GO Item 2
September 22, 2016
Worksession

MEMORANDUM

September 20, 2016

TO: Government Operations and Fiscal Policy Committee

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

SUBJECT: **Worksession 1:** Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements - Amendments

Bill 37-16, sponsored by Lead Sponsor Council President Floreen at the request of the Planning Board, was introduced on August 2, 2016. A public hearing was held on September 13.

Background

County Code §33A-15 requires the County Planning Board to submit a recommended Subdivision Staging Policy (SSP) to the Council. The SSP must include guidelines for the administration of laws and regulations which affect the adequacy and timing of public facilities needed to support growth and development. The Planning Board submitted a recommended 2016 SSP on July 27, 2016. The Planning Board recommended changes to the County law concerning the development impact tax for transportation and public school projects. Bill 37-16 would implement the Planning Board's recommended amendments to the impact tax laws. The Bill would:

(1) modify the method of calculating the transportation and public school impact tax;
(2) create new transportation tax districts associated with policy area categories;
(3) adjust the transportation impact tax for residential uses based on non-auto driver mode share (NADMS) associated with each tax district;
(4) adjust the transportation impact tax for non-residential uses based on vehicle miles of travel (VMT) associated with each tax district;
(5) authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59; and
(6) modify the public school impact tax payable for property located in a former enterprise zone.

Discussion

I. OVERVIEW

On July 27, 2016 the Planning Board transmitted Bill 37-16 that would make several significant changes to the impact tax law (©1-18). The Bill reflects the Board's recommendations for the 2012-2016 Subdivision Staging Policy (SSP), which has been referred to the Planning, Housing, and Economic Development (PHED) Committee.[1] Three Government Operations and Fiscal Policy (GO) Committee worksessions are planned, as follows:

September 22: overview; school impact tax uses, rates, and credits
October 6: transportation impact tax uses, rates, and credits
October 20: exemptions, grandfathering, effective date

General history of impact taxes in Montgomery County. The Council approved the initial impact fee law in 1986, and at the time it applied only in Germantown and Eastern Montgomery County (Fairland, White Oak, and Cloverly), then the fastest growing areas. After the Court of Appeals found in 1990 that the County did not have authority to impose the impact fee it had enacted[2], the Council enacted Emergency Bill 33-90 transforming the fee to an excise tax with most of the other aspects of the program remaining unchanged. After the approval of the Clarksburg Master Plan in 1994, the Council extended the tax to Clarksburg. Funds collected in each of these areas could be spent only on projects within the respective areas that were explicitly listed in the law, most of which were new roads, road widenings, and park-and-ride lots. Taxes were collected prior to the issuance of building permits. The cost of capacity-adding projects built by a development were creditable against the tax.

In 2001, Council Bill 47-01 (effective July 2002) established transportation impact taxes countywide. It created a new "County" District that encompassed all areas not within Germantown, Eastern Montgomery County, and Clarksburg, and established its own rate schedule. It created separate accounts for Rockville and Gaithersburg, noting that funds within each municipality could be spent only on projects that served them, respectively. It set the rates in Metro Station Policy Areas at half of the County District rates. It also deleted the explicit list of projects in the law, replacing it with several categories of projects that were eligible; the categories were no longer simply auto-based, but included such elements as added Ride On buses and shelters, new or expanded transit centers, hiker-biker trails, sidewalk connectors, and bike storage facilities. Two years later the County District and the Germantown and Eastern Montgomery County areas were combined into a new "General" District. Early in this decade further amendments to the law deferred the payment of the tax from building permit to 6 months after permit issuance or final inspection (whichever is earlier), established bikesharing stations as an eligible expenses, and extended the use of credits to 12 years. Several amendments over the years exempted (or set $0 rates) for certain types of development: development in existing and former enterprise zones, affordable dwelling units, hospitals, bioscience facilities, and social service agencies.

The Council approved a countywide school impact tax in 2003 (effective 2004) which applied only to residential development. Rates were set for single-family-detached houses, townhouses, garden apartments (up to 4 stories) and high-rise apartments. The rates for single-family-detached houses and townhouses also included a surcharge for larger homes. Senior housing had a $0 rate. There was one set of rates countywide, and funds collected anywhere in the county could be spent on any capacity-adding school project in the county. Under both the transportation and school taxes, affordable dwelling units and development in existing and (starting in 2007) former enterprise zones

[1] In order to keep the two Committees' discussions from overlapping, Council staff proposes that Bill 37-16's recommendations for the Transportation Mitigation Payment (§52-59), and the School Facility Payment (§52-94) be reviewed by the PHED Committee, since both payments are part and parcel of the SSP.
[2] Eastern Diversified Properties, Inc. v. Montgomery County, 39 Md. 45, 570 A.2d 850 (1990).

were exempted. A law enacted earlier this decade provides that if a development includes at least 25% affordable units, all units in that development are exempt from both taxes.

Impact tax collections over the years have fluctuated widely, reflecting the varying activity in the building industry. Transportation impact tax collections have been especially volatile, due to the unpredictability of when credits (which can be substantial) are cashed in.

Revenue from Impact Taxes since FY 2005

Year	School	Transportation
FY05	$7,695,345	$8,470,768
FY06	6,960,032	6,252,060
FY07	9,562,889	11,500,814
FY08	6,766,534	9,743,841
FY09	7,925,495	2,398,310
FY10	11,473,071	3,812,138
FY11	14,480,846	5,444,115
FY12	16,462,394	6,352,481
FY13	27,901,753	13,179,898
FY14	45,837,274	20,274,781
FY15	32,676,773	16,632,489
FY16	23,349,333	9,114,573

Impact taxes constitutes about one of every eight dollars spent on school capital projects. The funding sources for MCPS's Approved FY17-22 CIP are comprised of:

Funding Source	Funding Programmed	% of Total
G.O. Bonds/Current Revenue	$834,292,000	48.3%
Recordation Tax	$373,700,000	21.6%
State Aid	$308,628,000	17.8%
School Impact Tax	$210,985,000	12.2%
School Facility Payments	$1,854,000	0.1%
Total	**$1,729,459,000**	**100.0%**

Impact taxes are projected to fund $50,605,000 (4.5%) of the $1,120,821,000 transportation capital program in FY17-22.

Corrections to Bill 37-16 as introduced. Planning staff has noted three sets of corrections to the bill it transmitted. All of these changes represent the Planning Board's approval but were not adequately captured in the marked up version of Bill 37-16 provided with the Planning Board Draft SSP. The first correction is the set of transportation rates for commercial uses in the proposed "Red" policy areas. The corrected set of transportation rates in §52-57 are double underlined, below, and will be reviewed on October 6:

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)				
Land Use	**Red Policy Areas (Metro Stations)**	**Orange Policy Areas**	**Yellow Policy Areas**	**Green Policy Areas**
Residential Uses				
SF Detached	$3,653	$10,959	$18,266	$29,225
MF Residential				
SF Attached	$2,552	$7,656	$12,759	$20,415
Garden Apartments	$2,312	$6,937	$11,562	$18,499
High - Rise Apartments	$1,652	$4,955	$8,259	$13,214
Multi-Family Senior	$661	$1,982	$3,303	$5,286
Commercial Uses				
Office	$6.72	$13.45	$16.81	$16.81
Industrial	$3.34	$6.69	$8.36	$8.36
Bioscience	$0.00	$0.00	$0.00	$0.00
Retail	$5.98	$11.96	$14.95	$14.95
Place of Worship	$0.35	$0.70	$0.88	$0.88
Private School	$0.53	$1.06	$1.33	$1.33
Hospital	$0.00	$0.00	$0.00	$0.00
Social Service Agencies	$0.00	$0.00	$0.00	$0.00
Other Non-Residential	$3.35	$6.69	$8.36	$8.36

The second correction is added text, also in Section 52-57, associated with the Board's proposed discounting of impact taxes if parking proposed is less than the baseline minimum in the zoning ordinance. It, too, will be reviewed on October 6:

Add the following after line 93 at ©8:

(e) Any development where parking is provided below the minimum required under Section 6.2.3.I of Chapter 59 of the County Code (excluding development in a Parking Lot District), may pay the tax at a reduced rate where the reduced rate is based on the percentage of parking supply below the applicable baseline minimum. In the Red Policy Areas, the percentage reduction in the tax rate is three times the percentage of parking supply below the baseline minimum. In the Orange Policy Areas, the percentage reduction in the tax rate is two times the percentage of parking supply below the baseline minimum, and in the Yellow Policy Areas, the percentage reduction in the tax rate is equal to the percentage of parking supply below the baseline minimum.

The third and final correction, in §52-89 and double underlined below, reflects the Board's proposed phase out of school impact tax exemptions in the former Silver Spring CBD enterprise zone. It will be reviewed on October 20:

Amend lines 179-190 at ©12 as follows:

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone based upon the length of time since the expiration of its enterprise zone status. Within 1 year of its expiration, a full exemption must apply. Within 2 years of its expiration, 25% of the applicable development impact tax must apply. Within 3 years, 50% of the applicable development impact tax must apply. Within 4 years, 75% of the applicable development impact tax must apply. A project within an area previously designated as an enterprise zone must be required to pay 100% of the applicable development impact tax for public school improvements beginning 4 years after its expiration with the exception of Silver Spring CBD whose enterprise zone status will be treated as expired on November 15, 2016. Any exemption or associated discount, will remain in effect only for the duration of the development project's validity period.

Fiscal and Economic Impact Statements. The Office of Management and Budget (OMB) and the Department of Finance transmitted their analysis of the Bill on September 16 (©41-53). OMB and Finance predict that the school impact tax would produce about $8.2 million *less* revenue during FY17-22 than would current rates, about 3.9% less, despite the fact that the Planning Board recommends raising the rates to reflect 100% of school construction costs, not 90% as they are currently. They note that the tax's biennial construction cost adjustments (based on the Baltimore/Washington region's construction cost index) has proven to be higher than MCPS's actual construction cost increases. The revenue projection does not take into account added revenue as a result of phasing out the exemption in former enterprise zones, however.

OMB and Finance forecast that the transportation impact tax would generate about $10.3 million *more* revenue during FY17-22 than would current rates, about 22.2% more. This forecast is likely to be somewhat high because the Planning Board is recommending discounting rates in most policy areas if parking provided is less than the zoning minimum. A caveat: forecasting impact tax revenue for transportation is particularly precarious because it is unknown when credits (which can be substantial) will be used.

Because these findings are critical to the Council's deliberations and recommendations, Council staff has requested Finance and OMB staff to brief the Committee at this worksession, and to entertain questions from Councilmembers. Council staff intends to work closely with Executive staff over the next couple of weeks to determine the impacts of other proposals that have, or will, emerge.

II. SCHOOL IMPACT TAX: USES, RATES, AND CREDITS

Uses. The current law allows use of school impact tax funds for projects that add permanent teaching stations: new schools, additions, and modernizations (now called revitalizations/expansions). The understanding since the beginning has been that impact tax funds may be applied to any cost associated with a capacity-adding project. In the case of such school (and transportation) projects, impact tax funds have been used on all elements of capacity-adding capital projects: planning, design, land acquisition, site improvements and utility work, construction, and furniture and equipment needed for the facility when it opens. The Bill would add text (§52-91(d)(4)) explicitly allowing funds to be used for acquisition of land for a school (Line 256 at ©15). This amendment is unnecessary since land acquisition can be funded with school impact tax revenue, and the addition here could raise questions whether other cost elements are not eligible because they are not expressly listed. **Council staff recommendation: Do not include §52-91(d)(4).**

The Planning Board also recommends adding the following provisions:

A portion of the development impact tax equivalent to 10 percent of the cost of a student seat must be dedicated to land acquisition for new schools. See §52-89(c), lines 159-160 at ©11. The Bill would also add the following to §52-91 after line 256 at ©15:

> (e) Any funds collected for the acquisition of land must be placed in the MCPS Advance Land Acquisition Revolving Fund (ALARF) to be used strictly for the purchase of property for new MCPS schools.

The Planning Board is concerned that MCPS is likely to need, especially in urban areas, to acquire property for a new school because a dedication of land may not be possible. The Montgomery County Council of Parent-Teacher Associations (MCCPTA) and several individuals support the Planning Board's provisions.

The Board of Education (BOE) opposes these provisions, stating that a 10% set-aside might not be needed at any given time, thus diverting funds from other capacity projects that are ready to be funded. While the BOE believes developing a funding source for school site acquisition is important, the Board argues that it should be done through another tax or by exceeding the 100% level of school impact tax.

Council staff recommendation: Do not add these provisions. Land costs for new schools - or, should the opportunity be presented, for additions on existing schools, too - are costs that have occurred in the past and will be an even bigger part of the future, considering the paucity of sites existing in and around of some of the County's urbanizing areas. However, Council staff agrees with the BOE that creating a set-aside for land acquisition takes away from the Council's flexibility to use all the impact tax funds at hand to address the funding needs as they present themselves. If the BOE wants to recommend a specific capacity-adding project that requires land acquisition, that amount should be included in its capital improvements program (CIP) request.

Base School Impact Tax Rates. The base school impact tax rates proposed by the Planning Board, compared to current base rates, are displayed in the table below:

Dwelling type	***Current Base Rates/DU***	***Proposed Base Rates/DU***	***Change/DU***	***% Change/DU***
Single-Family Detached (SFD)	$26,827	$18,878	-$7,949	-29.6%
Single-Family Attached (SFA)	$20,198	$19,643	-$555	-2.8%
Multi-Family (except high-rise)	$12,765	$15,507	+$2,742	+21.5%
Multi-Family High-Rise	$5,412	$5,570	+$158	+2.9%
Multi-Family Senior	$0	$0	$0	0%

These are based on the most recent countywide student generation rates and assuming that the tax would cover 100% of the construction cost per student. The construction cost is for a new school, not an addition, so it also includes the cost of associated core space.[3] The comments received mainly supported using the 100% principle; there were no objections to the proposed base rates, per se. **Council staff recommendation: Concur with the base rates proposed by the Planning Board.**

Surcharge. The current school impact tax rate schedule also includes a surcharge for larger single-family homes: $2/square foot (sf) for every sf over 3,500sf, up to 8,500sf.[4] Therefore, the actual school impact tax for single-family units could be as much as $10,000 more than the rates in the table above. The Planning Board did not recommend any change to the surcharge. As a result, its proposal would collect more than 100% of the construction cost per student. This additional revenue is also not acknowledged in the fiscal and economic impact statements.

If the Council wishes to generate more school impact revenue from new homes, it may wish to consider increasing this surcharge. For example, in 2007 - the last time the school impact tax rates were reset - the base rate for single-family detached and attached homes were $8,000/DU and $6,000/DU, respectively. If the Planning Board's proposed base rates are acceptable, then they will have increased nearly three-fold for detached homes and more than three-fold for attached homes. Inflating the surcharge commensurately - three-fold, to $6/sf - could triple the revenue from the surcharge. It would increase the tax by as much as $20,000/DU, raising the maximum surcharge from $10,000 to $30,000, although very few would pay the maximum.

A larger surcharge would provide more revenue that may compensate, perhaps, for not having enough of an impact tax contribution for future land acquisitions, and in general for the lower school impact tax revenue that Bill 37-16 would generate. A further advantage of this increase is, because it

[3] Most, but not all, additions include modifications to add core space.

[4] This was proposed in the original school impact tax law (the chief sponsor was then-Councilmember and now-Labor Secretary Thomas Perez) because it was believed larger homes generated more students, and because the surcharge would add a measure of progressivity to the rates.

would touch the largest homes (and the most expensive), it would be more progressive, somewhat offsetting the Planning Board's proposal that would lower the rates for single-family homes and raise them for garden apartments. **Council staff recommendation: Explore increasing the surcharge for single-family homes from $2/sf to $6/sf.**

Charge for home expansions. Christopher Bruch testified that tear-downs and renovations are not subject to the school impact tax. Yet, he suggests, such projects has resulted in rising enrollment in the schools in his Kensington neighborhood. He notes that the Washington Suburban Sanitary Commission assesses a System Development Charge for net added plumbing fixtures and usage. He proposes applying the tax to tear-downs and renovations, and recommends that it be based on the increased number of bedrooms.

If there is a rationale for charging a new home a larger school impact tax, then there is a similar rationale for charging the increment to an existing home. Charging by additional bedrooms is fraught with enforcement problems, however; an unscrupulous builder could easily renovate a house with additional rooms without closets and claim them to be dens, rec rooms, and the like, and then return after DPS's final inspection to add closets.

Instead, a ready method would be to levy the tax on additional square footage, using the same range and rate noted above for the large-house surcharge: $6/sf for each sf above 3,500sf up to 8,500sf. For example, a tear-down replacing a small home with a 4,500sf home would be charged a school impact tax of $6,000 ($6/sf x [4,500sf-3,500sf]). The maximum tax for a tear-down or renovation would be $30,000, although, again, very few would pay the maximum. Because they would not pay the base rate, these payments would be relatively small for the homeowner/builder, but the sheer number of such renovations might generate significant revenue. **Council staff recommendation: Explore applying the same surcharge rate and range to tear-downs and renovations.**

Council staff will work with Finance and the Department of Permitting Services (DPS) to estimate how much revenue is generated from the surcharge now and how much revenue raising it to $6/sf would generate, both for new and renovated homes. The hope is to bring this information back to the Committee for the October 20 worksession.

Proportional payments for school land. MCCPTA and several individuals are calling for an additional impact tax that would require all builders to contribute an amount proportional to the number and type of dwelling units into a fund specifically for acquiring land for new schools. There are several problems with this approach. First, while parcels for new schools are in short supply for new middle schools and high schools down county, that is not the case elsewhere, so unless this were a tax only levied in down county clusters this would create an obvious inequity. Second, the amount needed for land acquisition is very unpredictable. How would a rate rationally be set?

Council staff recommendation: Do not establish an additional tax strictly for land acquisition. The BOE will request funds for land for specific projects as they occur; if past is prologue, the Council will approve the requested funding if necessary to provide the needed capacity, with whatever resources it has available. Remember that the overwhelming bulk of resources for school capital projects does not come from impact taxes, school facility payments, or State aid, but from General Obligation bonds backed by the County property tax, income tax, energy tax, and other General Fund revenue.

Inflation adjustments to school impact tax rates. Current law calls for existing rates to be updated biennially in the July of odd-numbered years, reflecting the percentage change in the Baltimore/Washington construction cost index during the prior two calendar years. Finance publishes the amended rates in the County Register in the spring and they become effective for impact taxes paid on or after July 1 of odd-numbered years.[5] Therefore, the most recent adjustment was on July 1, 2015, when the rates increased across the board by 3.4%.

The Planning Board recommends setting the school impact tax rates noted above with the adoption of Bill 37-16, and that future rate adjustments use MCPS's reported construction costs instead of the regional construction cost index. The adjustment would also take into account MCPS's most recent countywide student generation rates. Finally, the Board recommends capping any increase or decrease in the rate adjustment to 5%.

There is general concurrence that the adjustment should use MCPS's construction cost experience rather than the regional index, and that the student generation rates should also be part of the calculation. On the proposed 5% cap, however, there is not consensus. The BOE supports the Planning Board's recommendation; the Superintendent notes that the cap provides a level of certainty and stability for development projects. MCCPTA and several individuals do not agree, noting that a limit might not mean that the tax rates would no longer track the cost/student if inflation either soars or plunges. **Council staff recommendation: Concur with MCCPTA; do not cap these adjustments.** The rationale for setting the proposed rates is the link to construction cost/student; this link would be broken under the Board's proposal if the change rises or falls more than 5%.

It is important, nevertheless, to provide as much certainty and stability as possible. One way to improve that is to change the rates less frequently. The Planning Board proposes the automatic rate adjustment to occur every even-numbered July, but also when the quadrennial SSP is approved. That means that the rates would change on November 15, 2016, 16½ months after they were last amended, not 24 months later. The next change would occur on July 1, 2018, 19½ months later. Looking ahead, in 2020 the rates would change on July 1, 2020 but potentially again only 4½ months later, on November 15, 2020. **Council staff recommendation: Have the new rates go into effect not on November 15, 2016, but on July 1, 2017. Future SSP changes should also occur the subsequent July.** This would keep the adjustments in the odd-numbered years, and assure the rates would stay in place for 24 months at a time, thus providing more certainty and stability.

Credits for land dedications. Similar to the transportation impact tax, a development may receive a credit against the tax if it pays for some or all of the costs for which school impact taxes can be used: for a new school, addition, or the portion of a modernization (revitalization/expansion) project that adds capacity [§52-91(d)]. Unlike for the transportation tax, there have been few, if any, credits granted during the twelve years the tax has existed.[6] The BOE is loath to allow a developer to build a new school or an addition, and there have been no developments in the past twelve years that would generate enough students to warrant an addition on its own.

The Planning Board recommends amending the first part of the credit provision of §52-93 on lines 261-271 at ©15-16 as follows:

[5] The same process applies to changes in the transportation impact tax rates.
[6] A decade ago there was consideration of a development in Clarksburg potentially receiving a credit for clearing and grading land for a future elementary school, but Council staff cannot confirm whether or not this occurred.

(a) Section 52-55 does not apply to the tax under this Article. A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-91(d), including costs of site preparation. [A credit must not be allowed for the cost of any land dedicated for school use, including any land on which the property owner constructs a school] A property owner may receive credit for land dedicated for a school site, if:

(1) the density calculated for the dedication area is excluded from the density calculation for the site; and

(2) the Montgomery County School Board agrees to the site dedication.

This is the same principle that has been followed in granting transportation impact tax credits for land acquisition over the past three decades. If a developer dedicates land for a road, for example, but can place the development that could have occurred on the dedicated land elsewhere on the site, then no credit is granted, because the developer has lost no value. This is usually the case. However, there have been some instances when the development's cumulative units or square footage is limited by a dedication, in which case it is eligible for credit equal to the loss of development potential.

There are other proposed changes to §52-93 that refer back to this provision. There is general concurrence that this is a fair way to deal with the issue. **Council staff recommendation: Concur with the Planning Board regarding credits for land dedications that result in less density than otherwise allowed.**

Other credit provisions. As noted in §52-93(a), the credit provisions for the school impact tax law do not mirror those in the transportation impact law (§52-55). For clarity and fairness, Council staff sees no reason why the two laws should not treat credits the same way:

- Transportation tax credits are required to be used within 12 years after certification by the Department of Transportation. (This was amended up from 6 years by Expedited Bill 47-15, approved last December.) The school tax provisions mentions no deadline for when the credits must be used. **Council staff recommendation: Require school impact tax credits to be used within 12 years after certification by MCPS.**

- A credit to the transportation tax can be applied by the developer or his successor in interest, but only to the property for which the credit was originally certified by DOT. There is no such provision in §52-93. **Council staff recommendation: Include text noting that a credit to the school tax can be applied by the developer or his successor in interest, but only to the property for which the credit was originally certified by MCPS.**

- §52-93 provides credits to the school impact tax law for providing certain levels of accessibility standards:

(e) (1) A property owner must receive a credit for constructing or contributing to the cost of building a new single family residence that meets Level I Accessibility Standards, as defined in Section 52-18U(a).

(2) The credit allowed under this Section must be as follows:

(A) If at least 5% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $500 per residence.

(B) If at least 10% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $1,000 per residence.

(C) If at least 25% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $1,500 per residence.

(D) If at least 30% of the single family residences built in the project meet Level I Accessibility Standards, then the owner must receive a credit of $2,000 per residence.

(3) Application for the credit and administration of the credit be in accordance with Subsections 52-18U(e) and (f).

(4) A person must not receive a property tax credit under this Section if the person receives any public benefit points for constructing units with accessibility features under Chapter 59.

There is no apparent rationale for loading the entire credit on the school impact tax. **Council staff recommendation: Add these provisions to the §52-55, but split each of the credits evenly between the two taxes.** For example, if at least 5% of the single family residences built in the project meet Level I Accessibility Standards, then the owner should receive a credit of $250 per residence against the school impact tax and $250 per residence against the transportation impact tax. The total credit to the owner would remain the same, but the revenue 'hit' would be split between the two taxes rather than being borne entirely by the school impact tax.

County Attorney's Recommendations

The County Attorney's Office Bill Review memorandum is at ©23. The County Attorney's Office found the Bill to be legally sufficient, but recommended the following amendments for clarity:

1. The Bill amends the definition of additional capacity in §52-47 (see lines 9-10 at ©2) by adding the phrase "<u>or implements or improves transit, pedestrian and bike facilities</u>

or access to non-auto modes of travel." These words are not defined in the Bill and may lead to disputes over eligibility for tax credits. The County Attorney recommends a definition be added to the Bill or the SSP. **Council staff does not agree.** The additional capacity that would be eligible for a credit is adequately defined in §§52-55 and 52-58.

2. The Bill does not contain a metes and bounds description of the different policy areas. Although the SSP includes maps that clearly identify the geographical boundaries of each policy area, any future changes in the SSP would need to be clarified in the legislation.

3. The Bill limits the use of impact tax revenue collected for a development in the Red Policy Area to transportation improvements only in those policy areas on lines 60-63 at ©4. The County Attorney recommends clarifying if the limitation applies to the individual policy area within the Red Policy Area or any development in the Red Policy Area.

4. The Bill would copy the current practice of including the actual tax rate table for the both the transportation and school impact tax in the law, but authorize changes to the tax rates by Council resolution. This results in a codification of the incorrect tax rates as soon as they are changed. The County Attorney recommends that the Bill be amended to authorize the Council to adopt the tax rates by Council resolution and adjusted every 2 years. **Council staff agrees with this recommendation, but notes that the Council would have to introduce and adopt a resolution after another public hearing to set the rates.** The resolution could be introduced on September 27 with a public hearing on October 17. The GO Committee is scheduled to make its final recommendations on October 20.

5. The Bill would adjust the school impact rates on even-numbered years, but continue to adjust the transportation impact rates on odd-numbered years. The County Attorney recommends that both rates be adjusted at the same time. **Council staff agrees with this recommendation, continuing to adjust them in odd-numbered years.** See the discussion of adjustments to the school impact tax rates above.

6. The Bill introduces the term "other bike facility" on line 115 of the Bill at ©9 without defining it. The County Attorney recommends adding a definition to the law or in a regulation.

7. Lines 129 and 135 at ©9-10 refer to the SSP adopted on a blank date. The County Attorney recommends that the date be included. **Council staff agrees and the date will be included in the final Bill once it is known.**

8. Lines 137-138 at ©11 include "Langley Park" as a specific individual policy area, but it is not included in any of the color coded Policy Areas defined at lines 39-53 at ©3. **Council staff agrees that this should be corrected.**

9. The Bill includes the requirement to dedicate 10% of the school tax collected for land acquisition in §52-89 governing the imposition and application of the tax. See lines

159-160 at ©11. The County Attorney recommends that this requirement be placed within §52-91 governing the use of the tax. **Council staff agrees with this placement, but as described above, does not recommend adding the 10% dedication for land acquisition to the Bill.**

10. The Bill uses the term "student seat" on line 160 at ©11. The County Attorney recommends that this term be defined in the Bill or a regulation.

11. The County Attorney recommends clarifying the use of the term "for the site" on line 269 at ©16. The term refers to the overall development and not the portion of the site dedicated for a school. **Council staff believes it clearly refers to the overall development, but suggests the following amendment:**

    (1) the density calculated for the dedication area is excluded from the density calculation for the remainder of the site; and

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Bill No. 37-16
Concerning: Taxation – Development Impact Tax – Transportation and Public School Improvements - Amendments
Revised: August 15, 2016 Draft No. 2
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: ____________
Executive: ____________
Effective: ____________
Sunset Date: None
Ch. _____, Laws of Mont. Co. ________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN ACT to:

(1) modify the method of calculating the transportation and public school impact tax;
(2) create new transportation tax districts associated with policy area categories;
(3) adjust the transportation impact tax for residential uses based on Non-Auto Driver Mode Share associated with each tax district;
(4) adjust the transportation impact tax for non-residential uses based on Vehicle Miles of Travel associated with each tax district;
(5) authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59;
(6) modify the public school impact tax payable for property located in a former enterprise zone; and
(7) generally amend County law concerning the transportation and public school impact tax.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-47, 52-49, 52-53, 52-55, 52-57, 52-58, 52-59, 52-89, 52-90, 52-91, 52-93, and 52-94

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Sec. 1. Sections 52-47, 52-49, 52-53, 52-55, 52-57, 52-58, 52-59, 52-89, 52-90, 52-91, 52-93, and 52-94 are amended as follows:

52-47. Definitions.

In this Article the following terms have the following meanings:

Additional capacity means a new road, widening an existing road, adding an additional lane or turn lane to an existing road, or another transportation improvement that:

(1) increases the maximum theoretical volume of traffic that a road or intersection can accommodate, or implements or improves transit, pedestrian and bike facilities or access to non-auto modes of travel; and

(2) is classified as a minor arterial, arterial, parkway, major highway, controlled major highway, or freeway in the County's Master Plan of Highways, or is similarly classified by a municipality. The Director of Transportation may find that a specified business district street or industrial street also provides additional capacity as defined in this provision.

Additional capacity is sometimes referred to as added "*highway capacity*," "*transportation capacity*," or "*intersection capacity*".

* * *

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

(a) A development impact tax must be imposed before a building permit is issued for development in the County.

(b) An applicant for a building permit must pay a development impact tax in the amount and manner provided in this Article, unless a credit in the full amount of the applicable tax applies under Section 52-55 or an appeal bond is posted under Section 52-56.

(c) The following impact tax districts are established:

(1) [*Metro Station*: Friendship Heights, Bethesda CBD, Grosvenor, White Flint, Twinbrook, Rockville Town Center, Shady Grove Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro station policy areas, as defined in the most recent Subdivision Staging policy, except as modified by paragraph (3) for the White Flint policy area;

(2) *Clarksburg*: Clarksburg policy area, as defined in the most recent Subdivision Staging Policy;

(3)] *White Flint*: The part of the White Flint Metro Station Policy Area included in the White Flint Special Taxing District in Section 68C-2; [and]

(2) *Red Policy Areas*: Bethesda CBD, Friendship Heights, Grosvenor, Glenmont, Rockville Town Center, Shady Grove Metro Station, Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station Policy Areas;

(3) *Orange Policy Areas*: Bethesda/Chevy Chase, Chevy Chase Lake, Clarksburg, Derwood, Gaithersburg City, Germantown Town Center, Kensington/Wheaton, Long Branch, North Bethesda, R & D Village, Rockville City, Silver Spring/Takoma Park, Takoma/Langley, and White Oak Policy Areas;

(4) *Yellow Policy Areas*: Aspen Hill, Cloverly, Fairland/Colesville, Germantown East, Germantown West, Montgomery Village/Airpark, North Potomac, Olney, and Potomac Policy Areas; and

(5) *Green Policy Areas*: Damascus, Rural East, and Rural West Policy Areas.

[(4) *General*: Any part of the County, including any municipality, not located in an area listed in paragraphs (1) — (3).]

(d) Reserved.

* * *

52-53. Restrictions on use and accounting of development impact tax funds.

* * *

(h) Development impact tax funds collected from the [Clarksburg impact tax district] Red Policy Areas must be used for impact transportation improvements located in or that directly benefit [the Clarksburg] those policy [area] areas.

52-55. Credits.

* * *

(d) Any credit for building or contributing to an impact transportation improvement does not apply to any development that [is] has been previously approved under the Alternative Review Procedure for Metro Station Policy Areas in the County Subdivision Staging Policy.

* * *

52-57. Tax rates.

(a) The tax rates for each impact tax district, except as provided in subsection (b) are:[

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)			
Building Type	*Metro Station*	*Clarksburg*	*General*

Single-family detached residential (per dwelling unit)	$2,750	$8,250	$5,500
Single-family attached residential (per dwelling unit)	$2,250	$6,750	$4,500
Multifamily residential (except high-rise) (per dwelling unit)	$1,750	$5,250	$3,500
High-rise residential (per dwelling unit)	$1,250	$3,750	$2,500
Multifamily-senior residential (per dwelling unit)	$500	$1,500	$1,000
Office (per sq. ft. GFA)	$2.50	$6	$5
Industrial (per sq. ft. GFA)	$1.25	$3	$2.50
Bioscience facility (per sq. ft. GFA)	$0	$0	$0
Retail (per sq. ft. GFA)	$2.25	$5.40	$4.50
Place of worship (per sq. ft. GFA)	$0.15	$0.35	$0.30
Private elementary and secondary school (per sq. ft. GFA)	$0.20	$0.50	$0.40
Hospital (per sq. ft. GFA)	$0	$0	$0
Cultural institution	$0.20	$0.50	$0.40

Charitable, philanthropic institution	$0	$0	$0
Other nonresidential (per sq. ft. GFA)	$1.25	$3	$2.50

]

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)				
Land Use	**Red Policy Areas (Metro Stations)**	**Orange Policy Areas**	**Yellow Policy Areas**	**Green Policy Areas**
Residential Uses				
SF Detached	$3,653	$10,959	$18,266	$29,225
MF Residential				
SF Attached	$2,552	$7,656	$12,759	$20,415
Garden Apartments	$2,312	$6,937	$11,562	$18,499
High - Rise Apartments	$1,652	$4,955	$8,259	$13,214
Multi-Family Senior	$661	$1,982	$3,303	$5,286
Commercial Uses				
Office	$10.08	$13.45	$16.81	$16.81
Industrial	$5.01	$6.69	$8.36	$8.36

Bioscience	$0.00	$0.00	$0.00	$0.00
Retail	$8.97	$11.96	$14.95	$14.95
Place of Worship	$0.53	$0.70	$0.88	$0.88
Private School	$0.80	$1.06	$1.33	$1.33
Hospital	$0.00	$0.00	$0.00	$0.00
Social Service Agencies	$0.00	$0.00	$0.00	$0.00
Other Non-Residential	$5.02	$6.69	$8.36	$8.36

(b) For any development located in the White Flint Impact Tax District, the tax rates are:

Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)	
Building Type	*White Flint*
High-rise residential (per dwelling unit)	$ 0
Multifamily-senior residential (per dwelling unit)	$ 0
Office (per sq.ft. GFA)	$ 0
Industrial (per sq.ft. GFA)	$ 0
Bioscience facility (per sq.ft. GFA)	$ 0
Retail (per sq.ft. GFA)	$ 0
Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)	
Building Type	*White Flint*
Place of worship (per sq.ft. GFA)	$ 0
Private elementary and secondary school (per sq.ft. GFA)	$ 0
Hospital (per sq.ft. GFA)	$ 0

Other nonresidential (per sq.ft. GFA)	$ 0

(c) [Any development that receives approval of a preliminary plan of subdivision under any Alternative Review Procedure must pay the tax at double the rate listed in subsection (a). However, any development approved under an Alternative Review Procedure that is located in a Metro Station Policy Area must pay the tax at 75% of the rate listed in subsection (a) for the same type of development in the General district.

(d)] Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the applicable rate calculated in subsection (a).

[(e)] (d) Any building that would be located within one-half mile of the Germantown, Metropolitan Grove, Gaithersburg, Washington Grove, Garrett Park, or Kensington MARC stations must pay the tax at 85% of the applicable rate calculated in subsection (a).

[(f)] (e) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates set in this Section.

[(g)] (f) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. The Director must publish the amount of this adjustment not later than May 1 of each odd numbered year.

52-58. Use of impact tax funds.

Impact tax funds may be used for any:

(a) new road, widening of an existing road, or total reconstruction of all or part of an existing road required as part of widening of an existing road, that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes;

(b) new or expanded transit center or park-and-ride lot;

(c) bus added to the Ride-On bus fleet, but not a replacement bus;

(d) new bus shelter, but not a replacement bus shelter;

(e) hiker-biker trail or other bike facility used primarily for transportation;

(f) bicycle locker that holds at least 8 bicycles;

(g) bikesharing station (including bicycles) approved by the Department of Transportation;

(h) sidewalk connector to or within a major activity center or along an arterial or major highway; or

(i) the operating expenses of any transit or trip reduction program.

52-59. Transportation Mitigation Payment.

(a) In addition to the tax due under this Article, an applicant for a building permit for any building on which an impact tax is imposed under this Article must pay to the Department of Finance a [Transportation] Transit Accessibility Mitigation Payment if that building was included in a preliminary plan of subdivision that was approved under the Transportation Mitigation Payment provisions in the County Subdivision Staging Policy adopted on ____.

(b) The amount of the Payment [for each building must be calculated by multiplying the Payment rate by the total peak hour trips generated by the development] is based upon the latest finding of adequacy for transit accessibility for each Policy Area as approved and applicable under the

County Subdivision Staging Policy process. The initial findings of applicability and adequacy as adopted on _____ are as follows: [.]

Policy Area	**Transit Accessibility Mitigation**
Red Group	
Bethesda CBD	Exempt
Friendship Heights	Exempt
Grosvenor	Exempt
Glenmont	Exempt
Rockville Town Center	Exempt
Shady Grove Metro Station	Exempt
Silver Spring CBD	Exempt
Twinbrook	Exempt
Wheaton CBD	Exempt
White Flint	Exempt
Orange Group	
Bethesda/Chevy Chase	Adequate
Clarksburg	Inadequate, Full Mitigation
Derwood	Inadequate, Partial Mitigation
Gaithersburg City	Inadequate, Full Mitigation
Germantown Town Center	Inadequate, Full Mitigation
Kensington/Wheaton	Inadequate, Full Mitigation
North Bethesda	Inadequate, Full Mitigation
R&D Village	Inadequate, Full Mitigation
Rockville City	Inadequate, Full Mitigation
Silver Spring/Takoma Park	Inadequate, Full Mitigation
White Oak	Adequate
Yellow Group	
Aspen Hill	Inadequate, Full Mitigation
Cloverly	Inadequate, Full Mitigation
Fairland/Colesville	Inadequate, Partial Mitigation
Germantown East	Inadequate, Full Mitigation
Germantown West	Inadequate, Full Mitigation
Montgomery Village/Airpark	Adequate
North Potomac	Inadequate, Full Mitigation
Olney	Inadequate, Full Mitigation
Potomac	Adequate
Green Group	
Damascus	Exempt

Rural East	Exempt
Rural West	Exempt

In addition to the above, buildings in the Chevy Chase Lake, Langley Park, and Takoma/Langley Policy Areas are considered to have adequate transit accessibility as a result of programmed construction funds for the Purple Line.

(c) The Transit Accessibility Mitigation Payment is based upon a percentage of the tax due under this Article according to the following schedule:

(1) Full Mitigation Required – 25% of tax due under this Article; and

(2) Partial Mitigation Required – 15% of tax due under this Article.

The rate must be set by Council resolution, including a resolution that amends the Subdivision Staging Policy. [The Director of Finance must adjust the then-applicable Payment rate as of July 1 of 2015 and each later odd-numbered year by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years to the nearest multiple of $10. The Director must publish the amount of this adjustment in the County Register not later than May 1 of each odd numbered year. The Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the Payment rate or set different rates for different types of development.]

* * *

52-89. Imposition and applicability of tax.

* * *

(c) A portion of the development impact tax equal to 10% of the cost of a student seat must be dedicated to land acquisition for new schools.

(d) 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 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 in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; and

(6) any development located in an enterprise zone designated by the State or in an area previously designated as an enterprise zone based upon the length of time since the expiration of its enterprise zone status. Within 1 year of its expiration, a full exemption must apply. Within 2 years of its expiration, 25% of the applicable development impact tax must apply. Within 3 years, 50% of the applicable development impact tax must apply. Within 4 years, 75% of the applicable development impact tax must apply. A project within an area previously designated as an enterprise zone must be required to pay 100% of the applicable development

impact tax for public school improvements beginning 4 years after its expiration.

[(d)] (e) The tax under this Article does not apply to:

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building;

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

(3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the number of dwelling units of the previous building, if:

(A) construction begins within one year after demolition or destruction of the previous building was substantially completed; or

(B) the previous building is demolished or destroyed, after the replacement building is built, by a date specified in a phasing plan approved by the Planning Board or equivalent body.

However, if in either case the tax that would be due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

[(e)] (f) If the type of proposed development cannot be categorized under the residential definitions in Section 52-47 and 52-87, the Department must use the rate assigned to the type of residential development which generates the most similar school enrollment characteristics.

52-90. Tax rates.

(a) The Countywide rates for the tax under this Article are:

Dwelling type	*Tax per dwelling unit*
Single-family detached	[$8000] $18,878
Single-family attached	[$6000] $19,643
Multifamily (except high-rise)	[$4000] $15,507
High-rise	[$1600] $5,570
Multifamily senior	$ 0

(b) The tax on any single-family detached or attached dwelling unit must be increased by $2 for each square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet.

(c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the otherwise applicable rate.

(d) [Any non-exempt dwelling unit located in a development where at least 30% of the dwelling units are exempt from this tax under Section 52-89(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection (a).]

[(e)] (d) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates set in this Section.

[(f)] (e) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each [odd-numbered] even-numbered year, or on November 15, in accordance with the update to the Subdivision Staging Policy using the latest student generation rates and school construction cost data [by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years]. The Director must calculate the adjustment to the nearest multiple of one dollar, except that the rate must not be increased or decreased more than 5%. The Director must publish the amount of this adjustment not later than May 1 of each [odd numbered] even-numbered year.

52-91. Accounting; use of funds.

* * *

(d) Revenues raised under this Article may be used to fund any:

(1) new public elementary or secondary school;

(2) addition to an existing public elementary or secondary school that adds one or more teaching stations; [or]

(3) modernization of an existing public elementary or secondary school to the extent that the modernization adds one or more teaching stations; or

(4) acquisition of land for a public elementary or secondary school.

(e) Any funds collected for the acquisition of land must be placed in the MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used for the purchase of property for new public schools.

52-93. Credits.

(a) Section 52-55 does not apply to the tax under this Article. A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-91(d), including costs of site preparation. [A credit must not be allowed for the cost of any land dedicated for school use, including any land on which the property owner constructs a school] A property owner may receive credit for land dedicated for a school site, if:

(1) the density calculated for the dedication area is excluded from the density calculation for the site; and

(2) the Montgomery County School Board agrees to the site dedication.

(b) If the property owner elects to make a qualified improvement or dedication, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any building permit is issued. The agreement or development approval must contain:

(1) the estimated cost of the improvement or the fair market value of the dedicated land, if known then;

(2) the dates or triggering actions to start and, if known then, finish the improvement or land transfer; [.]

(3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards; [,] and

(4) such other terms and conditions as MCPS finds necessary.

(c) MCPS must:

(1) review the improvement plan or dedication; [,]

(2) verify costs or land value and time schedules; [,]

(3) determine whether the improvement is a public school improvement of the type listed in Section 52-91(d) or meets the dedication requirements in subsection (a); [,]

(4) determine the amount of the credit for the improvement or dedication; [,] and

(5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.

* * *

52-94. School Facilities Payment.

* * *

(b) The amount of the Payment for each building must be calculated by multiplying the Payment rate by the latest per-unit student yield ratio for any level of school or individual school found to be inadequate for the purposes of imposing the School Facilities Payment in the applicable Subdivision Staging Policy and for that type of dwelling unit and geographic area issued by MCPS.

(c) The Payment rates must be set by Council resolution. The Director of Finance must adjust the then-applicable Payment rates [as of] on July 1 of [2015 and] each [later odd- numbered] even-numbered year, or on November 15, in accordance with the update to the Subdivision Staging Policy by using the latest student generation rates and school construction cost data. The Director must calculate the adjustment to the nearest multiple of one dollar. [based on the construction cost of a student seat for each school level as certified by the Superintendent of Montgomery County Public Schools for the two most recent calendar years, to the nearest multiple of $10.] The Director must publish the amount of this adjustment in the County Register not later than May 1 of each [odd numbered] even-numbered year. The Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the Payment rate or set different rates for different types of housing unit. The Council must not increase or decrease the rate by more than 5%.

* * *

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 37-16

Taxation – Development Impact Tax – Transportation and Public School Improvements - Amendments

DESCRIPTION:	The Bill would amend the law concerning the Development Impact Tax for Transportation and Public Schools.
PROBLEM:	Development impact taxes were last calculated in 2007 based on infrastructure cost estimates current at that time.
GOALS AND OBJECTIVES:	To update development impact tax calculations based on more recent cost data and information.
COORDINATION:	Department of Permitting Services, Finance, County Attorney
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Pamela Dunn, Montgomery County Planning Board
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	None

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Jul+Zoning

Las → GO
Laura → CL
SCF
LL
Las → MM

MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

5043118

July 27, 2016

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2016 JUL 27 PM 3:22

The Honorable Nancy Floreen
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Floreen:

Attached please find the Planning Board Draft 2016 Subdivision Staging Policy (SSP) in accordance with County Law (Article 3. Sec. 33A-15) which requires that a Planning Board Draft be prepared and sent to the County Council by August 1, 2016. In addition to the 2016 SSP, the Planning Board recommends an update to the development impact tax for both transportation and schools. Development impact taxes were last calculated during the 2007 Growth Policy review. Language for the bill to change the tax is also being transmitted.

It should be noted that the Planning Board approved the 2016 SSP and accompanying update to the development impact taxes by a vote of 4:1, with Commissioner Dreyfuss dissenting. Commissioner Dreyfuss chose not to vote in favor of the SSP stating his concern that these policies change too frequently and the development community needs certainty in order to move forward with projects. Since his appointment to the Board, the policy area transportation test and mitigation requirement has changed three times. Commissioner Dreyfuss prefers that the current transportation test, Transportation Policy Area Review, also known as TPAR, be retained with modifications. In addition to his opposition to the Planning Board's recommended changes to TPAR and LATR (Local Area Transportation Review), Commissioner Dreyfuss does not support updating the calculation of development impact taxes at this time, preferring the current policy of biennial adjustments to the 2007 rates to account for inflationary changes in construction costs.

The majority of the Planning Board however, supports the 2016 SSP and the many new ideas that it contains. This SSP rethinks how we approach growth and its effect on our public facilities – particularly our schools and our transportation network. It provides a more context-sensitive, multi-modal approach to both the regional and local tests for transportation.

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This SSP moves away from policies focused predominantly on automobile travel by creating multi-modal adequacy tests that look at how different areas of the County are meeting their transit accessibility goal, and by measuring person trips associated with new development instead of only vehicle trips. It also recognizes the important connection between vehicle trips and parking – allowing for downward adjustments to vehicle trip rates and transportation impact taxes based on reductions in parking.

With respect to school facilities, the 2016 SSP aims to forge a better connection between the capacity of an individual school and its measure of adequacy, providing information that can help the County determine how best to spend taxpayer funds to provide needed facilities and services. It utilizes student generation rates that are associated with all residential structures regardless of year built – so as to capture the enrollment impact of new housing over its lifetime, and it implements a hybrid annual school test that combines cluster utilization tests with individual school capacity deficit tests, which is an adequacy test long-desired by our parent community. The Board recommends that a portion of the school impact tax be set aside for the acquisition of land and propose that credit against the school impact tax be allowed in certain land dedication cases.

The 2016 SSP moves Montgomery County toward a future that we anticipate will be more multi-modal, more diverse, and more populous, requiring increasingly more innovative ideas on how to provide public facilities in a way that enhances our quality of life.

The Public Hearing Draft SSP report was published on May 19, 2016 and posted on the Planning Department Web page. A public hearing was held on June 2, 2016 to receive testimony on the proposed policy. Planning Board worksessions were held on June 9, June 16, June 23, June 28, and June 30, 2016. The Planning Board approved the report, a draft County Council resolution, and a draft development impact tax bill on July 21, 2016.

The Planning Board's key findings and recommendations are contained in the SSP report. Recommended revisions are included in the draft resolution and draft impact tax bill. The Appendix documents (with the exception of the resolution and bill) are provided as background information and documentation of the analysis and are not considered policy documents approved by the Planning Board.

We look forward to working with you to assure the County Council can adopt a new Subdivision Staging Policy by November 15, 2016, per the requirements of the Growth Policy Law (Article 3. Sec. 33A-15).

Sincerely,

Casey Anderson
Chair

cc: County Executive Isiah Leggett
Glenn Orlin

Enclosures

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Diane Schwartz Jones
Director, Department of Permitting Services

Al Roshdieh
Director, Department of Transportation

VIA: Edward B. Lattner EBL
Division Chief, Division of Government Operations

FROM: Charles L. Frederick CLF
Associate County Attorney

Scott R. Foncannon SRF
Associate County Attorney

DATE: August 31, 2016

RE: Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments

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Assistant Chief Administrative Officer Bonnie A. Kirkland asked this Office to review and comment on Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments. The purpose of the Bill is to adopt the Planning Board's recommended changes to the County law concerning the development impact tax for transportation and public school projects. The proposed Bill modifies the method for calculating the transportation and public school impact tax, creates new transportation tax districts associated with policy area categories, and adjusts certain transportation impact taxes to encourage preferred behaviors.

Subject to the comments below, Bill 37-16 is legally sufficient.

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At Lines 9-10, the Bill amends the definition of *additional capacity*. The amendments, however, are vague and lack sufficient specificity. As a result, this Office foresees an increase in the number of appeals to the Maryland Tax Court. Therefore, this Office recommends that the Bill be further amended to establish a sustainable standard against which the phrase "implements or improves" a "transit, pedestrian and bike facilities or access to non-auto modes of travel" is to be judged in order to qualify for a tax credit under § 52-55 of the County Code. Additionally, the words "transit, pedestrian and bike facilities or access to non-auto modes of travel" are not defined. They should be defined in the Bill or in an accompanying executive regulation.

Consistent with the Montgomery County Plain Language Drafting Manual, the Policy Area definitions should be reformatted to read, by way of example, as follows:

> Red Policy Areas includes the Bethesda CBD, Friendship Heights, . . . and Wheaton CBD Metro Station Policy Areas.

The Bill does not contain metes and bounds descriptions of the smaller, specific individual Policy Areas. As such, the Policy Areas are not clearly defined, which has the inevitable potential to result in frequent appeals to the Maryland Tax Court. This Office recommends a metes and bounds description of each of the individual Policy Areas. In the alternative, this Office understands that the Subdivision Staging Policy (SSP) includes clear delineations of the individual Policy Areas and a Bill amendment that refers to or adopts the SSP may be effective. Note, however, if additional individual Policy Areas are added in later revisions of the SSP, the County Code will have to be amended.

This Office understands that the intent is for development impact taxes collected for development in one of the individual Policy Areas within the Red Policy Area to be used for transportation improvements in the individual area where the development occurred. For example, development impact taxes collected for development in the Grosvenor Policy Area will be used for transportation improvements in the Grosvenor Policy Area, not for transportation improvements anywhere in the Red Policy Area. The amendments contained in Lines 60-63 of the Bill are confusing, ambiguous, and potentially do not accomplish the goal intended. Therefore, this Office recommends further amendment of the Bill in order to accomplish the intended goal.

The tax rate table inserted within the brackets at Line 74 of the Bill is not the tax rate table found in the current County Code. The tax rate table found in the current Code should be inserted within the brackets.

The structure of the development impact tax law contemplates adjustment of the tax rates by Council Resolution every two years. Rather than codifying the tax rates in the body of the

County Code, this Office recommends further amendment to Bill 37-16, indicating that the tax rates initially will be established by Council Resolution, and then adjusted every two years.

Bill 37-16 proposes to adjust the development impact tax rates for public school improvements on even-numbered years. The adjustment of development impact tax rates for transportation improvements, however, remains on odd-numbered years. *Compare* Bill 37-16, Line 237 with Line 99. The adjustment of the two tax rates, whether it be on odd or even-numbered years, should be consistent.

The phrase "other bike facility" at Line 115 of the Bill should be defined in the law, or in an accompanying executive regulation. The phrase should be distinguished from a bicycle locker (Line 116) and bikesharing station (Line 117).

The language proposed at Lines 129 and 135 is incomplete. The Bill should not contain blanks.

Lines 137-8 include "Langley Park" as a specific, individual Policy Area. However, "Langley Park" is not included in any of the color coded Policy Areas defined at Lines 39-53.

The provision included at Lines 159-160 presumably requires the Department of Finance to dedicate of 10% of development impact tax for public school improvements collected for the acquisition of land for new schools. This Office recommends that this provision be taken out of § 52-89, which is titled "Imposition and applicability of tax." The provision should be relocated to § 52-91 of the County Code, which is titled "Accounting; use of funds."

The phrase "student seat" at Line 160 should be defined in the Bill or in an accompanying executive regulation.

The phrase "for the site" at Line 269 is not defined, or it needs to specifically indicate what it intends to modify. In other words, it is unclear whether the phrase is intended to modify the site dedicated or the overall project or development. Further amendment is needed in order to clearly effectuate the intended purpose.

cc: Bonnie A. Kirkland, Assistant Chief Administrative Officer
Marc Hansen, County Attorney
Scott R. Foncannon, Acting Division Chief, Division of Finance and Procurement, OCA
Jeffrey Zyontz, Sr. Legislative Analyst
Robert H. Drummer, Sr. Legislative Attorney

Board of Education
Montgomery County Maryland

MONTGOMERY COUNTY BOARD OF EDUCATION

850 Hungerford Drive ♦ Room 123 ♦ Rockville, Maryland 20850

Malcolm Baldrige
National Quality Award
2010 Award Recipient

August 31, 2016

The Honorable Nancy Floreen, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Floreen:

On August 25, 2016, the Montgomery County Board of Education (Board of Education) reviewed the Montgomery County Planning Board's (Planning Board) recommended *FY 2016–2020 Subdivision Staging Policy* as it pertains to public schools. The Board of Education was asked to provide comments to the County Council on the recommended policy by September 1, 2016. This letter is to inform you that the Board of Education generally supports the policy modifications recommended by the Planning Board, with four exceptions. Enclosed is a copy of the resolution adopted by the Board of Education.

The policy recommended by the Planning Board includes the following:

(1) modified student generation rates used to determine the student yield of residential structures;
(2) adoption of a new component of the annual school test that determines the adequacy of school facilities where development is proposed;
(3) biennial updates of the school facility payment and school impact tax calculations;
(4) modified school facility payment and school impact tax formulae;
(5) limits on the use of placeholder capacity projects in the annual school test;
(6) dedication of a portion of the school impact tax revenue to a land acquisition fund for the purchase of school sites;
(7) allowance of a credit against the school impact tax for land dedicated to schools; and
(8) reintroduction of the school impact tax and school facility payment in former Enterprise Zones.

Modified Student Generation Rates

The calculation of school facility payments and school impact taxes relies on student generation rates, which indicate the number of students per unit of residential development. The policy recommended by the Planning Board stipulates that these rates be based on the student yield of housing structures built in any year, rather than on the yield of structures built within a specified time frame. This ensures that the average impact of new housing on schools over time is captured, as opposed to just the initial impact. The Board of Education supports the Planning Board recommendation.

Phone 301-279-3617 ♦ Fax 301-279-3860 ♦ boe@mcpsmd.org ♦ www.montgomeryschoolsmd.org

Annual School Test

The annual school test has long compared a school cluster's current and planned capacity with its projected enrollment, determining if a school facility payment is required for residential development to proceed in that cluster. The policy recommended by the Planning Board stipulates that the annual school test continue to assess capacity at the cluster level, and in addition, assess capacity at the individual school level using the seat-deficit thresholds that trigger Montgomery County Public Schools (MCPS) capital project planning. This hybrid test prevents the issue of cluster-level school tests "masking" individual school-level space deficits, particularly given widely varying school sizes and school expansion possibilities within clusters. It also brings the annual school test into alignment with the MCPS Capital Improvements Program's implementation processes. The Board of Education supports the addition of school-level testing in the annual school test. However, the Board of Education requests that the County Council consider reducing the current cluster-level test thresholds from 105 percent to 100 percent for triggering school facility payment and from 120 percent to 110 percent for triggering a development moratorium. In order to address continuing overutilization levels at a majority of our schools, the Board of Education feels that additional revenues through the facility payment and policy mechanisms, such as development moratorium, are desperately needed to allow public infrastructure to keep pace with the county growth.

Biennial Updates of School Facility Payment and School Impact Tax

School facility payments and impact taxes should continue to be updated using the latest student generation rates and school construction cost data, as recommended by the Planning Board. The Board of Education supports the Planning Board recommendation for biennial updates of school facility payment and school impact tax calculations with a limit on the changes in payments and taxes to five percent.

Modified School Facility Payment and School Impact Tax Formulae

School impact taxes currently are calculated by applying a multiplier of 0.9 (90 percent) to per-seat school construction costs. The policy recommended by the Planning Board modifies this formula by removing the multiplier, so that the tax represents the full cost of construction of a seat associated with a new residential unit. The Board of Education supports the Planning Board recommendation.

School facility payments are currently calculated by applying a multiplier of 0.6 (60 percent) to the per-seat school construction cost. The policy recommended by the Planning Board modifies this formula so that the multiplier is 0.5 (50 percent). This ensures that development continues to pay no more than 150 percent of the per-seat cost of school construction where school facilities have been deemed inadequate (100 percent of per-seat costs in impact taxes plus 50 percent of per-seat costs in facility payments, instead of the currently required 90 percent of per-seat costs in impact taxes plus 60 percent of per-seat costs in facility payments). The Board of Education supports the Planning Board recommendation.

Placeholder Capital Projects

Placeholder capital projects reserve Capital Improvements Program funding for needed school capacity projects to prevent a cluster falling into a residential development moratorium. The policy recommended by the Planning Board recognizes the benefit of placeholder projects but restricts their inclusion in the annual school test to two consecutive years of the test. This ensures that if a placeholder project is not replaced with a capital project in MCPS' six-year Capital Improvements Program for two consecutive years, the annual school test reflects the unaddressed capacity deficit. The Board of Education supports the Planning Board recommendation.

Dedication of a Portion of School Impact Tax Revenue to a Land Acquisition Fund for the Purchase of School Sites

The Planning Board has recommended that 10 percent of school impact tax revenue be dedicated to a land acquisition fund for the purchase of school sites. The Board of Education strongly opposes this dedication requirement. While the dedication of impact tax revenue specifically for the purchase of land for school sites is purported to provide MCPS with "additional options for funding potential purchases," it would divert funds from those needed capacity projects that do not require the acquisition of a school site and allow funds to sit idle until they can be applied to a very specific type of capacity project—one that cannot move forward without the purchase of a school site. As MCPS continues to experience unprecedented student enrollment growth, it is imperative that 100 percent of the impact tax revenue is invested in addressing the growth needs. The Board of Education supports a school impact tax that represents the full cost of a seat associated with a new residential unit, but without constraints on the application of that revenue to capacity projects. The MCPS Capital Improvements Program prioritizes projects based on capacity needs regardless of whether the potential purchase of a school site is required. The Board of Education believes developing a funding source for school site acquisition is important, but through another type of impact tax or exceeding the 100 percent level for the school impact tax.

Credit Against the School Impact Tax for Land Dedicated to Schools

Current policy provides a credit against the school impact tax for construction of school facilities. The policy recommended by the Planning Board allows for an additional credit against the school impact tax for land dedicated to schools. The Board of Education supports this stipulation, as an appropriate and timely dedication of land for a school site can be as useful as school impact taxes in providing school facilities.

Reintroduction of the School Impact Tax and School Facility Payment in Former Enterprise Zones

Current policy provides school impact tax and facility payment exemptions within former Enterprise Zones. The policy recommended by the Planning Board reintroduces the school impact tax and school facility payment in former Enterprise Zones. Now that 10 years have passed since the expiration of the Silver Spring CBD's Enterprise Zone designation, there is little rationale for maintaining this exemption. The Board of Education supports the Planning Board recommendation.

Additional Change

The Board of Education proposed one additional change not addressed by the Planning Board. Current policy requires revenue collected from school facility payments to be used on capital projects within the cluster in which they are collected. Although the policy recommended by the Planning Board does not address this constraint on revenue, the Board of Education proposes that the updated policy allow for facility payment revenue to be applied to any MCPS capital project that addresses capacity. This policy revision would better enable MCPS to address its highest priority capacity needs wherever they are, thereby facilitating timely implementation of the six-year Capital Improvements Program. This approach will ensure that overutilized schools across the county are relieved in the order in which they have been prioritized. MCPS has been and continues to explore possibilities of alleviating the overcrowded schools by examining the adjacent clusters. Two recent examples include providing relief to Clarksburg and Northwest high schools by building larger capacity at Seneca Valley High School as a part of its revitalization/expansion project, as well as planning for the Col. Zadok Magruder and Thomas S. Wootton clusters to alleviate overutilization in the Gaithersburg Cluster. Both the roundtable discussion in the Walter Johnson Cluster and strategies being considered to provide relief for high schools in the Downcounty Consortium will require a broad countywide perspective. <u>For this reason, the Board of Education proposes allowance of facility payment revenue to be applied to any MCPS capital project that addresses capacity.</u>

I am confident that MCPS, the Planning Board, the county executive, and the County Council will continue to work together to ensure that public infrastructure, particularly our schools, adequately serves our growing community. The Board of Education appreciates the Planning Board's efforts to address the school system's enrollment growth challenges through its recommended *FY 2016–2020 Subdivision Staging Policy*. The Board of Education recognizes these potential changes require thoughtful consideration of how to balance public infrastructure needs and the county's economic growth. For this reason, the Board of Education generally supports the policy modifications recommended by the Planning Board, with the noted exceptions. While the Planning Board recommendations, as well as our suggested comments, are attempts to improve the county's Subdivision Staging Policy, the Board of Education believes more far-reaching measures will be needed to address the current and future needs of this county. The Board of Education looks forward to working with the County Council, as well as the Planning Board and county executive, on this vital policy.

Sincerely,

Michael A. Durso
President

MAD:AMZ:bls

Enclosure

Copy to:

Members of the Montgomery County Council
Members of the Board of Education
Dr. Smith
Dr. Navarro
Dr. Statham
Dr. Johnson
Dr. Zuckerman
Mr. Song
Mr. Ikheloa
Members of the Montgomery County Planning Board

ADOPTED
11.1

Office of the Superintendent of Schools
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

August 25, 2016

REVISED

MEMORANDUM

To: Members of the Board of Education

From: Jack R. Smith, Superintendent of Schools

Subject: 2016–2020 Subdivision Staging Policy

Background

The Subdivision Staging Policy (formerly known as the County Growth Policy) is reviewed on a four-year cycle. The county executive and the Montgomery County Board of Education are requested to provide their comments on the Montgomery County Planning Board (Planning Board) recommended 2016–2020 Subdivision Staging Policy to the County Council by September 1, 2016.

The Planning Board initiated the update of the Subdivision Staging Policy in fall 2015 and gathered public input from the community throughout winter and spring. The members of the Board's Fiscal Management Committee were briefed on the current policy and update process on May 9, 2016. Subsequently, the Fiscal Management Committee reviewed the existing policy and provided comments to the Planning Board on its Working Draft of the Subdivision Staging Policy on May 26, 2016.

On July 21, 2016, the Planning Board transmitted the recommended *2016–2020 Subdivision Staging Policy* to the County Council. The Subdivision Staging Policy is available at:

http://www.montgomeryplanning.org/research/subdivision_staging_policy/

This memorandum includes a review of the Planning Board's recommendations for the school test portion of the policy and recommendations for Board of Education consideration. The County Council will review the policy this fall and is expected to take action on the policy by November 2016.

The Subdivision Staging Policy includes guidelines for three funding sources—School Facility Payment, School Impact Tax, and Recordation Tax—that are allocated to the Montgomery County Public Schools (MCPS) Capital Improvements Program (CIP). While these three funding sources account for less than half of our total CIP allocation, they are vital revenue sources to ensure that the many construction projects needed in our school system are funded annually. The approved Fiscal Year (FY) 2017 Capital Budget of $305 million was partially funded from the three revenue sources above as follows: 1 percent ($1.7 million) from the School Facility Payment, 11 percent ($32.5 million) from the School Impact Tax, and 17 percent ($51.9 million) from the Recordation Tax. The following table illustrates the allocations from these revenue sources for the past five fiscal years:

Funding Sources Included in Subdivision Staging Policy
($000s)

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
School Facility Payments	$0	$170	$0	$2,144	$601
School Impact Tax	$14,480	$14,454	$27,046	$45,609	$31,898
Recordation Tax	$10,573	$21,873	$29,250	$21,583	$24,215

Planning Board Recommendations

The Planning Board has recommended changes to the policy which, with the exception of dedication of the impact tax revenue to a land acquisition fund, are well aligned with MCPS capacity needs. The recommended changes are as follows:

- Modified student generation rates used to determine the student yield of residential structures;
- Adoption of a new component of the annual school test that determines the adequacy of school facilities where development is proposed;
- Biennial updates of school facility payment and school impact tax calculations;
- Modified school facility payment and school impact tax formulae;
- Limits on the use of placeholder capacity projects in the annual school test;
- Dedication of a portion of school impact tax revenue to a land acquisition fund for the purchase of school sites;
- Allowance of a credit against the school impact tax for land dedicated to schools; and
- Reintroduction of the school impact tax and school facility payment in former Enterprise Zones.

Modified student generation rates used to determine the student yield of residential structures:

Student generation rates indicate how many new students will result from new residential units. The modification of student generation rates is an important policy change because both school impact taxes and school facility payments are calculated using these generation rates. All new residential development pays the school impact tax. New residential development occurring where schools are overutilized also must make school facility payments.

The policy recommended by the Planning Board stipulates that these rates be based on the number of students generated by housing structures built in any year, rather than just on the number of students generated by structures built within a specified timeframe.

In a previous working draft, generation rates for single-family homes were based on the number of students generated by structures built only in the past 10 years, which the Fiscal Management Committee opposed. This recommended policy change is a welcome one to the final draft that ensures the average overall impact of new housing on schools is captured, as opposed to just the initial impact. After new units are built, MCPS indefinitely will serve the students residing in these units, not just the first students who reside in them, over a finite period of time.

Adoption of a new component of the annual school test that determines the adequacy of school facilities where development is proposed:

The annual school test has long compared a school cluster's current and planned capacity with its projected enrollment, determining if a school facility payment is required for residential development to proceed in that cluster. Previously, development proposed within any cluster where schools were projected to be overutilized by 105 percent or more was subject to a school facility payment in addition to the school impact tax; development proposed within a cluster where schools were projected to be overutilized by 120 percent was prevented by a moratorium on residential development.

The policy recommended by the Planning Board stipulates that the annual school test continue to assess capacity at the cluster level, and in addition, assess capacity at the individual school level. This school-level component of the annual school test will allow the county to collect school facility payments in situations in which a cluster has capacity, but an individual school service area does not. This component of the school test uses seat-deficit thresholds to determine when a school service area is either subject to school facility payments or subject to a development moratorium. The thresholds for the school test are the same as those used by MCPS to trigger planning for a MCPS major capital project. This updated version of the annual school test, which the Fiscal Management Committee supported, prevents the issue of cluster-level school tests "masking" individual school-level space deficits, and additionally brings the test into alignment with the MCPS CIP implementation processes.

Biennial updates of school facility payment and school impact tax calculations:

School facility payments and impact taxes should continue to be updated using the latest student generation rates and school construction cost data, as recommended by the Planning Board. Moreover, the Board supports the stipulation that any changes to facility payments or impact taxes resulting from the updated data be limited to no more than five percent (increase or decrease). Updating the calculations ensures that this revenue keeps up with inflation and the number of students being produced by housing. Limiting the changes in payments and taxes to five percent provides an important level of certainty and stability for development projects. The Fiscal Management Committee did not review this policy change at its May 9, 2016, meeting.

Modified school facility payment and school impact tax formulae:

School impact taxes currently are calculated by applying a multiplier of 0.9 (90 percent) to the per-seat school construction cost. The per-seat cost of construction is the incremental cost of building additional space for a student. The policy recommended by the Planning Board, which the Fiscal Management Committee supported, modifies this formula by removing the multiplier, so that the tax represents the full cost of a seat associated with a new residential unit.

School facility payments currently are calculated by applying a multiplier of 0.6 (60 percent) to the per-seat school construction cost. The policy recommended by the Planning Board modifies this formula so that the multiplier is 0.5 (50 percent). This ensures that development pays no more than 150 percent of the per-seat cost where school facilities have been deemed inadequate (overutilized by 105 percent or more). Maintaining the overall burden on development in overutilized areas is important to the Planning Board. Under the new policy, a developer is responsible for up to 100 percent of per-seat costs in impact taxes plus 50 percent of per-seat costs in facility payments. Previously, a developer could be required to pay up to 90 percent of per-seat costs in impact taxes plus 60 percent of per-seat costs in facility payments. Both policies resulted in a maximum overall burden of up to 150 percent of per-seat costs.

Limits on the use of placeholder capacity projects in the annual school test:

Placeholders for capital projects have permitted the County Council to take quick action to reserve funds for needed school capacity without allowing a cluster to fall into a residential development moratorium. The policy recommended by the Planning Board, which the Fiscal Management Committee supported, recognizes the benefit of placeholder projects, but restricts their inclusion in the annual school test to two consecutive years of the test. This ensures that if a placeholder project is not replaced with a capital project in MCPS' six-year CIP for two consecutive years, the annual school test reflects this unaddressed capacity deficit, and either school facility payments can be collected or a moratorium can be instituted if applicable.

Dedication of a portion of school impact tax revenue to a land acquisition fund for the purchase of school sites:

The Planning Board has recommended that 10 percent of school impact tax revenue be dedicated to a revolving land acquisition fund. The Fiscal Management Committee did not support this recommendation. While the dedication of impact tax revenue specifically for the purchase of land for school sites is purported to provide MCPS with "additional options for funding potential purchases," it would divert funds from those needed capacity projects that do not require the acquisition of a school site and allow funds to sit idle until they can be applied to a very specific type of capacity project, one that cannot move forward without the purchase of a school site should such a project exist at some point in the future. MCPS supports a school impact tax that represents the full cost of a seat associated with a new residential unit, but without constraints on the application of that revenue to capacity projects, which are prioritized by the MCPS CIP based on capacity needs and regardless of the potential purchase of a school site.

Allowance of a credit against the school impact tax for land dedicated to schools:

Current policy provides a credit to developers against the school impact tax for construction of school facilities for MCPS. The policy recommended by the Planning Board stipulates the allowance of an additional credit against the school impact tax for land dedicated to schools. This stipulation is supported, as land dedication can be as useful as school impact taxes in providing school facilities. The Fiscal Management Committee did not review this policy change at its May 9, 2016, meeting.

Reintroduction of the school impact tax and school facility payment in former Enterprise Zones:

Current policy provides school impact tax and facility payment exemptions within areas of the county that are former Enterprise Zones. The policy recommended by the Planning Board reintroduces the school impact tax and school facility payment in former Enterprise Zones, such as the Silver Spring Central Business District (CBD). Now that 10 years have passed since the expiration of the Silver Spring CBD Enterprise Zone designation, there is little rationale for maintaining impact tax or facility payment exemptions there. The Fiscal Management Committee did not review this policy change at its May 9, 2016, meeting. I offer the following resolution for your consideration:

WHEREAS, A comprehensive review of the *2016–2020 Subdivision Staging Policy* has been conducted by the Montgomery County Planning Board during the past few months, and this review has included consideration of the school test in the policy; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* school test continues to incorporate the use of the Montgomery County Public Schools program capacity as the appropriate measure of school adequacy that aligns with Montgomery County Public Schools facility planning and capital programming; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* includes modified student generation rates used to determine the student yield of residential structures; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* school test continues the cluster utilization thresholds of 105 percent for triggering the school facility payment and 120 percent for triggering residential moratorium; and

WHEREAS, The Montgomery County Planning Board's recommended *2016-2020 Subdivision Staging policy* includes a new school-level component of the school test that uses the seat-deficit thresholds of 92 seats for triggering the school facility payment at elementary schools and of 150 seats for triggering the school facility payment at middle schools, and the seat-deficit thresholds of 110 seats for triggering residential moratorium at elementary schools and of 180 seats for triggering residential moratorium at middle schools; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* includes biennial updates of school facility payment and school impact tax calculations limiting any change to no more than five percent; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* includes modified school impact tax calculations such that the school impact tax multiplier of 0.9 applied to the per-seat school construction cost is increased to 1.0; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* includes modified school facility payment calculations such that the school facility payment multiplier of 0.6 applied to the per-seat school construction cost is reduced to 0.5; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* limits the use of placeholder capacity projects in the school test to two consecutive school tests; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* includes dedication of a portion of school impact tax revenue to a land acquisition fund for the purchase of school sites; and

WHEREAS, The policy provision that dedicates a portion of school impact tax revenue to a land acquisition fund would negatively impact utilization of impact tax revenue for current capital project needs; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* allows for a credit against the school impact tax for land dedicated as school sites; and

WHEREAS, The Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy* reintroduces the school impact tax and school facility payments in former Enterprise Zones; and

WHEREAS, All other elements of the current school test are retained in the Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy*; now therefore be it

Resolved, That the Board of Education propose lowering the cluster-level school test utilization thresholds for school facility payment from 105 percent to 100 percent and lowering the threshold for triggering residential moratorium from 120 percent to 110 percent; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for the *2016–2020 Subdivision Staging Policy* school test including continued cluster utilization testing at the elementary school, middle school, and high school levels in addition to individual school utilization testing that uses the seat-deficit thresholds of 92 seats for triggering the school facility payment at elementary schools and of 150 seats for triggering the school facility payment at middle schools and the seat-deficit thresholds of 110 seats for triggering residential moratorium at elementary schools and of 180 seats for triggering residential moratorium at middle schools; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for biennial updates of school facility payment and school impact tax calculations with a limit on the changes in payments and taxes to five percent; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for modified school impact tax calculations that use a multiplier of 1.0 applied to the per-seat school construction cost; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for modified school facility payment calculations that use a multiplier of 0.5 applied to the per-seat school construction cost; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for the *2016–2020 Subdivision Staging Policy* school test including limiting the use of placeholder capacity projects in the school test to two consecutive school tests; and be it further

Resolved, That the Board of Education oppose the Montgomery County Planning Board's recommendations for dedication of a portion of school impact tax revenue to a land acquisition fund; and be it further

Resolved, That the Board of Education submit comments to the Montgomery County Council requesting consideration of a separate funding stream for school site acquisition; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for a credit against the school impact tax for dedicated school sites; and be it further

Resolved, That the Board of Education support the Montgomery County Planning Board's recommendations for reintroduction of the school impact tax and school facility payments in former Enterprise Zones; and be it further

Resolved, That the Board of Education support retention of all other elements of the current school test in the Montgomery County Planning Board's recommended *2016–2020 Subdivision Staging Policy*; and be it further

Resolved, That the Board of Education propose the revenue from the school facility payment be allowed to apply towards any MCPS capital project within the county; and be it further

Resolved, That a copy of this resolution be forwarded to the county executive, the Montgomery County Council, and the Montgomery County Planning Board; and be it further

Resolved, That a copy of this resolution be forwarded to mayors and councils of Montgomery County municipalities.

JRS:AMZ:JS:lmt

Subdivision Staging Policy – School Issues

Next Steps Reps Subcommittee of the CIP Committee
Montgomery County Council of PTAs

1. Student Generation Rates – *Planning Board (Planning Board Draft, July 21, 2016): Calculate School Facility Payments and the School Impact Tax using student generation rates associated with all residential structures built any year.*

MCCPTA: Our first choice was the current approach: using student generation rates (A) from buildings built within 10 years, for single family homes and (B) from buildings built in any year, for other housing. This reflects the greatest impact each type of new housing will have on schools.

Since the Planning Board opposed that hybrid approach, we supported the approach described above. This approach addresses the impact of new development over the full life of that development. Further, it generates almost as much school impact tax revenue.

2. Hybrid Annual School Test – *Planning Board: Implement a hybrid annual school test that combines cluster utilization tests with individual school capacity deficit tests.*

MCCPTA: We requested a hybrid school test, and wholeheartedly support this approach. Many individual schools have reached dramatic levels of overcrowding (for example, Barnsley ES at 178 percent of capacity), and need the focus and attention that this hybrid test allows.

3. Facility Payment Updates – *Planning Board: Update the calculation of the School Facility Payments on a biennial basis (concurrent with the annual school test or with the update to the Subdivision Staging Policy) using the latest student generation rates and school construction cost data, limiting any change (increase or decrease) to no more than five percent.*

MCCPTA: We favor the use of the latest rates and cost data. We are concerned that the five percent limit might mean that School Facility Payments are not proportionate to costs of a seat under certain circumstances, such as soaring inflation.[1] Cost is cost, and if it rises significantly, the corresponding facility payment cannot be phased in over time without severely limiting the ability to construct new school capacity as needed.

[1] As examples of circumstances that might suddenly raise the cost of a seat by more than 5 percent, please consider: The State mandate regarding the Prevailing Wage Requirement alone increases county bid costs of construction projects by as much as 12% - 14% (*IAC Report to the Board of Public Works* – October 28, 2015). School construction cost estimates will increase by 29% in July 2016 to accommodate changes observed by the Interagency Committee on School Construction. Since 2010, school construction costs have increased by 50% (*Capital Budget Fiscal Briefing, Department of Legislative Services*, pp 27-28, February 9, 2016).

4. Facility Payment Multiplier – *Planning Board: Modify the calculation of the School Facility Payments to apply a 0.5 multiplier instead of the current 0.6 multiplier.*

MCCPTA: We find this change unnecessary. We know that recommendation 7 will raise at least as much funding as this change eliminates, in most clusters.[2] However, the funding raised by recommendation 7 will be used for (badly needed) land acquisition. Thus, this change will reduce funding for school construction, which we oppose.

If anything, the multiplier for School Facility Payments should be increased because the payments aid areas with badly overcrowded schools and schools directly impacted by new residential development. We suggest a multiplier of 0.75.

5. Placeholder Limits – *Planning Board: Placeholder capacity for a particular cluster level or school can only be counted as capacity in the annual school test for two years.*

MCCPTA: We requested a limit on (or elimination of) placeholders, which disconnect development from its impact on schools, and allow development to proceed well before schools are funded or built. We view this limit as a partial solution.

6. Impact Tax Updates – *Planning Board: Update the School Impact Tax amounts on a biennial basis (concurrent with the annual school test or with the update to the Subdivision Staging Policy) using the latest student generation rates and school construction cost data, limiting any change (increase or decrease) to no more than five percent.*

MCCPTA: We favor the use of the latest rates and cost data. We are concerned that the five percent limit might mean that School Impact Taxes are not proportionate to costs of a seat under certain circumstances, such as soaring inflation. If the cost of a seat rises significantly, the corresponding impact tax cannot be phased in over time without severely limiting the ability to construct new school capacity as needed.

7. Income Tax Multiplier – *Planning Board: Remove the 0.9 multiplier in the School Impact Tax, so as to capture the full cost of school construction associated with a new residential unit.*

MCCPTA: We wholeheartedly support this approach. However, we note that the combined effect of recommendations 4, 7, and 8 will be to reduce school construction funding. At a minimum, the Subdivision Staging Policy must maintain or increase school construction funding. In addition, it must provide payment for land in those particular areas where it is no longer possible to obtain land by dedication – to offset the value of that land. Please note

[2] In clusters that include municipalities, recommendation 7 may not raise as much funding as this change eliminates.

that a land payment is not an increased contribution by developers – simply a change in the type of resources provided.

Please remember, among the reasons that we need a robust School Impact Tax: Because the School Facility Payment is cluster specific and cannot be collected in municipalities, the School Impact tax must be used to cover that deficit, further diluting the money available to all school clusters.

8. Land Acquisition Fund – *Planning Board: Require a portion of the School Impact Tax equivalent to 10 percent of the cost of a student seat be dedicated to land acquisition for new schools.*

MCCPTA: We requested a mechanism to collect funds for school land acquisition, in order to continue to get land resources in areas where land dedication is now problematic. We are delighted to see this sort of mechanism under consideration.

However, we emphasize that funds should replace land dedication only for plans where land dedication is impracticable. Furthermore, since the cost of land is not related to MCPS's cost of a seat, the amount of funding for land acquisition should be calculated separately. It should be sufficient to replace the cost of the land MCPS has traditionally obtained by dedication. And it should cover the proportionate share of the cost of land for secondary as well as elementary schools.

9. Credit for Land Acquisition – *Planning Board: Allow a credit against the School Impact Tax for land dedicated for a school site, as long as the density calculated for the dedication area is excluded from the density calculation for the site, and MCPS agrees to the site dedication.*

MCCPTA: For decades, the County has obtained school sites through dedications by developers. The County should not end its expectation that a developer will contribute land (or funds toward land), to an extent proportionate to the number of students the development generates.

So, when a developer dedicates land, it should not get a credit for a dedication that has long been expected. However, if the developer dedicates land in addition to its proportional contribution, we support a credit for that additional contribution.

10. Former Enterprise Zones – *Planning Board: Reintroduce the School Impact Tax and School Facility Payments in former Enterprise Zones through a phased approach.*

MCCPTA: We agree. Developers with projects in areas that are not enterprise zones should pay these taxes and payments. The current policy denies facility payments to clusters in former enterprise zones - which are generally lower-income areas that need school resources.

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Concerning the phased approach, we understand the desire to give notice to developers in areas that are now, or will soon be, former enterprise zones. In the future, developers in former enterprise zones should not need a phaseout, as they would have notice that their exemptions are ending.

11. Future Exemptions – *Planning Board: Conduct further research to develop the criteria and process by which an area of the County can be exempted from the School Impact Tax and School Facility Payments.*

MCCPTA: We agree. This seems to be prudent planning.

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ROCKVILLE, MARYLAND

MEMORANDUM

September 16, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Naeem Mia, Office of Management and Budget

Fiscal Impact Statements
Council Bill 37-16 – Development Impact Tax – Transportation and Public School Improvements - Amendments

1. **Legislative Summary.**

Bill 37-16 amends the law governing the Development Impact Tax for transportation and public schools by updating the impact tax rates since their last update in 2007.

The proposed bill would also implement the Planning Board's latest recommendations for the Subdivision Staging Policy.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The proposed bill does not impact overall County expenditures. However, Bill 37-16 does introduce several restrictions on the *use* of impact tax revenues, including:

   a. Impact tax funds collected within the Red Policy Areas must be used for transportation improvements that directly benefit the Red Policy Area; and
   b. Ten (10) percent of the cost of a student seat is dedicated for land acquisition for new school construction.

Revenue projections were calculated over a six-year period (FY17 through FY22) by the Department of Finance using data from the Department of Permitting Services (DPS) (permits issued and square footage) provided by Planning Department based on the following assumptions for each of the revenue sources affected by the proposed bill:

School Impact Tax:

- Projections are based on the following new rates for the School Impact Tax and are assumed to take effect on July 1, 2017 (current approved rates and changes are included for reference):

Dwelling Type	Current Tax Per Dwelling Unit	Proposed Tax Per Dwelling Unit	$ Change	% Change
Single-Family (SF) Detached	26,827	18,878	(7,949)	-29.63%
Single-Family (SF) Attached	20,198	19,643	(555)	-2.75%
Multi-Family (MF)	12,765	15,507	2,742	21.48%
High-Rise	5,412	5,570	158	2.92%
Multi-Family (MF) Senior	0	0	0	-

- Using a 5-year moving average method, the estimate for each year was calculated by multiplying the proposed rates to the permit and square footage data based on actuals for fiscal years 2011, 2012, 2013, 2014, and 2015; permit and square footage data from fiscal year 2016 is not yet available.

- Rate increases in the out-years beyond the first two forecasted years (FY17-18) are based on a simple weighted average calculation tied to the Baltimore Construction Cost index; rates are increased by 2.6% every two years.
- Over the prior six years of actual data available (2011-2015), an average of 94.8% of the estimated revenues are actually received; the same average is applied to the forecasted six years (2017-2022).[1]
- Impact taxes for expiring enterprise zones are not included due to a lack of historical data.[2]
- Credits are not assumed in the forecast model due to the uncertainty and volatility of impact tax credit data.

As a result of the above assumptions and the new rates, changes to the School Impact Tax are as follows:

Revenues Projected under *Current* Rates ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**
Forecasted School Impact Tax	32,450,100	36,106,100	34,943,500	34,522,300	35,416,400	37,547,000	210,985,400

Revenues Projected under *Proposed* Rates ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**
Forecasted School Impact Tax	32,711,200	34,627,100	34,004,800	32,439,100	34,112,800	34,871,700	202,766,700

Delta of Revenues under Current Rates vs. Proposed Rates ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**
Forecasted School Impact Tax	261,100	(1,479,000)	(938,700)	(2,083,200)	(1,303,600)	(2,675,300)	(8,218,700)

Projected Collections for School Impact Tax ($)	**FY17-22 Period**
Current Rates:	210,985,400
Proposed Rates:	202,766,700
Total 6-Year Change:	(8,218,700)
Average Change in Revenues per Fiscal Year	(1,369,783)

[1] In other words, if $10M in revenues in FY20 is initially forecasted by the moving average model and a historical average of 95% of school impact taxes is actually received, then the estimated forecast of revenues for FY20 is $9.5M.

[2] Including the expiring enterprise zones would increase revenues; the exact amount is currently unknown due to a lack of data.

<u>**Summary**</u>: The proposed rate changes to the school impact tax is estimated to result in a ***decrease*** of $8,218,700 (or 3.89%) over the FY17-22 period vs. the current rates. This amounts to an average annual ***decrease*** of $1.37M in school impact tax revenues.

School Facility Payments and Transportation Mitigation Payments:

Bill 36-17 does not set the rates for School Facility Payments (SFP); the rates are set by a separate Council resolution.

The Department of Finance does not project School Facility Payment or Transportation Mitigation Payment (TMP) revenues due to:

a. the limited number of historical actuals data on payments received to date;
b. the uncertainty of when payments are actually paid to the County by developers; and
c. the uncertainty as to when buildings in a specific planning or policy area will be required to make either SFP or TMP payments.

Therefore, the SFP and TMP revenues are not included this fiscal analysis.

Transportation Impact Tax:

- Transportation Impact Tax rates differ across policy areas[3] - the current rate structure is based on three policy areas (Clarksburg, Metro Station, and General) while the proposed bill reorganizes the policy areas into four zones (Red, Orange, Yellow, Green).
- Projections are based on the following new rates for transportation impact tax *as identified in the version of Bill 37-16 as introduced in Council on August 2, 2016* and are assumed to take effect on July 1, 2017:[4] [5]

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[3] This fiscal analysis examines the aggregate change in rates under the proposed bill and does not include rate changes by specific policy area. The former Metro Station Policy Area has been reorganized as "Red" while the former Clarksburg Policy Area is now within the "Orange" Policy Area. The former General Policy Area is reorganized and divided across "Orange," "Yellow," and "Green."

[4] The Office of Management and Budget and Department of Finance prepares it fiscal and economic impact analyses using the version of the bill introduced in Council.

[5] The commercial rates for the Red Policy Area in this Fiscal Impact Statement (and the attached Economic Impact Statement) are based on the version of bill 37-16 as introduced in Council on August 2.

On August 11, 2016, the Planning Board issued corrections to these rates as listed page 43 of the Planning Board draft – preliminary analysis of the corrected rates indicates projected collected transportation impact tax revenues of $10,291,849, a ***decrease of approximately $2.29M*** over the FY17-22 period vs. the projections based on the rates in the introduced bill.

Residential Rates ($ per dwelling type)	Red Policy Area	Orange Policy Area	Yellow Policy Area	Green Policy Area
Single-Family (SF) Detached	3,653	10,959	18,266	29,225
Single-Family (SF) Attached	2,552	7,656	12,759	20,415
Multi-Family (MF) (Garden)	2,312	6,937	11,562	18,499
Multi-Family (MF) (High-Rise)	1,652	4,955	8,259	13,214
Multi-Family (MF) Senior	661	1,982	3,303	5,286

Commercial Rates ($ per square foot)	Red Policy Area (see footnote #10)	Orange Policy Area	Yellow Policy Area	Green Policy Area
Office	10.08	13.45	16.81	16.81
Industrial	5.01	6.69	8.36	8.36
Bioscience	0.00	0.00	0.00	0.00
Retail	8.97	11.96	14.95	14.95
Place of Worship	0.53	0.70	0.88	0.88
Private School	0.80	1.06	1.33	1.33
Hospital	0.00	0.00	0.00	0.00
Social Services	0.00	0.00	0.00	0.00
Other Non-Residential	5.02	6.69	8.36	8.36

- Using a 5-year moving average method, the estimate for each year was calculated by multiplying the proposed rates to the permit and square footage data based on actuals for fiscal years 2011, 2012, 2013, 2014, and 2015; data from fiscal year 2016 is not yet available.
- Rate increases in the out-years beyond the first two forecasted years (FY17-18) are based on a simple weighted average calculation tied to the Baltimore Construction Cost index; rates are increased by 2.6% every two years.
- Square footage data for multi-family (MF) housing received from DPS does not distinguish between Garden and High-Rise – OMB and Finance assumed the following ratios:

Type of Multi-Family	Red	Orange	Yellow	Green
Garden Apartments	0%	30%	70%	0%
High-Rise Apartments	100%	70%	30%	100%

- Over the prior six years of actual data available (2011-2015), an average of 32.0% of the estimated revenues are actually received; the same average is applied to the forecasted six years (2017-2022).[6]
- Credits are not assumed in the forecast model due to the uncertainty and volatility of impact tax credit data.

As a result of the above assumptions and the new rates, changes to the Transportation Impact Tax are as follows:

Revenues Projected under *Current* Rates[7] ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**
Forecasted Transportation Impact Tax	6,858,537	7,966,736	7,752,904	7,754,566	7,753,908	8,257,424	46,344,074

Revenues Projected under *Proposed* Rates[8] ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**
Forecasted Transportation Impact Tax	10,306,430	9,443,559	9,334,329	9,574,494	10,181,944	10,084,677	58,925,434

[6] In other words, if $10M in revenues in FY20 is initially forecasted by the moving average model and a historical average of 32% of transportation impact taxes is actually received, then the estimated forecast of revenues for FY20 is $3.2M. The percentage difference is due to several factors, including: application for impact tax credits and the historically high volatility of the transportation impact tax revenue source.

[7] Aggregated across the current three Policy Areas (Clarksburg, Metro Station, General).

[8] Aggregated across the proposed four Policy Areas (Red, Orange, Yellow, Green).

Delta of Revenues under Current Rates vs. Proposed Rates ($)	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**	**Total 6-Year**[9] [10]
Forecasted Transportation Impact Tax	3,447,894	1,476,823	1,581,425	1,819,928	2,428,036	1,827,254	12,581,360

Projected Collections for Transportation Impact Tax ($)	**FY17-22 Period**
Under the Current Rates:	46,344,074
Under the Proposed Rates:	58,925,434
Total 6-Year Change:	12,581,360
Average Change in Revenues per Fiscal Year	2,096,893

Summary: The proposed rate changes to the transportation impact tax is estimated to result in an ***increase*** of $12,581,360 (or 27.15%) over the FY17-22 period vs. the current rates. This amounts to an average annual ***increase*** of $2.10M in transportation impact tax revenues over the FY17-22 period.

The **total net** change in both impact tax revenue sources as a result of the proposed rate change is an ***increase*** of $4,362,660 during the FY17-22 period vs. the current rates, for an average ***increase*** in both impact tax revenues of $727,110 per year.

3. **Revenue and Expenditure estimates covering the next 6 fiscal years.**

   See item #2 above.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

[9] This figure includes the Cities of Rockville and Gaithersburg – impact taxes collected in these jurisdictions are reserved by a Memorandum of Understanding for projects within those jurisdictions only. The proposed bill does not alter this agreement. A more detailed analysis is necessary to determine specific fiscal impacts.

[10] The commercial rates for the Red Policy Area in this Fiscal Impact Statement (and the attached Economic Impact Statement) are based on the version of bill 37-16 as introduced in Council on August 2.

On August 11, 2016, the Planning Board issued corrections to these rates as listed page 43 of the Planning Board draft – preliminary analysis of the corrected rates indicates projected collected transportation impact tax revenues of $10.29M (or $1.72M per year, on average), a ***decrease of approximately $2.29M*** over the FY17-22 period vs. the projections based on the rates in the introduced bill.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

The proposed bill will not impact the County's ERP systems. The Department of Permitting Services (DPS) estimates an impact of $28,462[11] due to the need to reconfigure the Hansen IT system that is used to account for impact taxes received.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable, the proposed bill does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

DPS estimates at least 400 work-hours will be needed to reconfigure the Hansen IT system to track and monitor impact tax collections at a cost of $28,462.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

DPS cannot absorb the additional work created under the proposed bill without either re-prioritizing existing work or adding an additional appropriation of $28,462.

9. An estimate of costs when an additional appropriation is needed.

See item #8.

10. A description of any variable that could affect revenue and cost estimates.

Revenues estimates will be affected by future changes in the impact tax rates and structure, development activity, availability and use of impact tax credits, and other macroeconomic variables.

Revenue estimates for transportation impact tax in this analysis are primarily driven by the number of permits issued for new construction and the amount of square footage constructed. Estimates for school impact tax is based on new residential construction.

Since data from FY11-15 is being used to calculate projections, the data does not include the effects of the most recent recession on impact tax revenues and construction. Although the projections in this analysis include rate increase of 2.6%, any near-term future economic downturn will likely negatively affect revenues.ss

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[11] DPS estimates at least 400 work-hours for a Grade 28 Senior IT Specialist at maximum salary (FY17 GSS: $118,400) plus 25% benefits.

Bill 36-17 introduces the availability of school impact tax credits to developers for land dedications for a school site. Due to a lack of data, credits are not modeled in the revenue projections contained in this analysis.

Revenue estimates for collections of transportation impact tax is significantly influenced by the availability and application of impact tax credits[12] for any given year; it is difficult to predict when developers will seek tax credits for transportation improvements they construct.

The impact tax structure and rates themselves are driven by factors more fully described within the most recent recommended Subdivision Staging Policy, as transmitted to Council in July 2016. For example, rates for school impact taxes will change every two years and will be based on the then-current student generation rates and actual construction costs.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Revenue from the School Facility Payment are difficult to project due to a limited number of actuals data and overall volatility.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Robert Hagedoorn, Department of Finance

David Platt, Department of Finance

Dennis Hetman, Department of Finance

Naeem Mia, Office of Management and Budget

Jenni Nordin, Office of Management and Budget

MB for JAH

Jennifer A. Hughes, Director
Office of Management and Budgets

9/16/16

Date

[12] For improvements built by developers or other types of credits, such as parking incentives, that are in the proposed Subdivision Staging Policy.

Economic Impact Statement
Bill 37-16, Development Impact Tax — Transportation and Public School Improvements — Amendments

Background:

This legislation amends the law governing the Development Impact Tax for transportation and public schools by updating the impact tax rates. Bill 37-16 would also implement the Planning Board's recommendations for the Subdivision Staging Policy. Specifically, the legislation would:

- modify the method of calculating the transportation and public school impact tax;
- create new transportation tax districts associated with policy area categories;
- adjust the transportation impact tax for residential uses based on non-auto driver mode share (NADMS) associated with each tax district;
- adjust the transportation impact tax for non-residential uses based on vehicle miles of travel (VMT) associated with each tax district;
- authorize an adjustment to the transportation impact tax for providing parking below the minimum required under Chapter 59; and
- modify the public school impact tax payable for property located in a former enterprise zone.

1. **The sources of information, assumptions, and methodologies used.**

The sources of information include:

- The Office of Management and Budget (OMB)
- Montgomery County Planning Department of the Maryland National Capital Park and Planning Commission (Planning)
- Metropolitan Regional Information Systems, Inc. (MRIS)
- Dodge Data and Analytics (Dodge)

Finance incorporates data from OMB in the fiscal impacts, housing sales data from MRIS, and construction costs from Dodge in the preparation of the economic impact statement.

The Department of Finance (Finance) assumes the development impact taxes that will affect the cost of construction will be passed on to the buyer of a residential or commercial property. Finance also assumes the following in order to compare the changes to the impact of the proposed transportation impact taxes and current taxes and the effects of the changes on construction costs:

- Planning reconfigured the County from the current three regions – Metro, Clarksburg, and General – to four regions – red policy area, orange policy area, yellow policy area, and green policy area.
- Finance assumes for purposes of comparison that the current Metro region is the proposed red policy area, the current Clarksburg region is the proposed orange policy area, and the current General region is the proposed yellow and green policy areas.

- Residential construction costs estimated from Dodge data are countywide only and therefore the changes in the tax rate by policy area are applied to the countywide construction costs.

According to the fiscal impact statement prepared by OMB, the *total* impact of the proposed rates in Section 52-57 of the legislation would have an effect on the County's economy. Estimated collections from the proposed school development impact taxes *decrease* by \$8.219 million over six fiscal years from the current rates while the estimated collections from the proposed transportation development impact taxes *increase* by \$12.581 million over six fiscal years from the current rates – a difference of +\$4.362 million or +\$727,100 per fiscal year.

Finance analyzed specific rate changes to school impact taxes and transportation impact taxes and the analysis shows the following:

- For the school impact taxes, the proposed rates for single-family detached and single-family attached decrease 29.6 percent and 2.8 percent, respectively.
- For the school impact taxes, the proposed rates for multi-family garden and multi-family high-rise increase 21.5 percent and 2.9 percent, respectively.
- Therefore, while the *total* estimated collections from the proposed tax rates decrease, collections from single-family units decrease but collections from multi-family units increase.
- For the transportation impact taxes, the proposed residential rates decrease an average of 49.1 percent for the red policy area and 49.4 percent for the orange policy area. Since the yellow and green policy areas overlap the General policy area, Finance averaged the proposed rates for the policy areas. This calculation results in an average increase of 64.5 percent in the residential tax rates.
- Finally, Finance estimates the non-residential rates increase an average of 56.8 percent for the red policy area, 31.4 percent for the combined yellow and green policy areas, but decline 11.5 percent for the orange policy area.
- Therefore, with the increases in the residential rates for the combined yellow and green policy areas and increases in the non-residential rates for the red and combined yellow and green policy areas, total estimated collections under the proposed rates increase \$12.581 million over the six fiscal years compared to the current tax rates.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact estimates are the per unit construction costs for residential properties that Finance calculated from the Dodge data. For example, average construction costs for a single-family unit increased from \$212,757 per unit in FY2012 to \$285,148 per unit in FY2016 – an average annual increase of 7.6 percent. For multi-family structures, the per unit construction cost increased from \$165,918 to \$195,669 – an average annual rate of 4.2 percent. While these unit costs are countywide, Finance assumes the costs apply to all residential construction in the County.

Second, the other variable that could affect the economic impact estimates are the sales prices in Montgomery County. Using data from MRIS, Finance estimated the ratio of sales price to unit construction cost. For a single-family home, the ratio is 1.495 and for a multi-family home the ratio is 1.414.

Combining the estimated growth rates in the construction costs per unit with the ratio of sales price to construction costs, and the assumption that the cost is passed on to the homebuyer, Finance estimates the economic impact of the various proposed school impact tax rates on residential sales by type of unit. For a single-family home the estimated average price for a new home under the proposed rates would be $12,700 less than the average price for new home at current impact tax rates. However, for multi-family homes, the average price for a new unit would be $4,100 more than the average price at current impact tax rates. Therefore, the economic impact on the estimated sales price of a new home is positive for single-family home but negative for multi-family units.

Using the same methodology for the proposed transportation impact tax rates for residential property, Finance assumes that since the proposed residential rates for two policy areas – red and orange - are less than the current rates, ↓49.1 percent and ↓49.4 percent, respectively, the economic benefit to new home sales is positive. However, combining the proposed rates for yellow and green, which increase 64.5 percent, Finance assumes that the proposed rates would increase the sales prices of a new home compared to the current rates. Finally, the non-residential rate transportation impact tax rates are greater for the red and the combined yellow and green policy areas, ↑56.8 percent and ↑31.4 percent, respectively, but less for the orange policy area, ↓11.5 percent. Finance assumes that the proposed rates would increase the construction costs for non-residential properties for the red and combined yellow and green policy areas but would decrease for the orange policy area. Such increases would lead to higher rents for occupants of those properties while the decrease in the orange policy area would result in lower rents.

Due to the volatility of new construction, the proposed tax structure may have either a larger or smaller impact on the construction and sale of specific residential and commercial properties in the four policy areas, which may result in a total economic impact different from the estimated collections.

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Bill 37-16 would have an economic impact on total economic property values due to the effects of the proposed school and transportation tax rates on specific dwelling types and the proposed changes in the non-residential tax rates. The total fiscal impact of the proposed rates is a net increase of $4.362 million in revenues. For the school impact tax, the proposed rates have a positive effect on the sales of single-family homes because the decrease in the rate would result in a lower sales price but a negative effect on sales of multi-family units because the higher rates would result in a higher sales price. The proposed transportation tax rates for residential property in the red and orange policy areas decrease for all residential units but increase in the combined yellow and green policy areas. Therefore, the impact on property values would depend on the type of unit, single-family or multi-family units, and location in one of the four policy areas.

The proposed rates for non-residential properties would have a negative effect on construction costs and eventually an increase in rents for the red and combined yellow and green policy areas but a positive effect for the orange policy area because of a decrease in rents. As such, the proposed rates could have a negative effect on business net income in red and combined yellow and green policy areas because of the increase in rents, i.e., operating costs, without a concomitant increase in revenues and a positive effect in the orange policy area.

The total fiscal impact of the proposed rates is a net increase of $4.362 million in impact taxes. Therefore, whether Bill 37-16 has either a positive or negative effect depends on the market reaction from residential and commercial developers and buyers to the proposed tax structure for schools and transportation. With the proposed increase in total tax revenues, such an increase could have a negative impact on private savings and spending due to less disposable income for new home buyers and less net income for new businesses.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   Bill 37-16 would have either a positive or negative effect. Please see paragraph 3.

5. **The following contributed to or concurred with this analysis:** David Platt, Dennis Hetman, and Robert Hagedoorn, Finance; Naeem Mia, OMB.

Alexandre A. Espinosa, Director
Department of Finance

9/16/2016
Date

Christopher A. Bruch
3936 Washington Street
Kensington, Maryland 20895
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September 12, 2016

Montgomery County Council
100 Maryland Avenue, 5th Floor
Rockville, MD 20850
Attn: Nancy Floreen, Council President

RE: Subdivision Staging Policy – School Impact Tax Loophole

Dear Council President Floreen,

As the Council meets in the coming weeks to debate updates to the Subdivision Staging Policy, I call to your attention a revenue opportunity resulting from a loop hole so large that you could drive a school bus though it.

The loop hole pertains to the School Impact Tax, a tax assessed on all <u>new</u> residential development, regardless of school adequacy, to help fund capacity improvements. In 2015, over $32MM in school impact taxes were collected.

Over the past several years, there has been a proliferation of single-family tear-downs and/or massive renovations in older down-county neighborhoods. Take the Parkwood neighborhood for example. It was developed in the 1950's with modest 2-3 bedroom Cape Cod style homes on small lots. The community feeds into Kensington-Parkwood (KP) Elementary School. KP which completed a full-modernization only 10-years ago is currently 182 students over capacity and is projected to be 200 students over capacity by the time a $12M classroom addition is completed in 2017.

What's interesting about KP is that within its boundaries, there hasn't been any large scale development of single family homes, townhomes or multi-family apartments since it was modernized in 2006. However, there have been over one hundred tear-downs and/or additions where 2-3 bedroom 1950's homes are replaced with 5-6 bedroom beautiful modern homes. This past weekend I counted 13 tear-downs in a three block radius (see the attached photographs). These tear-down projects which have effectively doubled the bedroom count in over one hundred homes are the primary cause of over-crowding at KP. However, because these projects are not considered "new" in the permitting process, they have not been assessed any School Impact Tax. This loop-hole is an example where development activity is causing an impact on our school infrastructure and is not paying its fair (or any) share of costs attributable to the development activity.

These one-off projects which go largely un-noticed, collectively can have the same level of burden on school facilities as new large scale developments that currently pay a School Impact Tax of $26,827 per single family home. Tear-downs and renovations should be assessed a School Impact Tax that takes into consideration the pre-existing bedroom count. By example, a 1950 2-bedroom cape cod that is replaced with a 5- bedroom home would be assessed a School Impact Tax based on the 3 additional bedrooms.

WSSC has utilized a similar approach since 1995 where these tear-downs and renovations are assessed a System Development Charge (SCD) for net added plumbing fixtures/usage. I learned about this program several years ago when I renovated my 3-bedroom Kensington home into a 5-bedroom home. WSSC assessed me thousands of dollars in System Development Charges for added plumbing fixtures, however I was not assessed anything for School Impact.

I hope you will consider adopting a School Impact Tax specifically for tear-downs and renovations county-wide and in consultation with MCPS, adopt a tax formula based on net additional bedrooms.

Thank you for your time and consideration.

Sincerely,

Christopher A. Bruch

Attachment – photos

cc: Glenn Orlin

Parkwood Neighborhood – Photos Taken 9/11/16

GO Item 2
September 22, 2016
Addendum

MEMORANDUM

September 20, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Glenn Orlin, Deputy Council Administrator

SUBJECT: **Addendum:** Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements - Amendments

After the release of the main packet for this worksession, the Council received the attached memorandum from Assistant Chief Administrative Officer Ramona Bell-Pearson transmitting comments from the County Executive and his staff regarding school impact tax provisions in Bill 37-16 and the school test in the Subdivision Staging Policy (SSP). Council staff will refer and address the school impact tax comments at the Committee's September 22 worksession. The school test comments will be addressed in the packet for the PHED Committee's September 26 worksession.

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OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

September 20, 2016

TO: The Honorable Nancy Floreen, President
Montgomery County Council

FROM: Ramona Bell-Pearson Ramona Bell-Pearson
Assistant Chief Administrative Officer

SUBJECT: School Impact Tax and School Test issues

This memorandum is consolidated to give comments from the County Executive and Staff related to policy issues and related concerns about the school test issues proposed in the Subdivision Staging Policy submitted to Council by the Planning Board as well as the school impact tax issues proposed in Bill 37-16. The County Executive comments related to the transportation impact tax issues proposed in Bill 37-16 as well as transportation test issues contained in the Subdivision Staging Policy (SSP) are covered by the memorandum submitted by the Director of Transportation.

During the course of the first round of discussions on September 19, 2016 for the subdivision staging policy Mr. Orlin suggested that school facility payments may actually be a fee rather than a tax and therefore are not subject to use outside of the cluster in which they are collected. If this is an accurate classification for facility payments then there would be a legal bar to the School Board proposal that suggests using school facility payments countywide regardless of which cluster the development occurs for which they were paid. The Executive supports the flexibility that countywide use would provide and supports the School Board proposal to allow use of payments countywide if that action is not legally barred.

An additional comment was made by Mr. Orlin during the September 19, 2016 work session which suggested that there is no need for Council to adopt the Planning Board proposal that Developers who dedicate land for new schools be given a tax credit because the current law already permits such actions based on the conditions and circumstances of the dedication. The Executive does not support making any changes to the existing authority so that the conditions and circumstances that are currently imposed to determine if a credit will be permitted are still available to decision makers when dedications occur.

School Facility Payments

- Rates are now based on actual school construction data and changes to student generations rates, resulting in significantly reduced rates for single-family detached homes (decreases of 33% to 82%), while rates increase for all other types of residential housing (up to 25% for multi-family garden units).

- Proposed SSP to implement a hybrid annual school test that combines cluster utilization tests with individual school capacity deficit tests.
  - This would maintain the cluster tests, and introduce individual school service area test at the ES and MS level.

  - The County Executive does not support implementing an individual school test, if it would dis-incentivize using existing capacity within the cluster or neighboring clusters to address capacity needs within an individual school service area. If, however, by establishing a hybrid school test that determines overcapacity at the individual school level and restricts development only in that school service area and not throughout the entire cluster then a hybrid test may be beneficial to the affected school while not impeding the development progress of the remainder of the cluster. This would not negatively impact other schools abilities to engage in revitalization and other projects that would otherwise be estopped if the individual school test had implications on the entire cluster.

  - If this is limited to consequences for the individual school service area, then existing capacity in areas of the cluster outside of an overburdened individual school service area could potentially be credited as a potential solution to the individual school issue until a boundary change is approved.

- The Planning Board recommends that placeholder capacity for a particular cluster level or school should only be counted as capacity in the annual school test for two years.
  - Office of Management and Budget has indicated that implementing a hybrid school test in conjunction with this recommendation to cap the placeholder at no more than a two year duration would introduce additional moratorium pressures while restricting the County's ability to address moratorium through placeholder projects.

  - The County Executive does not support restricting placeholder capacity projects to no more than a two year duration. Nor does he support reducing the threshold for moratorium from 120% to 110%. He sees the two restrictions when imposed together as constituting a hard stop to progress in any affected Community without offering viable alternatives to the problem.

- The Board of Education recommends changing current policy so that School Facility Payment revenues may be used to support any capacity project Countywide. School Facility

Payment revenues are currently restricted to capacity projects in the clusters in which the fees are collected.

- The County Executive supports this proposal from the School Board to use School Facility Payment revenues to support any capacity project Countywide so long as there is no legal bar to doing so.

Bill 37-16 (Development Impact Tax- Transportation and Public School Improvements Amendments) is an amendment to current law which governs Development Impact Tax for transportation and public schools which also serves to implement the Planning Board's latest recommendations in the Subdivision Staging Policy.

The comments below should be considered in conjunction with the Fiscal and Economic Impact Statements (FEIS) that were submitted by the Office of Management and Budget and the Department of Finance in advance of this memorandum. These comments raise policy issues that the Executive wished to bring to the Committee's attention that should be considered in conjunction with the economic and fiscal analysis.

School Impact Taxes

- Rates are now based on actual school construction data and changes to student generations rates, resulting in significantly reduced rates for single-family detached homes (almost 30%), slight decrease for single-family attached (2.7%) and increasers for multi-family garden and high-rise (22% and 2.9%, respectively).
  - While this allows for increases to multi-family garden and high-rise homes which should address their increased affordability for families as the units age and become more affordable to rent; it does not account for the single family homes that have populations aging out of the school system who then sell to younger families who are then absorbed back into the school system.

- Revenues in the amount equal to 10% of per-student-seat costs are proposed to be restricted for land acquisition of new schools
  - The Executive does not support restricting revenues for land acquisition. He completely agrees with the School Board and believes that flexibility is necessary to support immediate capacity needs. Creating such a restriction would jeopardize revitalization projects and would hold money in a fund that could not be used unless and until enough need and money exists for land acquisition. While there is a need to provide for the acquisition of land for schools, he does not believe that a diversion of revenues is an effective or cost beneficial means of achieving the desired outcome.

- Credit proposed for developers who dedicate land for new schools.
  - The Executive does not support making any changes to the existing authority so that the conditions and circumstances that are currently imposed to determine if a credit will be permitted are still available to decision makers when dedications occur.

- The County Executive also does not support granting credits to developers when a Master or Sector Plan requires the Developer to dedicate property for public facilities such as schools as part of their development approval process. If the Master or Sector Plan does not require the Developer to dedicate at no cost to the County then assuming the dedication is equivalent to or exceeds the amount that the County would acquire through impact taxes there may be no objection to issuing a credit. This is an issue raised by Mr. Orlin in the first work session where he suggested that the current practice is for the County to give credits toward impact taxes when a Developer dedicates property as part of the development approval process.

- Enterprise zones are no longer exempt from paying school I-tax, with the amount of tax phased-in over a 4-year period after the first year after EZ-status expires.
    - The County Executive does not offer a position on this proposal at this time because he needs to collect more data on the consequences associated with this plan. He is concerned that Developers may have relied on these exemptions when they made the determination to build in a particular area, even after the Enterprise Zone status has expired. He is concerned that a reintroduction of the school impact tax will create a 'negative surprise' and will jeopardize the momentum moving forward in those areas.