AGENDA ITEM #7
October 25, 2016
Worksession

MEMORANDUM

October 24, 2016

TO: County Council

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

SUBJECT: **Worksession** –resolution to adopt the 2016-2020 Subdivision Staging Policy;
Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvement – Amendments;
Resolution to establish Development Impact Tax rates for transportation and public school improvements

Please bring the SSP Report and Appendix to this worksession.

On July 27, 2016 the Planning Board transmitted to the Council its Final Draft of the 2016-2020 Subdivision Staging Policy (SSP), the quadrennial update to the rules by which the Adequate Public Facilities Ordinance is implemented. The Board also forwarded Bill 37-16 that would amend the impact tax law. The public hearing on both the SSP and Bill 37-16 was held on September 13. The County Code requires final action on the SSP by November 15; otherwise, the 2012-2016 SSP would remain in effect. Because of several policy linkages between the SSP and Bill 37-16, the intent is that both measures would be approved at the same time.

Bill 37-16 includes the Planning Board's impact tax rate schedule. Council staff pointed out the problem that, since the rates are adjusted biennially by inflation, the rates as they appear in the Code are out of date within a short period of time. The Council already has the authority to revise the rates by resolution; there is a consensus that, to avoid future confusion, that such a resolution should be the vehicle for amending the rates. Therefore, on September 27 the Council introduced a resolution that would amend the rates just as Bill 37-16 would have. A public hearing on this resolution was held on October 18. Action on it is also planned to occur at the same time as the SSP and Bill 37-16.

The Planning, Housing, and Economic Development (PHED) Committee met on the SSP on September 19 and 26, and October 10, 17, and 18, and it will meet again after the Council's October 25 worksession. The Government Operations and Fiscal Policy (GO) Committee convened on Bill 37-16 on September 26 and October 6 and 20, and it plans one more meeting for October 27. The plan for this Council worksession is to review both the public school adequacy test in the SSP and the school impact tax in Bill 37-16. The Council President plans for straw votes on the school test and school impact tax be taken at the end of this worksession. (A similar process for the transportation test and impact tax is planned for November 1.) This packet discusses each issue and their options; the addendum to this packet lists the issues and options to facilitate the Council's decision-making.

I. SCHOOL TEST

The SSP (and its predecessor, the Annual Growth Policy) has included a school test since the late 1980s. The initial test, which was in effect until 2007, compared projected enrollment at a level (ES, MS, HS) to capacity at that level 5 years later. Capacity (then called "Council-funded program capacity") was standard across all classrooms: 22.5 students/room at the MS and HS levels, 25 students/room for Grades 1-6, 44 students/room for half-day kindergarten and 22 students/room for all-day kindergarten. Then (as now) only permanent teaching stations were counted in the calculations; relocatable capacity was not counted. If projected enrollment 5 years out at any level in a cluster exceeded 110% of Council-funded capacity, the cluster would be placed in moratorium for housing subdivision approvals. However, this would occur only if there were not surplus capacity at that level in a physically adjacent cluster; the assumption was that if this were the situation, the Board of Education (BOE) could solve the overcrowding with a cross-cluster boundary change, which was not uncommon then. In applying this test, no cluster was ever placed in a housing moratorium due to the lack of school capacity.[1]

In 2007 the Council significantly tightened the test. First, it eliminated the practice of "borrowing" surplus capacity from an adjacent cluster. Second, it abandoned "Council-funded program capacity" in favor of the program capacity figures used by Montgomery County Public Schools (MCPS), which assumes smaller capacities for specialty classrooms: 15/room for ESOL, 10/room for emotional disability; 6/room for autism spectrum disorder, etc. So, while it set the moratorium standard at 120%, the combined effect of the first two changes produced a much tighter test.[2]

The 2003 Growth Policy introduced the concept of the school facility payment (SFP), but not until the 2007 Growth Policy, when the threshold was lowered, did it have an effect. Since 2007 a developer has had the option to pay the SFP to meet the school test if the enrollment/capacity ratio at a cluster/level exceeds 105%[3] but is under 120%. The SFP rates have been set at 60% of the capital cost/student seat at each level, based on the average cost of a new school at each level. The development would pay the cost/seat rate for the number of seats at each level it generates above 105% capacity, so in some clusters there could be two or even three sets of payments. The payments are made concurrently with impact taxes: 6 months after issuing of a building permit or at final inspection, whichever is earlier. The first SFP payments were made in FY11; over the FY11-16 period only $4,957,329 has been collected. SFP payments fund only 0.1% of MCPS's Approved FY17-22 CIP.

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[1] For one year during the 1990s the test might have resulted in a moratorium in the Paint Branch Cluster. The projected enrollment at the HS level exceeded 110% capacity marginally, and there was no surplus HS capacity in an adjacent cluster from which to borrow. However, it was noted that Sherwood HS would have an addition completed in 6 years, one year later than what was "countable" under the test. Rather than having the Paint Branch Cluster go into moratorium for just one year, the Council voted 5-4 to find that the Paint Branch Cluster was adequate for school facilities.
[2] In 2007 the BOE and the Planning Board both had recommended setting the moratorium threshold at 135%, still a tighter test than before. The BOE was concerned that the 120% threshold would have the effect of diverting too much funding for additions, and short-changing funding for modernizations (now called "revitalizations/expansions").
[3] In 2007 the Planning Board and BOE had recommended 110% as the threshold for the SFP.

Fiscal Year	School Facility Payment (SFP) Collections
2011	$6,244
2012	163.918
2013	15,250
2014	2,008,371
2015	1,967,790
2016	795,756
Total	**$4,957,329**

Six years ago the Council recognized that some clusters that were about to exceed the 120% level were at that point because the Board of Education (BOE) wasn't ready to request funding in the CIP for a specific new school or addition. Since then the Council has approved a series of placeholder projects. Each placeholder sets aside funding for a small generic addition in the cluster, enough to bring the calculation beneath 120% (but not below 105%). This was done, however, only when MCPS concurrently was developing a potential "real" project for that cluster/level as part of its facility planning program, and when MCPS staff felt assured that the project ultimately forthcoming from facility planning would be requested by the BOE for completion within the original 5-year timeframe. As a result only rarely since 2010 has a cluster been in moratorium.

The SSP calls for the Planning Board to assess clusters annually. The most recent assessment was conducted on June 23, 2016, at which time the Board found that no clusters would be in moratorium. However, 4 clusters at the ES level, 3 clusters at the MS level, and 10 clusters at the HS level were in the 105-120% range, requiring the developer to pay at least one SFP to proceed. Residential development in the Einstein, Northwood, and Quince Orchard Clusters require payments at both the ES and HS levels, and at all three levels in the Gaithersburg Cluster (©14).

Rockville and Gaithersburg, as municipalities with independent planning and zoning authority, have their own adequate public facility tests for development within their respective boundaries. Recently Rockville adopted the same test as the County's current test. Gaithersburg's school adequacy test is:

- A school level test
- Uses a 6-year test timeframe
- Moratorium is triggered at 150% utilization, using BOE program capacity
- Mitigation/facility payments are required at 105% utilization, using BOE program capacity. Any school payment must be used to relieve over-utilization at the school where it was collected. If no capacity can be added there, the funds can be used to support additional capacity at a school that will relieve the over-utilized school.

1. The moratorium threshold for clusters. The Planning Board recommends retaining the 120% threshold at any level for residential moratorium in a cluster. The Executive concurs, stating that a tighter test would "immediately stop development without offering a solution to the problem" (©2). Several development representatives also oppose tightening the threshold.

The BOE recommends tightening the cluster moratorium threshold to 110% as part of a strategy to curb overcrowding. Several civic associations and individuals concur. If this rule were approved and effective this year, then 12 of the county's 25 clusters would go into a housing moratorium: Blair, Churchill, Einstein, Gaithersburg, Walter Johnson, Kennedy, Richard Montgomery, Northwood, Paint Branch, Quince Orchard, Rockville, and Wheaton. Under this test the following policy areas would be entirely or largely in a housing moratorium: Silver Spring CBD Metro Station Policy Area (MSPA), Wheaton CBD MSPA, Glenmont MSPA, Rockville Town Center MSPA, White Flint MSPA, Fairland, North Bethesda, North Potomac, Silver Spring/Takoma, and Kensington/Wheaton, as well as parts of the Rockville and Aspen Hill.

MCPS released its new enrollment forecast to the Board of Education on October 10, and it has calculated the effects of the various school test options as of July 2017. The results are on ©15-17. If the cluster-level threshold of 120% of program capacity were retained, 4 clusters could go into moratorium because of projected deficiency at the HS level: Blair, Einstein, Northwood, and Walter Johnson. All are in facility planning, and 3 of them already have "solution" (placeholder) projects programmed. A solution project for Blair HS would be appropriate, as would enlarging the other 3 solution projects. If a cluster-level threshold of 110% were established, then 11 clusters could go into moratorium.

MCPS staff has compared Montgomery County's thresholds with those in other Maryland jurisdictions that have adequate public facility ordinances (©18). For those in the vicinity of Montgomery County:

- Prince George's County has the same threshold: 120% of program capacity
- Howard County: 115% of State-rated capacity
- Carroll County: 120% of State-rated capacity
- Frederick County: 120% of State-rated capacity

State-rated capacity is a slightly different measure of capacity that the BOE's program capacity. For the current schools in the County the cumulative capacity at each level according to the two calculations are:

	ES	MS	HS	All Levels
BOE Program Capacity	72,176	36,219	48,017	156,412
State-Rated Capacity	75,761	36,875	46,452	159,088
BOE/State-Rated Capacity Ratio	**0.95**	**0.98**	**1.03**	**0.98**

Source: MCPS, FY 2017 Educational Facilities Master Plan, Appendix J. Capacity figures are from 2015-2016.

This means that, at the ES level, 120% of BOE capacity is about the same as 114% of State-rated capacity. At the MS level, 120% of BOE capacity is about equal to 118% of State-rated capacity. At the HS level, 120% of BOE capacity is about the same as 124% of State-rated capacity. Across all levels, 120% of BOE capacity is about 118% of State-rated capacity.

Council staff's primary recommendation: Retain the 120% threshold for a moratorium. The current threshold is roughly comparable to those in neighboring jurisdictions, when all levels are taken into account.

Council staff's secondary recommendation: Should the Council nevertheless wish to tighten the threshold, it should bring it no lower than 115%. This threshold would be tighter than neighboring jurisdictions—including Howard County—at every level. If 115% were the threshold, 4 of the County's 25 clusters would go into moratorium now: Blair, Einstein, Northwood, and Rockville. As of July 2017, 8 of the County's 25 clusters project to go into moratorium: Blair, Einstein, Northwood, Walter Johnson, Kennedy, Richard Montgomery, Quince Orchard, and Rockville.

PHED Committee *(and Council staff primary)* **recommendation (3-0): Retain the 120% cluster threshold for moratorium.**

2. The SFP threshold for clusters. The Planning Board recommends retaining the 105% threshold for school facility payments, and development representatives generally concur. The BOE, the Executive, the Montgomery County Council of Parent Teacher Associations (MCCPTA), and several civic associations and individuals recommend tightening it to 100%. If the standard were tightened to 100%, 8 more cluster-levels would enter the SFP range now: B-CC-HS; Blake-ES & HS; Poolesville-HS; Seneca Valley–ES; Springbrook-ES & MS; and Whitman-MS.

Council President Floreen recommends eliminating the school facility payment threshold, and instead increasing the school impact tax across the board by 10%. She points out that only about $5 million in school facility payments has been collected in the past 6 years; over the same period a school impact tax 10% higher would have raised about $11 million more (©11). MCCPTA supports Ms. Floreen's proposal, but with two caveats: (1) increase the impact tax by 20%, not 10%; and (2) introduce an individual school test.

This proposal is simpler than the current approach, and is much simpler than what is proposed by the Planning Board. It would generate more funds, and the amount of revenue collected would be somewhat more predictable than from school facility payments. It is possible some developers are holding back their proposals until new capacity is programmed in order to avoid the school facility payment, but that also means the payment of school impact taxes is being delayed.

Council staff's primary recommendation: Concur with Ms. Floreen's proposal. Council staff's secondary recommendation: If the Council nevertheless wishes to retain the SFP regime, then set the SFP threshold at 100%. The main effect is the potential for some more SFP revenue. But this revenue source is small, so adding more cluster/levels to the SFP range would generate only a modest additional contribution to the funds available for school construction.

PHED Committee recommendation (3-0): Concur with Ms. Floreen's proposal to eliminate the SFP payment regime, but also to raise the school impact tax 10% higher.

3. Individual school capacity deficit test. The Planning Board recommends a new test that would restrict approvals if an ES's or MS's projected enrollment were to exceed both a certain percentage utilization and a certain number of seats in deficit. The rationale is to recognize that some individual schools are considerably over capacity and cannot be addressed directly by a within-cluster boundary change, such as where spare capacity exists only at the far end of the cluster from the overcrowded school. The proposed test would be as follows:

- A moratorium would be imposed in an ES service area if utilization were to exceed 120% and there were a deficit exceeding 110 seats.
- A moratorium would be imposed in a MS service area if utilization were to exceed 120% and there were a deficit exceeding 180 seats.

- An SFP would be required in an ES service area if there were a deficit between 92-110 seats.
- An SFP would be required in a MS service area if there were a deficit between 150-180 seats.

When a capacity project at one school is intended to relieve enrollment burdens at another, the school test would continue to show a capacity deficit at the burdened school until MCPS approves a service area boundary change, usually shortly before construction of the additional capacity is complete.

The BOE, MCCPTA, and several civic associations and individuals support this proposed test. The County Executive and several development representatives oppose it. If implemented with the adoption of the SSP in November, 6 ES service areas would go into moratorium: Rosemont, Strawberry Knoll, and Summit Hall (all in the Gaithersburg Cluster), Highland View (Northwood), Lake Seneca (Seneca Valley), and Thurgood Marshall (Quince Orchard). Two ES service areas would be in the SFP range: Garrett Park (Walter Johnson), and Meadow Hall (Rockville). See ©19.

The three largest forecasted deficits are at the Gaithersburg Cluster schools. In FY16 MCPS held a tri-cluster (Gaithersburg/Wootton/Magruder) roundtable to develop solutions to forecasted overcrowding at four ES schools in the Gaithersburg Cluster: these three and Gaithersburg ES. The BOE's decision was to request funds to program a $26 million addition to Gaithersburg ES; this spring the Council included it in the FY17-22 CIP for completion by August 2020. As for the other schools:

- *Rosemont*: much of the projected increase depends on the buildout of the new developments on the Crown Farm and around the Shady Grove Metro Station. Then-Superintendent Bowers noted that the pace of development could be lower than anticipated in the forecasts. Furthermore, he recommended a cross-cluster boundary study to reassign some of the Gaithersburg Cluster service area to the Magruder Cluster to resolve this overcrowding. On April 19 the BOE decided that the portion of the Shady Grove Sector Plan located east of I-270 would be reassigned to the Magruder Cluster. The boundary study will begin next spring, BOE action would be in the fall of 2017, and reassignments would occur starting in the 2018-2019 school year.
- *Strawberry Knoll.* This school has 6 portables on site. It sits on 10.8 acres, the largest ES site in the cluster. Enrollment is projected to trend slightly lower over the next 5 years. As a result, enrollment will be monitored and an addition will be considered in the future if warranted by enrollment.
- *Summit Hall.* Like Strawberry Knoll, this school's enrollment forecast is trending slightly downward. It is currently in the Future Revitalizations/Expansions schedule for completion in January 2024. The BOE, understandably, wants to include any capacity expansion here within the rev/ex project. A further complication is that, based on OLO's study of the FACT assessment ranking system of rev/ex projects, Summit Hall's place in the queue will be reevaluated. For these reasons the BOE has not requested funding for an addition.

The SSP report states that MCPS considers an addition at an ES when forecasted enrollment exceeds capacity by 92 seats, equal to 4 classrooms. But, in fact, this is a flexible standard, depending upon the overall MCPS capital needs and its understanding as to what it can reasonably request from the Council. In the last CIP cycle the BOE judged that, due to fiscal constraints, a projected deficit of at least 125 seats would be the trigger for it to request funding for an ES addition. Highland View ES, Lake Seneca ES, and Thurgood Marshall ES were forecasted to exceed program capacity by 112, 113, and 118 seats, respectively, so the BOE did not request funding for additions at these schools.

In Council staff's view, the BOE made the correct judgment. Even with what it considered a restrained request, it received the highest level of capital funding in its history: $1.73 billion, an increase of $186 million (12%) over the prior CIP, while funding for most other County agencies—especially County Government and Montgomery College—declined. MCPS's share of the CIP funding rose from 25% to an astounding 37%.

A further problem with an individual school test is the reliability of the enrollment forecast for an individual school. A basic tenet of statistics, whether sampling voting preferences for an election or forecasting student enrollment is: the smaller the sample size, the less confidence in the result. MCPS staff has publicly stated that a forecast at the countywide level proves to be correct within 1% and within 2-3% at the cluster level, but only within about 10-12% at the individual school level, especially at elementary schools. Therefore, applying a forecast at the individual school level has a fair possibility of producing a "false positive" test failure.

Council staff recommendation: Do not introduce an additional individual school test. As noted above, the BOE had specific reasons not to request funding for each of these schools at this time, for a variety of reasons. Council staff does not see a rationale for placing restrictions on an individual school level where the BOE itself could not justify requesting funding for additional capacity.

PHED Committee recommendation (2-1): Councilmembers Leventhal and Riemer support the individual school test and setting the threshold moratorium at 120%.. Council President Floreen opposes an individual school test. Since the Committee unanimously recommends eliminating the school facility payment regime, there would be no individual school threshold for a school facility payment.

4. Placeholder projects. The Planning Board recommends limiting the use of placeholder projects for no more than 2 years at a time. As noted above, the purpose of these projects is to serve as a bridge, giving MCPS time to develop a project in facility planning until the BOE is ready to request a specific project for funding in the CIP. This, generally, should not take longer than 2 years. The BOE, MCCPTA, and several individuals agree with the Planning Board. The County Executive disagrees with the limitation, as do several development representatives.

The odd aspect of this recommendation is that it does not intend to control the timing of development, per se, but to the control the Council's own ability to act if it finds an overriding reason to thwart a moratorium. For example, what if the BOE were slow to make a decision as to how to add capacity in a cluster? Should the BOE, by not requesting funds for a new school or addition, effectively be allowed to control the timing of residential development? The Council must retain its prerogative to extend the use of placeholders beyond 2 years. This prerogative is likely to be used only rarely, if at all.

PHED Committee *(and Council staff)* recommendation (3-0): Amend the Planning Board's suggested text in Section S3 as follows (see Appendix, p. 129):

> **Placeholder capacity for a particular cluster level or school [can only] <u>should, in most circumstances,</u> be counted as capacity in the annual school test for <u>no more than</u> two years.**

Issues 5-6 only apply should the Council wish to continue the school facility payment regime. Since the PHED Committee recommended discontinuing the regime, it made no recommendations on them.

5. Use of SFP funding. The impact tax is an excise tax. Its purpose is to collect revenue from new development to pay its fair share of the cost of capacity. While impact taxes can be used only for capital projects that add capacity, as an excise tax there does not need to be a close nexus between where the funds are collected and where the funds are spent. For the school impact tax, for example, funds collected in one part of the County can and have been spent on a new school or addition in another part of the County. The school increment to the recordation tax is another example of an excise tax.

The School Facility Payment is something else entirely. It is an optional fee paid by a development to pass a localized adequacy test where there is not enough capacity in a particular cluster at a particular level. As a fee, there must be a strong nexus between what the fee revenue is used for and why the fee was paid in the first place. County Code §52-94 reads:

> (e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for MCPS capital improvements that result in added student capacity for, to the extent possible, the affected grade level in the school cluster, or, if no cluster is established, another geographic administrative area, where the development for which the funds were paid is located.

In other words, if a developer pays an SFP because of a shortage at the ES level in the Quince Orchard Cluster, then the funds are to be spent to address a shortage at the ES level in the Quince Orchard Cluster. The "to extent possible" language has been interpreted to allow funds to be spent to fund capacity improvements at a different level—but still for the same cluster. In this above example, if there were no ES capacity project in the Quince Orchard Cluster to which to put the ES SFP, it could be used towards funding an active project to add capacity at the MS or HS level in that cluster.

The BOE, the Executive, and MCCPTA recommend using SFP revenue anywhere in the County. This could raise an issues as to the legality of the fee. However, the example given by MCPS a PHED worksession *is* allowable. If a capacity problem at an ES in one cluster can be addressed by an ES addition in an adjacent cluster—accompanied by a boundary change between the clusters—then the SFP collected in the first cluster could be used for its intended purpose: solving the problem that caused the need for the payment in the first place. *Council staff recommendation: Do not change the rule as to where SFP revenue may be spent.*

6. The rate structure for the SFP. Currently there are 12 rates for the SFP: an ES, MS, and HS rate for each of the four housing categories: single-family detached, townhouses, garden apartments, and high-rise apartments. The rates are shown below, and are based on the per-student construction cost of a new school at each level: the existing rates are pegged at 60% of the per-student cost. In 2007 school impact taxes rates were set to collect 90% of the per-student construction cost, and the SFP was set at 60%. It was expected that nearly all housing development would pay the impact tax but relatively few developments would likely pay the SFP, so a combination of 90% for the impact tax and 60% from the SFP would generate about 100% of the per-student cost from new development.

The Planning Board recommends amending the impact tax rates to collect 100% of the per-student cost from impact taxes and 50% from the SFP. This combination should generate a higher than 100% share from new development. However, since the recently calculated per-student costs of construction are different than what have been used, the Planning Board is recommending revising the aggregate rates to reflect this fact. OMB and Finance did not forecast SFP revenue because the limited number of payments to date, the uncertainty when payments will actually be made, and the uncertainty when a specific cluster/level will be in SFP range.

Existing/Proposed SFP Rates (per student)

	ES	MS	HS
Single-family detached	$6,940/$3,812	$3,251/$2,158	$4,631/$3,469
Single-family attached	$4,160/$4,351	$1,743/$2,119	$2,754/$3,352
Multi-family garden	$2,838/$1,169	$1,169/$1,564	$1,877/$2,414
Multi-family high-rise	$1,166/$1,320	$531/$574	$804/$891

The BOE supports the Planning Board's proposed SFP rates. Several development representatives also support them. MCCPTA and several individuals support a higher rate, equal to 75% of the per-student cost; the rates would be 50% higher than those shown in the table above.

Council staff recommendation: Concur with the Planning Board. The new rates, in combination with the school impact tax, already would generate from new development somewhat more revenue than its share of the cost of school construction. Given how little revenue the SFP generates, even a 50% increase won't amount to much.

7. ***Updating the SFP rates.*** The Planning Board recommends updating both impact tax rates and SFP rates biennially based both on updated student generation rates by level and housing type as well as updated costs of school construction. *Council staff recommendation: Update the SFP rates following the same methodology and schedule as the GO Committee recommends for school impact taxes (see below).* Even if the Council agrees with the PHED Committee to discontinue the school facility payment test for future subdivision applications, this matter is important for the subdivisions that are or will have already been approved with an SPF as a condition of approval.

II. BILL 37-16, GENERALLY

1. A brief 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[4], the Council enacted Emergency Bill 33-90 that transformed the fee to an excise tax, but most other aspects of the law remained 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, 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

[4] *Eastern Diversified Properties, Inc. v. Montgomery County*, 39 Md. 45, 570 A.2d 850 (1990).

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 for housing to 6 months after permit issuance or final inspection (whichever is earlier)[5], 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, social service agencies, and charitable institutions.

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, low-rise 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 were exempted. A law enacted in 2015 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

[5] For non-residential, 12 months after permit issuance or final inspection, whichever is sooner.

Impact taxes constitute 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.

*2. **Fiscal and Economic Impact Statements.*** The Office of Management and Budget (OMB) and the Department of Finance transmitted their initial analysis of the Bill on September 16 (©40-52). However, over the past few weeks OMB and Finance, working with the Department of Permitting Services, has been developing revised revenue estimates for Bill 37-16, as well as for the several options that have been proposed during the GO Committee's deliberations. The estimates for the school impact tax options are presented later in this packet; the estimates for the transportation impact tax will be ready very shortly.

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

1. Land acquisition. The current law allows use of school impact tax funds for projects that add permanent teaching stations: new schools, additions, and 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, as introduced, would add text (§52-91(d)(4)) explicitly allowing funds to be used for acquisition of land for a school. 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. **GO Committee *(and Council staff)* recommendation (3-0): Do not include §52-91(d)(4) as a separate item and include it along with other components of construction in the beginning of §52-91(d).** The language as amended by the GO Committee is:

52-91. Accounting; use of funds.

* * *

(d) Revenues raised under this Article may be used to fund <u>planning design, acquisition of land, site improvements, utility relocation, construction, and initial furniture and equipment for</u> 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] <u>or</u>

(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.]]

*2. **Base School Impact Tax Rates.*** In 2007 the Council raised school impact taxes substantially so they would capture about 90% of the cost of adding capacity, on a per-seat basis. School facility payments were set at 60% of the cost. The thought was that, since relatively few developers would be paying an SFP, the net total of impact taxes and SFP revenue would capture about 100% of the cost of adding capacity for enrollment growth associated with new housing units. The Planning Board recommends changing the impact tax rates so that they collect 100% of the cost caused by new housing units, and reducing the SFP rates from 60% to 50% of the cost.

The table on ©53 shows three scenarios of rates, all based on the student generation rates across all homes of each type: single-family-detached, single-family-attached (i.e., townhouses), low-rise multi-family units (in buildings of 4 stories or less), and high-rise multi-family units. Scenario #1A is the Planning Board's recommendation. Note that the single-family-detached rate under #1A would decline by nearly $8,000/house, the rate for townhouses would decline marginally (and higher than for a single-family-detached house), the rate for low-rise multi-family apartments would rise by more than $2,700/unit, and the rate for multi-family high-rise units would increase very marginally. These rates reflect the actual student generation rate for all units of each type. The PHED Committee's recommendation to eliminate SFPs and to increase the school impact tax by 10% over the Planning Board's recommendation is Scenario #1B, while MCCPTA's proposal to increase the tax by 20% over the Board's recommendation is Scenario #1C.

The GO Committee discussed whether to use the student generation rates for all homes in each category, or the rates for homes that have been built in the last decade. The argument for using rates for the newer units is that it measures the near-term impact of new housing. The rates for the 100%, 110%, and 120% options using the student generation rates for housing built in the last 10 years (Scenarios #2A, #2B, and #2C, respectively) are on ©54. Using near-term rates produces a distinctly different pattern: the rate for single-family-detached is fairly static or goes up (depending on the option), while the rates for all other units decline significantly.

On October 24 Council staff received the new revenue school impact tax revenue estimates from OMB and Finance; they have calculated the revenue effects of each of the six scenarios, and has recalculated the estimate from current rates as well. The results are on ©55. The Planning Board's proposal (#1A) would generate virtually the same revenue as existing rates. Increasing these rates by 10% (#2A) to compensate for the loss of SPFs would generate about $14.8 million more (+6.9%) over the next 6 years, while MCCPTA's proposal (#3A) would raise about $30 million more (+14.0%). On the other hand, if the Planning Board's proposal had used instead the student generation rates from housing 10 years old or less (#1B), it would generate $51.6 million less (-24.1%); increasing it by 10% (#2B) would generate $41.6 million less (-19.4%); and increasing it by 20% (#2C) would generate about $31.5 million less (-14.7%).

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

GO Committee recommendation (2-1): Councilmembers Navarro and Katz recommend Scenario #2B; Councilmember Riemer recommends Scenario #2C. Note that the Committee made its recommendations on October 20, prior to these revenue estimates becoming available.

GO Committee recommendation (3-0): Add the following definitions to clarify the term "cost of student seat."

Construction means the planning, design, acquisition of land, site improvements, utility relocation, building, and initial furniture and equipment for a capital project.

Cost of a student seat means the construction cost of a school divided by the programmed capacity of the school.

3. Surcharge for larger new homes. 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.[6] 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.

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 accepted, 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 - would 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.

OMB and Finance estimate that tripling the surcharge to $6/sf would raise about $5.94 million more in school impact tax revenue annually, or $35.65 million more over a 6-year period. The Superintendent of MCPS has written in support of the surcharge (©56). The County Executive opposes it, expressing his concern about how it would increase the cost of housing (©57).

Council staff recommendation: Increase the surcharge for single-family homes from $2/sf to $6/sf. If the Council were to adopt base school impact tax rates calculated from the trip generation rate of all homes in each category (as recommended by the Planning Board), then the rate for a single-family-detached house

[6] 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 *decline* by nearly $8,000. If the surcharge were raised from $2/sf to $6/sf, then a single-family-detached house with less than about 5,500sf would still pay less than under current rates. Furthermore, this larger surcharge would provide more revenue to 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. One more advantage of this increase is, because it would touch the largest homes (and the most expensive), it would be more progressive.

GO Committee recommendation (3-0): Do not increase the $2.00/sf surcharge.

4. Charge for 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 for additional bedrooms is fraught with enforcement problems. 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 new 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. OMB and Finance project that a $6/sf charge would generate $2.06 million in school impact tax revenue annually, or about $12.36 million over a 6-year period. *Council staff recommendation: Apply the same surcharge rate and range to tear-downs and renovations as recommended for new single-family houses.*

GO Committee (3-0): Do not impose an impact tax on teardowns or expansions that create space over 3,500sf.

5. 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 were only levied in Downcounty clusters this would create an obvious inequity. Second, the amount needed for land acquisition is very unpredictable. How would a rate rationally be set?

GO Committee *(and Council staff)* **recommendation (3-0): 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.

6. Inflation adjustments to school impact tax rates. Current law calls for existing rates to be updated biennially on July 1 in odd-numbered years, reflecting the percentage change in the regional 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.[7] 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.

GO Committee *(and Council staff)* **recommendation (3-0): Continue to adjust the school impact tax rates biennially on July 1 of each odd-numbered year, but the adjustment would be based on updated MCPS's most recent data on construction cost/seat and student generation/type of dwelling unit.**

7. Should there be a cap on the biennial rate adjustment? The Planning Board recommends capping any increase or decrease in the rate adjustment to 5%. 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.

GO Committee *(and Council staff)* **recommendation (3-0): Concur with MCCPTA; do not cap these adjustments.** The rationale for setting the proposed rates is the link to construction cost/student and the student generation rate. This link would be broken under the Board's proposal if the change rises or falls more than 5%.

8. 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.[8] 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 as follows:

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[7] The same process applies to changes in the transportation impact tax rates.

[8] 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.

GO Committee *(and Council staff)* **recommendation (3-0): Concur with the Planning Board regarding credits for land dedications that result in less density than otherwise allowed.** 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. **The GO Committee would add "development" before "site" on line 270 for clarity.**

9. Transferability of credits. 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. For example, 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.

GO Committee *(and Council staff)* **recommendation (3-0): 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.**

10. Credit for providing a better accessibility standard. §52-58 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 52-107(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 52-107(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 clear rationale for loading the entire credit on the school impact tax; instead, it should be split evenly between the two impact 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.

GO Committee ***(and Council staff)*** **recommendation (3-0): Add these provisions to §52-47, but split each of the credits evenly between the two taxes.**

<u>Attachments</u>

County Executive's September 15 recommendations	©1-2
ACAO Ramona Bell-Pearson's comments for the Executive	©3-6
Board of Education's recommendations	©7-10
Council President Floreen's proposal on school test and tax	©11
MCCPTA (Next Steps Reps) talking points on Floreen proposal	©12-13
Results of school test for FY17	©14
Projected results of school test for FY18	©15-17
School tests among jurisdictions with APFOs	©18
Results of school test for FY17, adding individual school test	©19

Bill 37-16	©20-37
Impact tax rate resolution	©38-39
Sept. 16 fiscal and economic impact statement for Bill 37-16	©40-52
Rate scenarios based on student generation from all units	©53
Rate scenarios based on student generation from units built in the last 10 years	©54
Revenue estimates for school impact tax scenarios, 10-24-16	©55
Superintendent's letter favoring large-house surcharge and charge for large-house teardowns and expansions	©56
Executive's memo opposing large-house surcharge and charge for large-house teardowns and expansions	©57

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

RECEIVED
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2016 SEP 15 PM 3:15

MEMORANDUM

September 15, 2016

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Subdivision Staging Policy

I have asked Executive Staff to prepare comments for me related to the FY 2016-2020 Subdivision Staging Policy that was submitted to the Montgomery County Council by the Maryland-National Capital Park and Planning Commission Planning Board. My comments related to transportation issues are attached as represented by the memorandum signed by Al Roshdieh, as the Director of Transportation.

I have also had the opportunity to consider the Subdivision Staging Policy recommendations related to public schools. While I generally agree with the comments made by the Montgomery County Board of Education, I have some concerns about those proposals made that are related to the annual school test.

- In particular, the addition of an individual school level test using seat deficit thresholds to trigger the capital project planning for Montgomery County Public Schools is of concern because, while the overall cluster test may not indicate a deficit, the individual test might present an impediment for the Community to move forward without providing any opportunities to address the facility needs other than delaying development. While I understand the Community interest in addressing the needs of the individual schools, I am concerned that giving this level of attention to specific schools within any given cluster will only trigger project planning instead of addressing the individual school issues.

- I am in agreement with the proposed addition suggested by the Board of Education to decrease the cluster level test threshold from 105% to 100% as a trigger for facility payment.

- I, however, have concerns about the Board of Education proposal to decrease the cluster level test threshold from 120% to 1[illegible]0% as a development moratorium trigger because this would immediately stop development without offering a solution to the problem. Standing alone, the proposal does not solve or even address the problem of the over-extended school. While it is important to maintain a balance in our schools to ensure the high quality of education our children have now, it is also important to meet the needs of the Community by providing solutions that not only address the immediate impact but also the long-term problem.

Thank you for this opportunity to review and comment on the proposed Subdivision Staging Policy. I will also have Executive Staff present at the upcoming Council work sessions to participate in Council review of the many issues related to this policy.

I am confident that collaborative work between the County Council, the Planning Board, Montgomery County Public Schools and the Board of Education will result in the development of an effective and successful policy.

Attachment

cc: Casey Anderson, Chair, Montgomery County Planning Board
Michael A. Durso, President, Montgomery County Board of Education

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.

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. 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
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

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCIL PRESIDENT

MEMORANDUM

October 5, 2016

To: Councilmembers

From: Nancy Floreen, Council President

Subject: Subdivision Staging Policy provisions for School Facilities Payment

As we proceed through the Subdivison Staging Policy, I ask for your support for an approach that would continue this year's Council theme: "Education First."

At our PHED committee meeting on September 26 we learned that, over the past six years, a bit less than $5 million has been collected in School Facility Payments under the SSP (required when school clusters exceed the 105% threshold of cluster school capacity). The number has ranged from around $6,000 one year, to $2 million another year, with varied amounts throughout. This year, the Planning Board proposes a somewhat more complex and granular approach to measuring capacity at all school levels. While I applaud the Board's good intentions, I would cut to the chase and focus our attention on generating more money for school capacity needs, and minimize the complexity of the effort.

To that end, I propose that we increase the school impact tax by ten percent, to address our increasing capacity needs across the county, and eliminate the School Facilities Payment. If this approach had been in effect previously, I am advised that we would have raised around $16 million in the past six years, or about $11 million more than we actually received.

I would retain the existing provisions for moratorium, as well as the current approach with respect to placeholder capacity, and the cluster measures that we've employed in the past. The increased impact tax revenue will more than supplant current School Facility Payments and will provide support for addressing our capacity needs below the 120% threshold.

Thanks for your attention to this issue. I'll be happy to answer any questions you may have.

cc: Tim Firestine, Chief Administrative Officer
Casey Anderson, Chair Montgomery County Planning Board
Gwen Wright, Planning Director
Glenn Orlin, Deputy Staff Director
Dr. Jack Smith, Superintendent MCPS
Bob Drummer, Council Staff Attorney
Paul Bessel, President MCCPTA
Melissa McKenna, VP Programs and CIP Chair MCCPTA

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Talking Points – Next Steps Reps Subcommittee of the MCCPTA

President Floreen's School Test Follow-up Proposal for the Subdivision Staging Policy

PHED Committee Meeting – October 10, 2016

A. **Appreciation:** We appreciate very much President Floreen's efforts to address school funding needs through the SSP.

B. **Funding Needs:** In the last 3 years, the average amount collected through school impact taxes was about $35,500,000. Based on that, 10 percent of the construction cost of a seat (CCOS) [1] is, on average, about $4,000,000.

So, the Floreen proposal would adopt the Planning Board's proposal to add 10 percent of the CCOS and add another 10 percent of the CCOS – adding about $8,000,000. She would eliminate school facility payments, which in a good year are about $2,000,000. End result – about $6,000,000 more per year.

Our subcommittee of MCCPTA has asked for 100 percent of the CCOS for school construction, an additional 10 percent of the CCOS for land acquisition (which the Board of Education did not oppose if 100 percent of the CCOS goes to school construction), and school facility payments that, in a good year, would be about 6 percent of the CCOS. End result - $8 – 9,000,000 more per year.

<u>We therefore ask for at least that amount in this proposal – at least 120 percent of the CCOS.</u> In a time of scarce dollars for school construction, we think it fair that the PHED Committee require that amount from developers - especially since the Floreen proposal may include dropping some of our priorities, and the Planning Board's proposals, such as the limit on placeholders.

Otherwise, the additional money needed for school construction and school land is paid for by the taxpayers – and many taxpayers already funded an increase in the CIP budget last year through recordation tax increases.

C. **Existing School Test:** President Floreen's proposal would eliminate one part of the school test. We believe it maintains the part of the school test that requires a moratorium when a cluster level is at 120 percent of capacity.

[1] Note that this is 1/9 of the $35,500,000, because the current impact tax is collected at 90 percent of the construction cost of a seat.

That moratorium part of the school test must remain. As the Planning Department says, "The Subdivision Staging Policy seeks to ensure that Montgomery County's infrastructure, particularly schools. . . .keeps pace with new development". The moratorium part of the school test provides that essential link between development and school facilities.

D. Individual School Test: Similarly, we believe President Floreen's proposal does not determine the fate of the Planning Board's proposal for an individual school test tied to moratorium.

We continue to request a hybrid school test tied to a moratorium. Many individual schools have reached dramatic levels of overcrowding. The test should highlight the needs of these individual schools as well as overcrowded cluster levels.

While some of these schools (Barnsley at 178 percent of capacity, etc.) now have projects in the CIP – there were many years when they were well over 120 percent of capacity, and the cluster-level school test did not help them. 6 schools are described in the packet as being affected by this test – but in other years there would be more.

Please note that the Board does not request funding for all schools that need additional capacity. The last CIP requested about 12,000 seats, when about 16,000 will be needed within this timeframe.

E. Summary:

So, the Next Steps Reps Subcommittee of the MCCPTA can support--

(1) raising the School Impact Tax to at least 120 percent of the cost of a seat, to cover school construction costs, school site acquisition costs, and other impacts of development; and
(2) as a result of that increase—
(A) eliminating the School Facility Payment; and
(B) establishing an individual school test with respect to schools over 120 percent of capacity, as described by the Planning Board; and
(C) accepting the current County policies on placeholders.

Thank you for your consideration, and let us know if we can provide additional information.

Liz King, Coordinator, Next Steps Reps Subcommittee of the MCCPTA

Subdivision Staging Policy
Results of School Test for FY 2017

Reflects County Council Adopted FY 2017 Capital Budget and the FY 2017–2022 Capital Improvements Program (CIP)

Effective July 1, 2016

(14)

School Test Level	Description	Cluster Outcomes by Level: Elementary Inadequate	Cluster Outcomes by Level: Middle Inadequate	Cluster Outcomes by Level: High Inadequate
Clusters over 105% utilization School facility payment required in inadequate clusters to proceed.	5-year test Effective July 1, 2016 Test year 2021-22	Einstein (107.4%) Gaithersburg (112.4%) Northwood (116.0%) Quince Orchard (113.2%)	Gaithersburg (107.5%) Rockville (116.2%) Wheaton (110.7%)	Blair (116.3%) Churchill (113.5%) Einstein (116.9%) Gaithersburg (107.6%) Walter Johnson (113.9%) Kennedy (112.5%) Richard Montgomery (112.2%) Northwood (114.8%) Paint Branch (111.0%) Quince Orchard (110.4%)
Clusters over 120% utilization Moratorium required in clusters that are inadequate.	5-year test Effective July 1, 2016 Test year 2021-22			

Capacities in clusters include the following placeholder capital projects:

Twenty elementary school classrooms in the Northwest Cluster

Six high school classrooms in the Einstein Cluster.

Eight high school classrooms in the Walter Johnson Clustser.

Ten high school classrooms in the Northwood Cluster.

PROJECTED RESULTS, JULY 2017

HS Level Cluster Tests					
Facility Payment at HS Level, 105% Threshold			**Moratorium at HS Level, 120% Threshold**		
Kennedy	117%	Affected by supplement	Blair	123%	
Gaithersburg	114%		Einstein	129%	
Richard Montgomery	118%		Northwood	124%	
Blake	106%		Walter Johnson	120%	
Paint Branch	110%		~~Clarksburg~~	133%	Relieved by Seneca Valley
Poolesville	105%		~~Northwest~~	120%	Relieved by Seneca Valley
Quince Orchard	115%				
Rockville	107%				
Facility Payment at HS Level, 100% Threshold			**Moratorium at HS Level, 110% Threshold**		
BCC	103%		Blair	123%	
Churchill	103%		Einstein	129%	
Blake	106%		Northwood	124%	
Poolesville	105%		Kennedy	117%	
Rockville	107%		Gaithersburg	114%	
Watkins Mill	104%		Walter Johnson	120%	
			Richard Montgomery	118%	
			Paint Branch	110%	
			Quince Orchard	115%	
			~~Clarksburg~~	133%	Relieved by Seneca Valley
			~~Northwest~~	120%	Relieved by Seneca Valley

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PROJECTED RESULTS, JULY 2017

ES Level Cluster Tests

Facility Payment at the ES Level, 105% Threshold		Moratorium at the ES Level, 120% Threshold		
Quince Orchard	109%	~~Clarksburg~~	137%	Relieved by new school 19-20 SY
Facility Payment at the ES Level, 100% Threshold		**Moratorium at the ES Level, 110% Threshold**		
Blake	103%	Northwood	116%	
Clarksburg	106%	Gaithersburg	115%	
Einstein	104%			
Walter Johnson	102%			
Springbrook	103%			
Quince Orchard	109%			
Seneca Valley	101%			
Watkins Mill	101%			

MS Level Cluster Tests

Facility Payment at the MS Level, 105% Threshold		Moratorium at the MS Level, 120% Threshold	
Kennedy	108%		
Wheaton	106%		
Gaithersburg	106%		
Rockville	117%		
Facility Payment at the MS Level, 100% Threshold		**Moratorium at the MS Level, 110% Threshold**	
Kennedy	108%	Rockville	117%
Wheaton	106%		
Gaithersburg	106%		
Springbrook	104%		
Watkins Mill	102%		

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PROJECTED RESULTS, JULY 2017

School by School Test & HS Level Cluster Test

Elementary Schools in Facility Payment, 92 Seat Deficit

School	*Deficit*	*CIP Notes*
Ashburton	98	Capacity affected by supplement
Captain James Daly	93	
Greencastle	93	
JoAnn Leleck	106	

Elementary Schools in Moratorium, 110 Seat Deficit

School	*Deficit*	*CIP Notes*
~~Beall~~	233	Relieved by new school 18-19 SY
Burnt Mills	174	
~~Rachel Carson~~	283	Relieved by DuFief 22-23 SY
~~Cedar Grove~~	201	Relieved by new school 19-20 SY
~~Clarksburg~~	269	Relieved by new school 19-20 SY
~~Clopper Mill~~	116	NW Placeholder project
~~College Gardens~~	153	Relieved by new school 18-19 SY
Farmland	121	
~~Forest Knolls~~	206	Relieved by others 20-21 SY
Garrett Park	118	
Highland View	135	
Kemp Mill	113	
Lake Seneca	165	
~~Ronald McNair~~	135	NW Placeholder project
~~Ritchie Park~~	114	Relieved by new school 18-19 SY
~~Rolling Terrace~~	133	Relieved by others 22-23 SY
Rosemont	290	
South Lake	139	
Strawberry Knoll	193	
Summit Hall	200	
~~Wilson Wims~~	549	Relieved by new school 19-20 SY

Middle Schools in Facility Payment, 150 Seat Deficit

School	*Deficit*	*CIP Notes*
Earle B. Wood	161	

Middle Schools in Moratorium, 180 Seat Deficit

School	*Deficit*	*CIP Notes*
Neelsville	184	
Parkland	197	
~~Westland~~	729	Affected by supplement-OK

School Tests Among Jurisdictions with APFOs

Test Thresholds

Jurisdiction	Moratorium Threshold
LESS THAN 100% UTILIZATION	
Washington County	(ES): 90% Utilization @ State-Rated Capacity (HS): 100% Utilization @ State-Rated Capacity
100% UTILIZATION	
Anne Arundel County	100% Utilization @ State-Rated Capacity
Charles County	100% Utilization @ State-Rated Capacity
Calvert County	100% Utilization @ BOE Program Capacity
Caroline County	100% Utilization @ BOE Program Capacity
Queen Anne's County	100% Utilization @ State-Rated Capacity
110% UTILIZATION	
Harford County	110% Utilization @ State-Rated Capacity
St. Mary's County	(ES): 107% Utilization @ State-Rated Capacity (MS): 109% Utilization @ State-Rated Capacity (HS): 116% Utilization @ State-Rated Capacity
115% UTILIZATION	
Howard County	115% Utilization @ State-Rated Capacity
Baltimore County	115% Utilization
120% UTILIZATION	
Montgomery County	120% Utilization @ BOE Program Capacity
Prince George's County	120% Utilization @ BOE Program Capacity
Carroll County	120% Utilization @ State-Rated Capacity
Frederick County	120% Utilization @ State-Rated Capacity

Jurisdiction	School Payment Threshold
100% UTILIZATION	
Frederick County	100% Utilization @ State-Rated Capacity
Howard County[1]	100% Utilization @ State-Rated Capacity
105% UTILIZATION	
Montgomery County	105% Utilization @ BOE Program Capacity
Prince George's County	105% Utilization @ BOE Program Capacity
110% UTILIZATION	
Carroll County[2]	110% Utilization @ State-Rated Capacity

Summary: The threshold for moratorium ranges from 100% utilization to 120%. Some districts that have a higher moratorium threshold have an initial threshold at which school payments are required. However, most districts do not collect school payments based on adequacy tests. Some limit development prior to moratorium (Carroll/Howard Co.).

[1] This is not an initial test threshold for school payment, but rather a threshold for building limits – the planning dept. will only allow up to 300 new units in one year in an elementary school district if the school "region" exceeds 100% capacity. There are no school payments for development based on school overutilization in Howard County.

[2] This is not an initial test threshold for school payment, but rather a threshold for permit restrictions – development might receive conditional approval.

Table 2. FY2017 Annual School Test Results Including Individual School Threshold Tests

Action	Inadequate Outcomes by Level: Elementary	Middle	High
School Facility Payment	• **Einstein Cluster** (107.4% utilization) • **Gaithersburg Cluster** (112.4%) • **Northwood Cluster** (116.0%) • **Quince Orchard Cluster** (113.2%) • Garrett Park ES (-128 seats, 117.0% utilization) in the Walter Johnson Cluster • Meadow Hall ES (-106, 130.0%) in the Rockville Cluster	• **Gaithersburg Cluster** (107.5%) • **Rockville Cluster** (116.2%) • **Wheaton Cluster** (110.7%)	• **Blair Cluster** (116.3%) • **Churchill Cluster** (113.5%) • **Einstein Cluster** (116.9%) • **Gaithersburg Cluster** (107.6%) • **Walter Johnson Cluster** (113.9%) • **Kennedy Cluster** (112.5%) • **Richard Montgomery Cluster** (112.2%) • **Northwood Cluster** (114.8%) • **Paint Branch Cluster** (111.0%) • **Quince Orchard Cluster** (110.4%)
Moratorium	• Highland View ES (-112, 137.6%) in the Northwood Cluster • Lake Seneca ES (-113, 127.2%) in the Seneca Valley Cluster • Thurgood Marshall ES (-118, 122.1%) in the Quince Orchard Cluster • Rosemont ES (-250, 140.8%) in the Gaithersburg Cluster • Strawberry Knoll ES (-144, 129.9%) in the Gaithersburg Cluster • Summit Hall ES (-191, 141.0%) in the Gaithersburg Cluster		

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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)] <u>(d)</u> 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)] <u>(e)</u> 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)] <u>(f)</u> 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

Resolution No.: ______________
Introduced: September 27, 2016
Adopted: ______________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

SUBJECT: Development Impact Tax Rates for Transportation and Public School Improvements.

Background

1. Under County Code §52-57(f), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for transportation.

2. Under County Code §52-90(e), the County Council may, by resolution, after a public hearing advertised at least 15 days in advance, increase or decrease the development impact tax rates for public school improvements.

2. A public hearing was held on this resolution on October 18, 2016.

3. This amendment is necessary to update the impact tax rates necessary for transportation and public school improvements.

Action

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

1. The development impact tax rates for transportation, effective January 1, 2017 are:

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
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

2. The development impact tax rates for public school improvements, effective January 1, 2017 are:

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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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]

[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 [signature]

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

BUILT ALL YEARS

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

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

#1A

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

#1B

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

#1C

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

BUILT LAST 10 YEARS

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

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

#2A

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

#2B

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

#2C

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

Estimated Revenue from School Impact Tax Scenarios

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

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MCPS MONTGOMERY COUNTY PUBLIC SCHOOLS
www.montgomeryschoolsmd.org MARYLAND

October 18, 2016

Malcolm Baldrige National Quality Award 2010 Award Recipient

The Honorable Nancy Navarro, Chair
The Honorable Sidney Katz
The Honorable Hans Riemer
Government Operations and Fiscal Policy Committee
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Navarro, Mr. Katz, and Mr. Riemer:

This is a follow up to the letter from Mr. Michael A. Durso, president, Montgomery County Board of Education, to the Honorable Nancy Floreen, president, and members of the Montgomery County Council, dated October 17, 2016, regarding the Board's comments and positions on the Subdivision Staging Policy Review and Bill 37-16 Taxation—Development Impact Tax—Transportation and Public School Improvements—Amendments. This is to provide further comment on the particular section of Bill 37-16 related to increasing the single-family house surcharge on the school impact tax from the current rate of $2 per square foot (for each square foot of more than 3,500 square feet up to 8,500 square feet) to a rate of $6 per square foot.

It is our understanding that the base school impact tax rates have increased more than 300 percent since 2007, but the surcharge rate of $2 per square foot has not increased proportionately. Therefore, Montgomery County Public Schools (MCPS) supports the increase in the current single-family house surcharge rate of $2 per square foot to $6 per square foot and to apply the same surcharge rate for teardowns and expansions of existing houses of more than 3,500 square feet.

As MCPS continues to face enormous growth in student enrollment and the challenges with addressing the capacity needs at our schools, it is imperative that measures included in the Subdivision Staging Policy and Bill 37-16 address the needed funding streams to support school capacity needs. We sincerely appreciate your consideration of this important matter as you deliberate on Bill 37-16.

Sincerely,

Jack R. Smith, Ph.D.
Superintendent of Schools

JRS:AMZ:JS:lmt

Copy to:

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

Office of the Superintendent of Schools
850 Hungerford Drive, Room 122 ♦ Rockville, Maryland 20850 ♦ 301-279-3381

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 20, 2016

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett
County Executive

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

Thank you for the opportunity to offer additional comments on Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements – Amendments.

I understand that Montgomery County Public Schools has taken a position in favor of the proposed increase to the single family house surcharge on school impact tax. While I appreciate the need to provide support for our public schools so that we maintain the quality educational opportunities that are currently available in our County, I do not agree with using this mechanism to accomplish that goal.

As I considered this proposal, I reviewed the revenue analysis performed by our Office of Management and Budget and Department of Finance. It is clear to me that the amount of revenue created by this surcharge increase does not raise significant revenues that benefit our public schools, even if you include the tear down and renovation projects within the single family housing market. Instead, I am concerned that the surcharge increase serves more to impose a negative impact on housing development because of the effect it will have to increase single family housing costs. I also considered this increase within the context of recent property tax and recordation tax increases.

I am, therefore, not in support of a surcharge increase on school impact taxes related to single family housing. I appreciate being given this opportunity to comment on my position related to these provisions of Bill 37-16.

IL:rpb