken a position on the bill, ~~but was expected to do by this time.~~

Almost all the civic groups and individual citizens who testified (except the League of Women Voters) supported the bill. Several witnesses wanted to strengthen it by, among other things, allowing the People's Counsel to participate in legislative proceedings or giving the Counsel discretion to represent individual citizens and neighborhood organizations.

A comparative chart summarizing the laws creating People's Counsels in other jurisdictions, prepared by Ben Bialek, is on circle 9-10.

Committee Recommendations and Amendments

At its July 13^{and 14/78} worksession, the Committee discussed a number of policy and legal issues and tentatively adopted several amendments to the bill. The amendments are incorporated in the attached draft 5. The Committee also asked staff, in consultation with the County Attorney, to draft a Charter amendment in case one is necessary. The draft amendment is on circle 14.

^{GSA}
The Committee recommended that;

1) The People's Counsel should be able to intervene as a party in administrative or judicial proceedings, rather than being limited to giving information and advice.

2) The People's Counsel should represent individual citizens or organizations that would have standing in the proceeding — that is, are directly aggrieved by an action or proposed action — rather than representing "the public interest".

The potential client's ability to afford a lawyer would be an element for the People's Counsel to consider, but the Counsel would not use an income eligibility standard.

3) The People's Counsel should not be able to participate in legislative proceedings — e.g. Master Plan amendments and annual growth policies. However, he or she could advise citizens about these proceedings.

4) The People's Counsel's subject-matter jurisdiction should be limited to land use and environmental issues, as the bill proposes. The Committee generally felt that the People's Counsel should intervene in only the most important non-land use environmental matters.

5) The People's Counsel should serve a 4-year term, generally coinciding with the term of the Council that appoints him or her. Staff suggests starting the term on the July 1 after the Council is elected; this will give a new Council time to make the appointment.

The Committee did not limit the number of terms a People's Counsel could serve, although it generally felt that no more than 2 terms are appropriate.

6) The Committee agreed that the County Council should be able to remove the People's Counsel only by a 2/3 vote, and did not strengthen or weaken the standards for removal. (Some citizens had suggested tightening the grounds for removal.)

Pending Issues

The major issue pending before the Committee is whether a Charter amendment is needed to establish a People's Counsel. The County Attorney vigorously contends that a Charter amendment is necessary to avoid problems with the Charter's merit system provision, and with Charter §213 which establishes the County Attorney as the exclusive legal representative of the County government.

The Committee can choose from at least 4 courses of action:

- 1) Propose a Charter amendment for the November 1990 ballot, and wait until the Charter amendment is approved before enacting any legislation.
- 2) Enact the bill by itself, drafting it to withstand any Charter challenges. This is essentially what staff tried to do in the attached draft.
- 3) Enact the bill now, but condition its effectiveness on the passage in November 1990 of an enabling Charter amendment.
- 4) Enact the bill now, and make it largely effective in 91 days, but limit or postpone the implementation of any arguable elements (mainly the People's Counsel's authority to intervene in judicial proceedings) until an enabling Charter amendment is approved.

If the Committee recommends the last option, in our view the only element that would need to be conditioned on a Charter amendment is the People's Counsel's authority to intervene in court. In our view, the County Council has full authority to amend the laws governing County-level administrative proceedings to provide legal representation for citizens; this would raise few if any serious Charter issues.

Similarly, we conclude that the People's Counsel can be appointed under the merit system, or through a contract for services to the County Council, without serious Charter problems. Nowhere does the Charter, or any history attached to it, say that the merit system restricts the County to appointing only permanent employees. To argue so would contradict at least 2 decades of personnel practice and call into question the employment status of about 2600 current temporary County employees.

Therefore, we suggest that, if the Committee decides to recommend that the bill be enacted without or before a Charter amendment, the bill be amended to give the Council the option of appointing the People's Counsel either under the merit system or by a contract for services.

This packet contains:

	<u>Circle</u>
Bill 11-89	1
Legislative Request Report	7
OLO evaluation	8
Comparative chart - other jurisdictions	9
OMB Fiscal impact statement	11
Minutes of July 13 GSA worksession	14
Draft Charter amendment	20

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
GOVERNMENT STRUCTURE, AUTOMATION & REGULATION COMMITTEE

Thursday, September 28, 1989
12:12 P.M. to 3:56 P.M.
Council Hearing Room

PRESENT

Bruce Adams, Chairman

Neal Potter

Isiah Leggett

SUBJECT: Bill No. 11-89, People's Counsel

The Committee had before it the memorandum dated September 28, 1989, from Senior Legislative Attorney Faden outlining recommendations and amendments previously developed by the GSA Committee and setting forth issues remaining for resolution.

Rather than delay action on the bill, Mr. Leggett suggested that the bill as previously amended by the GSA Committee be forwarded to the Council for consideration with the understanding that, prior to Council consideration, further amendments may be developed by Committee members pertaining to some of the broad issues which have been raised.

The length of term which the People's Counsel would serve and the date the term would begin were considered. The Committee reaffirmed its previous decision not to limit the number of terms an individual may serve and to begin the first term on July 1, 1991.

The Committee considered the suggestion of Mr. Mansinne, Director, Office of Legislative Oversight (OLO), to include a sunset provision. Mr. Faden suggested that the Council consider the option of not appointing or reappointing an individual after the four-year term rather than providing a sunset date. He said the Council may want to consider requesting that OLO conduct an evaluation after the office has been operating for three years and report to the Council. Assistant County Attorney Hansen supported the proposal to include a sunset date, advising that a sunset date emphasizes the temporary nature of the position.

Mr. Faden expressed concern about providing a sunset date, noting that there may be ongoing cases which must be concluded and which could be handled by others working in the office if the law remains in effect after the term of the People's Counsel expires. Mr. Potter suggested that the sunset date be established a year after expiration of the four-year term to allow time for resolution of ongoing cases. Mr. Leggett expressed concern that including a sunset date reduces flexibility. Mr. Adams suggested that the term of the People's Counsel begin on July 1, 1991, and that OLO be asked to conclude its evaluation and report to the Council by December 1, 1994, which will allow the Council six months to consider whether to continue the program.

ACTION: Agreed that a sunset provision will not be included, that the term of the People's Counsel will begin on July 1, 1991, that OLO's report will be due December 1, 1994, which will allow the Council which comes into office at the end of 1994 six months to determine whether to continue the program and appoint the People's Counsel for the next four-year term.

The effective date of the law was considered. Mr. Faden suggested that the standard 91-day effective date be established and that the law provide for an interim appointment of a People's Counsel until July 1, 1991, at which time an appointment will be made for the four-year term. He noted that the advisory committee can be appointed during the 91-day period before the law goes into effect.

Mr. Potter raised concerns about recruitment difficulties which may result if the initial appointment is for a one-year period rather than a longer period. As an alternative, Mr. Adams suggested that the first appointment be for a five-year term. Mr. Potter noted that, if the Council is not satisfied with the People's Counsel, the Council can remove the appointee with a two-thirds vote or repeal the law. If the People's Counsel is a Merit System employee and is removed by a two-thirds vote of the Council, Mr. Hansen advised that the employee will have the right to appeal his removal to the Merit System Protection Board. Mr. Faden recommended that the bill provide the option of contracting the services in order to address the concerns which have been raised about filling the position with a Merit System employee.

Mr. Leggett expressed concern about providing a five-year term and said he does not believe there will be significant recruitment difficulties for an interim appointment. Mr. Faden advised that lawyers often take leaves of absence from law firms for short-term assignments. Mr. Adams noted his concern about appointing a lawyer who is on a leave of absence, expressing the view that the relationship between the appointee and the law firm for which he worked should be completely dissolved.

ACTION: Agreed to provide for a short-term appointment prior to the four-year appointment and to provide the option of filling the position by service contract.

Mr. Hansen expressed the view that the provisions pertaining to legislative and municipal proceedings require revision so that it is clear the People's Counsel cannot participate in these matters. Mr. Faden responded to inquiries concerning the provisions and noted that, although the Counsel may not represent citizens in legislative proceedings, he may advise citizens about these proceedings.

The Committee considered the amendment prepared by Mr. Faden reflected at the top of page 4 which provides that the People's Counsel may represent individual clients. Mr. Leggett expressed concern that the provisions do not clearly indicate that the People's Counsel does not have the discretion to decide when to intervene in a proceeding, and he suggested that the language be clarified to indicate that the People's Counsel is not authorized to act without the advice of the citizens advisory board.

Ms. Riesett, Director, Office of Planning Policies, said that it is also not clear that the People's Counsel must have the advice of the advisory committee with regard to which cases he represents.

ACTION: Instructed Mr. Faden to clarify the language pertaining to the participation of the People's Counsel in legislative and municipal proceedings.

On page 4, line 6, inserted the following phrase after the word "may": with the approval of the advisory committee.

Mr. Hansen expressed concern about establishing the office in the Legislative Branch, noting that it is a program which, under the Charter, must be administered by the Executive Branch. Mr. Adams suggested that Mr. Hansen prepare a memorandum for the Council outlining his concerns about the bill from a legal standpoint and indicating his opinion that a Charter amendment will be required if the bill is enacted.

ACTION: Recommended approval of Bill No. 11-89, as amended, and noted that there may be further amendments for the consideration of the Council.

(The Committee recessed at 12:52 P.M. and reconvened at 2:07 P.M.)

SUBJECT: Follow-up on Criminal Justice Budget Issues

The Committee had before it the memorandum dated September 28, 1989, from Senior Legislative Analyst Hughes outlining an agenda for discussion and providing an update on issues which the GSA Committee requested be reviewed further as a follow-up to the review of the FY90 Operating Budgets of the criminal justice agencies.

Col. Hottinger, Deputy Chief, Police Department, briefed the Committee on the civilianization efforts, referring to the memorandum from Police Chief Brooks dated September 21, 1989. He advised that 14 civilian positions have been created and advertised, and he anticipates they will be filled in approximately six weeks. He noted that a meeting was held to advise officers impacted by the civilianization effort of their options. Chief Brooks advised that the Police Department will make every effort to reduce the impact on officers holding positions which will be civilianized. Mr. Adams requested that the Police Department continue its efforts and keep Ms. Hughes advised particularly of any difficulties which may arise.

Major Blasher, Police Department, provided information on efforts to reduce overtime expenditures, particularly initiatives which have been implemented in the Emergency Communications Center. In response to inquiries, Chief Brooks advised that, based on an agreement which was previously reached with the Fraternal Order of Police, the opportunity to work overtime cannot be denied to high-ranking officers. He advised that Judge Loam, the administrative judge of the District Court, has been willing to work with the Police Department and make changes in the way cases are scheduled so that



THE LEAGUE
OF WOMEN VOTERS
of Montgomery County

RECEIVED COUNCIL

DEC 4 11:08

November 30, 1989

11-89 & 21-89
The Honorable Michael Gudis, President
Montgomery County Council
Stella Werner County Office Building
Rockville, MD 20850

022783

MF
cc
BB

Re: People's Counsel (11-89) and Land Use Information Officer (21-89)

Dear Mr. Gudis and Members of the Council:

The League of Women Voters of Montgomery County has continued to study Mr. Leggett's proposal (Bill 11-89) to establish the Office of People's Counsel, as well as Mrs. Crenca's bill (Bill 21-89) directing the Planning Board to appoint a citizen's land use information officer. Since these bills will soon be discussed in committee, we thought you should be aware of our current thoughts on the subject.

We agree with the general goal of both bills - assisting citizens so they can fully participate in the planning and zoning decisions that affect them directly.

At the hearing in June, we generally supported Bill 21-89, although we noted that the scope of the material to be assembled in the resource library was too broad. We questioned the need for going as far as Bill 11-89 would, noting that it often would be difficult for the People's Counsel to determine what the public interest is, and we opposed giving the People's Counsel the power to initiate or intervene in judicial proceedings. We were amazed that all the citizens association testifiers seemed certain that the People's Counsel would always find that "the public interest" would support their position.

Although Bill 11-89 was amended to remove the words "in the public interest" and to delete the power to intervene in judicial proceedings, we still have some concerns with the bill. Our overriding concern is that since the Council was elected to serve in the public interest, they should not ever delegate to any other person or group the determination of what is in the public interest. Therefore, we oppose the formation of an Advisory Board. The bill now provides that the People's Counsel "may represent an aggrieved person or organization which would otherwise not have adequate legal representation and which would raise issues that would otherwise not be raised." The Citizens Advisory Board would have a very onerous responsibility. On very controversial issues, they would still apply a view of "the public interest" in recommending who the People's Counsel may represent in administrative proceedings, or whether or not the People's Counsel should represent anyone. Another concern is that the scope of the bill is extremely broad, covering all land use matters and environmental matters. Will the Citizens Advisory Board have to screen all

these issues as they arise, in order to determine when the People's Counsel should get involved? Or, will they act only in reaction to requests from citizens and organizations? If the latter, again, it will be the knowledgeable and vocal who get assistance. If the former, they will be very busy.

After hearing public testimony, and after several discussions within the League, we have concluded that simply providing a Public Information Officer would not be enough. We hear the citizen groups saying that legal and technical assistance is desperately needed to level the playing field, and we agree. A good compromise would be to appoint a People's Counsel to 1) provide technical assistance and advise any citizen of his rights and duties, and 2) become a party in any land use matter at the administrative level to ensure a full and complete presentation of all relevant issues.

We see the first function as tremendously helpful to enable citizens to compete with well-heeled developers and their attorneys. In Prince George's County, the appointed People's Counsel tells us she is able to be very helpful in letting citizens know where to get information, what they can do and when, and how to prepare for a hearing.

We see the second function as a reasonable substitute for actually representing a citizen or organization in an administrative proceeding. The People's Counsel in Prince George's County strenuously cross-examines witnesses, particularly expert witnesses, and makes sure that all aspects of a case are presented on the record.

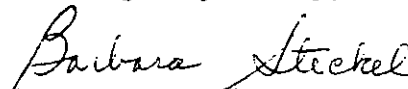
Why not try this limited type of People's Counsel first and see how it works for two or three years?

We have spent many hours deliberating these bills and we hope that by sharing our thoughts, your job will be somewhat easier.

Sincerely yours,



Nancy Schneider, President
LWV-Montgomery County, Md.



Barbara Steckel, Director
Land Use Planning

MEMORANDUM

TO: GSA and PHED Committees

FROM: ^{NY} Michael Faden, Senior Legislative Attorney

SUBJECT: Worksession: Bill 11-89, People's Counsel; Bill 21-89, Citizen's Land Use Information Officer - Information and Referral Services

Bill 11-89, People's Counsel, sponsored by Council President Pro Tem Leggett and Councilmember Adams, was introduced on March 7, 1989. Bill 21-89, Citizen's Land Use Information Officer -- Information and Referral Services, sponsored by Councilmember Crenca, was introduced on March 21, 1989. Bill 21-89 could be enacted along with Bill 11-89, or as an alternative to it.

A public hearing was held on June 20, 1989, on both bills. Bill 11-89 was considered by the GSA Committee at worksessions held on July 13 and September 28. The Committee unanimously recommended that the bill be enacted with amendments. Bill 21-89 had been scheduled for a worksession before the PHED Committee, but that was postponed until the GSA Committee acted on Bill 11-89. When Bill 11-89 was placed on the Council's agenda for November 21, 1989, Bill 21-89 was also scheduled for action. The Council then tabled both bills and referred them to this joint worksession of the two Committees.

Summary of Bill 11-89

Bill 11-89 establishes the Office of the People's Counsel in the legislative branch of County government, and authorizes the County Council to appoint and remove a People's Counsel. As introduced, it authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens on land use and environmental matters. Bill 11-89 does not give any citizen new substantive rights, or allow citizens to initiate or intervene in any proceeding they cannot now initiate or intervene in.

As introduced, the People's Counsel could not represent any private citizen or citizens' group, or the County or any government agency. The People's Counsel is not authorized to intervene in any County legislative proceeding (such as a Master Plan revision, zoning text amendment, or annual growth policy resolution), or any municipal proceeding.

Bill 11-89 also establishes a Citizens Advisory Board to the People's Counsel. The Advisory Board would have 9 members, serving for 3-year terms. The County Council would appoint the Advisory Board after receiving recommendations from various civic and community organizations that it has specified by resolution. The Advisory Board would nominate one or more candidates for the County Council to appoint as People's Counsel, and would advise the People's Counsel on priorities and issues to intervene in.

Summary of Bill 21-89

Bill 21-89 requires, subject to appropriation, the Planning Board to establish an information and referral service. It also requires the appointment of a citizen's land use information officer within the Planning Department.

The sponsor's intent is to provide for an information officer who can offer centralized, comprehensive, and in-depth informational services to the public. In other words, more than "counter" assistance is envisioned. In the FY 1989 budget, the Planning Board received one new professional and one new support position allocated to the public information function. This legislation is intended to further elevate that function.

Bill 21-89 has a sunset date of June 30, 1993, with a provision for an evaluation by the Office of Legislative Oversight.

Public Hearing

At the public hearing the County Executive opposed Bill 11-89 because it is unneeded, would cost too much, could delay "essential but unpopular projects", and "would encourage confrontation instead of cooperation".

The County Attorney testified that, in his opinion, Bill 11-89 violates the County Charter because it intrudes into the Executive function of enforcing the laws, and because it sets up an "instrumentality" of County government that is not subject to the "authority or legal advice" of the County Attorney. The County Attorney advised that the goals of Bill 11-89 could be achieved only through a Charter amendment.

The Planning Board did not testify at the hearing and has not taken a position on the bill.

Almost all the civic groups and individual citizens who testified (except the League of Women Voters) supported the bill. Several witnesses wanted to strengthen it by, among other things, allowing the People's Counsel to participate in legislative proceedings or giving the Counsel discretion to represent individual citizens and neighborhood organizations.

A comparative chart summarizing the laws creating People's Counsel's in other jurisdictions, prepared by Ben Bialek, is on circle 20-21.

GSA Committee Recommendations and Amendments

At its July 13 and September 28 worksessions, the GSA Committee recommended unanimously that the bill be enacted with certain amendments:

- 1) The People's Counsel should be able to intervene as a party in administrative or judicial proceedings, rather than being limited to giving information and advice. The Executive had argued that adding another party to land use and environmental hearings would provoke needless confrontation and delay decision-making. Citizens stressed that, under the present system, those who can't afford expensive lawyers don't have their interests fully represented in what are supposed to be adversary proceedings.

2) The People's Counsel should only represent individual citizens or organizations that are directly aggrieved by an action and otherwise would not have adequate legal representation, rather than representing "the public interest" as the bill had originally proposed. The potential client's ability to afford a lawyer would be a criterion, but the Committee decided that the People's Counsel should not use an income eligibility standard.

The People's Counsel could also intervene in a proceeding "to achieve a full presentation of relevant issues".

A broad-based Citizens Advisory Board would advise the People's Counsel generally and approve participation in specific cases.

3) The People's Counsel's subject-matter jurisdiction should be limited to land use and environmental issues, as the bill proposed. The People's Counsel could "initiate or intervene as a party in any judicial or administrative proceeding before any federal, state or County court, board, or agency, including the County Council, if the proceeding involves: (1) the zoning, subdivision, use, or development of land subject to the zoning power of the County; or (2) the application or enforcement in the County of any federal, state or County law or regulation designed to protect the environment." This includes the County Board of Appeals, the Planning Board, and the Hearing Examiner. The Committee generally felt that the People's Counsel should intervene in only the most important non-land use environmental matters.

The People's Counsel could not participate in legislative proceedings -- e.g. Master Plan amendments and annual growth policies. However, he or she could advise citizens about these proceedings.

4) Under Bill 11-89, the People's Counsel is a merit system position, with the County Council being the appointing authority upon the recommendation of the Citizens Advisory Board. Applicants for the position would go through the normal merit system hiring process.

Alternatively, the Council can retain a People's Counsel under a contract for services, which would render moot any merit system issues.

5) The People's Counsel should serve a 4-year term, generally coinciding with the term of the Council that appoints him or her. The term begins on the July 1 after the Council is elected; this gives a new Council time to make the appointment. An interim People's Counsel could be appointed when Bill 11-89 takes effect, to serve until July 1, 1991.

The Committee did not limit the number of terms a People's Counsel could serve, although all members felt that no more than 2 terms are appropriate.

6) The Committee agreed that the County Council should be able to remove the People's Counsel only by a 2/3 vote, and did not strengthen or weaken the standards for removal. Some citizens had proposed tightening the grounds or procedures for removal, in order to make removal more difficult and to insulate the Counsel from political pressures.

7) The Committee did not recommend any other mechanisms to bolster citizens' ability to participate in land use decisions, as suggested by some witnesses. These included funding citizen groups to hire lawyers, or reimbursing citizens who win important land use cases.

8) The Office of Legislative Oversight must evaluate the law and the People's Counsel's performance by December 1, 1994. This is 7 months before the first full term of the People's Counsel ends.

Pending Issues

At the outset, the Council must decide whether to create an activist People's Counsel who can intervene in administrative proceedings, and possibly litigate as well -- the approach of Bill 11-89 -- or simply expand the County's land use information-providing functions as Bill 21-89 does. Or the Council can decide that neither bill should be enacted.

If the Council prefers the approach taken by Bill 11-89, you can choose from at least 4 alternative options:

a) Enact Bill 11-89, crafted to withstand any Charter challenges. In staff's view, the GSA Committee bill meets that standard.

b) Put a Charter amendment on the November 1990 ballot, and enact implementing legislation if the amendment is approved.

c) Enact Bill 11-89 now, but make it effective only if the voters approve a Charter amendment next November.

d) Enact Bill 11-89 now and make it effective in 91 days, but delay the effectiveness of any legally arguable provision until the Charter is amended.

The option the Council selects depends on whether a Charter amendment is required to establish a People's Counsel. The County Attorney vigorously contends that a Charter amendment is necessary to avoid the Charter's merit system requirements and to exempt the People's Counsel from Charter §213, which makes the County Attorney the exclusive legal representative of the County government. A staff draft of a Charter amendment is on circle 27.

If the Council selects option d, in our view the only part of Bill 11-89 that would need to be delayed is the People's Counsel's authority to participate in court cases. (Councilmember Leggett has prepared an amendment, printed on circle 26, to delete that authority.) The County Council has full power over County administrative proceedings, and can amend the Code to provide legal representation for citizens; this raises few if any serious Charter issues. Similarly, we conclude that the People's Counsel can be appointed under the merit system, or through a contract for services to the County Council, without serious Charter problems.

An alternative presented by the League of Women Voters (letter, circle 24-25) is to limit the People's Counsel to 1) providing technical assistance and advice, and 2) intervening in any proceeding only to assure a complete and fair presentation of the issues. This is similar to the Prince George's County model and more limited than the Baltimore County PC (see circle 22-23).

Councilmember Potter questioned at the full Council session whether, if the People's Counsel is not given authority to appear in court, that position must be filled by a lawyer, rather than a planner or other land-use expert. Staff believes that representing clients before an administrative proceeding probably is the practice of law; thus, allowing non-lawyers to do that would probably violate rules adopted by the Court of Appeals.

Legal Analysis

Executive function. The County Attorney argues that the People's Counsel would exercise an Executive function: enforcing and interpreting the laws. Thus, the theory goes, the Counsel must be an Executive appointee unless the Charter is amended to allow a Council appointment.

We disagree with this Charter interpretation because the People's Counsel simply does not have any law enforcement or decision-making responsibilities. Rather, the People's Counsel would function as an adjunct of the County Council, analogous to the Office of Legislative Oversight, to help see that those who do have the authority to enforce the laws implement them properly.

Legal Advisor. The County Attorney asserts that the appointment of a legal officer outside the office of the County Attorney violates §213 of the Charter, which makes the County Attorney the only legal advisor to the "departments, and other instrumentalities" of County government. In our view, this argument misses at least two salient points: First, the People's Counsel is an adjunct to the County Council, and under the Charter the County Attorney is not the only legal advisor to the Council. Second, the People's Counsel would not offer legal advice to any County agency, or represent the County in court. In its representational functions, the People's Counsel would not bind or obligate the County. Only if the People's Counsel were sued for damages in an official capacity would the County Attorney have a role to play, just as he does when the County Council or any other County officer is sued.

Merit system. The County Attorney objects that appointment for a fixed term is inconsistent with the merit system. Nowhere does the Charter, or any history associated with it, say that the merit system means that the County can appoint only permanent employees. That would contradict at least 2 decades of personnel practice and call into question the employment status of many current temporary County employees.

This packet contains:

	<u>Circle</u>
Bill 11-89	1
Legislative Request Report	8
OLO evaluation	9
OMB Fiscal impact statement	10
Bill 21-89	13
Legislative Request Report	17
OMB Fiscal Impact Statement	18
Comparative chart - other People's Counsel's	20
<u>Warfield's</u> article re Baltimore County PC	22
Letter from League of Women Voters	24
Amendment by Councilmember Leggett	26
Draft Charter amendment	27

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
GOVERNMENT STRUCTURE, AUTOMATION & REGULATION COMMITTEE
and
PLANNING, HOUSING & ECONOMIC DEVELOPMENT COMMITTEE

Friday, January 12, 1990
9:45 A.M. - 12:25 P.M.
Council Hearing Room

PRESENT

GSA Committee members

Bruce Adams, Chairman
Neal Potter
Isiah Leggett

PHED Committee members

William E. Hanna, Jr., Chairman
Michael L. Subin
Rose Grenca

SUBJECT: Bill No. 11-89, People's Counsel; Bill No. 21-89, Citizens Land Use Information Officer - Information and Referral Services

The Committees reviewed a memorandum from Mr. Faden, Senior Legislative Attorney, dated January 12, 1990, setting forth issues concerning the subject bills.

The Committee discussed the analysis of the two bills prepared by legal staff, with Mr. Subin citing the need for a more in-depth analysis of Bill No. 21-89; the revisions made to Bill No. 11-89, in accordance with the recommendations of the Government Structure, Automation and Regulation (GSA) Committee; the similarities and differences between the two bills; the public information service presently provided by the Montgomery County Planning Board (MCPB); and the purpose of Bill No. 21-89 to expand the information function at MCPB versus the purpose of Bill No. 11-89 to establish a People's Counsel to assist citizens through complex government processes.

Mr. Adams suggested that the Committees act on Bill No. 21-89, and then discuss Bill No. 11-89. Mr. Adams moved, duly seconded, that Bill No. 21-89 be recommended for approval.

Ms. Crenca expressed concern that citizens were not provided the opportunity to address the amendments to Bill No. 11-89 proposed by the GSA Committee which she believes substantially change the bill. She stated that the type of assistance being requested by citizens is similar to that provided by the People's Counsel in Prince George's County which she believes can be provided under Bill No. 21-89.

Ms. Steckel, Director, Land Use Planning, League of Women Voters of Montgomery County, speaking in accordance with her letter of November 30, 1989, stated that the League is recommending that a People's Counsel be established in Montgomery County to provide technical advice to citizens and become a party in any land use matter at the administrative level to insure a full and complete record.

Ms. Plunkett, Community Relations Manager, MCPB, stated that most of the services included in Bill No. 21-89 are currently being provided by MCPB. However, she believes it would be difficult for the MCPB to obtain, and have available for distribution to citizens, the County government material required under Section 33A-17(c). Although she is uncertain how the expanded information function would be structured, she believes it would result in a more intensive work program for MCPB.

Mr. Adams amended his motion to substitute language in Section 33A-17(c) to require MCPB to refer individuals to County departments, offices, and agencies where requested material could be obtained.

Mr. Sorrell, County Attorney, asked that Mr. Adams' motion include the addition of language to prohibit the divulging of confidential information. Mr. Adams agreed.

During the discussion that followed, legal staff pointed out that the intent of subsection 33A-17(c) is to provide the Information Officer with the discretion of either obtaining requested materials for citizens or referring them to the government offices where the material can be obtained.

Ms. Crenca explained that the purpose of Bill No. 21-89 is to provide a highly specialized information function. She believes the Information Officer would need to have a working knowledge of all government functions but would not need to be an attorney.

Mr. Subin moved, duly seconded, to amend Bill No. 21-89 to include in the functions performed by the Land Use Information Officer the functions suggested by the League of Women Voters in its letter of November 30, 1989, by adding the two recommendations as numbers seven and eight on page two, Section 33A-17(a); and to add language that would require the Information Officer to be an attorney.

During discussion of his motion, Mr. Subin agreed to separate the two amendments for purposes of voting. The Committees took no action on the amendment that would require the Information Officer to be an attorney.

Committee members discussed the feasibility of providing the services of the Information Office and the People's Counsel at one location. Mr. Subin agreed to amend his motion to delete the second part of the recommendation of the League of Women Voters to provide the opportunity for it to be discussed in connection with Bill No. 11-89. Mr. Adams agreed to incorporate this amendment in his motion.

ACTION: Recommended approval of Bill No. 21-89, as amended
by motion of Mr. Adams, without objection.

Mr. Leggett provided an overview of the intent of Bill No. 11-89, as amended by the GSA Committee, expressing the view that the authority for establishing the position of People's Counsel exists currently in the County Charter. Mr. Leggett also provided information concerning the functions of the People's Counsels in other jurisdictions in the State.

Mr. Potter pointed out the need for more refinement of the functions of the People's Counsel and suggested that additional work might be done to attempt to merge the two bills. He suggested that the functions of the People's Counsel could be limited to exclude environmental issues.

Mr. Adams agreed with Mr. Potter, suggesting that the broader functions could be deleted from Bill No. 11-89, and that, in the future, the Council could consider a Charter amendment to broaden the functions of the People's Counsel. Mr. Adams pointed out that most of the land use information functions included in Bill No. 21-89 are already being accomplished at the MCPB; therefore, he does not believe it is wise to mandate that the functions of each of the bills be performed together. He believes an attempt should be made not to duplicate the information services already being provided by MCPB.

Discussion was held on the responsibilities of the advisory board and the selection of its members; the advantages and disadvantages of establishing an advisory board; and the physical location of the Information Office and the People's Counsel Office, with Mr. Leggett pointing out the convenience of offering the services of the two offices at the same location.

Mr. Sorrell stated that the deletion in the revised bill of the provision that would have allowed the People's Counsel to appear before the court on behalf of the public interest represents an improvement to the bill. However, there are still a number of legal functions that the People's Counsel would be performing as the bill is presently written, which, in his opinion, would require the People's Counsel to be an attorney who is qualified to practice law in the State of Maryland. Mr. Sorrell pointed out that the Executive Branch of the County government was established under the County Charter to perform the functions of the People's Counsel, and that an amendment to the County Charter would be needed to delegate this authority to another entity; however, if the authority of the People's Counsel is limited to planning and land use matters under the Regional District Act, a Charter amendment might not be necessary. Referring to lines 23-25, on page 4, he noted that the bill goes beyond the limits of the Regional District Act by allowing the People's Counsel to become involved in the application or enforcement of a law or regulation designed to protect the environment.

Mr. Sorrell suggested that the involvement of the People's Counsel should be limited to certain agencies, noting that, as the bill is presently written, there is a question of whether agencies such as Housing Opportunities Commission and the Washington Suburban Sanitary Commission would be involved.

The Council discussed Mr. Sorrell's concern that the assistance provided by the People's Counsel might frequently result in the filing of litigation against the County Government which would have a fiscal impact on the County and result in delaying procedures. Mr. Sorrell stated that he believes the bill can be redrafted to make the functions of the People's Counsel similar to those of the People's Counsel in Prince George's County. Mr. Sorrell pointed out that provisions in the bill are inconsistent with the County merit system laws and regulations in that the bill proposes to make the People's Counsel a merit system position, but, at the same time, requires that the People's Counsel be reappointed every four years. He noted that a merit system employee may only be removed for cause. Also, the bill proposes that the Council appoint the People's Counsel from a list of names developed by a Citizens Advisory Board which is contrary to the present requirements that appointments to a merit system position be made on an open, competitive basis.

With respect to a fiscal issue, Mr. Faden stated that a fiscal impact statement has not been requested, but that the revisions made to the bill by the GSA Committee amendments have reduced the costs associated with the bill.

Mr. Subin moved that the bill be amended to delete lines 19-27, on page 6, regarding the duties of the Citizens Advisory Board. There was no second to the motion.


Mr. Hanna stated that he has philosophical problems with the concept of the People's Counsel because the People's Counsel could intervene in decisions made by the Council on issues which took years to resolve. This would lengthen the process and increase its cost, as well as increase the amount of litigation filed against the County. However, he does believe that technical advice should be provided to citizens on procedures and the processing of applications. Mr. Hanna stated that, if the bill is enacted, he prefers that it be amended to delete the Citizens Advisory Board to the People's Counsel, to limit the functions of the People's Counsel to the planning and land use functions under the Regional District Act, and to delete the provisions that require the People's Counsel to be a merit system position.

ACTION: Agreed with the aforementioned amendments proposed by Mr. Hanna.

Instructed legal staff to work with Mr. Sorrell in redrafting Bill No. 11-89 in accordance with the intent expressed by Committee members at this meeting.

Recommended approval of Bill No. 11-89, as amended, Ms. Crenca abstaining and Mr. Potter temporarily absent.

This is an accurate account of the meeting:


Kathleen A. Freedman, CMC
Secretary of the Council

Minutes written by: Mary A. Edgar
Senior Assistant Secretary

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: Final Action: Bill 11-89, People's Counsel

Bill 11-89, People's Counsel, sponsored by Council President Pro Tem Leggett and Councilmember Adams, was introduced on March 7, 1989. A public hearing was held on June 20, 1989, on this bill and Bill 21-89. Bill 11-89 was considered by the GSA Committee at worksessions held on July 13 and September 28. The Committee unanimously recommended that the bill be enacted with amendments. Bill 11-89 and Bill 21-89 were considered at a joint worksession of the GSA and PHED Committees on January 12, 1990.

Summary of Bill 11-89

Bill 11-89 establishes the Office of the People's Counsel in the legislative branch of County government, and authorizes the County Council to appoint and remove a People's Counsel. As introduced, it authorizes the People's Counsel to initiate or intervene on behalf of the public interest in judicial and administrative proceedings involving land use and environmental protection, and to provide advice and technical assistance to citizens on land use and environmental matters. Bill 11-89 does not give any citizen new substantive rights, or allow citizens to initiate or intervene in any proceeding they cannot now initiate or intervene in.

As introduced, the People's Counsel could not represent any private citizen or citizens' group, or the County or any government agency. The People's Counsel is not authorized to intervene in any County legislative proceeding (such as a Master Plan revision, zoning text amendment, or annual growth policy resolution), or any municipal proceeding.

Bill 11-89 also establishes a Citizens Advisory Board to the People's Counsel. The Advisory Board would have 9 members, serving for 3-year terms. The County Council would appoint the Advisory Board after receiving recommendations from various civic and community organizations that it has specified by resolution. The Advisory Board would nominate one or more candidates for the County Council to appoint as People's Counsel, and would advise the People's Counsel on priorities and issues to intervene in.

Public Hearing

At the public hearing the County Executive opposed Bill 11-89 because it is unneeded, would cost too much, could delay "essential but unpopular projects", and "would encourage confrontation instead of cooperation".

The County Attorney testified that, in his opinion, Bill 11-89 violates the County Charter because it intrudes into the Executive function of enforcing the laws, and because it sets up an "instrumentality" of County government that is not subject to the "authority or legal advice" of the County Attorney. The County Attorney advised that the goals of Bill 11-89 could be achieved only through a Charter amendment.

The Planning Board did not testify at the hearing and has not taken a position on the bill.

Almost all the civic groups and individual citizens who testified (except the League of Women Voters) supported the bill. Several witnesses wanted to strengthen it by, among other things, allowing the People's Counsel to participate in legislative proceedings or giving the Counsel discretion to represent individual citizens and neighborhood organizations.

A comparative chart summarizing the laws creating People's Counsel's in other jurisdictions, prepared by Ben Bialek, is on circle 20-21.

GSA Committee Recommendations

At its July 13 and September 28 worksessions, the GSA Committee recommended unanimously that the bill be enacted with certain amendments:

1) The People's Counsel should be able to intervene as a party in administrative or judicial proceedings, rather than being limited to giving information and advice. The Executive had argued that adding another party to land use and environmental hearings would provoke needless confrontation and delay decision-making. Citizens stressed that, under the present system, those who can't afford expensive lawyers don't have their interests fully represented in what are supposed to be adversary proceedings.

2) The People's Counsel should only represent individual citizens or organizations that are directly aggrieved by an action and otherwise would not have adequate legal representation, rather than representing "the public interest" as the bill had originally proposed. The potential client's ability to afford a lawyer would be a criterion, but the Committee decided that the People's Counsel should not use an income eligibility standard.

The People's Counsel could also intervene in a proceeding "to achieve a full presentation of relevant issues".

A broad-based Citizens Advisory Board would advise the People's Counsel generally and approve participation in specific cases.

3) The People's Counsel's subject-matter jurisdiction should be limited to land use and environmental issues, as the bill proposed. The People's Counsel could "initiate or intervene as a party in any judicial or administrative proceeding before any federal, state or County court, board, or agency, including the County Council, if the proceeding involves: (1) the zoning, subdivision, use, or development of land subject to the zoning power of the County; or (2) the application or enforcement in the County of any federal, state or County law or regulation designed to protect the environment." This includes the County Board of Appeals, the Planning Board, and the Hearing Examiner. The Committee generally felt that the People's Counsel should intervene in only the most important non-land use environmental matters.

The People's Counsel could not participate in legislative proceedings -- e.g. Master Plan amendments and annual growth policies. However, he or she could advise citizens about these proceedings.

4) Under Bill 11-89, the People's Counsel is a merit system position, with the County Council being the appointing authority upon the recommendation of the Citizens Advisory Board. Applicants for the position would go through the normal merit system hiring process.

Alternatively, the Council can retain a People's Counsel under a contract for services, which would render moot any merit system issues.

5) The People's Counsel should serve a 4-year term, generally coinciding with the term of the Council that appoints him or her. The term begins on the July 1 after the Council is elected; this gives a new Council time to make the appointment. An interim People's Counsel could be appointed when Bill 11-89 takes effect, to serve until July 1, 1991.

The Committee did not limit the number of terms a People's Counsel could serve, although all members felt that no more than 2 terms are appropriate.

6) The Committee agreed that the County Council should be able to remove the People's Counsel only by a 2/3 vote, and did not strengthen or weaken the standards for removal. Some citizens had proposed tightening the grounds or procedures for removal, in order to make removal more difficult and to insulate the Counsel from political pressures.

7) The Committee did not recommend any other mechanisms to bolster citizens' ability to participate in land use decisions, as suggested by some witnesses. These included funding citizen groups to hire lawyers, or reimbursing citizens who win important land use cases.

8) The Office of Legislative Oversight must evaluate the law and the People's Counsel's performance by December 1, 1994. This is 7 months before the first full term of the People's Counsel ends.

Joint Worksession Recommendations

At the joint GSA/PHED worksession on January 12, the 6 Councilmembers present reshaped the key elements of Bill 11-89.

The Committees essentially accepted an alternative presented by the League of Women Voters (letter, circle 20-21) to limit the People's Counsel to providing technical assistance and advice, and intervening in any proceeding only to assure a complete and fair presentation of the issues. This is similar to the Prince George's County model and more limited than the Baltimore County People's Counsel (see circle 18-19).

1) Appointment The Committees agreed that the People's Counsel would be hired through a contract for services, rather than as a merit system employee. The service contract had been an alternative in the GSA bill, with the Council as appointing authority having the option to use either approach.

2) Function The People's Counsel would not represent either aggrieved citizens or "the public interest". Rather, the People's Counsel's only function, similar to its counterpart in Prince George's County, is to assure that the decision-making body receives "a full and fair presentation of relevant issues".

3) Forum jurisdiction The People's Counsel could not file or intervene in any court case. Its forum jurisdiction would be limited to County administrative proceedings in which a decision is based on a written record. (See issues 2 and 3.) As before, the People's Counsel could not participate in any legislative proceeding or any municipal matter.

4) Subject-matter jurisdiction The Committees asked staff to draft more specific provisions on the subject matters in which the People's Counsel may intervene. The Committees discussed, but did not decide, whether to eliminate the Counsel's ability to intervene in environmental issues. (See issue 4.)

5) Liability The Committees directed staff to develop language that strictly limits the People's Counsel's (and therefore the County's) civil liability to dissatisfied citizens. See circle 8, lines 8-11 and 24-27.

6) Advisory Board The Committees decided to delete the Advisory Board entirely.

Remaining Issues

1) **Should the Council retain the ability to appoint the People's Counsel under the merit system?**

If a future Council wishes to use the merit system, rather than a contract for services, to select a People's Counsel, should this bill preserve that option? As originally reported from Committee, the bill encompassed both approaches. A merit-appointed People's Counsel could (in staff's opinion) be appointed for a fixed term and could still be removed by a 2/3 vote of the Council, although cause would have to be shown.

2) Should the People's Counsel be able to appear before the County Council in non-legislative proceedings?

The Committees retained the ability of the People's Counsel to appear before the Council in non-legislative proceedings that are decided on a written record (e.g. local map amendments, road abandonments and closures). Councilmember Hanna questioned whether this should be allowed.

3) Should the People's Counsel be able to appear in administrative proceedings before any County administrative body?

The bill (circle 6, lines 3-10) lists only four bodies before which the People's Counsel may appear: the County Council, the Planning Board, the Board of Appeals, and the Hearing Examiner. Councilmember Leggett suggested adding a clause covering other County bodies that decide cases on a written record, by adding after line 10:

(5) any other County quasi-judicial or administrative body.

4) Should the People's Counsel be able to participate in environmental proceedings?

The staff draft (circle 6, line 11 - circle 7, line 3) spells out the subject matters the People's Counsel can participate in, by chapters in the County Code. It includes a number of environmental provisions, as the original bill did. The County Attorney's draft (circle 25) limits the Counsel to a very specific list of proceedings before only 3 administrative bodies.

The County Attorney argues that the People's Counsel's jurisdiction must be confined to those matters that the Council itself, or its designees, decide under the Regional District Act. He asserts that the People's Counsel cannot participate in any matter that is before, or originates in, the Executive branch. In our view, this creative legal analysis leads to a sweeping restriction on the Council's power to legislate, with very broad implications. (If the People's Counsel can be confined in this manner, why not the Office of Legislative Oversight?) We see nothing in the Charter that so delimits the Council. The People's Counsel is monitoring the Executive's authority to enforce the laws, rather than displacing it. We do not believe that the Council is legally compelled to truncate the People's Counsel's subject matter jurisdiction.

Whether the Council wants to have the People's Counsel intervene in environmental cases is another issue. As the Council knows, these cases can be critical in determining the future of certain geographic areas, and citizens need assistance in them as well as in zoning matters. On the other hand, the People's Counsel risks being spread too thin if it must be ready to cover too many legal specialties. Staff's recommendation is not to overly restrict the Counsel's jurisdiction, but let him or her sort out priorities as the cases demand.

5) Should the People's Counsel's advice and assistance function be limited to assuring a complete record?

As in the original bill, the People's Counsel is given broad leeway to provide technical assistance and advise citizens on their rights and duties without getting involved in legal proceedings. Councilmember Hanna would limit this section, as well as the Counsel's power to intervene in cases, to clarifying and completing the record before an administrative agency. This would narrow the range of services the People's Counsel could provide legally unrepresented citizens.

This packet contains:

	<u>Circle</u>
Bill 11-89	1
Legislative Request Report	11
OLO evaluation	12
OMB Fiscal impact statement	13
Comparative chart - other People's Counsel's	16
<u>Warfield's</u> article re Baltimore County PC	18
Letter from League of Women Voters	20
Draft Charter amendment	22
County Attorney redraft	23

Bill No.: 11-89
Concerning: People's Counsel
Draft No. & Date: 9 2/6/90
Introduced: March 7, 1989
Enacted: February 6, 1990
Executive: February 15, 1990
Effective: May 17, 1990
Sunset Date: None
Ch. 22, Laws of Mont. Co., FY 90

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Pro Tem Leggett and Councilmember Adams

AN ACT to:

- (1) establish the Office of the People's Counsel and authorize the County Council to [[appoint and remove a People's Counsel]] contract for the services of a People's Counsel;
- (2) authorize the People's Counsel [[to initiate or intervene]] [[on behalf of]] [[the public interest or]] [[certain unrepresented persons or organizations, or]] to achieve a full and fair presentation of relevant issues, to participate in certain [[judicial and]] administrative proceedings involving land use [[and environmental protection]], and to provide [[advice and]] technical assistance to citizens of the County on certain matters;
- [[((3))]](3) establish a Citizens Advisory Board to the People's Counsel, and define the Board's powers and duties;]] and
- [[((4))]](3) generally create an independent body to [[represent]] [[the public interest or]] [[certain unrepresented persons or organizations]] help achieve a full and fair presentation of relevant issues in certain [[judicial and]] administrative proceedings.

By amending

Montgomery County Code
Chapter 1A, Establishing the Structure of County Government
Sections 1A-203, 1A-204

By adding

Chapter 2, Administration
Article XII, People's Counsel
Section[[s]] 2-150[[, 2-151]]

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original bill.
[Single boldface brackets] indicate text that is deleted from existing law by the original bill.
Double underlining indicates text that is added to the bill by amendment.
[[Double boldface brackets]] indicate text that is deleted from existing law or the bill by amendment.
* * * indicates existing law unaffected by the bill.

The County Council for Montgomery County, Maryland, approves the following act:

1 Sec. 1. Sections 1A-203 and 1A-204 are amended as follows:

2 1A-203. Establishing other offices.

3 (a) Executive branch. * * *

4 (b) Legislative branch. These are the offices of the
5 Legislative Branch.

6 Office of the County Council

7 Office of Legislative Oversight

8 Office of the People's Counsel

9 Office of Zoning and Administrative Hearings

10 (c) Internal offices. * * *

11 1A-204. Supervision of offices and appointment of heads.

12 (a) Executive branch.

13 * * *

14 (b) Legislative branch.

15 * * *

16 (3) Office of the People's Counsel.

17 [[(A) Under the merit system laws, the County

18 Council appoints the People's Counsel by a

19 resolution approved by a majority of

20 Councilmembers in office [[from a list of one

21 or more names submitted by the Citizens

22 Advisory Board. The Council may reject all

23 names submitted by the Board and ask the

24 Board for another set of names]].

25 (B) The People's Counsel serves a term of [[3]] 4

26 years, starting on July 1 of the year after

27 each year in which the members of the County

Council are elected. If the Council has not
appointed a successor when a term expires,
the People's Counsel serves until a successor
takes office and the successor serves the
rest of the unexpired term.

(C) The Council may remove the People's Counsel
by a resolution approved by two-thirds of the
Councilmembers in office after following all
procedures required under merit system laws
and regulations.

(D) When appointed, the People's Counsel must:

(i) be a member of the bar of the Court of
Appeals of Maryland;

(ii) have at least 5 years experience in the
practice or teaching of law; and

(iii) have substantial experience with land
use or environmental legal issues.

(E) The People's Counsel serves full time in that
position and must not engage in any other
practice of law.

(F) The People's Counsel appoints and supervises
the merit system employees of the office.]]

[[G]](A) [[Alternatively, the]] The County Council
[[by contract]] may retain as an independent
contractor one or more attorneys, [[full-time
or part-time,]] along with support staff,
consultants, and expert witnesses, to provide

1 [[some or all of]] the services of the
2 People's Counsel under Section 2-150. The
3 contract may be cancelled at any time by a
4 resolution approved by two-thirds of the
5 Councilmembers in office.

6 (B) Any attorney retained as the People's Counsel
7 must:

8 (i) be a member of the bar of the Court of
9 Appeals of Maryland;

10 (ii) have at least 5 years experience in the
11 practice or teaching of law; and

12 (iii) have substantial experience with land
13 use [[or environmental]] legal issues
14 and procedures.

15 (C) Any attorney retained under the contract must
16 not:

17 (i) represent any client in any matter
18 involving land use in any jurisdiction;
19 and

20 (ii) appear before any court in Montgomery
21 County, or before any County agency or
22 any bi-county agency with jurisdiction
23 in the County.

24 [[Before retaining an attorney under this
25 subparagraph, the Council must seek the
26 advice of the Citizens Advisory Board.]]

27 [(3)](4) Office of Zoning and Administrative Hearings.

* * *

1
2 Sec. 2. Section[[s]] 2-150 [[and 2-151 are]] is added to
3 Chapter 2:

4 Article XII. People's Counsel.

5 2-150. People's Counsel - Functions.

6 (a) Purpose. Informed public actions on land use matters
7 require a full exploration of often complex factual and
8 legal issues. An independent People's Counsel can
9 promote a full and fair presentation of relevant issues
10 in administrative proceedings in order to achieve [[a]]
11 balanced records upon which sound land use decisions can
12 be made. In addition, a People's Counsel who provides
13 technical assistance to citizens and citizen
14 organizations will encourage effective participation in,
15 and increase public understanding of, the County land use
16 process.

17 [[(a) To represent [[the public interest and]] an aggrieved
18 person or organization which would otherwise not have
19 adequate legal representation and which would raise
20 issues that would otherwise not be raised, or to achieve
21 a full presentation of relevant issues, the People's
22 Counsel, with the approval of the Citizens Advisory
23 Board, may initiate or intervene as a party or on behalf
24 of an aggrieved party in any judicial or administrative
25 proceeding before any federal, state or County court,
26 board, or agency, including the County Council, if the
27 proceeding involves:

1 (1) the zoning, subdivision, use, or development of
2 land [[in]] subject to the zoning power of the
3 County; or

4 (2) the application or enforcement in the County of any
5 federal, state or County law or regulation designed
6 to protect the environment.]]

7 [[b) To achieve a full and fair presentation of relevant
8 issues, the People's Counsel may initiate or intervene as
9 a party in any administrative proceeding in which a
10 decision is based on a written record before the:

11 (1) County Council;

12 (2) Montgomery County Planning Board;

13 (3) County Board of Appeals; or

14 (4) Hearing Examiner.]]

15 [[c) The People's Counsel may initiate or intervene in an
16 administrative proceeding if the proceeding arises out of
17 or involves:

18 (1) Chapter 2B, Agricultural Land Preservation;

19 (2) Chapter 3, Air Quality Control;

20 (3) Chapter 8, Buildings;

21 (4) Chapter 19, Erosion, Sediment Control and Storm
22 Water Management;

23 (5) Chapter 24A, Historic Resources Preservation;

24 (6) Chapter 25A, Housing, Moderately Priced;

25 (7) Chapter 26, Housing and Building Maintenance
26 Standards;

27 (8) Chapter 31B, Noise Control;

(9) Chapter 42A, Ridesharing and Transportation

Management;

(10) Chapter 45, Sewers, Sewage Disposal and Drainage;

(11) Chapter 50, Subdivision of Land;

(12) Chapter 55, Unsafe Buildings;

(13) Chapter 56, Urban Renewal and Community Development;

(14) Chapter 59, Zoning.]]

(b) Authority; duties.

To achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:

(1) the Board of Appeals if the proceeding involves a variance or a special exception;

(2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process or a special exception; and

(3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

[[(d)]](c) The People's Counsel must not appear or intervene in any legislative proceeding, or in any proceeding before a board or agency of any municipality in the County.

(d) The People's Counsel is not a party in a proceeding under

1 subsection (b). To achieve a full and fair presentation
2 of relevant issues, the People's Counsel is entitled to
3 all notices to a party and may participate by making
4 motions, introducing evidence, calling witnesses,
5 examining and cross-examining witnesses, and making
6 arguments as the law and the evidence in the proceeding
7 warrant. The People's Counsel must not be a party to an
8 appeal.

9 [(b)](e) The People's Counsel must not represent the
10 County,[(,)] [(or)] any government agency,[(, or
11 any private party]] or any private party in any
12 proceeding. The People's Counsel is not subject to
13 the authority of the County Attorney. Section 411
14 of the Charter does not apply to participation by
15 the People's Counsel in any proceeding under
16 subsection [(a)] [(c)](b).

17 [(c)] [(f) The People's Counsel has all powers necessary to
18 carry out the functions assigned under subsection
19 [(a)](b), including:

- 20 (1) all rights of a party to any proceeding under
21 subsection [(a)](c), except the right to appeal a
22 decision to a court and the right to approve a
23 settlement agreed to by all other parties;
24 (2) the authority to employ or retain staff or expert
25 witnesses, subject to appropriation; and
26 (3) the authority to [(investigate)] seek and collect
27 information on any matter relevant to a proceeding

under subsection (c).]][(a); and]]

[(4) the authority to appeal any judgment or order of a
court, board, or agency if the public interest and
the interest of the Counsel's client, if any,
requires an appeal.]]

(f) If the People's Counsel intends to [[intervene]]
participate in a proceeding, the People's Counsel must
give all [[other]] parties a notice of intention to
[[intervene]] participate.

(g) In the People's Counsel's discretion, the People's
Counsel may withdraw from, or decline to [[intervene]]
participate in, any proceeding in which the Counsel may
participate under subsection [(c)] (b). The People's
Counsel is not liable to any person for [[initiating,
intervening]] participating in, or declining to
[[initiate or intervene]] participate in, any proceeding.

[(d)](h) Without becoming a party to any judicial or
administrative proceeding, and subject to available
time and resources, the People's Counsel may
provide technical assistance[, and advise any
citizen of the County on that person's rights and
duties, in any matter that involves:

(1) the zoning, subdivision, use, or development of
land [[in]] subject to the zoning power of the
County; or

(2) the application or enforcement in the County of any
federal, state or County law or regulation designed

1 to protect the environment.]] to any person about a
2 proceeding under subsection (b). When providing
3 technical assistance [[or advice]] under this
4 subsection, the People's Counsel must inform the
5 recipient that the People's Counsel is not acting
6 and cannot act as a personal attorney for the
7 recipient.

8 (i) The People's Counsel must coordinate the services of its
9 office with those offered by the citizens land use
10 information officer in the Planning Board, to avoid
11 inconsistency and duplication and to maximize the
12 assistance offered to citizens.

13 [[e)](j) The People's Counsel must annually report to the
14 Council on the activities of the office.

15 [[2-15]. Citizens Advisory Board to the People's Counsel.

16 [[a) The County Council must appoint a Citizens Advisory Board
17 to the People's Counsel.]]

18 [[b) The Board consists of 9 members, appointed by the Council
19 on the recommendation of certain civic and community
20 organizations designated in a resolution adopted by the
21 Council. The Council must designate one member as chair
22 and one member as vice-chair.]]

23 [[c) Each member of the Board serves a 3-year term. Initial
24 appointments must be staggered so that 3 members' terms
25 expire each year. A member appointed to fill a vacancy
26 serves the rest of the unexpired term.]]

27 [[d) The duties of the Board are to:

- 1 (1) advise the County Council and the People's Counsel
2 on the policies, operations and priorities of the
3 Office of the People's Counsel;
4 (2) evaluate current land use and environmental issues
5 and proceedings, and [[recommend]] approve those in
6 which the People's Counsel should be involved,
7 consistent with the Rules of Professional Conduct
8 for attorneys;
9 (3) when the position of People's Counsel is vacant or
10 is about to be vacant, evaluate candidates for the
11 position and submit one or more names to the
12 Council for appointment.]]

13 [[Sec. 3. Notwithstanding Section 1A-204(b)(3)(B), added by
14 Section 1 of this Act, the County Council may appoint a People's
15 Counsel at any time after this Act takes effect. If the Council
16 appoints a People's Counsel before June 30, 1991, the Counsel's
17 term ends on June 30, 1991.]]

18 Sec. [[4]] 3. The Office of Legislative Oversight must
19 evaluate the operation of this Act and the performance of the
20 Office of the People's Counsel, and must report its findings and
21 recommendations to the County Council by December 1, 1994.

22
23
24 Approved:

25 William E. Hanna, Jr.
26 _____

27 William E. Hanna, Jr., President, County Council

2/8/90

 Date

1 Approved:

2 Sidney Kramer

3 2/15/90

4 Sidney Kramer, County Executive

Date

5
6
7 This is a correct copy of Council action.

8 Kathleen A. Freedman

9 2/16/90

10 Kathleen A. Freedman, CMC

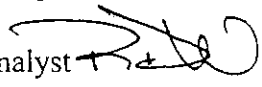
Date

11 Secretary of the Council
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

K
PHED COMMITTEE #1
April 12, 1999

MEMORANDUM

July 28, 1998

TO: Planning, Housing, and Economic Development Committee
FROM: Ralph D. Wilson, Senior Legislative Analyst 
SUBJECT: **Worksession** - People's Counsel

Background

In response to the continued interest of County residents in assistance in appearing and addressing land use issues that are decided by County administrative agencies, the Council President has asked the Committee to recommend that \$125,000 be appropriated to activate the People's Counsel office for FY00. The People's Counsel was authorized by legislation in 1990, but never funded. The relevant portions of the County Code that describe the role and responsibilities of the People's Counsel are included in this packet.

In considering the People's Counsel office last year, the Council decided not to fund the office at that time and to use the \$16,000 reduction made in the Hearing Examiner's budget to fund certain activities intended to broaden citizens' understanding of how the Board of Appeals works. It was suggested that the \$16,000 be set aside in the Council Office budget for the possible production of educational materials on how to appear and process matters before the Board of Appeals. Some initial work has been done in arranging for Board of Appeals hearings to be televised and for a "public relations" video explaining the role and activities of the Board. The Board of Appeals is also considering an update of the "user guide", and using a consultant to do a "consumer satisfaction" survey.

Staff Comments

Though not mandated, staff believes the People's Counsel position, at least initially, should be performed by a contractor on a less than full-time basis. Only law professors and retired lawyers may be eligible since the legislation restricts a contractor from representing any client in a land use matter in any jurisdiction and from appearing before any court or administrative agency with jurisdiction in Montgomery County. With these restrictions it may

be difficult to find a People's Counsel qualified to deal effectively with complex factual and legal land use issues.

Under the legislation, the People's Counsel function is to ensure that a full and fair representation of the issues is made and that the record before the administrative agency is balanced. The People's Counsel may provide technical assistance to citizens and citizen associations in land use matters, but does not act as a personal attorney for any party. It may be useful to clarify in the legislation that the People's Counsel: (1) is responsible for defending approved land use policies and not to assist or take any particular side over another, and (2) may review pending administrative proceedings and participate on its own motion in the public interest.

Appointment of a People's Counsel would address one of the issues raised in the Civic Federation report on special exceptions.

f:\wilson\miscmemo\people.doc

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
PLANNING, HOUSING, AND ECONOMIC DEVELOPMENT COMMITTEE

Monday, April 12, 1999
9:54 A.M. to 11:55 A.M.
Council Hearing Room

PRESENT

Derick Berlage, Chair

Phil Andrews

Steven Silverman

SUBJECT: People's Counsel

The Committee considered a memorandum and attachments, dated July 28, 1998, from Senior Legislative Analyst Wilson providing background information and issues for discussion concerning the People's Counsel.

ACTION: Discussed the role of the People's Counsel and the intent of the legislation in creating the office.

Noted Councilmember Silverman's request for information from Baltimore County and any other jurisdictions as to the operations and funding of the People's Counsel office.

Agreed to draft legislation to amend current law to provide that the People's Counsel can be either an independent contractor or a full-time County Merit System employee, and to: (1) allow People's Counsel to represent individual clients; (2) make appearances in Court; and establish criteria regarding under what circumstances (1) and (2) can occur. Requested that the legislation be drafted as quickly as possible to allow it to proceed to public hearing in tandem with legislation sponsored by Councilmembers Krahnke and Praisner.

Recommended approval of \$125,000 to be placed on the Reconciliation List to fund the People's Counsel office for FY 00 Operating Budget.

SUBJECT: FY 00 Operating Budget – Intervention Task Force NDA

The Committee had before it for consideration a memorandum from Senior Legislative Analyst Wilson, dated April 12, 1999, providing background information and recommendations concerning funding for the FY 00 Operating Budget.

ACTION: Agreed with the Council staff recommendation to fund the Intervention Task Force NDA for the FY 00 Operating Budget at the same level as FY 99 in the amount of \$12,500.

SUBJECT: Zoning Text Amendment (ZTA) 99002 – Radio and Television Broadcasting Studios in the Central Business District (CBD) Zones

The Committee considered a memorandum from Senior Legislative Analyst Wilson, dated April 6, 1999, providing information on the ZTA to allow film production studios to locate in CBD zones.

ACTION: Discussed Councilmember Praisner's concern brought out at the public hearing concerning whether some of the definition of terms in the ZTA are broad enough to include electronic media programming.

Agreed, following a discussion with Council and Planning Board staff, to amend the ZTA as follows:

Radio and television broadcasting studio: A facility used for the creation and production of radio, television, or other electronic media programming, including internet content provider. This includes studios, stages, editing facilities, post-production facilities, and program distribution via wire or fiber optic cable. A radio and television broadcasting studio does not include broadcasting equipment associated with broadcast transmission towers at the same location as the studio.


Recommended approval of ZTA 99002, as amended.

AGENDA ITEM # 5
May 14, 1999
Worksession

MEMORANDUM

May 10, 1999

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: People's Counsel - FY00 Appropriation

Background

In response to the continued interest of County residents in assistance in appearing and addressing land use issues that are decided by County administrative agencies, the Council President asked the Planning, Housing, and Economic Committee to recommend that \$125,000 be appropriated to activate the People's Counsel office for FY00. The People's Counsel was authorized by legislation in 1990, but never funded. The relevant portions of the County Code that describe the role and responsibilities of the People's Counsel are included in this packet.

In considering the People's Counsel office last year, the Council decided at that time not to fund the office and to use the \$16,000 reduction made in the Hearing Examiner's budget to fund certain activities intended to broaden citizens' understanding of how the Board of Appeals works. It was suggested that the \$16,000 be set aside in the Council Office budget for the possible production of educational materials on how to appear and process matters before the Board of Appeals. Some initial work has been done in arranging for Board of Appeals hearings to be televised and for a "public relations" video explaining the role and activities of the Board. The Board of Appeals is also considering an update of the "user guide", and use of a consultant to do a "consumer satisfaction" survey.

Planning, Housing, and Economic Committee Recommendation

The Committee recommends that \$125,000 be appropriated to activate the People's Counsel Office for FY00 and that the role and responsibilities of the office be expanded. I believe the Committee intends to review the details of the People's Counsel function as it has been applied elsewhere in the State before any legislative changes are recommended. In Maryland, there are three jurisdictions that use a People's Counsel for land use matters.

These jurisdictions are Prince George's County, Harford and Baltimore Counties. The most visible and active office is the People's Counsel for Baltimore County, which might serve as a good model for Montgomery County. Information on the People's Counsel operations in Baltimore County and Prince George's County is attached.

Under the existing Montgomery County law, the People's Counsel function is to ensure that a full and fair representation of the issues is made and that the record before the administrative agency is balanced. The People's Counsel may provide technical assistance to citizens and citizen associations in land use matters, but does not act as a personal attorney for any party. The People's Counsel is prohibited from participating as a party before any administrative agency and in any Court appeal.

Appointment of a People's Counsel would address one of the issues raised in the Civic Federation report on special exceptions.

f:\wilson\miscmemo\people.doc


This packet includes:

Circle #

- | | | |
|----|--|------|
| 1. | Code provisions for Office of People's Counsel | 1-3 |
| 2. | People's Counsel - Baltimore County | 4-5 |
| 3. | People's Counsel - Prince George's County | 6-16 |
| 4. | Counsel President request to PHED Committee | 17 |

MEMORANDUM

March 29, 1999

TO: Derick Berlage, Chair, PHED Committee
FROM: Isiah Leggett, Council President 
SUBJECT: Meeting on People's Council

The Office of the People's Council was authorized by legislation in 1990, but it was never funded by the County Council. As I indicated in my December 30, 1998 memo to you, I continue to hear from residents as to the difficulties they encounter when dealing with the County and private developers regarding land use issues that can seriously impact them or their property. The People's Council was conceived to give such residents a more equitable position when they deal with complex land use problems. I think it is time for this program to become a reality.

I am requesting that the Committee examine the existing law in depth. I am attaching the County Code references to the law for your review. If there are legislative changes that you recommend, I want to work with the Committee. The process to make any such recommended adjustments should begin as soon as possible because I hope to see this important program funded for the next fiscal year.

Last year I requested an addition of \$125,000 to the operating budget to activate the office. That request was not funded. I am again requesting that \$125,000 be added to the FY00 Operating Budget to enable the People's Council to begin assisting County residents. I ask that the PHED Committee consider this request during its Budget worksessions.

On PHED Agenda for 4/12. scm.

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
PLANNING, HOUSING, AND ECONOMIC DEVELOPMENT COMMITTEE

Monday, June 28, 1999
9:32 A.M. – 12:22 P.M.
Council Hearing Room

PRESENT

Derick Berlage, Chair

Phil Andrews

Steven Silverman

Councilmember Silverman, Lead Councilmember for Parks and Recreation, in the
Chair.

SUBJECT: **Process for Council Review of Park Planning Documents and the Countywide
Park Trails Plan**

The Committee had before it the memorandum and attachments from Senior Legislative Analyst Michaelson, dated June 22, 1999, providing background information and issues for discussion; and a copy of the following documents: *Trails – The County's Most Popular Park Facilities*; *Dates of Construction of Major Existing Hiker-Biker (Hard Surface) Trails*; and *Overview of Trail User Surveys*.

ACTION: Received overview comments from Mr. Hussmann, Chair, Montgomery County Planning Board, Mr. Cochran, Director, Park Department, and Mr. Zyontz, Park and Planning Staff; and received a powerpoint presentation from Ms. Coleman, Park and Planning Staff, on the Countywide park Trails Plan.

Discussed the maintenance costs for each type of trail; and requested Park and Planning Staff to provide the cost estimates for completing the trail system in the Countywide Park Trails Plan.

Received comments from interested citizens on the Countywide Park Trails Plan.

Agreed to address the policy issues outlined in Council Staff's memorandum at the next Committee meeting.

Requested additional information on the width of paved trails that are included in the Plan; the number of trails that are proposed for the stream valley parks, including issues associated with hard surface trails in stream valley parks; and trail widths.

Councilmember Berlage in the Chair.

SUBJECT: Bill 14-99, People's Counsel – Amendments

The Committee had before it the memorandum and attachments from Senior Legislative Attorney Faden.

ACTION: Agreed not to amend the bill to allow private representation by the People's Counsel.

Agreed to amend the bill by adding a provision that the People's Counsel should protect the public interest rather than just assuring that the record is complete.

Agreed not to amend the bill to specify what substantive positions the People's Counsel must adopt.

Supported the current County law that directs the People's Counsel to promote a full and fair presentation of relevant issues . . . to achieve balanced records on which sound land use decisions can be made, and agreed that Bill 14-99 does not change this direction.

Agreed that the technical assistance function is one of the People's Counsel's two primary functions under the current County law, and that Bill 14-99 does not change that mandate.

Supported the suggestion of Councilmember Berlage to amend the bill by adding language that would allow the People's Counsel to request a review of existing special exceptions by the Board of Appeals.

Agreed that the resolution appointing the People's Counsel would set the length of the term of the position, as recommended by Council Staff.

Requested additional information on the number of votes required to remove other County officials and People's Counsels from office;
Councilmember Berlage recommended retaining a 6-vote requirement to remove a People's Counsel from Office, Councilmember Silverman recommended a majority vote requirement, and Councilmember Andrews abstained and will make a recommendation after he has received additional information.

Supported Councilmember Andrews suggestion to amend the bill by prohibiting the Peoples's Counsel from representing any party in a land use proceeding in the County for one year after serving as People's Counsel; Councilmember Silverman voting in opposition.

Recommended approval of amending the bill by deleting Section A-204(b)(C)(ii) and reducing the restriction on the People's Counsel to represent any client in any matter involving land use in any jurisdiction to only Montgomery or Prince George's County.

Recommended approval of amending the bill by clarifying that the People's Counsel is intended to function as a full party to a proceeding that he or she enters into instead of vaguely participating in the proceeding, as recommended by Council Staff.

Agreed to amend page 4 of the bill by deleting Section 2-150(c).

Recommended approval of the bill, as amended.

SUBJECT: Zoning Text Amendment 99004, Special Exceptions

The Committee had before it the memorandum and attachments from Senior Legislative Wilson, dated June 21, 1999, on the subject text amendment.

ACTION: Agreed to amend the text amendment by using the full definition of a special exception as follows: Special Exception. The grant of a specific use that would not be appropriate generally or without restriction and must be based upon a finding that certain conditions governing special exceptions as detailed in the Zoning Ordinance exist, that the use conforms to the plan and is compatible with the existing neighborhood.

Agreed to add to the People's Counsel's authority the ability to request a review of a special exception by the Board of Appeals.

Noted Councilmember Silverman's request to Staff to compile a list of specific Board of Appeals cases that have created the concerns about special exceptions.

Discussed the issues addressed in Council Staff's memorandum, and agreed to discuss it further at the next Committee meeting.

This is an accurate account of the meeting:




Mary A. Edgar, CMC
Clerk of the Council

Minutes written by: Elda Dodson, Deputy Clerk

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 14-99, People's Counsel - Amendments

Planning, Housing, and Economic Development Committee recommendation: enact with amendments.

Summary; Background

Bill 14-99, People's Counsel – Amendments, sponsored by Councilmembers Berlage, Andrews, and Silverman, was introduced May 19. Bill 14-99 allows the County Council to employ a People's Counsel as a term merit system employee, and to remove the People's Counsel under certain circumstances. It also removes a restriction on the People's Counsel's participation in appeals and makes minor clarifying changes in current law creating the Office of the People's Counsel.

The People's Counsel was first established as an independent (in all senses of the word) contractor of the County Council by Bill 11-89, which became law after extensive discussions in 1990. The concept derived from People's Counsels established in the mid-1970's to deal with land use matters in Baltimore, Prince George's, and Harford Counties. (Maryland and the District of Columbia have People's Counsels who handle public utility and related issues, but not land use matters.) However, until FY00 the Council did not appropriate funds for the contract.

A public hearing for Bill 14-99 was held on June 22 at which the only speaker was attorney Harry Lerch, speaking for himself and the County Chamber of Commerce (see Mr. Lerch's prepared testimony, ©32-33). In addition, at the June 15 hearing on Zoning Text Amendment 99004 several speakers supported Bill 14-99 and attorney Norman Knopf urged that the People's Counsel be allowed to participate in the legislative process and appeal administrative decisions to court.

Committee Amendments

At a worksession on June 28, the Planning, Housing, and Economic Development Committee recommend that Bill 14-99 be enacted with amendments that would:

- allow the People's Counsel to represent the public interest, rather than only assure that the record of a land use proceeding is complete (see ©4, lines 46, 53);
- loosen certain restrictions on the People's Counsel's other law practice while serving as People's Counsel, but add a restriction that the People's Counsel cannot represent any party in a land use proceeding in the County for one year after the People's Counsel's term ends (see ©3, lines 27-40);
- allow the People's Counsel to trigger the process to revoke or modify a special exception (see ©5, lines 65-68); and
- clarify that the People's Counsel functions as a full party in any proceedings he or she intervenes in (see ©5, lines 72-81).

Issues discussed by Committee

1) What should the People's Counsel do? In other words, what kind of People's Counsel should the County have? Vis-à-vis the People's Counsel's role and purpose, the County could follow any of several models:

a) represent unrepresented parties Some civic groups have urged that the People's Counsel be allowed to represent individual citizens or community organizations who have standing to participate in an adjudicatory proceeding but cannot find or afford a private lawyer. Neither the current law nor Bill 14-99 allows private representation. The most frequently raised objection to giving the People's Counsel this broad a function is the discretion involved -- the perceived difficulty in deciding which cases or clients to take, who most *needs* representation (because of their lack of resources) and *deserves* representation (because of the merits of their position or the gravity of the issues). If the Council agrees that allowing private representation is desirable you could insert criteria in the law, such as:

- the person or organization's ability to retain other counsel;
- the relative balance of the advocacy resources of the parties to the proceeding;
- the nature, significance, and breadth of impact of the issues in the proceeding; and
- any other public policy or precedent-setting implications of the proceeding.

The Committee did not give the People's Counsel authority to represent individual clients.

b) "protect the public interest" Under this standard, which applies in Prince George's and Harford Counties, the People's Counsel makes an independent decision on what result would best protect the public interest in each case. (However, the Prince George's County People's Counsel may see his mandate in narrower terms; see letter, ©15-16.) In particular, the Prince George's County People's Counsel must review each Comprehensive Design Plan filed with the Planning Board and render an opinion to the Council on whether the Plan approved by the Planning Board meets public facilities needs and conforms to the Basic Plan. It is also relevant that in Prince George's County the County Executive appoints the People's Counsel. In Harford County the People's Counsel is advised on participation in cases by a Council-appointed advisory

committee, which can direct the People's Counsel to participate in a given case. Neither the current County law nor Bill 14-99 incorporates a "public interest" standard. **The Committee added "public interest" protection to the People's Counsel's duties.**

c) defend County land use policies In Baltimore County this is the People's Counsel's primary function. (See Baltimore County materials on ©9-14.) Some observers say that, in practice, the Baltimore County People's Counsel almost invariably opposes new development; at the hearing on this bill attorney Lerch characterized the Baltimore County People's Counsel as having "unbridled discretion". Observers with different viewpoints might find the Counsel's activism essential and refreshing. In any case, as with the two previous options, standards are needed to channel the Counsel's discretion. Neither the current County law nor Bill 14-99 incorporates similar language. In Council staff's view, the role of *defending* County land use policies more properly falls to the Planning Board, Executive agencies, and the County Attorney. Mr. Lerch's testimony also recommends that the People's Counsel be required to defend the recommendations of adopted master plans and to support positions "consistent with Smart Growth Guidelines". Council staff disagrees; in our view, the law should not specify what substantive positions the People's Counsel must adopt. **The Committee did not insert this language.**

d) complete the record The current County law directs the People's Counsel to "promote a full and fair presentation of relevant issues ... to achieve balanced records on which sound land use decisions can be made." This is also a stated function of the Prince George's County People's Counsel, and probably an unstated function of the other two as well. **Bill 14-99 does not change this direction.**

e) advise citizens The technical assistance function is one of the People's Counsel's two primary functions under the current County law. **Bill 14-99 does not change this mandate.**

f) review special exceptions At the June 28 worksession, Committee Chair Berlage proposed, and the Committee agreed, that **the People's Counsel should be able to trigger a review of existing special exceptions by the Board of Appeals.** Under the language inserted on ©5, lines 65-68, the People's Counsel could require the Board to hold a show cause hearing on whether to modify or revoke a special exception that the Board previously granted, and the People's Counsel could require the Department of Permitting Services to investigate whether the holder of a special exception is fully complying with conditions attached to the special exception. At its July 26 worksession on Zoning Text Amendment 99004, the Committee agreed to amend relevant provisions of the zoning law to reflect the People's Counsel's role in this area.

2) Operational issues The Committee discussed several operational issues:

a) Length of term Bill 14-99 allows the Council to appoint a People's Counsel as a term merit system employee, but does not specify the length of the People's Counsel's term. While the law could require, for example, a 4-year term as the Inspector General has, the Committee agreed that **the term would be set in the resolution appointing the People's Counsel.**

b) Removal - number of votes needed County Attorney Division Chief Marc Hansen questioned whether the 6-vote requirement for removal of a People's Counsel that is inserted in Bill 14-99 (see ©2, lines 8-11), and by extension the current law's requirement for 6 votes to cancel a contract for the services of a People's Counsel, needs to be specified in the County Charter rather than in the Code. This is part of a larger legal issue which, in Council staff's view, can be resolved generically with further research and discussion.

Committee members asked how many votes are required to remove comparable County officials and other People's Counsels. The requirements are:

Hearing Examiner §1A-204(b)(4) not specified; probably 5 votes

Inspector General §2-64A(e) 6 votes

Ethics Commission §§19A-5(e) 5 votes; 6 votes if Executive objects

Baltimore County People's Counsel 6 of 9 Councilmembers, on recommendation of County Executive

Prince George's County People's Counsel 2/3 of Councilmembers

Harford County People's Counsel 5 of 7 Councilmembers on recommendation of County Executive, Council President, or majority of Citizens' Advisory Board

The Committee, Councilmember Silverman dissenting, retained the 6-vote requirement to remove a People's Counsel. Councilmember Silverman preferred to require only a majority of the Council to remove a People's Counsel.

c) Revolving door The current law prohibits the People's Counsel, while serving in that position, from representing any other client in any land use matter anywhere, or appearing before any court or agency in the County on any matter. However, the law does not restrict the People's Counsel after he or she leaves that position from taking any kind of case. Citizens have suggested that a People's Counsel should be prohibited from taking any land use case for a certain period. The County ethics law (§19A-13), which would apply to a former People's Counsel, prohibits a former employee from working on the same matter for a private party for 10 years after leaving County employment, and prohibits the former employee from taking employment with anyone the former employee regulated for 1 year after leaving County government. It is not clear how the latter clause would affect a People's Counsel, who does not "regulate" anyone. **The Committee eliminated some restrictions on the People's Counsel's other law practice but prohibited the People's Counsel from representing any party in any land use proceeding in the County for 1 year after serving as People's Counsel.**

d) Status as party Mr. Hansen suggested that the bill clarify that the People's Counsel is intended to function as a full party to a proceeding that he or she enters (without representing any other party) instead of vaguely "participating" in the proceeding. **The Committee agreed.**

CALL OF BILLS FOR FINAL READING**SUBJECT: Bill 14-99, Peoples' Counsel – Amendments**

The Council had before it the memorandum and attachments from Senior Legislative Attorney Faden, dated August 3, 1999, providing background information and issues for discussion on Bill 14-99.

Councilmember Berlage, Chair of the Planning, Housing and Economic Development (PHED) Committee, presented the report and recommendation of the Committee.

Councilmember Praisner questioned the Committee's use of the words "review" and "modify" as they relate to the recommendation to review existing special exceptions which is addressed on page 3 of Council Staff's memorandum. Referring to the language on page ©5, lines 65-68 of the bill, she expressed concern about whether it adequately expresses the Committee's recommendation that the People's Counsel can trigger a review of existing special exceptions by the Board of Appeals, and require the Board to hold a show cause hearing on whether to modify or revoke a special exception that the Board previously granted. Ms. Praisner expressed concern about addressing the People's Counsel's role in special exceptions prior to reviewing Zoning Text Amendment 99004, Special Exceptions. She said she is not opposed to the Committee's recommendation for the People's Counsel to request a review of special exceptions but believes it would be more appropriate to address the issue later in the fall when both the text amendment and the bill are before the Council. Ms. Praisner said that as one of the sponsors of the text amendment, she believes it was the intent to have a comprehensive review of special exceptions. Councilmember Berlage explained the Committee's rationale for recommending that the People's Counsel have the ability to request a review of existing special exceptions and require the Board to hold a hearing to determine whether the special exception should be modified or revoked. He said that the Committee has completed its recommendations on both the text amendment and the bill, but because of the complexities of the text amendment, it is not finalized for Council action today.

Councilmember Praisner expressed concern about the Committee's recommendation to delete the language on page ©5, lines 69-71 of the bill restricting the People's Counsel from participating in any proceeding before a board or agency of any municipality in the County because she believes it would broaden the legislation beyond its initial intent. Mr. Faden suggested that the bill be amended by retaining the language and deleting only the words [in any legislative proceeding, or]. Councilmember Berlage agreed with Mr. Faden's suggestion, and stated that it was the intent of the Committee. There was no objection to Mr. Faden's suggestion to amend the bill.

Referring to the language on page ©5, lines 79-81 of the bill that the People's Counsel may file and argue an appeal the same as any other party to the proceeding, Councilmember Praisner expressed concern about the intent and fiscal implications. She said that she believes the ability to file and argue an appeal goes beyond providing assistance to the public, which was the original intent of the legislation. She expressed concern about the increased workload that could result and the unrealistic expectations that could be created in the community. Ms. Praisner expressed concern that the County has not had any previous experience in this area which makes it difficult to determine in advance the extent of the public's interest. She suggested that a sunset provision be added to the bill that would allow the Council to review the legislation after a period of time to determine if it is operating as intended.

President Leggett said that he shares some of Councilmember Praisner's concerns and agrees with her suggestion to add a sunset provision in the bill.

Councilmember Dacek said that she agrees with the comments of Councilmember Praisner, and is particularly concerned about providing the People's Counsel the authority to trigger a review of existing special exceptions. She requested and received information from Mr. Faden on the procedures that citizens can pursue if they believe the holder of a special exception is not complying with the conditions of the special exception or if conditions are inadequate under current law. Councilmember Dacek said that she supports adding a sunset provision to the bill, but is not prepared to vote on the bill today because she believes the bill and text amendment should be addressed by the Council at the same time.

Councilmember Silverman provided clarification of the Committee's recommendation to add language to the bill giving authority to the People's Counsel to file and argue an appeal. He said that the Committee believed that the budgetary restrictions would preclude the People's Counsel from addressing every case through an appeals process. Mr. Silverman spoke in support of the Committee's recommendation for the People's Counsel to have the authority to trigger a review of existing special exceptions by the Board of Appeals and commented on the Committee's attempt to find a balanced approach to the issue. He said that there is requirement for a supermajority vote when the Board of Appeals modifies a special exception it previously granted, and said that he supports adding a sunset provision to the bill.

Councilmember Krahnke said that she shares the concerns expressed by Councilmember Praisner, and moved, duly seconded, a substitute motion to amend the bill by deleting the language on page ©5, lines 79-81 of the bill that gives the People's Counsel the authority to file and argue an appeal the same as any other party to the proceeding.

Councilmember Berlage spoke in opposition to Councilmember Krahnke's motion, and expressed concern that the role of the People's Counsel would be reduced to providing assistance only if the motion is adopted.

ACTION: Defeated Councilmember Krahne's substitute motion to amend the bill by deleting language in the bill that gives the People's Counsel the authority to file and argue an appeal the same as any other party to the proceeding:

YEAS: Dacek, Krahne, Praisner

NAYS: Andrews, Berlage, Silverman, Subin, Leggett

ABSENT: Ewing.

President Leggett moved, duly seconded, to amend the bill by adding a sunset provision for July 1, 2002. Councilmember Praisner amended Mr. Leggett's motion by replacing the date [July 1, 2002] with July 1, 2003.

ACTION: Amended Bill 14-99 by adding a sunset provision of July 1, 2003.

YEAS: Andrews, Silverman, Praisner, Krahne, Subin, Leggett

NAYS: Dacek, Berlage

ABSENT: Ewing.

Councilmember Berlage led the Council through the Committee's recommendations on the remaining issues in the bill.

ACTION: Defeated Councilmember Praisner's motion to postpone action on the bill until ZTA 99004 and the Bill 14-99 can be addressed at the same time:

YEAS: Dacek, Praisner, Krahne

NAYS: Andrews, Berlage, Silverman, Subin, Leggett

ABSENT: Ewing.

Adopted the following amendments as reflected in the bill:

AN ACT to:

- (1) allow the Council to employ a People's Counsel as a term merit system employee, and to remove the People's Counsel under certain circumstances;
- (2) direct the People's Counsel to participate in certain legal proceedings as necessary to protect the public interest, and allow the People's Counsel to take certain actions regarding special exceptions;
- (3) amend the restrictions on other legal work the People's Counsel may perform during and after service as People's Counsel;
- (4) clarify the status of the People's Counsel as a party in certain proceedings;
- (5) remove a restriction on the People's Counsel's participation in appeals;
- (6) terminate the Office of the People's Counsel on a certain date; and
- [[(3)] (7) generally amend provisions of law regarding the People's Counsel.

By amending

Montgomery County Code
Chapter 1A, Establishing the Structure of County Government
Section 1A-204

Chapter 2, Administration
Section 2-150

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 1A-204 and 2-150 are amended as follows:

1A-204. Supervision of offices and appointment of heads.

(b) *Legislative Branch.*

(3) *Office of the People's Counsel.*

(A) The County Council may employ, as a term merit system employee, a People's Counsel. The Council may, by a resolution adopted by an affirmative vote of 6 Councilmembers, remove a People's Counsel during the Counsel's term for good cause. [The] Alternatively, the County Council may retain as an independent contractor one or more attorneys, along with support staff, consultants, and expert witnesses, to provide the services of the People's Counsel under Section 2-150. The contract may be

canceled at any time by a resolution [approved] adopted by [two-thirds of the] an affirmative vote of 6 Councilmembers [in office].

(B) Any attorney employed or retained as the People's Counsel must:

- (i) be a member of the bar of the Court of Appeals of Maryland;
- (ii) have at least 5 years experience in the practice or teaching of law; and
- (iii) have substantial experience with land use legal issues and procedures.

(C) Any attorney employed or retained [under the contract] as the People's Counsel must not~~[[:]~~

~~[[i)]]~~ represent any client, other than as People's Counsel, in any matter involving land use in ~~[[any jurisdiction; and]]~~ Montgomery or Prince George's County.

~~[[ii)]]~~ appear before any court in Montgomery County, or before any County agency or any bi-county agency with jurisdiction in the County, other than as People's Counsel.]]

(D) Any attorney employed or retained as the People's Counsel must not, within one year after the attorney's service as People's Counsel ends, represent any party in any proceeding involving land use in the County.

*

*

*

ARTICLE XII. PEOPLE'S COUNSEL.**2-150. People's Counsel - Functions.**

- (a) *Purpose.* 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, and increase public understanding of and confidence in, the County land use process.
- (b) *Authority; duties.* To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Counsel may participate in a proceeding before:
- (1) the Board of Appeals if the proceeding involves a variance or a special exception;
 - (2) the County Council (solely for oral argument) or the Hearing Examiner for the County Council if the matter involves a local map amendment, a development or schematic development plan approved under the zoning process, or a special exception; and
 - (3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

The People's Counsel may also file a complaint under Section 59-G-1.3(b) alleging failure to comply with a special exception, or may seek a modification of a special exception under Section 59-G-1.3(c) or a revocation of a special exception under Section 59-G-1.3(e).

- (c) Restrictions. The People's Counsel must not [appear or intervene] participate [[in any legislative proceeding, or]] in any proceeding before a board or agency of any municipality in the County.
- (d) Participation. The People's Counsel is [[not]] a party in a proceeding under subsection (b) once the People's Counsel files a notice of intention to participate. [[To achieve a full and fair presentation of relevant issues,]] After the notice is filed, the People's Counsel 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 the evidence in the proceeding warrant. The People's Counsel [must not be a party to] may file and argue an appeal [[as if it were a]] the same as any other party to the proceeding.
- (e) Independent status. The People's Counsel must not represent the County, any government agency, or any private party in any proceeding. The People's Counsel is not subject to the authority of the County Attorney. [Section 411 of the Charter does not apply to participation by the People's Counsel in any proceeding under subsection (b).]
- (f) Notice. If the People's Counsel intends to participate in a proceeding, the People's Counsel must give all parties a notice of intention to participate.

- (g) Discretion. In the People's Counsel's discretion, the People's Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate under subsection (b). The People's Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.
- (h) Technical assistance. Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Counsel may provide technical assistance to any person about a proceeding [under] listed in subsection (b). When providing technical assistance under this subsection, the People's Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient.
- (i) Coordination. The People's Counsel must coordinate the services of its office with those offered by [the citizens] land use information [officer] staff in the Council, Board of Appeals, and Planning Board, to avoid inconsistency and duplication and to maximize the assistance offered to citizens.
- (j) Annual report. The People's Counsel must annually report to the Council on the activities of the office.

Sec. 2. Sunset. The position of People's Counsel, and the Office of the People's Counsel, are terminated on July 1, 2003.

ACTION: Enacted Bill 14-99, as amended
by recommendation of the PHED Committee, as amended, by a roll call vote:

YEAS: Andrews, Berlage, Silverman, Subin, Leggett

ABSTAIN: Dacek, Praisner, Krahne

ABSENT: Ewing.

Bill No. 14-99
 Concerning: People's Counsel -
 Amendments
 Revised: 8-3-99 Draft No. 6
 Introduced: May 19, 1999
 Enacted: August 3, 1999
 Executive: August 12, 1999
 Effective: November 11, 1999
 Sunset Date: ~~[[None]]~~ July 1, 2003
 Ch. 19, Laws of Mont. Co. 1999

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berlage, Andrews, and Silverman

AN ACT to:

- (1) allow the Council to employ a People's Counsel as a term merit system employee, and to remove the People's Counsel under certain circumstances;
- (2) direct the People's Counsel to participate in certain legal proceedings as necessary to protect the public interest, and allow the People's Counsel to take certain actions regarding special exceptions;
- (3) amend the restrictions on other legal work the People's Counsel may perform during and after service as People's Counsel;
- (4) clarify the status of the People's Counsel as a party in certain proceedings;
- (5) remove a restriction on the People's Counsel's participation in appeals;
- (6) terminate the Office of the People's Counsel on a certain date; and
- ~~[[3]]~~ (7) generally amend provisions of law regarding the People's Counsel.

By amending

Montgomery County Code
 Chapter 1A, Establishing the Structure of County Government
 Section 1A-204

Chapter 2, Administration
 Section 2-150

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Sections 1A-204 and 2-150 are amended as follows:

2 **1A-204. Supervision of offices and appointment of heads.**

3 * * *

4 (b) *Legislative Branch.*

5 * * *

6 (3) *Office of the People's Counsel.*

7 (A) The County Council may employ, as a term merit system
8 employee, a People's Counsel. The Council may, by a
9 resolution adopted by an affirmative vote of 6
10 Councilmembers, remove a People's Counsel during the
11 Counsel's term for good cause. [The] Alternatively, the
12 County Council may retain as an independent contractor
13 one or more attorneys, along with support staff,

14 consultants, and expert witnesses, to provide the services

15 of the People's Counsel under Section 2-150. The

16 contract may be canceled at any time by a resolution

17 [approved] adopted by [two-thirds of the] an affirmative

18 vote of 6 Councilmembers [in office].

19 (B) Any attorney employed or retained as the People's

20 Counsel must:

21 (i) be a member of the bar of the Court of Appeals of

Maryland;

(ii) have at least 5 years experience in the practice or teaching of law; and

(iii) have substantial experience with land use legal issues and procedures.

(C) Any attorney employed or retained [under the contract] as the People's Counsel must not[[:]]
[[(i)]] represent any client, other than as People's Counsel, in any matter involving land use in [[any jurisdiction; and]] Montgomery or Prince George's County.

[[(ii)]] appear before any court in Montgomery County, or before any County agency or any bi-county agency with jurisdiction in the County, other than as People's Counsel.]]

(D) Any attorney employed or retained as the People's Counsel must not, within one year after the attorney's service as People's Counsel ends, represent any party in any proceeding involving land use in the County.

* * *

42 **ARTICLE XII. PEOPLE'S COUNSEL.**

43 **2-150. People's Counsel - Functions.**

- 44 (a) *Purpose.* Informed public actions on land use matters require a full
45 exploration of often complex factual and legal issues. An independent
46 People's Counsel can protect the public interest and promote a full and
47 fair presentation of relevant issues in administrative proceedings in
48 order to achieve balanced records upon which sound land use
49 decisions can be made. In addition, a People's Counsel who provides
50 technical assistance to citizens and citizen organizations will
51 encourage effective participation in, and increase public
52 understanding of and confidence in, the County land use process.
- 53 (b) *Authority; duties.* To protect the public interest and achieve a full and
54 fair presentation of relevant issues, the People's Counsel may
55 participate in a proceeding before:
- 56 (1) the Board of Appeals if the proceeding involves a variance or a
57 special exception;
- 58 (2) the County Council (solely for oral argument) or the Hearing
59 Examiner for the County Council if the matter involves a local
60 map amendment, a development or schematic development plan
61 approved under the zoning process, or a special exception; and

(3) the Planning Board if the proceeding involves action on an optional method development, a subdivision plan including a subdivision plan for a cluster development, or a site plan.

The People's Counsel may also file a complaint under Section 59-G-1.3(b) alleging failure to comply with a special exception, or may seek a modification of a special exception under Section 59-G-1.3(c) or a revocation of a special exception under Section 59-G-1.3(e).

(c) Restrictions. The People's Counsel must not [appear or intervene] participate [[in any legislative proceeding, or]] in any proceeding before a board or agency of any municipality in the County.

(d) Participation. The People's Counsel is [[not]] a party in a proceeding under subsection (b) once the People's Counsel files a notice of intention to participate. [[To achieve a full and fair presentation of relevant issues,]] After the notice is filed, the People's Counsel 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 the evidence in the proceeding warrant. The People's Counsel [must not be a party to] may file and argue an appeal [[as if it were a]] the same as any other party to the proceeding.

- 82 (e) Independent status. The People's Counsel must not represent the
83 County, any government agency, or any private party in any
84 proceeding. The People's Counsel is not subject to the authority of the
85 County Attorney. [Section 411 of the Charter does not apply to
86 participation by the People's Counsel in any proceeding under
87 subsection (b).]
- 88 (f) Notice. If the People's Counsel intends to participate in a proceeding,
89 the People's Counsel must give all parties a notice of intention to
90 participate.
- 91 (g) Discretion. In the People's Counsel's discretion, the People's Counsel
92 may withdraw from, or decline to participate in, any proceeding in
93 which the Counsel may participate under subsection (b). The People's
94 Counsel is not liable to any person for participating in, or declining to
95 participate in, any proceeding.
- 96 (h) Technical assistance. Without becoming a party to any judicial or
97 administrative proceeding, and subject to available time and
98 resources, the People's Counsel may provide technical assistance to
99 any person about a proceeding [under] listed in subsection (b). When
100 providing technical assistance under this subsection, the People's
101 Counsel must inform the recipient that the People's Counsel is not

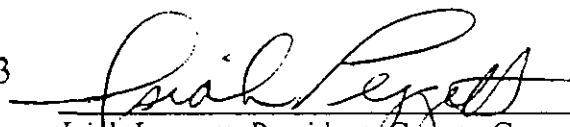
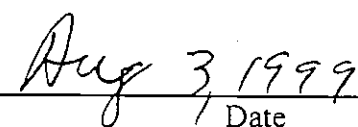
102 acting and cannot act as a personal attorney for the recipient.

103 (i) Coordination. The People's Counsel must coordinate the services of
104 its office with those offered by [the citizens] land use information
105 [officer] staff in the Council, Board of Appeals, and Planning Board,
106 to avoid inconsistency and duplication and to maximize the assistance
107 offered to citizens.


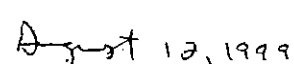
108 (j) Annual report. The People's Counsel must annually report to the
109 Council on the activities of the office.

110 Sec. 2. Sunset. The position of People's Counsel, and the Office of the
111 People's Counsel, are terminated on July 1, 2003.

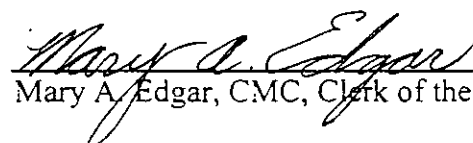
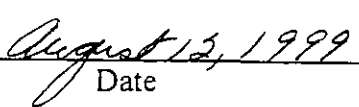
112 *Approved:*

113  
Isiah Leggett, President, County Council Date

114 *Approved:*

115  
Douglas M. Duncan, County Executive Date

116 *This is a correct copy of Council action.*

117  
Mary A. Edgar, CMC, Clerk of the Council Date

Ordinance No: 14-11
Zoning Text Amendment No: 99004
Concerning: Special Exceptions
Draft No. & Date: 3 – 11/16/99
Introduced: April 6, 1999
Public Hearing: June 15, 1999; 7:30 PM
Adopted: November 16, 1999
Effective: December 6, 1999

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Krahnke and Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- establishing a definition for the term “Special Exception” and clarifying the general standard for grant of a special exception;
- establishing that a special exception has inherent and non-inherent adverse effects which must be considered by the body that decides the special exception;
- establishing a special exception standard based on the inherent and non-inherent adverse effects at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone;
- establishing that the Board of Appeals must be [[guided]] consistent in its special exception decisions [[by]] with the master plan;
- authorizing the People’s Counsel to take certain actions regarding compliance with the grant of a special exception; and
- [[authorizing the Board of Appeals to review a special exception upon a transfer of land ownership, and periodically if a review period is established as a condition of the special exception grant; and]]
- making clarifying and conforming changes [[throughout]] to the provisions generally governing special exceptions.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

ARTICLE 59-A	“IN GENERAL”
DIVISION A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1	“Definitions”
ARTICLE 59-G	“SPECIAL EXCEPTIONS, VARIANCES, AND NONCONFORMING USES”

DIVISION 59-G-1	"SPECIAL EXCEPTIONS—AUTHORITY AND PROCEDURE"
Section 59-G-1.1.1	"Standard for evaluation"
Section 59-G-1.21	"General conditions"
Section 59-G-1.22	"Additional requirements"
Section 59-G-1.3	"Compliance with special exception grant"

*EXPLANATION: **Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment 99004 was introduced on April 6, 1999 to address several priority concerns raised by the Montgomery County Civic Federation in their report on the special exception process.

Zoning Text Amendment 99004 as introduced proposes to establish a standard for evaluating special exceptions that would allow the Board of Appeals to consider both the inherent and non-inherent adverse effects of a special exception on nearby properties at the subject site. Under the proposed standard, the Board of Appeals could deny a special exception based on the inherent and non-inherent adverse effects at the subject site, regardless of the adverse effects the use might have if established at any other site within the zone. To address the County Attorney ruling that a special exception runs with the land and not the person, the amendment would authorize the Board of Appeals to review a special exception on a transfer of land ownership and to establish new conditions, if the Board determines new conditions are needed to control adverse effects. The amendment would establish that the Board of Appeals must be guided in its decisions by any discussions or recommendations provided in a master plan regarding the appropriateness of a special exception at a particular location. The amendment also defines the term "special exception" and makes clarifying and conforming changes throughout.

The Montgomery County Planning Board in its report to the Council supported the approach proposed by Zoning Text Amendment No 99004 for addressing the priority concerns raised in the Montgomery County Civic Federation report and recommended approval with revisions to clarify the meaning of the terms "inherent" and "non-inherent".

The County Council held a public hearing on June 15, 1999, to receive testimony concerning the proposed Zoning Text Amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation. The Committee carefully reviewed the text amendment, the public hearing record, and related Maryland Court cases at worksessions held on June 28, July 26 and September 7, 1999.

A fundamental question raised by the Committee, was whether the Council has legislative authority to change caselaw on special exceptions, and if so, as a policy matter, how should the law governing special exceptions be changed? The County Attorney advised that the broad power given the District Council is believed to be sufficient authority to regulate the basis upon which a special exception can be granted. In discussing the options for varying the standard for grant of a special exception, a majority of the Committee agreed that a special exception should be evaluated based on its "adverse effects" on nearby properties and the neighborhood, regardless of any adverse effects the use might have if established elsewhere in the zone.

The effect of revising the standard for evaluating a special exception as contained in ZTA 99004, and as recommended by a majority of the Committee, is to replace the court method of measuring adverse effects against the same use at another location, with one that measures adverse effects only at the proposed location. The Committee was advised that the use of

"inherent and non-inherent adverse impacts" generally tracks the Board of Appeal's current evaluation practice and should not present a major problem for the Board.

Key court cases have made it clear to the Committee that a County Council, in permitting a special exception use, is presumed to know the inherent effects of the particular special exception, and that unless the adverse effects at the proposed location are greater than at any other location with the same zone, inherent effects are not a basis for denying a special exception. The Committee believes that the effect of the court cases has been to shift the burden of proof in a special exception proceeding from the applicant to the community, and that the Council's original understanding of a special exception needs to be restored. The Committee supports approval of Zoning Text Amendment to clarify: (1) that the legislative intent of the Council is for a special exception to be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effects if established elsewhere in the zone; (2) that inherent effects may exist irrespective of the physical size or scale of operations of a special exception; and (3) that adverse effects that arise from the physical size or intensity of a special exception, are not "inherent" and, may alone be a basis for denial of a special exception.

As a result of its discussions and findings, the Committee recommended that Zoning Text Amendment No. 99004 be approved with revisions to: (1) harmonize the definition of "special exception" essentially with that of Article 66B of the State Code, (2) clarify the terms "inherent" and "non-inherent", (3) require the grant of a special exception to include a specific finding of master plan consistency, and (4) clarify that a review of a special exception on a transfer of ownership may take place only upon a showing of substantial evidence that the terms and conditions of the original grant are ineffective for preventing adverse effects.

The District Council reviewed Zoning Text Amendment No. 99004 at a worksession held on November 16, 1999, and agreed with the conclusions and recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 99004 will be approved as revised.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Article 59-A is amended as follows:**

2 **ARTICLE 59-A. IN GENERAL.**

3 * * *

4 **DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

5 **59-A-2.1. Definitions.**

6 * * *

7 **Special Exception.** [[A specific use that would not be appropriate generally or without
8 restriction that may be granted based upon a finding that the use meets certain conditions
9 and standards governing special exceptions as established in the Zoning Ordinance.]] The
10 grant of a specific use that would not be appropriate generally or without restriction, which
11 must be based on a finding that certain conditions governing special exceptions as detailed
12 in Article 59-G exist, and that the use is consistent with the applicable master plan and is
13 compatible with the existing neighborhood.

14 * * *

15 **Sec. 2. Article 59-G is amended as follows:**

16 **ARTICLE 59-G. SPECIAL EXCEPTIONS, VARIANCES, AND**
17 **NONCONFORMING USES.**

18 **DIVISION 59-G-1. SPECIAL EXCEPTIONS—AUTHORITY AND PROCEDURE.**

19 * * *

20 **[[Sec. 59-G-1.1. Authority to hear and decide petitions.]]**

21 **[[59-G-1.1.1. Standard for evaluation.**

22 A special exception may not be established absent the findings required by this Article. In
23 making these findings, the Board of Appeals must take into account the inherent and non-
24 inherent adverse effects of the special exception on nearby properties and the general
25 neighborhood at the particular location proposed, irrespective of any adverse effects the
26 use might have if established elsewhere in the zone. Inherent adverse effects are the
27 physical and operational characteristics normally associated with the particular special

exception and are not alone a sufficient basis for denial of a special exception. Non-inherent adverse effects are the physical and operational characteristics beyond those normally associated with the particular special exception and include any adverse effects particular to the location. Non-inherent adverse effects alone or in conjunction with inherent adverse effects, are a sufficient basis for denial of a special exception. The fact that the specific standards for the grant of a special exception are met, is not a presumption that the special exception is compatible with nearby properties and the surrounding neighborhood at the particular location.]]

* * *

59-G-1.2. Conditions for granting.

59-G1.2.1. Standard for evaluation.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by [[the]] unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

59-G-1.21. General conditions.

(a) A special exception may be granted when the [b] Board, the [h] Hearing [e] Examiner, or the [d] District [c] Council, as the case may be, finds from preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

(2) Complies with the standards and requirements set forth for the use in [d] Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception[[,]] does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

(3) Will be consistent with the general plan for the physical development of the [d] District, including any master plan [or portion thereof] adopted by the commission. [[The Board, Hearing Examiner, or District Council, as the case may be,]] Any decision to grant or deny special exception must be [[guided in its decisions by]] consistent with any [[discussion or]] recommendation in [[a]] an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. [[A special exception granted in accordance with a master plan recommendation does not alter the character of an area.]] If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone [; and].

(6) [w] Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(7) [6] Will not, when evaluated in conjunction with existing and approved special exceptions in [[the]] any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter [its] the predominantly residential nature of the area. Special exception uses [[in accord]] that are consistent with the recommendations of a master or sector plan [[are deemed]] do not [[to]] alter the nature of an area.

(8) [7] Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(9) [8] Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, [in accordance with chapter 50 of this Code, title “subdivision of Land,”] the adequacy of public facilities [[will]] must be determined by the [p] Planning [b] Board at the time of subdivision [approval] review. In that case, [the board of appeals must include such planning board approval as a condition of the grant of the special exception] subdivision approval must be included as a condition of the special exception.

[When making this finding for a special exception use that does not require planning board approval of a preliminary plan of subdivision, the board of appeals must take into account the Planning Board advice as stated in its report and recommendation in accordance with section 59-A-4.48(b)(2).]

(ii) With regard to findings relating to public roads, the [b] Board, the [h] Hearing [e] Examiner, or the [d] District [c] Council, as the case may be, [may] must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

(b) Nothing [[herein is construed as relieving the]] in this Article relieves an applicant from [[the necessity of]] complying with all requirements [[for obtaining]] to obtain a building permit or any other authorization or approval required by law, nor [[is]] does the [b] Board's finding of facts regarding public facilities [[binding on]] bind any other governmental agency or department responsible for making a determination relevant to the authorization, approval or licensing of the project.

[(b)] (c)[The applicant for a special exception has the burden of proof, which includes the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the board, the hearing examiner or the district council] The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

a) The [b] Board, the [h] Hearing [e] Examiner, or the [d] District [c] Council, as the case may be, [[is [hereby] empowered to]] may add to the specific provisions [enumerated] contained in this [section] Article, any others [[that it may deem]] necessary to protect [adjacent] nearby properties[,] and the general neighborhood[, and the residents, workers and visitors herein].

b) Pursuant to guidance by the [p] Planning [b] Board, the [b] Board, the [h] Hearing [e] Examiner, or the [d] District [c] Council, as the case may be, may require a special exception to comply [compliance] with the provisions of [d] Division 59-D-3, [[title]] "Site Plan," if:

(1) The property is in a zone requiring site plan approval, [in accordance with article 59-C, title "Zoning Districts - Regulations," and article 59-D, title "Zoning Districts – Approval Procedures;"] or

(2) The property is not in a zone requiring site plan approval, but the [p] Planning [b] Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

* * *

59-G-1.3. Compliance with special exceptions grant.

(a) Inspection of operations.

* * *

(b) **Complaints.** Complaints alleging failure to comply with the terms [[and/]] or conditions of a special exception grant may be filed with the [d] Department or with the Board by any person, [[the Peoples Counsel,]] or government agency. [[; moreover, the] The [d] Department may also initiate complaints [[upon]] on its own initiative.

* * *

(c) **Modification.** The Board may amend or modify the terms or conditions of a special exception [[upon]] on the request of the special exception holder, [[the Peoples Counsel,]] or the recommendation of the [d] Department, or after a show cause hearing held under subsection (e).

* * *

(d) Abandonment.

* * *

(e) **Show cause hearing for revocation of a special exception.** If, under this [[a]] Article, the Board receives a written notice from the Department [[or the Peoples Counsel]] that the terms or conditions of a special exception grant or that the terms, conditions or restrictions attached to the grant of any permit issued under [[the provisions of]] this [[a]]

Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may [[issue an]] order [[to]] the special exception holder and [[to]] the property owner to appear before the Board at a date, time, and place specified to show cause why the special exception should not be revoked.

(1) The notice of a show cause hearing [shall] must be issued to the special exception holder, the property owner, the [d] Department, [[the Peoples Counsel,]] and to all parties who have submitted written complaints concerning the [subject] special exception.

* * *

(f) Hearing Examiner and District Council. For those special exceptions which are.....

* * *

(g) Review on Transfer of Land Ownership. [[A]] The terms and conditions of a special exception may be reviewed by the Board, Hearing Examiner, or District Council, as the case may be, for good cause shown, upon a transfer of land ownership [[and periodically if a review period is established as a condition of the special exception grant,]] to determine the effectiveness of the conditions placed on the use and for new conditions to be established, if determined necessary. A review on a transfer of land ownership may take place at the request of the Department of Permitting Services, any aggrieved person, or at the initiative of the Board of Appeals, only upon a showing of substantial evidence that the terms and conditions of the original grant are ineffective for preventing adverse effects. [[A special exception must be reviewed if requested by any interested party or may take place at the initiative of the Board.]] Parties entitled to notice must be notified of the review and a public hearing held on reasonable notice. If, after the public hearing, it is determined that the terms and conditions of the special grant are not effective or the special exception is or will be operated in a manner previously unanticipated, new conditions may be established to address the [[inherent and

1 non-inherent]] adverse effects on nearby properties and the general neighborhood.
2 It is the responsibility of the special exception holder to notify the Board of
3 Appeals of any change in land ownership or change in circumstances or conditions
4 affecting the special exception.

5
6 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the date of
7 Council adoption.

8
9 This is a correct copy of Council action.


10
11
12
13 

14 Elda Dodson

15 Acting Clerk of the Council

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 25-02, People's Counsel - Sunset Repeal

Planning, Housing, and Economic Development Committee recommendation: enact.

Council President Silverman introduced Bill 25-02, People's Counsel - Sunset Repeal, on July 23. The bill would make permanent the position and office of the People's Counsel. Under the 1999 amendments to the law they are scheduled to expire on July 1, 2003.

A public hearing was held on September 17, at which all speakers, including representatives of the Planning Board, Board of Appeals, and Office of Zoning and Administrative Hearings, enthusiastically endorsed the bill. (See Planning Board report, ©23-25.) The Council also received a number of letters from civic associations and individuals who have participated in land use issues supporting the sunset repeal.

At its worksession on September 19, the Planning, Housing, and Economic Development Committee unanimously recommended enactment of this bill. While the advertisement for this bill allows any amendment to the law that authorizes the People's Counsel (see ©26-28), the Committee did not recommend any.

This packet contains:

	<u>Circle #</u>
Bill 25-02	1
Legislative Request Report	3
Memo from People's Counsel	4
1 st Annual Report of the Office of People's Counsel	6
2 nd Annual Report of the Office of People's Counsel	17
Planning Board report	23
County Code §2-150	26

Bill No. 25-02
Concerning: People's Counsel - Sunset
Revised: 7-18-02 Draft No. 1
Introduced: July 23, 2002
Expires: January 23, 2004
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Silverman

AN ACT to:

- (1) repeal the sunset date for the position and office of the People's Counsel; and
- (2) generally amend the law governing the People's Counsel.

By amending

Laws of Montgomery County 1999
Chapter 19

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 2 of Chapter 19 of the Laws of Montgomery County 1999

is repealed as follows:

[Sec. 2. Sunset. The position of People's Counsel, and the Office of the People's Counsel, are terminated on July 1, 2003.]

Approved:

Steven A. Silverman, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

The Charter of Baltimore County, Maryland

Article V: The Administrative Services Division 2. Office of the Administrative Services Subdivision 6: Office of Planning and Zoning

Sec. 524.1. People's counsel.

(a) The county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matter as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

(1) *Qualifications:* The people's counsel shall be a resident of Baltimore County, a member in good standing of the Maryland Bar, and actively engaged in the general practice of law for at least five (5) years prior to his appointment.

(2) *Removal:* The people's counsel may be removed at any time on the recommendation of the county executive and with the affirmative vote of not less than a majority plus one of the total number of county council members established by this Charter. (Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(3) *Powers and duties:* The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County

zoning maps or master plan or as authorized by resolution by the county council. (Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

B. He shall make such investigations as he may deem necessary to the intelligent performance of his duties imposed by subparagraph A. of this Section.

C. He shall have full access to the records of all county agencies, shall be entitled to call upon the assistance of county employees, and shall have the benefit of all other facilities or information of the county in carrying out his duties.

(4) *Employment of experts:* The people's counsel may hire from time to time, as needed, in connection with specific proceedings before the above named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that county personnel cannot be utilized, and to expend such sums for compensation and/or expenses of these experts as shall be provided in the annual budget.

(5) *Salary and expenses:* He shall receive an annual salary and such sums as may be needed to carry out the powers and duties set forth herein as provided in the annual budget. (Bill No. 104, 1960; Bill No. 61, 1974, § 1; Bill No. 90, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 131, 1990, § 1; approved by voters Nov. 6, 1990, effective Dec. 7, 1990)

Annotation—The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).

Subdivision 7. [Reserved.] *

** Editor's note: Subdivision 7, consisting of sections 524.2 and 524.3, was repealed by Bill No. 131, 1990, § 2, which was approved by the voters on Nov. 6, 1990, effective Nov. 6, 1990.*

The Charter of Harford County, Maryland

Article II Legislative Branch

Section 224. Office of Council Attorney. [Added by Bill No. 76-35]

- (a) The Office of Council Attorney shall be administered by the Council Attorney. At the time of his appointment, he/she shall have been a member in good standing of the Bar of the Maryland Court of Appeals for at least five (5) years. Prior to assuming the duties of his/her office, he/she shall be domiciled in the County.
- (b) The Council Attorney shall be the Chief Legal Advisor to the County Council in all matters and shall have the authority and duty to appear in legal and administrative proceedings on behalf of Harford County, Maryland, in all matters as he/she may deem advisable and necessary relating to and supporting the Council's actions, functions, powers and duties. The Council Attorney shall be appointed by the County Council and shall be in the exempt service. [Amended by Bill No. 78-54]
- (c) The Council Attorney shall have the authority to hire such assistant Council attorneys and other employees as may be necessary to perform his/her duties. The officers and employees of the Executive Branch shall provide such assistance and facilities to the Council Attorney as may be deemed necessary to the performance of his/her duties. The Council Attorney shall render such assistance to the officers and employees of the Executive Branch as may be necessary to assist them in the performance of their duties.
- (d) The Council Attorney may, with the approval of the County Council, employ special legal counsel to work problems of an extraordinary nature when the work to be done is of such a character or magnitude as to require services in addition to those regularly provided by the Department of Law or Council Attorney's Office.
- (e) Neither the Council Attorney nor any assistant in the Council Attorney's Office may, at any time, while holding such office, practice as an attorney before the Council or any agency of the County Government other than to represent the County's interest.
- (f) Subject to the approval of a majority of the County Council, a People's Counsel shall be employed by the Council Attorney to represent the interests of the public in zoning matters. The duties, powers and functions of the People's Counsel shall be set forth by legislative act. The Council may provide for a People's Council Citizens' Advisory Board to be appointed by the County Council.

Code of Harford County, Maryland

§ 4-26. People's Counsel. Editor's Note: See also Sec. 224 of the Harford County Charter.

- A. With the approval of a majority of the Council, a People's Counsel, and such assistants as may be necessary, shall be employed by the Council Attorney to represent the interests of the public in all matters and proceedings preliminary to, arising out of or affecting the zoning classification or reclassification of land in the county. Persons employed as People's Counsel shall serve as People's Counsel until such time as they resign or have been removed pursuant to the provisions stated herein. Except as provided for below, the People's Counsel shall, at all times, be free to make an independent determination as to the matters and proceedings in which he shall participate and the conduct of the affairs of his position in performing his duties and functions.
- B. The People's Counsel shall have been a member in good standing of the Maryland Bar for a period of at least five (5) years prior to his appointment. He may not practice law before any county agency except to perform his duties and functions as People's Counsel.
- C. The People's Counsel may be removed for cause by the Council on the recommendation of the County Executive, Council President or by a majority vote of the entire membership of the People's Counsel Citizens' Advisory Board, but only upon the affirmative vote of not less than five (5) members of the Council.
- D. In performing his functions, the People's Counsel shall have the following powers and duties:
 - (1) He shall have the authority to appear before any governmental agency on behalf of the citizens of the county in all matters and proceedings related to planning, zoning and other land use and development matters and proceedings, and he shall have standing as an aggrieved party.
 - (2) He shall have the authority to appear as a party in interest before any state or federal court on behalf of the citizens of the county in all matters and proceedings related to planning, zoning and other land use and development matters and proceedings, and he shall have standing as an aggrieved party.
 - (3) He shall have standing to appear as an aggrieved party before the Zoning Hearing Examiners, Board of Appeals and County Council on behalf of the citizens of the county in any matter or proceeding now pending or hereafter instituted, before and under the jurisdiction of those officers or bodies, in which he may deem the public interest to be affected.
 - (4) He shall have the authority to conduct such investigations as he may deem appropriate to enable him to intelligently perform his other duties and functions.
 - (5) He shall have full access to the records of all county agencies, be entitled to call upon the assistance of all county agencies and shall be accorded the assistance and benefits of all county agencies who receive or disburse county funds and their facilities and employees in carrying out his powers, duties and functions.
 - (6) The People's Counsel may hire from time to time, as necessary for specific proceedings, persons to testify as expert witnesses, to the extent that employees of county agencies

who receive or disburse county funds cannot be utilized, and may expend such sums for compensation for these persons as are provided by appropriation ordinances.

- (7) Under no circumstances can the People's Counsel be considered by private parties as representing or protecting the interests of private parties insofar as those interests are different from the general public's interests. However, this does not preclude the People's Counsel from advancing arguments of private parties or having private parties listed as parties to a case or proceeding if it furthers the interests of the public in general. A determination of a court or administrative agency to the contrary shall not be a ground for denying standing of, or relief requested by, the People's Counsel.

§ 4-27. People's Counsel Citizens' Advisory Board. Editor's Note: See also Sec. 224 of the Harford County Charter.

A. Establishment; organization; terms; removal; vacancies; representation.

- (1) There is hereby established a People's Counsel Citizens' Advisory Board consisting of seven (7) members to be appointed by the County Council.
- (2) A Chairman shall be designated by the members of the Board.
- (3) The members of the Board shall serve terms coterminous with that of the Council that appoints them.
- (4) A member of the Board may be removed only for cause by a majority vote of the Council.
- (5) A vacancy on the Board shall be filled for the unexpired term in the manner of the original appointment.
- (6) Members of the Board shall be broadly representative of all segments of the county's population.

B. The Board may hold such meetings as necessary to perform its functions and shall meet as requested by the People's Counsel. The Board shall adopt such rules and regulations as necessary in the manner provided by Section 807 of the Charter.

C. The Board may provide guidance to and make recommendations to the People's Counsel regarding any matter referred to it by the People's Counsel, County Council or as requested by any citizen or group of citizens of the county. The Board need only record and file with the Secretary of the Council those recommendations they make to the People's Counsel.

D. When requested, the Board may, by a majority vote of the entire membership, direct the People's Counsel to enter his appearance in a particular matter, case or proceeding to protect the interest of the public in general.

**//Howard County, Maryland/CODE County of HOWARD, MARYLAND Codified through
Bill No. 12-2008, enacted March 3, 2008. (Supplement No. 64, Update 1)/TITLE 16
PLANNING, ZONING AND SUBDIVISIONS AND/SUBTITLE 10. ZONING COUNSEL***

SUBTITLE 10. ZONING COUNSEL*

***Editor's note:** Section 1 of C.B. 77, 1995, repealed former subtitle 10, §§ 16.1000--16.1012, relating to growth management and derived from C.B. 43, 1989; C.B. 98, 1989; C.B. 104, 1989; C.B. 55, 1990; C.B. 61, 1990; C.B. 62, 1990; and C.B. 12, 1991. Subsequently, C.B. 37, 2000 added a new section 16.1000 pertaining to zoning counsel.

Sec. 16.1000. Zoning Counsel.

- (a) The County Council may employ a Zoning Counsel on a part-time, contractual basis. The Zoning Counsel shall be a member in good standing of the Bar of the Maryland Court of Appeals and at the time of appointment shall have been actively engaged in the general practice of law for at least 5 years.
- (b) A decision to enter into a contract with an individual to perform the duties of Zoning Counsel shall be made by an affirmative vote of at least 3 Council members. A decision to terminate a Zoning Counsel's contract shall be made by an affirmative vote of at least 4 Council members.
- (c) The Zoning Counsel shall appear at all zoning board hearings on requests for piecemeal zoning map amendments for the purposes of producing evidence and testimony supporting comprehensive rezoning and facilitating the compilation of a complete record.
- (d) In the performance of these duties the Zoning Counsel may:
 - (1) Present evidence and witnesses;
 - (2) Examine and cross-examine witnesses;
 - (3) Present argument; and
 - (4) Take any other action necessary to perform these duties.
- (e) The budget for the Zoning Counsel shall be included in the County Council budget.
- (f) The Zoning Counsel may retain expert witnesses and compensate them to the extent that the Council budget includes funds for such compensation.
- (g) The Zoning Counsel shall be available:
 - (1) To any person interested in any zoning matter to advise as to procedures before a county agency or board, provided that when doing so the Zoning Counsel does not engage in the practice of law or render individual legal advice; and
 - (2) To any group to speak about zoning procedures in the county.
- (h) The Zoning Counsel shall attend certain pre-submission community meetings, as necessary. The County Council shall determine whether or not the Zoning Counsel shall attend certain pre-submission community meetings to advise any person or group of procedural

matters.

(i) The Zoning Counsel:

- (1) Does not represent the county, any government agency or any private party;
- (2) Is not a party and does not have a right of appeal in connection with any case before the Board of Appeals;
- (3) May not represent any client involving land use in Howard County; and
- (4) May not represent any client before the Zoning Board or Board of Appeals for 1 year after leaving the Office of Zoning Counsel.

(i) On or before July 1 of each year, the Zoning Counsel shall submit to the Council and the County Executive a report on the activities of the office in the past year.

(C.B. 37, 2000; C.B. 58, 2005; C.B. 8, 2006, § 1)

Secs. 16.1001--16.1012. Reserved.

The Charter for Prince George's County, Maryland

Article VII Planning and Zoning

Section 712. People's Zoning Counsel.

The County Executive shall appoint one or more attorneys, who are members of the bar of Maryland and are experienced in zoning law and procedure, to serve as People's Zoning Counsel. Their compensation shall be contained in the annual budget, and they shall be provided such clerical and other assistance as may be determined by the annual budget. They shall be subject to the provisions of Sections 709, 1001, and 1002 of this Charter. It shall be the duty of the People's Zoning Counsel to appear at all hearings on zoning cases, whether before the Council or a hearing examiner, for the purposes of protecting the public interest and insuring the compilation of a full and complete record. The People's Zoning Counsel may summon, examine and cross-examine witnesses, introduce documentary evidence into the record, file exceptions, and make such argument to the hearing examiner or the Council as the law and the evidence in the case may warrant.

CODE OF PRINCE GEORGE'S COUNTY, MARYLAND

SUBTITLE 27. ZONING.

PART 3. ADMINISTRATION.

DIVISION 1. GENERAL ZONING PROCEDURES.

SUBDIVISION 4. PEOPLE'S ZONING COUNSEL.

Sec. 27-136. Purpose.

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, and increase public understanding of and confidence in, the County land use process.
(CB-19-2003)

Sec. 27-137. Appointment.

(a) The County Council shall appoint one (1) or more attorneys to serve as People's Zoning Counsel and Deputy People's Zoning Counsel, pursuant to Section 322 of the County Charter, for terms of four (4) years. Preference shall be given to persons who are residents of Prince George's County.

(b) An individual appointed as People's Zoning Counsel or Deputy People's Zoning Counsel may be removed from office for cause by the affirmative vote of not less than two-thirds (2/3) of the members of the full Council.

(c) An individual appointed as People's Zoning Counsel or Deputy People's Zoning Counsel may not represent any client in any matter involving any land use case brought pursuant to Subtitles 24 or 27 in Prince George's County nor be a principal in a firm which does so.

(d) At the end of a term, an individual appointed as People's Zoning Counsel or Deputy People's Zoning Counsel shall continue to serve until a successor is appointed and qualified.
(CB-56-1993; CB-19-2003; CB-10-2004)

Sec. 27-138. Qualifications.

Any person appointed shall be a member in good standing of the Maryland bar, have substantial experience in land use law and procedure, and be actively engaged in the practice or teaching of law for at least five (5) years prior to the date of appointment.
(CB-19-2003; CB-10-2004)

Sec. 27-139. Compensation and support.

The compensation of the People's Zoning Counsel and Deputy People's Zoning Counsel shall be contained in the annual budget of the County. Payment shall be made upon approval of the Chairman of the Council. The People's Zoning Counsel and Deputy People's Zoning Counsel shall be provided the clerical and other assistance prescribed in the budget. (CB-19-2003; CB-10-2004)

Sec. 27-139.01. Powers and duties.

(a) To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Zoning Counsel shall have the right to appear on behalf of the interests of the public in general, to defend any duly enacted General Plan, Master Plan, or comprehensive zoning maps as adopted by the District Council, and in any matter involving zoning reclassification or any Special Exception. The People's Zoning Counsel may appear before:

(1) The Zoning Hearing Examiner or the District Council (for oral argument hearings or evidentiary hearings) if the matter involves a zoning case;

(2) The Planning Board if the matter involves a Comprehensive Design Plan, Development District Overlay Zone or a Transit District Overlay Zone; or

(3) The Board of Appeals if the matter involves a variance.

(b) The People's Zoning Counsel may prosecute an application before any state or federal court for injunctive or other relief incidental thereto, to enjoin violation of any zoning map or Master Plan or as specifically authorized by the District Council.

(c) To participate in any proceeding under Subsection (a), the People's Zoning Counsel shall file a notice of intention to participate. After the notice is filed, the People's Zoning Counsel is entitled to all notices provided to parties of record and may participate by making motions, introducing evidence, examining witnesses, cross-examining witnesses, filing exceptions and making arguments as the law and evidence in the case may warrant. The People's Zoning Counsel shall provide a copy of the notice of intention to participate to all persons who are then parties of record to the matter. In the People's Zoning Counsel's discretion, the Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate in under Subsection (a). The People's Zoning Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.

(d) The People's Zoning Counsel shall have in each appearance all rights of counsel for a party of record, including, but not limited to the right to file and prosecute an appeal to the courts as an aggrieved party to promote and protect the health, safety, and welfare of the community.

(e) The Deputy People's Zoning Counsel shall act for the People's Zoning Counsel at the direction of the People's Zoning Counsel or when the People's Zoning Counsel is unable to serve.

(CB-19-2003; CB-10-2004)

Sec. 27-139.02. Education of the Public.

(a) Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Zoning Counsel may provide technical assistance to any person about a proceeding described in Section 27-139(a). When providing technical assistance, the People's Zoning Counsel must inform the recipient that the People's Counsel is not acting and cannot act as a personal attorney for the recipient.

(b) The People's Zoning Counsel shall be available to any civic association, homeowners association or other similar group to speak about land use law and procedures in Prince George's County.

(CB-19-2003)

Editor's Note: The reference to Section 27-139(a) is in error. The correct reference should be Section 27-139.01(a).

Sec. 27-139.03. Annual Report.

The People's Zoning Counsel must annually report to the District Council on the activities of the Office.

(CB-19-2003)



ATTORNEY AT LAW

LLC t/a Stan Derwin Brown, Esq.
9500 Arena Drive, Suite 104 • Largo, Maryland 20774-5331
Telephone: 301.883.8888 • Fax: 301.883.8606
Website: StanBrown.net
E-mail: attorney@stanbrown.net

To: Camille A. Exum, Chair
Planning, Zoning & Economic Development Committee

Copies to: Ms. Colette R. Gresham
Ms. Jacqueline W. Brown
Steven M. Gilbert, Esq.

From: Stan Brown, People's Zoning Counsel *SB*

Re: Md. House Bill 928, An Act concerning Prince George's County—People's
Zoning Counsel—Appeals; PG/MC 118-08

Date: April 25, 2008

I have reviewed both House Bill 928 and the Maryland Department of Legislative Services' Fiscal & Policy Note concerning House Bill 928. I also compared House Bill 928 to existing Zoning Ordinance Sections 27-136, 27-137, 27-138, 27-139, 27-139.01, 27-139.02 and 27-139.03 (concerning the compensation & support, powers & duties and education of the public functions of the People's Zoning Counsel).

House Bill 928 conflicts with the following Zoning Ordinance sections:

Sec. 27-136. Purpose.

...An independent People's Zoning 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 Zoning Counsel who provides technical assistance to citizens and citizen

organizations will encourage effective participation in, and increase public understanding of and confidence in, the County land use process.

Sec. 27-137. Appointment.

(c) An individual appointed as People's Zoning Counsel or Deputy People's Zoning Counsel may not represent any client in any matter involving any land use case brought pursuant to subtitles 24 (subdivision cases) or 27 (zoning cases) in Prince George's County nor be a principal in a firm which does so.

Sec. 27-139. Compensation and support.

The compensation of the People's Zoning Counsel and Deputy People's zoning Counsel shall be contained in the annual budget of the County....

Sec. 27-139.01 Powers and duties.

- (a) To protect the public interest and achieve a full and fair presentation of relevant issues, the People's Zoning Counsel shall have the right to appear on behalf of the interests of the public in general...in any matter involving zoning reclassification or any Special Exception....
- (b) The People's Zoning Counsel may prosecute an application before any state or federal court for injunctive or other relief incidental thereto, to enjoin violation of any zoning map
- (c) ...In the People's Zoning Counsel's discretion, the Counsel may withdraw from, or decline to participate in, any proceeding in which the Counsel may participate in under Subsection (a). The People's Zoning Counsel is not liable to any person for participating in, or declining to participate in, any proceeding.
- (d) The People's Zoning Counsel shall have in each appearance all rights of counsel for a party of record, including, but not limited to the right to file and prosecute an appeal to the courts as an aggrieved party to promote and protect the health, safety, and welfare of the community.

Sec. 27-139.20. Education of the Public.

- (a) Without becoming a party to any judicial or administrative proceeding, and subject to available time and resources, the People's Zoning Counsel may provide technical assistance to any person

about a proceeding described in section 27-139(a). **When providing technical assistance, the People's Zoning Counsel must inform the recipient that the People's Zoning Counsel is not acting and cannot act as a personal attorney for the recipient.**

- (b) The People's Zoning Counsel shall be available to any civic association, homeowners association or other group to speak about land use law and procedures in Prince George's County.

House Bill 928 provides as follows:

(B) The People's Zoning Counsel in Prince George's County, on a reasonable belief that a **final action** on an application for a **subdivision of land**, special exception, variance, or site plan is arbitrary and capricious, **may appeal the final action** on behalf of a **bona fide citizens' association** entitled to appeal in accordance with the provisions of this Article.

House Bill 928 contradicts state law (Article 66B), and contradicts the County Zoning Ordinance, which does not allow the People's Zoning Counsel to participate in "**subdivision cases**" before the Planning Board, thus House Bill 928 would allow People's Zoning Counsel to "**appeal the final action in a subdivision case**" even though People's Zoning Counsel cannot participate in the actual evidentiary proceeding before the Planning Board. In addition, House Bill 928 would not allow People's Zoning Counsel to "**appeal a final action**" in a **rezoning case**, even though participation in rezoning cases is a core function of People's Zoning Counsel pursuant to the Zoning Ordinance.

House Bill 928 would allow People's Zoning Counsel to "appeal the **final action** on behalf of a bona fide citizen's association," which means People's Zoning Counsel may file an appeal in Circuit Court on behalf of any citizens' association that was a party of record in a "subdivision case" (People's Zoning Counsel's participation in an appeal without the authority to participate in the initial evidentiary proceeding before the

Planning Board would not provide any benefit to any undefined "bona fide citizens' association" (House Bill 928 does not clarify whether "bona fide citizens associations" include homeowner associations).

Moreover, the Zoning Ordinance Sections noted above clearly prohibit the People's Zoning Counsel from representing any particular party in an appeal to the Circuit Courts. The Zoning Ordinance only allows People's Zoning Counsel to represent the "**interests of the public in general,**" which directly conflicts with House Bill 928 (which would allow People's Zoning Counsel to take a legal position against a civic association in the "interest of the public in general" in a Special Exception case during the initial evidentiary hearing and then later take an opposing legal position on behalf of a citizens association on appeal in the same case!).

Finally, the Md. Department of Legislative Services in its Fiscal & Policy Note on House Bill 928 indicates that:

"Prince George's County expenditures could increase minimally due to additional staff time and resources to handle appeals... The county's planning department indicates that the additional costs could total approximately \$13,000.00 a year...In addition, it is assumed that the People's Zoning Counsel could handle any actions with existing resources."

As the People's Zoning Counsel for the past ten years I unequivocally conclude that \$13,000.00 would not adequately fund the estimated \$30,000.00 to \$50,000.00 cost needed to litigate just one appeal for eighteen months in the Circuit Court, Court of Special Appeals and Court of Appeals. The Office of People's Zoning Counsel cannot handle any actions or appeals mandated by House Bill 928 with existing resources. Please contact me if you need any additional clarification on the merits of House Bill 928.

HOUSE BILL 928

L5, L2

8lr0803

By: Prince George's County Delegation and Montgomery County Delegation
Introduced and read first time: February 6, 2008
Assigned to: Environmental Matters

Committee Report: Favorable
House action: Adopted
Read second time: March 18, 2008

CHAPTER _____

1 AN ACT concerning

2 Prince George's County - People's Zoning Counsel - Appeals

3 PG/MC 118-08

4 FOR the purpose of authorizing the People's Zoning Counsel in Prince George's
5 County to make certain appeals on behalf of certain associations under certain
6 circumstances; and generally relating to the People's Zoning Counsel in Prince
7 George's County.

8 BY repealing and reenacting, with amendments,
9 Article 28 - Maryland-National Capital Park and Planning Commission
10 Section 8-122.1
11 Annotated Code of Maryland
12 (2003 Replacement Volume and 2007 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 Article 28 - Maryland-National Capital Park and Planning Commission

16 8-122.1.

17 (A) Notwithstanding any other provision of the Code, the district council for
18 Prince George's County may authorize in its rules and procedures the representation
19 before the Prince George's County planning board, the district council, the zoning

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 hearing examiner, or the board of zoning appeals, of any bona fide civic association or
2 homeowner's association by any duly elected officer of the association regardless of
3 whether that individual is an attorney.

4 (B) ~~THE PEOPLE'S ZONING COUNSEL IN PRINCE GEORGE'S COUNTY,~~
5 ~~ON A REASONABLE BELIEF THAT A FINAL ACTION ON AN APPLICATION FOR A~~
6 ~~SUBDIVISION OF LAND, SPECIAL EXCEPTION, VARIANCE, OR SITE PLAN IS~~
7 ~~ARBITRARY AND CAPRICIOUS, MAY APPEAL THE FINAL ACTION ON BEHALF OF A~~
8 ~~BONA FIDE CITIZENS' ASSOCIATION ENTITLED TO APPEAL IN ACCORDANCE~~
9 ~~WITH THE PROVISIONS OF THIS ARTICLE.~~

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2008.

to court

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 928

(Prince George's County Delegation and Montgomery
County Delegation)

Environmental Matters

Education, Health, and Environmental
Affairs

**Prince George's County - People's Zoning Counsel - Appeals
PG/MC 118-08**

This bill authorizes the People's Zoning Counsel in Prince George's County to appeal a final action with regard to a subdivision of land, special exception, variance, or site plan on behalf of a bona fide citizens' association, if there is reason to believe the final action is arbitrary or capricious.

Fiscal Summary

State Effect: None.

Local Effect: Prince George's County expenditures could increase by approximately \$13,000 annually due to additional staff time and resources at the county's planning department to handle appeals. Revenues would not be affected.

Small Business Effect: None.

Analysis

Current Law: The District Council for Prince George's County is authorized to allow a duly elected officer of any bona fide civic association or homeowners' association to represent the association before the planning board, district council, zoning hearing examiner, or board of zoning appeals.

Background: The People's Zoning Counsel appears at all hearings on zoning matters to protect the interest of the citizens and residents of Prince George's County and to ensure the compilation of a full and complete record. The People's Zoning Counsel is empowered to summon and cross examine witnesses, introduce document evidence, file exemptions, and make arguments before the hearing examiner as the law and the evidence may warrant. The fiscal 2008 county budget includes \$140,000 for the People's Zoning Counsel, which supports three contract attorneys. Funding for these positions is paid by the Maryland-National Capital Park and Planning Commission (M-NCPPC).

The Prince George's County Planning Department is operated and funded by M-NCPPC. The fiscal 2008 commission budget includes \$29.3 million for the county's planning department.

Local Fiscal Effect: Prince George's County expenditures could increase minimally due to additional staff time and resources to handle appeals. The actual impact would depend on the number of land use cases that are appealed each year by the People's Zoning Counsel and the characteristics of each case. The county's planning department indicates that the additional costs could total approximately \$13,000 a year. This estimate is based on a three-year analysis of staff time at the county's planning department associated with appeals before the District Council for site plan and zoning cases and a similar number of cases. In addition, it is assumed that the People's Zoning Counsel could handle any actions with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning, Prince George's County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2008
mll/hlb

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510