Agenda Item 12
September 13, 2016
Public Hearing

MEMORANDUM

September 9, 2016

TO: County Council

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

SUBJECT: **Public Hearing:** 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 Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for September 22 at 9:30 a.m.

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.

Proposed Transportation Impact Tax Rates

Bill 37-16 would change the categories for the transportation impact taxes and change the tax rates. Bill 37-16, as introduced, includes the proposed transportation impact tax rates in the draft bill submitted with the recommended SSP. However, these proposed rates do not accurately reflect the final recommendations of the Planning Board. After the introduction of Bill 37-16, the Planning Board staff submitted a new chart with proposed transportation impact tax rates that accurately reflect the final recommendations of the Planning Board. This new chart should replace the chart in Section 52-57(a) beginning after line 75:

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 County Attorney's Office Bill Review memorandum is at ©23. The County Attorney's Office found the Bill to be legally sufficient, but recommended some amendments for clarity. We also received comments on the proposed SSP from County Board of Education President Michael Durso. See ©26. Some of these comments apply to Bill 37-16 as well.

This packet contains: Circle #

F:\LAW\BILLS\1637 Impact Tax - Amendments SSP\PH Memo.Docx

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. <u>The Council must not increase or decrease the rate by more than 5%</u>.

* * *

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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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.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

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

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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. <u>The Board of Education supports the Planning Board recommendation.</u>

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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. For this reason, the Board of Education proposes allowance of facility payment revenue to be applied to any MCPS capital project that addresses capacity.

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

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