

LAND USE ARTICLE

Flags in House Bill 1290 of 2012

Ranked by Significance

This is a list of issues ranked in significance that have been flagged in the Revisor's Notes to House Bill 1290.

The issues fall into three categories: (1) matters of significant concern to the Land Use Article Review Committee (the "committee"); (2) matters of moderate concern; and (3) informational and minor matters. Some matters, on consideration, may be suitable for inclusion in the companion bill, House Bill 1130, during this legislative Session; others may best be handled by interim study and separate substantive legislation.

I. Matters of significant concern to the Article Review Committee.

2-102. Membership. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsections (a)(2) and (b) of this section, the authority of a legislative body to include one of its own members on a planning commission that it appoints presents an opportunity for a potential conflict of interest. The General Assembly may wish to reconsider the wisdom of allowing a local legislator to serve *ex officio* on a planning commission, or perhaps should consider enacting criteria for recusal of a local legislator serving on a planning commission. (p. 47)

2-102. Membership. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that the provisions for removal of a planning commission member under subsection (d) of this section present several issues. Subsection (d)(1) of this section requires the legislative body to hold a "public hearing" before removing a member, but does not provide guidance as to the type of hearing or the due process protections available to the accused member. It may be presumed that the legislative body would conduct a quasi-judicial hearing to remove a planning commission member. If the General Assembly considers that some other form of evidentiary or other hearing is intended, it may wish to add specific language to subsection (d) of this section, including more specific language on the due process to be afforded to the member sought to be removed. (pp. 47-48)

In cases where a Revisor's Note contains more than one flag, a number indicating the order of the particular flag is shown, e.g. **2-102. Membership. (1)**

Page references are to the first reader copy of House Bill 1290.

2-102. Membership. (3) Similarly, the criteria for removal under subsection (d)(1) of this section appear limited to “inefficiency”, “neglect of duty”, or “malfeasance in office”. It is unclear whether any of these criteria would cover common grounds for removal under other statutes, such as “incompetence”, “criminal activity”, whether or not related to planning commission activities, or “other good cause shown”, a catch-all found in other provisions of this article. The General Assembly may wish to compare the removal provisions for the various boards and commissions authorized under this article and conform the removal and related ethical provisions that apply to each type. *(p. 48)*

2-102. Membership. (5) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that under subsection (f) of this section, only a municipal corporation is authorized to designate an alternate or temporary alternate member to serve on a planning commission. It seems to the committee that any rationale for allowing a municipal corporation to designate an alternate member would apply equally in a county subject to this division. The General Assembly may wish to consider authorizing counties as well as municipal corporations to designate alternates and temporary alternates. The committee also notes that alternates and temporary alternates are subject to the same educational requirements as full members of the planning commission. *(p. 48)*

3-205. Planning commission review. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that the procedure for adoption of a plan or a plan amendment under subsection (d) of this section does not appear to authorize a remand of a recommended plan or amendment from the legislative body to the planning commission. The current provision forces the legislative body to approve or reject the recommended plan or amendment outright, which might be considered cumbersome by both bodies, and might unnecessarily prolong an adoption process that may involve the need to make minor changes to a recommended plan or amendment. Similarly, in most local jurisdictions, it is unclear which body has the final say in plan adoption, and there is no provision to determine how a dispute between the legislative body and the planning body may be resolved. In Frederick County, however, the county commissioners are specifically authorized to overrule the planning commission. *See § 9-1002* of this article. The General Assembly may wish to consider: (1) specifically authorizing a process for a legislative body to remand all or part of a recommended plan to the planning commission with recommended adjustments or a requirement to conduct additional hearings, and to authorize the adoption of acceptable portions of the recommended plan or amendment in the meantime; and (2) establishing or enabling a local jurisdiction to adopt a process for resolving disputes between the legislative body and the planning commission. *(pp. 73-74)*

3-206. Municipal growth element. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(3) of this section, the specific designation of the “Mediation and Conflict Resolution Office”, a unit of the State judicial system, as the required facilitator, may be considered a violation of the separation of powers

under the Maryland Constitution. The General Assembly may wish to substitute the phrase “an appropriate mediation and conflict resolution service” for the specific reference to the office in order to give the affected local jurisdictions a choice of facilitators, while not precluding them from using the office. (p. 75)

4-302. Membership. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (f) of this section, only one “permanent” alternate member is authorized, although there is no explicit limit on the number of temporary alternate members who may be appointed. Because members of boards of appeals must complete an education course under § 1-206 of this article, the General Assembly may wish to authorize a legislative body to appoint more than one “permanent” alternate member in order to ensure that an adequate number of participating members are available in case of multiple recusals without requiring training of temporary alternate members who may not otherwise be needed. (p. 96)

5-301. Sale or transfer of lots in unapproved subdivisions. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c)(1) of this section, the prohibition against simple negotiation in advance of plat approval and recordation may run contrary to common commercial practice, as well as perhaps constituting a prior restraint on commercial speech. The General Assembly may wish to consider how closely the process of pre-recordation negotiation should be regulated, especially in the context of economic development and commercial enterprises. One option for the General Assembly to consider might be to allow the sale of property to be conditioned on final plat approval. (p. 115)

*Revised by
ch 427
of 2012*
8-101. Definitions. ~~The Land Use Article Review Committee notes, for consideration by the General Assembly, that § 8-302(a) of this subtitle requires a “person” to file an application for a permit to change a site or structure, and the term “person” defined in § 1-101 of this title does not generally include a governmental unit. However, units of local government have historically been required to file an application for such a permit. See *City of Annapolis v. Anne Arundel County*, 271 Md. 265 (1974); 87 Op. Att’y Gen’l 119 (2002); cf. Op. Att’y Gen’l 17 (2002). For purposes of clarity, the General Assembly may wish add an affirmative definition of “person” to this section specifically including “a unit of local government” to the definition of “person” for this title. See Revisor’s Note to § 1-101(k). (p. 145)~~

10-403. Board — Established. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, there is no provision for appointment of an alternate or temporary alternate member of the Board, only for the filling of a vacancy, unlike the boards of appeal authorized for noncharter counties and other municipal corporations under Title 4, Subtitle 3 of this article. Because members of the Board must complete an education course under § 1-206 of this article, the General Assembly may wish to authorize the appointment of one or more “permanent” alternate members, or other temporary alternate members, in order to ensure that an adequate number of participating members are available in case of multiple recusals. Cf. § 4-302 of this article. (p. 200)

18–208. Tax anticipation notes. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, it may at times be advantageous to reissue or renew tax anticipation notes at a lower interest rate than the original issue. The General Assembly may wish to consider substituting a standard such as “an interest rate that the Commission determines to be advantageous” for the existing phrase “the same or a greater interest rate”. (*p. 438*)

20–607. Procedures for referendum following enactment of local law. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsections (b)(2) and (g)(2) of this section, the requirement for obtaining signatures based on a percentage of assessed value of real property and voting based on property ownership has been found to be unconstitutional under federal law. *See Muller v. Curran*, 889 F.2d 54 (4th Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990). The General Assembly may wish to seek the advice of the Attorney General on the soundness of this provision and, if necessary, repeal it and the corresponding provision of § 20–603(a)(2)(ii) and (b)(2) of this subtitle. (*p. 518*)

23–102. In general. (3) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (e)(1) of this section, the statutory requirement that a plat “shall be firmly fixed in a well-bound book” may be unnecessarily restrictive in light of current and evolving technology for preparing and submitting maps and materials and integrating them into public and private geographic information systems. The General Assembly may wish to authorize the Commission, the circuit court, or some other unit to specify the required or permissible means and media for submitting and preserving plats in land records. (*p. 600*)

II. Matters of moderate concern.

1-101. Definitions. (h) Local executive. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in paragraph (2)(iii) of this subsection, it is unclear whether the term “executive head” would include an official with the power to bind a local jurisdiction, such as the county administrator of Garrett County, or only an elected official. The General Assembly may wish to clarify its intention with regard to the term “executive head”, or perhaps redefine the term “local executive” by reference to specific functions rather than titles. (*pp. 8-9*)

1-101. Definitions. (n) Regulation. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in paragraph (2) of this subsection, the inclusion of the defined term “plan” in the definition of “regulation” may be construed to make a “comprehensive plan”, as that term is included in the definition of “plan” in subsection (1)(2) of this section, a regulatory device rather than a guide. (*p. 11*)

1-207. Annual report — In general. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c)(2)(iii) through (v) of this section, the phrase “adopted plan” may refer to a plan that has been adopted by the planning commission of the local jurisdiction but not approved by the legislative body. As such, the “adopted plan” may not be the plan in force at the time the annual report is prepared. If the General Assembly intends that the report should reflect comparison with plans in force rather than adopted plans, it may wish to substitute the phrase “approved plan” where appropriate. *(p. 25)*

1-410. Water resources element. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section, charter counties are required to adopt a water resources element in relation to a land use element. However, only noncharter counties and municipal corporations are specifically required to adopt a land use element under § 3-111 of this article. In practice, all charter counties do adopt a land use element as part of their comprehensive plans. The General Assembly may wish to consider adding a specific required land use element for charter counties to adopt patterned after § 3-111 of this article. *(p. 39)*

1-415. Plan implementation. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the application of this part to a code county may depend on whether it has chosen to exercise the zoning authority of a charter county under § 1-402 of this subtitle. The General Assembly may wish to add a specific reference to a “code county” to this section for clarity. *(p. 41)*

1-418. Deadline. The Land Use Article Review Committee notes, for consideration by the General Assembly, that subsection (c) of this section, which prohibits rezoning in a charter county that fails to have included required elements in its comprehensive plan “after October 1, 2009”, when read together with subsection (a) of this section, may have the unintended consequence of subjecting a charter county to restrictions on its rezoning power for the indefinite future, long beyond the originally intended phase-in period for compliance under the former law contemplated under the original enactment in 2006. *See* Ch. 381 of 2006. The General Assembly may wish to consider altering the language of subsections (a) and (c) of this section to clarify the implementation of that law, or moving this section and the corresponding provision applicable to other local jurisdictions, § 3-304 of this article, to the Session Laws. *See also* Revisor’s Note to § 3-304. *(p. 44)*

2-102. Membership. (4) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that under subsection (e)(2) of this section, it is unclear whether the filling of a vacancy by a single elected local executive is subject to legislative confirmation under subsection (b)(2) of this section. If so, the General Assembly may wish to clarify subsection (e) of this section by referring to filling a vacancy “in the same manner as is required for appointment under subsection (b) of this section” or similar language. *(p. 48)*

3-113. Fisheries element. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the requirement for a fisheries element under this section predates the conversion of a number of tidal counties to charter or code home rule, notably Talbot and Dorchester counties. It seems unlikely that the General Assembly intended to allow these counties to avoid preparing fisheries elements in their plans simply by changing their form of government. The General Assembly may wish to address whether charter counties located on the State's tidal waters should be required to prepare fisheries elements. *(pp. 64-65)*

3-203. Plan development. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c) of this section copies of a recommended plan and amendments need only be provided to "State units and local jurisdictions", whereas a number of regional entities such as multicounty development councils may benefit from receiving the copies. The General Assembly may wish to consider adding explicit references to providing copies to "regional units" to subsections (c) and (d) of this section to ensure that these entities have an appropriate voice in local planning. *(p. 71)*

3-205. Planning commission review. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that under subsection (d)(1)(iii) of this section, it is unclear whether the "extension" of a plan that may be adopted is a geographic or a temporal extension. The General Assembly may wish to clarify this provision. *(p. 74)*

3-304. Deadline. The Land Use Article Review Committee notes, for consideration by the General Assembly, that subsection (c) of this section, which prohibits rezoning in a local jurisdiction that fails to have included required elements in its comprehensive plan "after October 1, 2009", when read together with subsection (a) of this section, may have the unintended consequence of subjecting a local jurisdiction to restrictions on its rezoning power for the indefinite future, long beyond the originally intended phase-in period for compliance under the former law contemplated under the original enactment in 2006. *See Ch. 381 of 2006.* The General Assembly may wish to consider altering the language of subsections (a) and (c) of this section to clarify the implementation of that law, or moving this section and the corresponding provision applicable to other local jurisdictions, § 1-418 of this article, to the Session Laws. *See also* Revisor's Note to § 1-418. *(pp. 78-79)*

4-103. Additional powers. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it is unclear how the notice requirements for conditions sought in rezoning under subsection (d)(2)(ii) of this section apply to the limitations on development that may be included in an annexation agreement under subsection (b) of this section. Read strictly, subsection (d) seems to impose a requirement to include in local law notice of both public hearings and conditions sought in connection with an annexation agreement, without specifically authorizing the imposition of "conditions", only limitations. The General Assembly may wish to consider whether to add substantive authority to impose conditions in connection with an annexation agreement, without broadening the scope of limitations under subsection (b) of this section. *See Ch. 385, Acts of 2004. (p. 82)*

4-202. Zoning regulations — Adoption; purposes. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that the conservation of value of “buildings and other structures” in subsection (a)(3) of this section may not adequately address the value placed on other land such as open space in accordance with current legislatively approved policies including smart growth and priority funding areas. *(pp. 85-86)*

4-202. Zoning regulations — Adoption; purposes. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (b)(6) of this section, the concept of simply “avoid[ing] an undue concentration of population” may be considered obsolete in relation to more modern, legislatively endorsed policies such as smart growth, preservation of open space, use of cluster development, and priority funding areas. The General Assembly may wish to clarify the relationship of this item in relation to other policies for managing growth while balancing legislatively endorsed policies. *(p. 86)*

4-205. Administrative adjustments. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (g) of this section, it is unclear whether the term “critical areas” is intended to: (1) mean a specific reference to the “Critical Area” under NR, Title 8, Subtitle 18; (2) refer more generally to “areas of critical State concern” required in comprehensive plans of noncharter counties and municipal corporations under § 3-109 of this article; or (3) cover some other type of area. The General Assembly may wish to address this matter by providing a specific cross-reference to other relevant provisions as appropriate. *(p. 91)*

4-306. Appeal — Procedures. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that the breadth of the potential stay of proceedings under subsection (d) of this section is considerable. It may be construed to apply to applications for concept plans of developments, even though it is difficult to imagine the circumstances under which appeal of a concept plan could constitute an imminent peril to life or property. The General Assembly may wish to consider the scope of the stay of proceedings under this and the corresponding provision applicable to Baltimore City. *See also* § 10-405(d) of this article. *(p. 101)*

4-306. Appeal — Procedures. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (e)(1)(ii) of this section, it is unclear whether the term “parties in interest” is intended to be coextensive with the term “aggrieved persons” as found in Maryland case law, and if not, what classes of persons are intended to be entitled to notice of an appeal. The General Assembly may wish to consider clarifying the intended scope of “parties in interest” and whether entitlement to notice under this provision should automatically confer standing to seek judicial review of the matter appealed. *See also* Revisor’s Note to § 10-405 of this article. *(p. 101)*

7-104. Restriction in priority funding area — Reports. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, it is unclear whether the required reporting of restrictions and their resolution also requires reporting of waivers granted to the provisions of a restriction. The General Assembly may wish to explicitly include a reference to the reporting of such waivers. *(p. 130)*

7-201. Local authority. The Land Use Article Review Committee notes, for consideration by the General Assembly, that programs for the transfer of development rights often intersect with the programs for the preservation of open space and agricultural land. The General Assembly may wish to consider explicitly including a reference to these and other development management programs and techniques in the purposes for which a legislative body may adopt a program under this section. *(p. 131)*

7-302. Powers. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it is unclear whether subsection (b) of this section confers on a public principal the authority to enter into an agreement in conjunction with annexation of land to a municipal corporation. If the General Assembly wishes to authorize the public principal to enter into an agreement in these circumstances, it may be advisable to include specific authorization in this subsection. *(p. 135)*

8-303. Application for changes to sites or structures — Review of application. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(2)(iv) of this section, the ability of a commission to consider “any other factors, including aesthetics, that the commission considers pertinent” provides broad grounds for rejecting an application under § 8-302(b) of this subtitle, which provides that a commission “may reject an application based only on the considerations listed in § 8-303(a) of this subtitle”. While the latter provision seems on its face to be restrictive, the language in subsection (a)(2)(iv) allows a commission considerable discretion to reject an application. The General Assembly may wish to consider more closely the criteria that a commission may use to approve, approve with conditions, modify, or reject an application, and the standards that the commission must apply. *(p. 156)*

8-308. Appeal of decision. The Land Use Article Review Committee notes, for consideration by the General Assembly, that under this section it is unclear: (1) whether an appeal is always available through the local board of appeals; (2) whether a local jurisdiction may divest an applicant of the opportunity to appeal to the local board of appeals rather than seeking judicial review; and (3) who bears the costs of an action in direct judicial review compared with consideration by the board of appeals. The committee recommends establishing a clear appellate path for these matters, indicating whether or not there is a local option or requirement to proceed through the local board of appeal, or whether direct judicial review is always available. *(pp. 160-161)*

15-104. Additional requirements for appointment of Montgomery County commissioners. (2) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsections (d)(1)(iii) and (f)(1) of this section, the lists of related individuals whose financial information must be disclosed includes the appointee's "spouse", but not the appointee's "domestic partner". The General Assembly may wish to consider whether information from such an individual would be relevant to the appointment process. *(p. 237)*

15-105. Removal. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that although subsection (b)(1)(i) of this section requires that the cause for removal be stated in writing, this section provides no criteria for removal. It is unclear whether a commissioner serves at the will of the appointing body, or if there are some implicit criteria for the appointing body to consider when removing a commissioner, such as malfeasance, lack of attendance, or similar causes. The General Assembly may wish to compare the various grounds for removing appointed commissioners and members of similar bodies elsewhere in this article in order to harmonize removal criteria. *See, e.g.,* Revisor's Notes to §§ 2-102, 4-302, and 10-404 of this article. *(p. 238)*

15-105. Removal. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (b)(2) of this section, it is unclear whether the commissioner being removed has a right to a public hearing, which the commissioner may waive, or whether the County Council may choose to hold a public hearing despite the commissioner's having waived the hearing. The General Assembly may wish to consider recasting this subsection to confer on the commissioner an affirmative right to a public hearing, which the commissioner may waive, and to clarify whether the County Council may conduct a hearing on its own motion even after such a waiver. *(p. 238)*

15-115. Powers and duties — Financial reports. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the requirement that the Commission's annual financial report be "certified" under subsection (a)(2)(ii) of this section is not consistent with, and is a lesser standard, than the "audit" to which subsection (b)(1) refers. If the General Assembly wishes to require an audit of the Commission's annual report, the references to "certifi[cation]" in subsections (a)(2)(ii) and (b)(2) of this section should be altered accordingly; if "certification" suffices, the reference to an "audit" in subsection (b)(1) of this section should be changed to "certification". *(p. 251)*

15-120. Prohibited acts — Conflicts of interest. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that there is considerable overlap between this section and the State Ethics Law provisions of SG Title 15, Subtitle 5, and the specific bicounty commission ethics provisions of SG Title 15, Subtitle 8, Part III. This section is derived from material that preceded the enactment of the relevant provisions of SG Title 15. The committee advises that the General Assembly may wish to compare the enforcement mechanisms for these provisions as compared with those in SG Title 15, and perhaps to reconcile

10-403. Board — Established. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (b) of this section, there are no specific standards for removal of a member of the Board other than “for cause”, unlike the general provision for appointment of members of a planning commission under Title 2, Subtitle 1 of this article. The General Assembly may wish to consider whether standards for appointing members of boards of appeals and planning commissions should be the same or similar, and whether those standards should be relatively specific or should remain vague. *See* § 2-102 of this article. (p. 200)

10-405. Board — Appeal procedures. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (e)(1)(ii) of this section, it is unclear whether the term “parties in interest” is intended to be coextensive with the term “aggrieved persons” as found in Maryland case law and, if not, what class of persons are intended to be entitled to notice of an appeal. The General Assembly may wish to consider clarifying the intended scope of “parties in interest” and whether entitlement to notice under this provision should automatically confer standing to seek judicial review of the matter appealed. *See also* Revisor’s Note to § 4-306 of this article. (p. 205)

11-103. Remedies. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(4) of this section the extent of the authority of a local jurisdiction to prevent an illegal act in or about the “premises” is unclear. The word “premises” might mean a structure, a structure and immediate surroundings, or a larger area such as a lot or subdivision. The General Assembly may wish to consider substituting one of these terms for the existing word “premises”. (p. 211)

11-207. Judgments and court costs. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section it is unclear how the reference to “forfeitures” would be applied by the District Court, as the term is not otherwise used in this subtitle. (p. 216)

14-101. Definitions. (m) Road. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it is unclear whether the term “road” defined in this subsection includes a “trail” or “bicycle path”. If these or similar travel ways are intended to be included in the “roads” that the Commission constructs and maintains under this division, the General Assembly may wish to consider adding those terms to this definition. (p. 222)

15-103. Appointment procedures. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it is unclear whether the eighth and ninth sentences of former Art. 28, § 2-101(a), revised as subsection (b)(4) of this section, were intended to apply only to appointments in Prince George’s County or also to appointments in Montgomery County. If intended to apply in both counties, the General Assembly should consider either moving subsection (b)(4) of this section so that it applies in both counties, or duplicating the language in subsection (a) of this section. (p. 233)

the matters where they overlap. The committee also notes, however, that SG Title 15 does not appear to have criminal sanctions such as those found in this section except for lobbyists who violate ethics laws. In addition, it may be helpful to consolidate the ethics provisions relating to the Commission in one statute, either in this subtitle or in SG Title 15. The General Assembly may wish to weigh these substantive issues as it reviews the ethics provisions related to the Commission. *(p. 260)*

15–120. Prohibited acts — Conflicts of interest. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that the exclusion from the limitation on ownership and required disclosure of “the ownership of a recorded single-family lot on which the commissioner actually resides” under subsection (b)(2)(ii) of this section does not apply to a commissioner who resides in a townhouse, regardless of the form of ownership, or in property subject to a condominium regime. The General Assembly may wish to consider altering the exclusion to reflect “real property on which the commissioner maintains a primary residence” or a similar phrase. *(p. 260)*

16–103. Merit system board. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the effect of subsection (b)(2) of this section, which appears to be a rule of construction stating that this subtitle does not require rotation of board chairmanship between the two counties, is confusing and possibly ineffective. If the General Assembly intends to state flatly that this subtitle does not require rotation, then the provision should state so clearly; if on the other hand the provision is intended to prohibit or require automatic rotation outright, it should state the prohibition or requirement clearly. Otherwise, the provision may be safely repealed. *(p. 275)*

16–105. Removal of board member. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the standard for removal of a member of the board under this section is not consistent with the standards for removal of members of other boards under this article. The General Assembly may wish to consider the tasks of the several types of board and commission established or authorized under this article and to harmonize the removal provisions applicable to them to the extent it may consider desirable. *Cf.* §§ 2–102(d), 4–302(d), and 10–403(b)(4) of this article. *(p. 276)*

16–108. Subpoena for hearings. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section, the standard under which the board may issue a subpoena, that the testimony of the witness be “essential for the proper consideration of a case”, seems to require clairvoyance on the part of the board. The General Assembly may wish to revisit the standard that the board should apply in determining whether to issue a subpoena under this section. *(p. 278)*

16–218. Unfair labor practices. The Land Use Article Review Committee notes, for consideration by the General Assembly, that any further judicial review of an unfair labor practice in the State courts, such as review by the Court of Special Appeals, would require

specific statutory authorization. The General Assembly may wish to consider adding specific language to this section authorizing such a path for additional judicial review. *(p. 306)*

16-303. Labor relations administrator. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1) of this section, there does not seem to be a procedure for appointment of a neutral party as labor relations administrator if the Commission and the exclusive representative are unable to agree. The General Assembly may wish to consider adopting such a procedure. *(p. 314)*

16-308. Arbitration. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1) of this section, the ability of either party to declare an "impasse" on or after December 1 may conflict with the definition of "impasse" in § 16-301(k) of this subtitle, which provides that the impasse occurs 30 days before the deadline for budget submission. The General Assembly may wish to alter or eliminate the definition of "impasse", or otherwise harmonize the definition with the substantive provision of subsection (a) of this section. *(p. 328)*

17-204. Leases, permits, and concessions. The Land Use Article Review Committee notes, for consideration by the General Assembly, that subsection (d)(2) of this section, which prohibits granting authority to require closing an existing park or park facility to prevent competition, appears to be subsumed entirely within the limitation stated in subsection (d)(1) of this section, which prohibits authorizing a person other than the Commission to close a park or park facility. The General Assembly may wish to consider clarifying subsection (d)(2) of this section, if it is intended to be different than subsection (d)(1) of this section, or eliminating it entirely. *(p. 383)*

17-206. Disposal or exchange of land and recreational facilities. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(2) of this section, the word "shall" is substituted for the former word "may", thus explicitly requiring proceeds from the sale or disposition of a playground or recreational facility to be applied to a similar use. The former law was ambiguous on this point. If the General Assembly instead meant to allow the Commission the discretion to apply the proceeds to any other use, the substitution should be undone. No substantive change is intended. *(p. 385)*

17-208. Commission infractions. The Land Use Article Review Committee also notes, for consideration by the General Assembly, that the reference to "penalties, or forfeitures" in subsection (e)(5) of this section may be unnecessary. There is no authorization elsewhere relating to any penalties or forfeitures that may be imposed for a Commission infraction. The General Assembly may wish to amend this provision. *(p. 391)*

17-212. Street names and house numbers. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1) of this section, the authority of the Commission to name streets and number houses in the "metropolitan district"

should instead refer to the “regional district”. The General Assembly may wish to make this substitution by substantive legislation. *(p. 399)*

18–112. Preparation and submission to counties. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in this part the term “county governing body” is used inconsistently. While it is the only term used for provisions relating to Prince George’s County, there are specific references to the “County Executive and County Council of Montgomery County”, which seem to be the county governing body of that county under charter home rule. The General Assembly may wish to clarify the term in this part by using the term “local governing body”, which is consistent with many other provisions in this article, or if the intention is to mean only the county council, to use that term or the term “legislative body” as defined and used throughout Division I of this article. *(p. 414)*

18–206. Revenue bonds. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (f)(3) of this section, the prohibition against discrimination because of “creed, race, or gender” is relatively narrow compared with more recent statutory prohibitions against discrimination based on an individual’s status. The General Assembly may wish to consider comparing this provision to other similar antidiscrimination provisions and harmonizing this provision with more recent provisions. *(p. 433)*

20–513. Building permits. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(2)(iii) of this section, the nexus between the issuance of building permits and the right to enter and inspect boats and vehicles may be tenuous, and may in part be preempted by federal and State manufacturing and licensing laws. *(p. 500)*

20–514. County board of education — Compliance. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the specific construction standards for fire escapes under subsection (b) of this section may conflict with current provisions of the Life Safety Code and are likely obsolete. *(p. 501)*

21–104. Elements. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(1)(i)5 of this section, the reference to considering the “quality” of housing may or may not include aesthetic as well as functional considerations. Similarly, it may be advisable for the development process for the general plan to consider needs, types, quality, and general location of other land uses, such as the commercial, industrial, and public sector facilities listed in subsection (b)(1)(i)2 of this section. The General Assembly may wish to consider the scope of each of these provisions in light of smart growth and similar principles. *(p. 534)*

22-104. Authority to adopt and amend zoning law. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, the land use attributes that a district council may regulate do not include explicit authority to regulate design elements and aesthetics, unlike the attributes that may be regulated in a commission county or a municipal corporation under Division I of this article, specifically, §§ 4-102 and 4-103 of this article. Although charter counties generally have plenary land use authority under the Express Powers Act, Art. 23A, § 5(X), it is unclear whether the failure to provide this authority to the district councils under this division presumes that they have this authority implicitly, or that they do not have the authority to regulate design elements and aesthetics. The General Assembly may wish to clarify the authority over design elements and aesthetics that the district councils are intended to have, or to state explicitly that the district councils have the same authority to regulate as have charter counties. *(p. 552)*

22-119. Effect of statewide zoning — In municipal corporations. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(2) of this section, the power to “enforce” laws is an executive power, not a legislative power, and should properly vest in the chief executive of the municipal corporation rather than in the governing body. The General Assembly may wish to clarify this provision. *(p. 562)*

22-209. Approval — Montgomery County — Classification change. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the requirement for a supermajority vote to approve a zoning classification “not shown as appropriate or suitable in the text or on the land use map of [an approved] master plan” under subsection (c)(1) of this section may inadvertently penalize a beneficial application that does not conform to an outdated master plan that itself may not be legally current. In part, this may be overcome with the express support of the Commission under subsection (c)(2) of this section. The General Assembly may wish to consider how this provision relates to a stale master plan in an evolving area. *(p. 571)*

22-402. Map amendments. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsection (a)(1)(ii) of this section, a person may obtain judicial review of an action without showing aggrievement, so long as the person appeared at the hearing. The General Assembly may wish to consider whether a different standard involving some form of aggrievement or impact should be required of one obtaining judicial review under this section. *See also* § 23-401 of this article, *(p. 589)*

22-402. Map amendments. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that it is unclear whether judicial review may be available under subsection (a) of this section only for an individual map amendment, or also for a sectional map amendment. The General Assembly may wish to clarify the type of map amendment for which judicial review is available under this section. *(p. 589)*

22–407. Judicial review. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsection (c)(3)(i) of this section, the possibility that the district council might modify or reverse a decision based on additional evidence may open up unforeseen consequences if one or more parties changes its position in the proceedings, and the rights of those persons also change accordingly. The General Assembly may wish to explore further, with caution, the possibilities that an open remand to the district council might bring to the process. *(pp. 594-595)*

22–407. Judicial review. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that subsection (f)(2) of this section appears to allow a member of the district council who previously was recused to participate in the decision to appeal to the Court of Special Appeals, raising certain ethical concerns. The General Assembly may wish to examine more closely the language of subsection (f)(2) of this section and consider the effect of recusal on qualification to vote on the decision to appeal an action. *(p. 595)*

23–205. Preliminary subdivision plan — Prince George’s County. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, the 70–day limitation period within which the county planning board may disapprove a preliminary subdivision plan is intended to begin only with the submission and acceptance of a complete application. Although the provision is unambiguous as drafted, and is so interpreted by the Commission, the General Assembly may wish to consider making it even more explicit by adding the word “complete” to modify “the plan” in subsection (b)(1) of this section. *(p. 621)*

23–401. Authorized. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsection (a)(1)(ii) of this section, a person may obtain judicial review of an action without showing aggrievement, so long as the person appeared at the hearing. The General Assembly may wish to consider whether a different standard involving some form of aggrievement or impact should be required of one obtaining judicial review under this section. *See also* § 22–402 of this article. *(p. 626)*

23–401. Authorized. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that while this section appears to apply equally to both Montgomery and Prince George’s counties, subsection (b) of this section requires the use of “procedures under § 20–402(b) of this article”, which on their face apply only in Montgomery County. *(p. 626)*

25–503. Powers of county executive. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(2) of this section, the county executive may not enter into an agreement unless the county planning board, an unelected body not a party to the agreement, determines “that” the agreement is consistent with the Commission’s general plan. This places the county planning board in an unusual position with respect to the prerogative of the county executive. In the corresponding provision in

Montgomery County, § 24–304(c) of this article, the county planning board is an executing party to the agreement, and so there is no such problem in that jurisdiction. *Cf.* Revisor’s Note to § 7-305 of this article. (p. 661)

III. Informational and minor matters.

1-101. Definitions. (j) Local law. The Land Use Article Review Committee notes, for consideration by the General Assembly, that this provision is not intended to alter the legislative mechanisms required to implement any portion of this division in any local jurisdiction. *See* § 1-205 of this title. Neither is the term “local law” defined in this subsection to be confused with the term “public local law”, an enactment of the General Assembly that applies to a single county. *Cf. Kent Island Defense League v. Queen Anne’s Co. Bd. of Elections*, 145 Md. App. 684 (2002). (p. 9)

1-101. Definitions. (r) Subdivision. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that this subsection is patterned after the revision of the same term defined in § 14–101(p) of this article for clarity and consistency within this article. This revision recognizes that land may be subdivided for several purposes, including both conveyance and development, not necessarily involving an immediate sale. No substantive change is intended. (p. 14)

1-101. Definitions. (r) Subdivision. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in paragraph (1)(i) of this subsection, the phrase “consistent with criteria established by the legislative body of the local jurisdiction”, which was implicit in the former law, is added for clarity. No substantive change is intended. (p. 14)

1–402. Code counties — Land use powers. The Land Use Article Review Committee notes, for consideration by the General Assembly, that this section is added to clarify the status of land use powers exercised by code counties by providing a specific cross-reference to the powers that a code county shares with charter counties, and may exercise under the express powers relating to land use stated in Article 25A of the Code, as well as the powers previously exercised by the county as a commission county before adoption of code home rule. No substantive change is intended. (p. 34)

4–203. Zoning regulations — Procedure; public hearings. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(1) of this section, the relationship between the status of a “citizen” as one with an opportunity to be heard as opposed to that of a “resident” is unclear. (p. 87)

5-102. Subdivision regulations. (1) In subsection (c)(5) of this section, the reference to avoiding “inappropriate” population congestion is added for clarity. The Land Use Article Review Committee brings this addition to the attention of the General Assembly. No substantive change is intended. *(p. 107)*

5-102. Subdivision regulations. (2) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c)(5) of this section, the concept of simply “avoid[ing] ... population congestion” may be considered obsolete in relation to more modern, legislatively endorsed policies such as smart growth, preservation of open space, use of cluster development, and priority funding areas. While the Land Use Article Review Committee added the qualification “inappropriate” to the phrase, the General Assembly may wish to clarify further the relationship of this concept to other policies for managing growth while balancing legislatively endorsed policies. *(p. 107)*

5-401. Authorized. This section is new language added to provide a specific reference to the availability and manner of judicial review of a subdivision matter, as distinguished from the specific requirements for judicial review of a zoning matter under Title 4, Subtitle 4 of this article. It is patterned after former Art. 66B, § 4.08(f) and (a)(2). The Land Use Article Review Committee brings this addition to the attention of the General Assembly. No substantive change is intended. *(p. 116)*

6-201. “Appellate board” defined. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it is unclear whether any local jurisdiction has actually created a special board under item (2) of this section, or whether all local jurisdictions subject to this division use for this purpose a board of appeals established under Title 4, Subtitle 3 of this article. If no local jurisdiction has created such a special board, the General Assembly may wish to consider repealing this definition and substituting the term “board of appeals” for the term “appellate board” throughout this subtitle. *(p. 123)*

6-203. Development permit. In subsection (a)(2) of this section, the reference to a vote of the “authorized membership” of the appellate board is substituted for the former reference to the vote of the “members” of the appellate board for clarity. No substantive change is intended. The Land Use Article Review Committee brings this substitution to the attention of the General Assembly. *(p. 125)*

6-204. Development prohibitions; official map. The Land Use Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a) of this section, the identity of the “official map” and its relationship to a capital acquisition or improvement plan of a local jurisdiction are unclear. *(p. 126)*

7-305. Procedures. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that the standards for determining consistency between an agreement and the comprehensive plan under former Art. 66B, § 13.01(e) [revised in

subsection (c) of this section], or a proposed amendment to an agreement and the comprehensive plan under former Art. 66B, § 13.01(h)(2) [revised in subsection (f)(2) of this section], were different and inconsistent. In the former case, the planning commission was required to determine “whether” the proposed agreement was consistent with the comprehensive plan, whereas in the latter, the commission was to determine “that” an amendment to the agreement was consistent with the comprehensive plan. Applying the word “that” in the latter case would give the appointed planning commission a veto over action of its appointing governing body, raising serious State constitutional concerns. A review of the legislative history convinced the committee that both reviews should use the word “whether”, as indeed the original 1995 enactment specified, but was inadvertently altered in a 2000 recodification that was intended to be nonsubstantive. The committee considered the change in the 2000 legislation to be purely a scrivener’s error. No substantive change is intended. *See* Ch. 562, Acts of 1995; Ch. 426, Acts of 2000. *(pp. 139-140)*

7-305. Procedures. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that under subsection (d) of this section, the time limit for recording an executed agreement, 20 days, is quite short, considering that an unrecorded agreement becomes void after that. The General Assembly may wish to consider whether another period would be more appropriate in light of the complicated nature of the transactions that would be subject to an agreement, as well as the effect of potential litigation and judicial review on such a transaction and agreement. *(p. 140)*

8-101. Definitions. (h) Structure. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the comprehensive definition of “structure” in paragraph (1) of this subsection is very broad and perhaps overly inclusive. *(p. 145)*

8-204. Accepting gifts. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that a commission may be subject to provisions concerning ethics and disclosure of gifts and their disposition. *(p. 151)*

8-204. Accepting gifts. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that this section does not describe the nature of permissible gifts. It may be inferred that a gift may be in the form of any sort of property, such as money or an easement. The General Assembly may wish to consider whether it is advisable to specify that gifts may be in any form, not merely monetary. *(p. 151)*

8-302. Application for changes to sites or structures — In general. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section, the reference to a structure “intended” to be visible from a public way is ambiguous. It is unclear *whose* intent is meant – that of the person filing the application for a structure to be built or altered, or that of the commission concerned with the structure present or contemplated. It is also unclear whether the intent refers only to an existing structure that may be altered or to a structure that may be added to the site. The General Assembly may wish to clarify

the nature of the “intent” of visibility as to whose viewpoint, and as to what is to be viewed. In the alternative, the General Assembly may wish to delete the phrase “or intended to be visible”. *(p. 154)*

8-302. Application for changes to sites or structures — In general. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (a) of this section, the meaning of the term “public way” from which a site or structure is visible is unclear. It may mean a roadway, an alley, or a path that people may traverse, as opposed to an easement for a storm drain, for example. The General Assembly may wish to clarify the potential effects of a proposed change to a site or structure that is intended to be protected if any portion of the site or structure “is visible or intended to be visible from a public way”. *(pp. 154-155)*

10-302. Zoning regulations — Purposes; considerations. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in item (2)(vi) of this section, the concept of simply “avoid[ing] an undue concentration of population” may be considered obsolete in relation to more modern, legislatively endorsed policies such as smart growth, preservation of open space, use of cluster development, and priority funding areas. The General Assembly may wish to clarify the relationship of this item in relation to other policies for managing growth while balancing legislatively endorsed policies. *(p. 191)*

10-303. Zoning regulations — Procedure; public hearings. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(1) of this section, the relationship between the status of a “citizen” as one with an opportunity to be heard as opposed to that of a “resident” is unclear. *(p. 193)*

10-404. Board — Authority. In subsection (a)(2) of this section, the reference to hearing and deciding special exceptions “or conditional uses” is added for clarity. The Land Use Article Review Committee brings the addition to the attention of the General Assembly. *(p. 201)*

11-204. Election to stand trial. In subsection (a) of this section, the reference to 5 “business” days is added for consistency with Art. 1, § 36, which provides that a time period of 7 days or less does not include weekends, holidays, and other days that the office of a court where a filing must occur is not open the entire day during ordinary business hours. The Land Use Article Review Committee notes the addition for consideration by the General Assembly. *(p. 214)*

14-101. Definitions. (g) **Governed special taxing district.** The Land Use Article Review Committee notes, for consideration by the General Assembly, that the term “governed special taxing district” defined in this subsection represents those local governed areas that are not incorporated as municipal corporations under Art. XI-E of the Maryland Constitution but are part of the zoning, subdivision, and land acquisition functions of the Commission under this

division. No substantive change is intended. *See, e.g.* §§ 18–401(i), 20–509, 22–206 through 22–208, and 23–202 of this article. (p. 220)

14–101. Definitions. (h) Local law. The Land Use Article Review Committee notes, for consideration by the General Assembly, that this provision is not intended to alter the legislative mechanisms required to implement any portion of this division in any local jurisdiction. *See* § 14–203 of this title; *cf.* Revisor’s Note to § 1–101(j) of this article. Neither is the term “local law” defined in this subsection to be confused with the term “public local law”, an enactment of the General Assembly that applies to a single county. *Cf. Kent Island Defense League v. Queen Anne’s Co. Bd. of Elections*, 145 Md. App. 684 (2002). (p. 220)

14–101. Definitions. (p) Subdivision. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in paragraph (1)(i) of this subsection, the phrase “consistent with criteria established by the legislative body of the local jurisdiction”, which was implicit in the former law, is added for clarity. No substantive change is intended. (p. 224)

15–101. Established. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, the reference to the Commission as a “body politic and corporate and ... an agency of the State” is substituted for the former references to the Commission as a “body corporate” and a “corporate agency” for clarity and consistency with provisions establishing similar bodies in recently revised articles of the Code. No substantive change is intended. (p. 227)

15–104. Additional requirements for appointment of Montgomery County commissioners. (1) In subsection (e)(4)(ii) of this section, the phrase “when the appointee takes office,” is added for clarity. The Land Use Article Review Committee brings this addition to the attention of the General Assembly. No substantive change is intended. (p. 236)

15–116. Powers and duties — Publications of Commission. In subsection (b)(2) of this section, the Land Use Article Review Committee notes, for consideration by the General Assembly, that the Commission does not “enact” regulations, but only “adopt[s]” them. (p. 253)

15–118. Powers and duties — Entry into buildings and private premises. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the right of entry granted by this section is subject to constitutional requirements and limitations under both federal and State constitutions. (p. 254)

16–102. Merit system — In general. In subsection (b)(3) of this section, the reference to exclusion of “a part-time or temporary employee [that the Commission excludes] under Subtitle 2 ... of this title” is added for clarity. The Land Use Article Review Committee brings this addition to the attention of the General Assembly. No substantive change is intended. (p. 273)

16-204. Constitution and bylaws of employee organization. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it may be helpful to compare the nondiscrimination standards in subsection (b)(1) of this section with similar nondiscrimination standards required under other State laws in order to harmonize them. *See also* Revisor's Note to § 16-304 of this title. *(p. 284)*

16-217. Strikes. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (d) of this section, the prohibition against receiving "compensation" from the Commission during a strike may be ambiguous. It is unclear whether the word "compensation" in this context applies solely to "wages" or other direct monetary payment, or also to "benefits". The General Assembly may wish to specify whether this provision cuts off only wage payments or also benefits such as eligibility for health insurance and pension accrual. *(p. 303)*

16-304. Constitution, bylaws, and annual report of employee organization. The Land Use Article Review Committee notes, for consideration by the General Assembly, that it may be helpful to compare the nondiscrimination standards in subsection (b)(1) of this section with similar nondiscrimination standards required under other State laws in order to harmonize them. *See also* Revisor's Note to § 16-204 of this title. *(p. 317)*

16-313. Prohibited activities of Commission employees or employee organization. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in item (5) of this section, an employee organization and its agents and representatives are prohibited from engaging in a "strike". However, the term "strike" is defined in § 16-301 as actions taken – or not taken – by an "employee". It does not appear from the definition that any person other than an employee can engage in a strike, although an employee organization could induce, initiate, or ratify a strike by Commission employees, as is prohibited for employees other than police under § 16-217(b) of this title, or assist or authorize a strike, for which penalties are provided under § 16-217(f)(1) of this title. This issue also arises in § 16-315(d) of this subtitle, which provides penalties for an "employee organization" that engages in a "strike". The General Assembly may wish to consider and address the nature of activities relating to strikes that employee organizations and their agents and representatives may or may not engage in, and harmonize them in this subtitle and in the corresponding provisions of Subtitle 2 of this title. *(pp. 336-337)*

16-407. Failure to comply with subtitle. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(1) of this section, the standard that may be used to calculate a pay award is unclear. It is not clear whether the award is in nominal dollars, or should be calculated as future earnings and then reduced to present value. The General Assembly may wish to compare this provision to other pay provisions in the Code and adjust this provision accordingly. *(p. 355)*

17-101. Authorized. In subsection (a) of this section, the former reference to acquisition of property “by means of donations, purchases, or condemnation” is deleted as surplusage. Even though the deletion of the reference to “condemnation” might appear to be substantive, that power is specifically authorized in Part II of this subtitle, *below*. No substantive change is intended. The Land Use Article Review Committee brings this deletion to the attention of the General Assembly. *(p. 361)*

17-110. Possession; appeal. The Land Use Article Review Committee notes, for consideration by the General Assembly, that while the process for taking possession of condemned property under this section is similar to that found in Title 12, Subtitle 2 of the Maryland Rules, it is not identical. The General Assembly may wish to compare the provisions on condemnation under this section and this part with those found in the Maryland Rules with an intent to harmonize the two. *(p. 368)*

17-114. Relocation payment — In general. (1) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c) of this section, the references to the “Commission” and the “county planning board” are substituted for each other to reflect the proper roles of each unit and for clarity. To the knowledge of the Commission and of this committee, no relocation payment has ever actually been paid under this section. The committee draws the substitution to the attention of the General Assembly. *(p. 374)*

17-114. Relocation payment — In general. (2) The Land Use Article Review Committee also notes, for consideration by the General Assembly, that in subsection (d)(1)(i) of this section, the reference to expenses to move a person’s “family” may have implications under the federal Fair Housing Act. The General Assembly may wish to consider whether a reference to a person’s “household” or some other term might better comport with the federal law. *(p. 374)*

17-115. Additional relocation payment — Dwelling. (1) In subsection (b)(3) of this section, the reference to expenses for “title insurance, recording and transfer fees and taxes, and other taxes and closing costs” is substituted for the former reference to expenses for “evidence of title, recording fees, and other closing costs” for clarity and to bring the terminology of the statute closer to that found in current real estate settlement practice. The Land Use Article Review Committee draws the substitution to the attention of the General Assembly. No substantive change is intended. *(p. 376)*

17-115. Additional relocation payment — Dwelling. (2) In subsection (c)(2) of this section, the reference to the amount being “computed for the period of time remaining under the mortgage on the acquired dwelling the product of: (i) the net present value of the difference, if any, between ... the interest and other debt service costs to be incurred to finance the replacement dwelling for that period ... and ... those costs that would have been incurred for that period to finance the acquired dwelling; and (ii) the unpaid principal balance of the mortgage on

the acquired dwelling at the time of acquisition divided by the principal amount of the purchase money mortgage on the replacement dwelling” is substituted for the former reference to the amount being “equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value” for clarity. The Land Use Article Review Committee brings this substitution to the attention of the General Assembly. No substantive change is intended. (*p. 377*)

18–304. Park taxes. The Land Use Article Review Committee notes, that although subsection (e)(4) of this section provides that “[a] tax authorized under this section shall be treated the same as county taxes in every other respect”, it is unclear whether exemptions and credits that apply to property assessed for taxation by a county apply to the taxes imposed under this subtitle. The General Assembly may wish to consider explicitly applying or curtailing the application of those exemptions and credits to these taxes. (*pp. 448-449*)

20–101. Maryland–Washington Regional District. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(2) of this section, the exclusion from the regional district of “the City of Laurel as it existed on July 1, 2008” precludes the application of the land use powers of the City of Laurel to land annexed to that municipal corporation after July 1, 2008, absent specific subsequent substantive legislation altering the boundaries of the regional district. (*pp. 470-471*)

21–106. Functional master plan. In subsection (a)(1) of this section, the comprehensive reference to “transportation routes and facilities” is substituted for the former reference to “master plans of highways, mass transit that includes light rail and busways” for clarity and consistency within this article. Similarly, in subsection (b)(1) and (3) of this section, the references to “transportation routes and facilities” and a “transportation route or facility” are substituted for the former references to “highway[s] or transportation line[s]”. The Land Use Article Review Committee brings these substitutions to the attention of the General Assembly. No substantive change is intended. (*pp. 536-537*)

22–103. Adoption of local law by bi–county district council — Majority vote by each district council required. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in practice the bi–county district council never meets as such other than to consider the budgets. (*p. 550*)

22–206. Procedures. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the meaning of the phrase “undeveloped zoning amendments”, and their review de novo, are unclear. It is possible that they refer to proposed but unadopted zoning amendments, or to map amendments approved in anticipation of actions that subsequently fail to occur such as in conditional zoning under § 22–215 of this subtitle, or to some other concept. The General Assembly may wish to clarify the meaning of the phrase

“undeveloped zoning amendments” and its relationship to other matters in that subsection. *(p. 568)*

22–408. Judicial review from board of appeals; final and binding decisions. The Land Use Article Review Committee notes, for consideration by the General Assembly, that subsection (b) of this section, which requires the board of appeals to take certain actions to enforce a final decision of the board, may be obsolete in light of the district council’s assumption of that authority. The General Assembly may wish to consider substantively altering this provision or repealing it. *(p. 596)*

23–102. In general. (1) In subsections (a) and (d) of this section and throughout this title, several references to the “county planning board” are substituted for the former references to the “Commission” to conform to current subdivision practice. The Land Use Article Review Committee brings this substitution to the attention of the General Assembly. No substantive change is intended. *(p. 599)*

23–102. In general. (2) The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c) of this section, the authority of a municipal corporation to approve subdivisions applies not only to land not previously subdivided in the municipal corporation, but also to land that the municipal corporation annexes. *(p. 600)*

23–103. Dedication of land for roads. The Land Use Article Review Committee notes, for consideration by the General Assembly, that subsection (d) of this section, which requires the district council to approve a master plan of transportation in Prince George’s County, appears to be redundant of the general provisions required of the master plan under Title 1, Subtitle 4 and § 20–504 of this article. *(p. 603)*

23–104. Subdivision regulations — In general. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c)(1)(vii) of this section, the concept of the former reference to simple “avoidance of undue population congestion” may be considered obsolete in relation to more modern, legislatively endorsed policies such as smart growth, preservation of open space, use of cluster development, and priority funding areas. The General Assembly may wish to clarify the relationship of this item in relation to other policies for managing growth while balancing legislatively endorsed policies. *(pp. 609-610)*

23–202. Required referrals — Montgomery County. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the specific procedures for commenting on a resubdivision plan for residential property under subsection (d) of this section seem to be redundant of the general commenting procedures for any subdivision, which includes resubdivision, under subsection (c)(3) of this section. *(p. 617)*

24-310. Recordation. The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsection (a)(2) of this section, the time limit for recording an executed agreement, 20 days, is quite short, considering that an unrecorded agreement becomes void after that. The corresponding provision applicable in Prince George's County has a limit of 30 days. The General Assembly may wish to consider whether another period would be more appropriate in light of the complicated nature of the transactions that would be subject to an agreement. *See also* Revisor's Notes to §§ 7-305 and 25-511 of this article. (p. 643)

25-507. Term. In subsection (a) of this section, the phrase "is void 15 years after execution by the parties" is substituted for the former phrase "shall contain a definite period of duration ... not exceeding 15 years" for clarity and brevity. The Land Use Article Review Committee brings this substitution to the attention of the General Assembly. No substantive change is intended. (p. 664)

25-509. Amendment. In item (1) of this section, the word "substantive" is substituted for the former word "substantial" for clarity. The Land Use Article Review Committee brings this substitution to the attention of the General Assembly. No substantive change is intended. (p. 665)

25-805. Advisory committees on recreation. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1) of this section, the word "residents" is substituted for the former word "citizens" because the relationship between recreation programs and the status of citizenship is unclear. (p. 681)

25-807. Bladensburg Marina and Boat Basin. The Land Use Article Review Committee notes, for consideration by the General Assembly, that in subsection (c)(1) of this section, the word "residents" is substituted for the former word "citizens" because the relationship between open access to the Marina and the status of citizenship is unclear. (p. 685)

26-103. Nature of Programs. The Land Use Article Review Committee notes, for consideration by the General Assembly, that the reference to "residents" is substituted for the former reference to "citizens" because the relationship between the Program benefits and the proximity of residents is clear, whereas the relationship between the benefits and citizenship, including its attendant rights and duties such as voting and jury service, is unclear. No substantive change is intended. (p. 688)

