"Federation Corner" column
Montgomery Sentinel - August 26, 2010

The problems of "boutique" legislation
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Six years ago I wrote a Federation Corner column entitled "Process of designer legislation should be stopped." The piece detailed two amendments to the county zoning ordinance being considered in 2004 which were designed to change the building standards on specific properties and, thereby, increase the profit to be derived from redevelopment of those properties.

A relative newcomer to the world of civic activism at that time, I referred to the process as "designer legislation," but have since learned that it is also called "boutique legislation." In the intervening years, I have also learned that the problem of boutique legislation is not unique to our county, and is not limited to proposed changes to zoning law. The process of special interests seeking changes in the law for financial gain is, undoubtedly, as old as the legislative process itself. And, unfortunately, it is still occurring in Montgomery County.

If we lived in Oregon, I might be writing about the timber industry trying to influence the rewriting of laws to increase the profitability of their business. Or if this were Colorado, my column might address efforts by mining interests to effect changes in the laws regulating their industry. But in Montgomery County, our primary natural resource is developable land. So, here, the development industry is the primary special interest engaged in efforts to change the law governing their business. And the law, in this case, is the county zoning ordinance.

One of the problems associated with boutique land use legislation is that the process of changing zoning standards to benefit a single property is known as "spot zoning," and is illegal under Maryland State law. So when shopping for a government official to introduce legislation to change zoning standards, the land use attorneys who work for developers are careful to craft language so that the change will at least apply to a few other properties, too. The problem here is one of unintended negative consequences...a change which, if approved, might not have a negative impact if applied to the sole target property, but may have a severe impact if applied to multiple properties.

An example of unintended consequences might be as follows. A developer seeks a zoning text amendment--the term given to legislation that changes the county zoning ordinance--which would allow him to construct an office building twice as high as that currently permitted under the building standards assigned to his property. His property is at the far end of a block, several hundred yards from a nearby single-family detached home neighborhood. But, in broadening the applicability of the change to more than the one property, to avoid it being disallowed as illegal spot zoning, the developer's attorney suggests to legislators that the change apply to all of the commercially zoned properties on the block. As a result, an overly tall commercial structure could now be built on a property right next to an adjacent single-family home.

The most recent example of boutique legislation in the county involves two developers who seek to build bigger hotels on their Bethesda properties than allowed under existing zoning standards. The problem of the desired change being considered spot zoning is avoided, therefore, since at least two properties would be affected by any resulting increase in allowed building size. In drafting the language to limit any unintended negative consequences, the attorneys for the two developers (from two different land use law firms...imagine the billable hours!) have proposed the change only apply to CBD (Central Business District) zoned properties on a site "confronting a major highway and located at least 250 feet from single-family zoned land." Still, the change would apply to multiple properties in the county's four Central Business Districts of Bethesda, Silver Spring, Wheaton and Friendship Heights.

In this instance, the government official the developers contacted in seeking a change in zoning law for their properties was County Executive Isiah Leggett. And on June 22 of this year, Zoning Text Amendment 10-09 was introduced "by the District Council at the request of the County Executive." The County Council is referred to as the District Council when it considers land use related actions like changes to the zoning ordinance, revision of community master plans, and the like.

In his defense, a staffer from the Office of the County Executive explained to me that Mr. Leggett believes the change in zoning law is merited in this case since the two developers claim that, if granted the right to build bigger, more profitable hotel projects, they could secure financial backing for their "shovel ready" projects. And, his staffer claimed, Mr. Leggett thinks the public interest would be best served in these tough economic times by facilitating approval of these development projects, resulting in the creation of jobs and revenue to the county coffers from increased property taxes, from county tax on hotel room rentals, and from the hiring of workers--for construction as well as operation of the finished hotels--who will then pay income taxes on their wages.

I am just not convinced that the exigency of a transient fiscal crisis is an appropriate rationale for making indiscriminate and long-lasting changes to the land use and zoning laws of the county, especially since the real motivation for the requested changes is the desire of corporations for increased profit.

The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to theelms518@earthlink.net