GO COMMITTEE #1-2
October 27, 2016

MEMORANDUM

October 26, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney
GO Glenn Orlin, Deputy Council Administrator
Linda A. McMillan, Senior Legislative Analyst

SUBJECT: **Worksession 5:** Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments;
Resolution to establish Development Impact Tax Rates for transportation and public school improvements

Please bring to this session the Bill 37-16 packets for September 22, October 6, and October 20.

I. FOLLOW-UP ISSUES

1. Base rates of the school impact tax. The table on ©1 shows three scenarios of rates, all based on the student generation rates across all homes of each type: single-family-detached, single-family-attached (i.e., townhouses), low-rise multi-family units (in buildings of 4 stories or less), and high-rise multi-family units. Scenario #1A is the Planning Board's recommendation. Note that the single-family-detached rate under #1A would decline by nearly $8,000/house, the rate for townhouses would decline marginally (and higher than for a single-family-detached house), the rate for low-rise multi-family apartments would rise by more than $2,700/unit, and the rate for multi-family high-rise units would increase very marginally. These rates reflect the actual student generation rate for all units of each type. The PHED Committee's recommendation to eliminate SFPs and to increase the school impact tax by 10% over the Planning Board's recommendation is Scenario #1B, while MCCPTA's proposal to increase the tax by 20% over the Board's recommendation is Scenario #1C.

The GO Committee discussed whether to use the student generation rates for all homes in each category, or the rates for homes that have been built in the last decade. The argument for using rates for the newer units is that it measures the near-term impact of new housing. The rates for the 100%, 110%, and 120% options using the student generation rates for housing built in the last 10 years (Scenarios #2A, #2B, and #2C, respectively) are on ©2. Using near-term rates produces a distinctly different pattern: the rate for single-family-detached is fairly static or goes up (depending on the option), while the rates for all other units decline significantly.

On October 24 Council staff received the new revenue school impact tax revenue estimates from OMB and Finance; they have calculated the revenue effects of each of the six scenarios, and have recalculated the estimate from current rates as well. The results are on ©3. The Planning Board's proposal (#1A) would generate virtually the same revenue as existing rates. Increasing these rates by 10% (#2A) to compensate for the loss of SFPs would generate about $14.8 million more (+6.9%) over the next 6 years, while MCCPTA's proposal (#3A) would raise about $30 million more (+14.0%). On the other hand, if the Planning Board's proposal had used instead the student generation rates from housing 10 years old or less (#1B), it would generate $51.6 million less (-24.1%); increasing it by 10% (#2B) would generate $41.6 million less (-19.4%); and increasing it by 20% (#2C) would generate about $31.5 million less (-14.7%).

Council staff believes that impact taxes should represent the capital budget impact of a house or building in perpetuity, just as the school capacity that the tax would help fund is expected to last in perpetuity. Impact taxes for transportation are based on average trip generation rate of all homes and buildings, irrespective of their age; the same rationale should follow for schools. **Council staff recommendation: Approve the rates for Scenario #1B if SFP payments are eliminated, or for Scenario #1A if they are not.**

On October 20 Councilmembers Navarro and Katz recommended Scenario #2B, while Councilmember Riemer recommended Scenario #2C. However, that was prior to these revenue estimates becoming available. This is an opportunity for the Committee to revisit its recommendation.

*2. **Base transportation impact tax rate scenarios and revenue impact.*** There are five rate scenarios that Council staff has asked OMB and Finance to evaluate (see Chart 1 on the next page):

Scenario A – retain current rates in MSPAs, General District, and Clarksburg

Scenario B – Planning Board's rates, that vary across the Red, Orange, Yellow, and Green areas

Scenario C – apply current General District rates to all areas, including MSPAs and Clarksburg (proposed by Council President Floreen)

Scenario D – retain current rates in MSPAs and the Orange area, increase current rate in the Yellow area by 25%, and increase current rate in the Green area by 50% (requested for analysis by Councilmember Riemer)

Scenario E – same as Scenario C, except to charge $0.00 rate for Office and Industrial in MSPAs (also requested for analysis by Councilmember Riemer)

On October 26 Council staff received revised revenue estimates for Scenarios A and B and estimates for new scenarios C, D, and E. All the scenarios raise additional revenue over current rates to varying degrees (see ©4). The difference above current rates during the FY17-22 period—assuming the rates apply by next July (the beginning of FY18)—are estimated to be:

Scenario B: +$0.8 million (+1.3%)
Scenario C: +$6.6 million (+10.6%)
Scenario D: +$7.7 million (+12.5%)
Scenario E: +$3.7 million (+6.1%)

Council staff recommendation: Concur with Ms. Floreen's recommendation (Scenario C).

Chart 1

Transportation Impact Tax Options

	Current ("A")			Planning Board ("B")				Floreen ("C")	Riemer ("D")			TPAR Offset (using "C" * as base)			
Land Use	General District	MSPAs	Clarks-burg	Red Areas (MSPAs)	Orange Areas	Yellow Areas	Green Areas	All. Areas*	Red & Orange Areas	Yellow Areas	Green Areas	Gen. Dist. +14% "C-1"	Gen. Dist. +11% "C-2"	Red Areas +0% "C-3"	Other Areas +25% "C-3"
Residential Uses	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit	cost/unit
Single-family Det.	$13,966	$6,984	$20,948	$3,653	$10,959	$18,266	$29,225	$13,966	$13,966	$17,458	$20,949	$15,921	$15,502	$13,966	$17,458
Single-family Att.	$11,427	$5,714	$17,141	$2,552	$7,656	$12,759	$20,415	$11,427	$11,427	$14,284	$17,141	$13,027	$12,684	$11,427	$14,284
Low-to-Mid-Rise Apt.	$8,886	$4,443	$13,330	$2,312	$6,937	$11,562	$18,499	$8,886	$8,886	$11,108	$13,329	$10,130	$9,863	$8,886	$11,108
High-Rise Apartment	$6,347	$3,174	$9,522	$1,652	$4,955	$8,259	$13,214	$6,347	$6,347	$7,934	$9,521	$7,236	$7,045	$6,347	$7,934
Multi-Family Senior	$2,539	$1,269	$3,808	$661	$1,982	$3,303	$5,286	$2,539	$2,539	$3,174	$3,809	$2,894	$2,818	$2,539	$3,174
Commercial Uses	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf	cost/sf
Office	$12.75	$6.35	$15.30	$6.72	$13.45	$16.81	$16.81	$12.75	$12.75	$15.94	$19.13	$14.54	$14.15	$12.75	$15.94
Industrial	$6.35	$3.20	$7.60	$3.34	$6.69	$8.36	$8.36	$6.35	$6.35	$7.94	$9.53	$7.24	$7.05	$6.35	$7.94
Bioscience	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Retail	$11.40	$5.70	$13.70	$5.98	$11.96	$14.95	$14.95	$11.40	$11.40	$14.25	$17.10	$13.00	$12.65	$11.40	$14.25
Place of Worship	$0.65	$0.35	$0.90	$0.35	$0.70	$0.88	$0.88	$0.65	$0.65	$0.81	$0.98	$0.74	$0.72	$0.65	$0.81
Private School	$1.05	$0.50	$1.35	$0.53	$1.06	$1.33	$1.33	$1.05	$1.05	$1.31	$1.58	$1.20	$1.17	$1.05	$1.31
Hospital	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0,00	$0.00	$0.00	$0.00	$0.00
Social Service Agency	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Charitable Institution	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Other Non-Residential	$6.35	$3.20	$7.60	$3.35	$6.69	$8.36	$8.36	$6.35	$6.35	$7.94	$9.53	$7.24	$7.05	$6.35	$7.94

- Councilmember Floreen recommends a $0.00/sf rate for places of worship and private schools. In the "TPAR Offset" scenarios above, the current General District rates for places of worship and private schools are assumed.

Riemer Scenario "E": Same rates as Floreen Scenario "C", except to set a $0.00 rate for Office and Industrial uses in Red Areas (MSPAs).

*3. **Replacing TPAR payments with a higher transportation impact tax.*** On October 18 the PHED Committee recommended eliminating the policy area transportation test: neither continuing the Transportation Policy Area Review (TPAR) nor instituting the Planning Board's recommended transit accessibility test. Instead it preferred to raise the transportation impact tax by a certain percentage over whatever new set of rates the Council will select. Council staff had noted that traffic mitigation payments under PAMR and TPAR over the past decade have been quite small: over the past 6 years, the County has collected about $1.46 million in transportation mitigation payments, or about 2% of what the County collected in transportation impact tax revenue during the same period.

However, it was also noted that the amount of mitigation payment revenue would likely be larger in the future, since many subdivisions having been approved with the condition of making this payment have not yet reached the point of payment: 6 months after building permit issuance for residential development or 12 months after permit issuance for non-residential development. Councilmember Leventhal asked for more information about what the mitigation payment revenue would likely be in the future before deciding on the percentage by which the transportation impact tax rates should be increased to compensate for discontinuing mitigation payments.

Planning staff's analysis is on ©5. MSPAs—"Red Areas" in the Draft SSP's parlance—are exempt from the TPAR test, so they generate no mitigation payment revenue. Of the many non-MSPA policy areas, most fail either the transit adequacy or roadway adequacy tests, but not both: so to proceed, developments there must make a mitigation payment equal to 25% of the applicable transportation impact tax. Three policy areas fail both tests, so they must pay an amount equal to 50% of the applicable, and three others pass both tests, so no TPAR payment is required. Therefore, on average, developments in non-MSPAs pay an amount equal to 25% of the impact tax.

The housing and employment growth projections between 2015 and 2020 show that 44% of the housing growth and 65% of the jobs growth will be in the non-MSPA policy areas, that is, where the TPAR test applies. Thus, Planning staff estimates that, if TPAR were to continue as it is now, mitigation payment revenue from housing would equal about 11% (0.25 x 0.44) of the impact tax, and such revenue from employment would equal about 16% (0.25 x 0.65) of the impact tax.

Therefore, in order not to reduce revenue below what would otherwise be collected, there are two options: after determining what the base impact tax rate schedule would be assuming continuation of mitigation payments, either (1) increase the rates only in the non-MSPAs, by 25%, or (2) raise the rates in all policy areas by a figure between 11% and 16%, say 14%.

The PHED Committee did not have a majority recommendation to the GO Committee. Councilmember Riemer recommends raising the rates only in the non-MSPAs, by 25%. Councilmember Leventhal recommends raising the rates in all policy areas by 14%. Councilmember Floreen recommends raising the rates in all policy areas by 11%.

On October 26 Council staff also received from OMB and Finance revenue estimates for these three "TPAR Replacement" options. The rates are also shown on Chart 1, all as revisions to Scenario C, above. Mr. Riemer's option (C-1) would generate about $10.5 million more over the FY17-22 period; Mr. Leventhal's option (C-2) would generate about $7.1 million more; and Ms. Floreen's option (C-3) would generate about $5.5 million more. Similarly, if the Council were to select one of the other base impact tax rate scenarios, the resulting surcharges (B-1, B-2, B-3 or D-1, D-2, D-3 or E-1, E-2, E-3) would show the same general revenue generating pattern.

Council staff recommendation: Concur with Mr. Leventhal's recommendation—raise the rates in all policy areas by 14%. This is consistent with Council staff's earlier recommendation to equalize impact tax rates across all areas of the County, just as the school impact tax is levied. A 14% increase would roughly cover the loss of TPAR mitigation revenue.

Councilmember Floreen wishes the Committee to know that if the rates are raised countywide, she recommends that the higher payment in the MSPAs be phased in just as the Planning Board had recommended for the phasing in of impact taxes in the Silver Spring CBD former enterprise zone. Diane Schwartz Jones, Director of the Department of Permitting Services, will be on hand to comment about DPS's ability to keep track of impact tax payments if they are tied to subdivision approval dates years earlier.

3. HOC proposal. Council staff informed the Committee in the October 20 packet that William Kominers, representing the Housing Opportunities Commission (HOC), transmitted a proposal to amend the law to expand HOC's exemptions by adding building that are "controlled", but not owned, make certain units exempt when they serve households earning equal or less than 60% of area median income (AMI), and to increase the options that allow a development to have all units exempt if 20% of units are affordable to households earning 50% of AMI or 15% of units are affordable to households earning 40% of AMI (©6-9). In response to questions from Council staff, Mr. Kominers has provided additional information which is attached at ©10-12.

Council staff recommendation: Approve the minor request for "equal or less than 60%," but do not approve the other amendments. The other two amendments do not only apply to HOC, which raises the following concerns.

The first amendment would expand the exemption to any building controlled, and used primarily, by any agency or instrumentality of federal, State, County or municipal government. If this amendment is needed for HOC, the Council should consider it separately and approve a clear definition of control. It is not clear to Council staff how the proposed amendment might impact, for example, an office building that would not be owned, but would be "controlled" by the federal government for a period of time.

While the amendment to allow an exemption for providing a certain percentage of very low income affordable units is responsive to the need to increase the housing stock for those earning 50% AMI and below, it does not only apply to HOC. Council staff expects that HOC would always have a mix of incomes in its development and would be developing rental housing. However, the provision would also apply to for-sale developments. Council staff believes it is preferable to get more MPDU units (25%) and then work with other resources to buy the affordability down further, as was done at the Bonifant, or to assist non-profit organizations to purchase MPDUs that can then be rented to very low income households.

4. Refund for Clarksburg outlet mall. The GO Committee asked staff to draft text that would allow for Clarksburg Premium Outlets to receive a refund if the ultimate transportation impact tax rate for retail approved by the Council for Clarksburg is lower than the current $13.70/sf rate. The mall consists of 450,000sf of retail space. Depending on the combination of the base rate and TPAR replacement surcharge approved by the Council, there would either be no refund or a refund of either $315,000 or $472,500:

Scenario	**New Retail Rate**	**Refund**
B-1	$18.69/sf	None
B-2	$17.04/sf	None
B-3	$16.59/sf	None
C-1 or E-1	$14.25/sf	None
C-2 or E-2	$13.00/sf	$315,000
C-3 or E-3	$12.65/sf	$472,500
D-1	$17.81/sf	None
D-2	$16.25/sf	None
D-3	$15.82/sf	None

Below is text drafted by Council staff that would restrict any potential refund to Clarksburg Premium Outlets:

Add the following after line 415:

Sec. 2. The Director of Finance must refund, without interest, to any property owner the difference between the development impact tax for transportation improvements paid for up to 450,000 square feet and the development impact tax that would have been due after this Act takes effect if:

(a) the property owner paid the development impact tax for transportation improvements on or before November 15, 2016;

(b) the impact tax was paid for a retail development on the west side of Interstate 270 in the Clarksburg policy area;

(c) the development impact tax rate per square foot for this project was reduced on the date this Act takes effect; and

(d) the property owner applies for the refund on a form requested by the Director of Finance on or before 60 days after this Act takes effect.

II. REMAINING DECISIONS

Below are the issues for which the Committee should attempt to make recommendations. Under each issue the option in *italics* represents the existing rule. Support is shown (in parentheses).

1. Basic transportation impact tax rates – see page 3
   a. *Current rates - Scenario "A"*
   b. Planning Board's proposed rates – Scenario "B" (MCCC, GBCA, GCCA, Sierra Club, developers)
   c. Apply current General District rates countywide – Scenario "C" (Council President Floreen, Council staff)
   d. Retain current rates in Red and Orange areas, raise them 25% in the Yellow area and 50% in the Green area (scenario requested by Councilmember Riemer)
   e. Same as Scenario "C", except to set $0.00 rate for Office and Industrial in MSPAs (scenario requested by Councilmember Riemer)
   f. Keep MSPA commercial rates at half the general rate; set housing at 75% (Chevy Chase)
   g. Other

2. TPAR Replacement impact tax surcharge
   a. Increase non-MSPA areas by 25% (Councilmember Riemer)
   b. Increase all areas by 14% (Councilmember Leventhal, Council staff)
   c. Increase all areas by 11% (Council President Floreen)

3. Should the 15% rate discount within ½-mile of six specific MARC stations be continued?
   a. *Yes*
   b. No (Council staff)

4. Should places of worship and private schools have a $0 rate?
   a. *No* (Council staff)
   b. Yes (Council President Floreen)

5. Should there be a discount for providing less parking?
   a. *No* (DOT, Council staff)
   b. Yes (Planning Bd., Sierra Club, CSG)

6. Use of, and credits against, impact tax funds - bikeways
   a. *hiker-biker trail used primarily for transportation*
   b. hiker-biker trail <u>and other bike facility</u> used primarily for transportation (Planning Bd.)
   c. hiker-biker trail <u>and protected bike lanes</u> used primarily for transportation (Council staff)

7. Use of, and credits against, impact tax funds – sidewalk connector
   a. *sidewalk connector to a major activity center or along an arterial or major highway* (DOT, Council staff)
   b. sidewalk connector to <u>or within</u> a major activity center or along an arterial or major highway (Planning Bd.)

8. Use of, and credits against, impact tax funds – light rail and BRT
   a. *No for light rail; imprecise for BRT*
   b. explicitly yes for light rail and BRT (Cynthia Bar)
   c. no for light rail, yes for BRT (Council staff)

9. Use of, and credits against, impact tax funds – operating expenses of any transit or trip reduction program
   a. *Retain*
   b. Delete (Council staff)

8. Use of, and credits against, impact tax funds – State road improvements
   a. *No* (Council staff)
   b. Yes (CP Floreen, Christopher Ruhlen)

10. Dedicate impact tax revenue collected in Red areas to improvements in Red areas
   a. *No* (Council staff)
   b. Yes (CP Floreen)

11. Dedicate impact tax revenue collected in an area to pay for LATR improvements in that area
   a. *No* (Council staff)
   b. Yes (CP Floreen)

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BUILT ALL YEARS

CONSTRUCTION COST	ES	MS	HS
Capacity/Core	740	1,200	2,400
Building Size (sq. ft.)	99,000	165,000	400,000
Project Cost	$27,522,000	$47,520,000	$112,500,000
Cost per Pupil	**$37,192**	**$39,600**	**$46,875**

GENERATION RATES	ES	MS	HS
Single Family Detached	0.205	0.109	0.148
Single Family Attached	0.234	0.107	0.143
Multi-Family Low- to Mid-Rise	0.203	0.079	0.103
Multi-Family High-Rise	0.071	0.029	0.038

#1A

IMPACT TAX - 100%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$18,878	$26,827	($7,949)
Single Family Attached	$19,643	$20,198	($555)
Multi-Family Low- to Mid-Rise	$15,507	$12,765	$2,742
Multi-Family High-Rise	$5,570	$5,412	$158

#1B

IMPACT TAX - 110%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$20,766	$26,827	($6,061)
Single Family Attached	$21,608	$20,198	$1,410
Multi-Family Low- to Mid-Rise	$17,057	$12,765	$4,292
Multi-Family High-Rise	$6,127	$5,412	$715

#1C

IMPACT TAX - 120%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$22,654	$26,827	($4,173)
Single Family Attached	$23,572	$20,198	$3,374
Multi-Family Low- to Mid-Rise	$18,608	$12,765	$5,843
Multi-Family High-Rise	$6,684	$5,412	$1,272

BUILT LAST 10 YEARS

CONSTRUCTION COST	ES	MS	HS
Capacity/Core	740	1,200	2,400
Building Size (sq. ft.)	99,000	165,000	400,000
Project Cost	$27,522,000	$47,520,000	$112,500,000
Cost per Pupil	**$37,192**	**$39,600**	**$46,875**

GENERATION RATES	ES	MS	HS
Single Family Detached	0.358	0.152	0.157
Single Family Attached	0.193	0.075	0.09
Multi-Family Low- to Mid-Rise	0.071	0.025	0.039
Multi-Family High-Rise	0.038	0.014	0.015

#2A

IMPACT TAX - 100%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$26,693	$26,827	($134)
Single Family Attached	$14,367	$20,198	($5,831)
Multi-Family Low- to Mid-Rise	$5,459	$12,765	($7,306)
Multi-Family High-Rise	$2,671	$5,412	($2,741)

#2B

IMPACT TAX - 110%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$29,363	$26,827	$2,536
Single Family Attached	$15,803	$20,198	($4,395)
Multi-Family Low- to Mid-Rise	$6,005	$12,765	($6,760)
Multi-Family High-Rise	$2,938	$5,412	($2,474)

#2C

IMPACT TAX - 120%	NEW Impact Tax per Unit	PREVIOUS Impact Tax per Unit	Change
Single Family Detached	$32,032	$26,827	$5,205
Single Family Attached	$17,240	$20,198	($2,958)
Multi-Family Low- to Mid-Rise	$6,551	$12,765	($6,214)
Multi-Family High-Rise	$3,205	$5,412	($2,207)

Estimated Revenue from School Impact Tax Scenarios

Scenario #	Forecast Scenario	6-Year	FY17	FY18	FY19	FY20	FY21	FY22	Average per Year	Difference from Current
Current	Current Approved Rates	$ 214,431,900	$ 32,450,100	$ 36,652,300	$ 36,435,600	$ 35,007,900	$ 36,718,000	$ 37,168,000	$ 35,738,650	-
#1A	Planning Board (100%/All Years)	$ 214,106,600	$ 32,450,100	$ 36,659,700	$ 36,211,900	$ 34,888,700	$ 36,728,800	$ 37,167,400	$ 35,684,433	(325,300)
#2A	Planning Board (100%/10 Years)	$ 162,830,500	$ 32,450,100	$ 26,148,100	$ 26,241,300	$ 25,197,300	$ 26,173,700	$ 26,620,000	$ 27,138,417	(51,601,400)
#1B	Planning Board (110%/All Years)	$ 229,276,200	$ 32,450,100	$ 39,743,100	$ 39,250,500	$ 37,776,400	$ 39,800,400	$ 40,255,700	$ 38,212,700	14,844,300
#2B	Planning Board (110%/10 Years)	$ 172,875,300	$ 32,450,100	$ 28,180,900	$ 28,283,400	$ 27,116,300	$ 28,190,300	$ 28,654,300	$ 28,812,550	(41,556,600)
#1C	Planning Board (120%/All Years)	$ 244,449,600	$ 32,450,100	$ 42,827,200	$ 42,289,900	$ 40,664,700	$ 42,872,800	$ 43,344,900	$ 40,741,600	30,017,700
#2C	Planning Board (120%/10 Years)	$ 182,919,700	$ 32,450,100	$ 30,213,600	$ 30,325,400	$ 29,035,300	$ 30,206,900	$ 30,688,400	$ 30,486,617	(31,512,200)

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Revenue from Transportation Impact Tax Scenarios

Scenario	Forecast Scenarios	6-Year	FY17	FY18	FY19	FY20	FY21	FY22	Diff from Current	Average per Year
"A"	Current Approved Rates	**$ 61,755,052**	$ 9,287,964	$ 10,427,284	$ 10,592,118	$ 10,355,019	$ 10,401,765	$ 10,690,901	$ -	$ 10,292,509
"B"	Planning Board - differential rates in Red, Orange, Yellow, and Green areas	**$ 62,561,856**	$ 9,287,964	$ 10,187,842	$ 10,321,419	$ 10,557,601	$ 11,183,928	$ 11,023,102	$ **806,804**	$ 10,426,976
"C"	Floreen - apply current General District rates everywhere	**$ 68,313,113**	$ 9,287,964	$ 11,912,761	$ 11,783,878	$ 11,567,535	$ 11,709,508	$ 12,051,467	$ **6,558,061**	$ 11,385,519
"D"	Riemer - current rates in Red and Orange; +25% in Yellow, +50% in Green	**$ 69,454,919**	$ 9,287,965	$ 11,902,713	$ 11,354,027	$ 11,935,598	$ 12,404,480	$ 12,570,136	$ **7,699,867**	$ 11,575,820
"E"	Riemer - Scenario "C", except $0.00/sf rate for Office & Industrial in Red areas	**$ 65,494,338**	$ 9,287,964	$ 11,350,878	$ 11,109,618	$ 11,079,513	$ 11,182,096	$ 11,484,269	$ **3,739,286**	$ 10,915,723
"C-1"	Floreen +25% in non-MSPAs	**$ 78,851,829**	$ 9,287,964	$ 13,960,790	$ 13,946,038	$ 13,668,643	$ 13,796,274	$ 14,192,119	$ **17,096,777**	$ 13,141,971
"C-2"	Floreen +14% in all areas (TPAR Replacement)	**$ 76,577,613**	$ 9,287,964	$ 13,580,776	$ 13,433,793	$ 13,187,172	$ 13,349,032	$ 13,738,876	$ **14,822,561**	$ 12,762,936
"C-3"	Floreen +11% in all areas (partial TPAR Replacement)	**$ 74,807,349**	$ 9,287,964	$ 13,223,507	$ 13,080,362	$ 12,840,237	$ 12,997,844	$ 13,377,434	$ **13,052,297**	$ 12,467,891

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Assuming the elimination of a Policy Area Test (or TPAR), what percentage increase in transportation impact tax is needed to raise relatively the same amount of revenue (countywide) as could potentially be raised by 2020 under the current TPAR mitigation requirement of 25% for any policy deemed inadequate for roadway or transit service?

Currently, Metro Station Policy Areas (MSPAs) are exempt from the transit test under TPAR, and all are found to have adequate roadway service. Thus, only non-MSPAs are currently required to make a TPAR payment. Three non-MSPAs are adequate for both roadways and transit, while three different non-MSPAs are inadequate for both roadways and transit. Based upon this current profile, an assumption is made that from a revenue stand point this is like all non-MSPAs being inadequate at one level, or making a payment equivalent to 25% of the transportation impact tax.

A forecast of household and employment growth between 2015 and 2020 is shown in the chart below.

Policy Areas*	Total number of HHs 2020	Total Employment 2020	Increase in HHs 2015-2020	Increase in Employment 2015-2020	Percentage of County HH Growth	Percentage of County Employment Growth
MSPAs	39,203	115,717	7,020	6,339	56%	35%
Non-MSPAs	344,872	402,139	5,442	11,659	44%	65%
Total	384,075	517,856	12,462	17,998	100%	100%

*Does not include White Flint

Based on the estimated percentage of county employment growth in the non-MSPAs, to recover an equivalent amount of revenue from an increase in the impact tax on non-residential development for <u>all</u> policy areas, the impact tax countywide would need to increase on average 16%. Basically, using the current TPAR results for 2014, a 25% TPAR surcharge would apply to 65% of new employment (non-residential development) with an expected TPAR income stream is equal to 25% of 65%, or 16% of the total impact tax revenue stream.

Likewise, based on the estimated percentage of county household growth in the non-MSPAs, to recover an equivalent amount of revenue from an increase in the impact tax on household development for <u>all</u> policy areas, the impact tax countywide would need to increase an average of 11%.

Countywide residential and employment growth between 2015 and 2020 are approximately equal to 3.2% and 3.5% respectively.

Orlin, Glenn

From:	Kominers, William <wkominers@lerchearly.com>
Sent:	Tuesday, October 18, 2016 4:55 PM
To:	Orlin, Glenn
Cc:	Zachary Marks (zachary.marks@hocmc.org); Nowelle Ghahhari (Nowelle.Ghahhari@hocmc.org)
Subject:	Impact Tax Amendment -- HOC
Attachments:	Draft.PDF; Changes.PDF

Glenn,

Attached is a proposal to address some of the impact tax treatment of HOC that you and I had discussed. I am sorry that it took a little while for us to settle on the appropriate manner of trying to address the issues and make it as simple as possible. (The impact tax discussion is complex enough in Bill 37-16.) I also know that you have been rather consumed by the SSP and have not wanted to distract you.

This language enclosed tries to address two issues -- the ownership of HOC rental properties (where often the majority of ownership rests with an investor, while control and all other attributes except complete ownership rests with HOC) and other types of percentage of units/affordability mixes that are equivalent or better than the 25% at 60% of AMI that is embodied in the text from Bill No. 8-15. These amendments, proposed by HOC, would modify Sections 52-49(g)(5) and 52-89(c)(5) to expand the provision established by Bill No. 8-15 in 2015 to apply to similar levels of deeper affordability of units.

Bill No. 8-15 added a means by which, as a result of constructing a higher percentage (25%) of MPDUs, the remaining dwelling units in a development would be exempt from the Impact Tax. In order to address the variety of financing types that HOC uses in its projects, HOC has evaluated the combinations of percentage of dwelling units and percentage below area median income that are essentially the equivalent of, or better than, the 25% at 60% AMI that is present today in Sections 52-49(g)(5) and 52-89(c)(5). HOC proposed that the combination of either 20% of the units being offered at 50% of AMI, or 15% of the units being offered at 40% AMI, are equivalent or better than what is provided in the current sections. Thus, HOC proposes, as an alternative to the existing language in the Code, additional text to allow an alternative for these other combinations of unit types. Our hope is, since the revision simply looks at other equivalent conditions, it should fall within the scope of what the Council was trying to accomplish with Bill No. 8-15. But the Code would now be able to accommodate the different types of structures that HOC uses in its financings.

Rather than repeating language, this revision has been prepared in table form as an addition and alternative in the referenced code sections.

In addition to the alternative percentage arrangements referenced above, HOC also proposes that the general exemption for government buildings be clarified, so that for HOC purposes the language is consistent with what is called for by the Internal Revenue Service in reviewing HOC ownership structure. This suggests that buildings owned "or controlled," and used primarily for the agency for its purpose of providing housing, would not be subject to the impact tax. Very often, HOC may give up a large percentage of ownership (for example, in the tax credit situation), while HOC retains control of the building and its operations. HOC has all attributes of ownership other than a significant ownership in the title. Of course, HOC always retains some small percentage of ownership in those situations.

Enclosed is a clean copy of the proposed text, and a redline to show the comparison to current law.

I apologize for the late transmission of this material. The number of holidays recently became more of a challenge than anticipated.

Please contact me if you have any questions on this matter.

Bill

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Marked in an effort to show changes

Proposed Equivalency Amendment to Impact Tax—HOC
(HOC, October 13, 2016)

[TRANSPORTATION IMPACT TAX]

Sec. 52-49. Imposition and applicability of development impact taxes.

* * *

(f) A development impact tax must not be imposed on any building owned or controlled, and used primarily, by any agency or instrumentality of federal, state, County, or municipal government.

(g) A development impact tax must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under chapter 25A or any similar program enacted by either Gaithersburg, or Rockville,

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal or less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) any non-exempt dwelling unit in a development: (i) in which at least 25% of the dwelling units are exempt under paragraph (1),(2),(3), or, (4), or any combination of them~~; and~~, or (ii) in which, of the total dwelling units, at least the percentage listed in Column "A" below are built under a government regulation or binding agreement that limits for at least 20 years the price or rent charged for the unit in order to make it affordable to households earning equal or less than the percentage of the area median income, adjusted for family size, that is listed in Column "B" below;

Column "A"	Column "B"
Percentage of total dwelling units	Percentage of area median income, adjusted for family size
20	50
15	40

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone~~.~~; and

(h) * * *

[SCHOOL IMPACT TAX]

Sec. 52-89. Imposition and applicability of tax.

* * *

(a) * * *

(c) The tax under this Article must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville,

(2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning equal or less than 60% of the area median income, adjusted for family size;

(3) any Personal Living Quarters unit built under Sec. 59-A-6-15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(4) any dwelling unit in an Opportunity Housing Project built under Section 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(5) any non-exempt dwelling unit in a development: (i) in which at least 25% of the dwelling units are exempt under paragraph (1),(2),(3), or (4), or any combination of them~~; and~~, or (ii) in which, of the total dwelling units, at least the percentage listed in Column "A" below are built under a government regulation or binding agreement that limits for at least 20 the price or rent charged for the unit in order to make it affordable to households earning equal or less than the percentage of the area median income, adjusted for family size that is listed in Column "B" below;

Column "A"	Column "B"
Percentage of total dwelling units	Percentage of area median income, adjusted for family size
20	50
15	40

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone.

* * *

(d) * * *

(e) * * *

(f) A development impact tax must not be imposed on any building owned or controlled, and used primarily by any agency or instrumentality of federal, state, County, or municipal government.

Details of Property Under Consideration.

The concept is not property specific. HOC is simply trying to clarify that as a government agency, it should be exempt from the tax on developments it owns or controls. We are suggesting a separate provision that any development should be exempt by meeting the 25% at 60% AMI; 20% at 50% AMI; or 15% at 40% AMI with any given project. That capability would be available to any developer, not just HOC.

Owned or Controlled.

Control. The intent is to address properties where HOC has either ownership, or control of the operation of the project, for a sufficient duration of occupancy that it represents a consistent affordable housing project. The intent is not to gain exemption for a property or component of a property simply by having HOC hold that element through the development phase in order to spin off later after occupancy.

HOC might "own" through a wholly-owned subsidiary, or a subsidiary in which HOC has majority ownership. HOC would "control" through agreements providing day-to-day management and operation of the property.

Duration. Ownership for this purpose could vary. It could reflect a five year period, such as under the Agreement Not To Convert that is required in the instances of the right of first refusal. Alternatively, the period could be ten years, related to the term of the 20 year covenant required for the financing. Control could occur through the non-profit entity established by HOC for use and operation of the project. Ownership or control, as appropriate, could be accomplished with title held by a non-profit housing corporation where the project is used as housing for persons of eligible income and owned in whole or in part, directly or indirectly, through one or more wholly or partially owned subsidiary entities of HOC. As you are probably aware, the reality is that HOC almost never disposes of its properties.

Options for Income Restrictions.

This proposal should not in any way affect the existing requirement for 12.5% MPDUs. Within the percentage that would be authorized by Chapter 52, at least 12.5% of those units would have to be treated as, and controlled as, MPDUs under County law. This would be the case unless some other control period and program where "accepted" by DHCA as being equivalent to MPDUs for this purpose. Whatever might be required by that agreement with DHCA would, presumably, be reflected in the construction agreement between the developer (whether HOC or other) and DHCA.

Bedrooms. On proportionality of bedrooms, I expect that all units meeting the percentage test will follow the proportionality standard for the MPDUs. That is the simplest method.

Variety of Incomes.

In a mixed-income building, I think that from the standpoint of HOC, a variety of incomes would be a desirable outcome. For example, workforce housing units and some proportion of deeply affordable units would normally be a part of the HOC unit mix. However, part of the goal of the proposed text was to establish some basic, necessary parameters, but without trying to be too prescriptive so as to exclude creativity and other solutions not currently contemplated. None of the potential scenarios would be substantially different from the minimum MPDU scenario of 12.5% MPDU/87.5% market.

In the event that a greater range of affordability were desired, it would likely necessitate a reduction of the qualifying units. For example, in the 20% at 50% situation, it might result in a reduction of the 20% and the infeasibility of the 15% at 40%. If this is a topic you would like to explore further, we can provide additional information.

I hope these answers are responsive to your inquiry. Please do not hesitate to contact me if you have any questions after reviewing our thoughts.