GO COMMITTEE #1
October 20, 2016
Worksession 3

MEMORANDUM

October 19, 2016

TO: Government Operations and Fiscal Policy Committee

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

SUBJECT: **Worksession 3:** Bill 37-16, Taxation – Development Impact Tax – Transportation and Public School Improvements - Amendments

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

During this worksession the Committee will review issues related to exemptions, refunds, grandfather clauses and effective dates, as well as follow-up from prior worksessions on the school and transportation impact taxes.

I. FOLLOW-UP FROM PRIOR WORKSESSIONS

1. Revenue estimates. At the October 6 worksession Council staff noted that while the base school impact tax rates had roughly tripled during the past dozen years, the $2/sf surcharge for new large homes (greater than 3,500sf) has not changed. 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 Committee also requested what revenue would be generated from imposing a $6/sf charge on teardowns and expansions, where the replacement or expanded house exceeds 3,500sf. 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. These estimates are based on the experience over the past dozen years. In both cases the charges would be capped for homes larger than 8,500sf.

Together these two measures would raise about $8 million more annually in school impact tax revenue, or about $48 million more over a 6-year period. A chart demonstrating how these estimates were calculated is shown below:

	Total Revenues Collected Between FY05 and FY16			
	Teardowns/Renovations/Additions		New-Build Single-Family	
$2 per square foot	$	8,237,107	$	35,649,048
$6 per square foot	$	24,711,320	$	106,947,143
# of permits issued by DPS:		1,769		12,931

	Average Annual Revenues Collected Between FY05 and FY16			
	Teardowns/Renovations/Additions		New-Build Single-Family	
$2 per square foot	$	686,426	$	2,970,754
$6 per square foot	$	2,059,277	$	8,912,262
# of permits issued by DPS:		147		1,078

Assumptions:

Surcharge only applies to square footage between 3,500sf and 8,500sf

Maximum surcharge revenue per home is $10,000 (5,000sf at $2/sf) or $30,000 (5,000sf at $6/sf)

Revenues based on actuals between FY05 and FY16 (12 years)

Council staff recommendation: Raise the surcharge on new single-family homes over 3,500sf from $2/sf to $6sf, and charge teardowns and expansions at $6/sf for the space created exceeding $3,500sf. The Superintendent has expressed his support for these two measures (©1).

DPS, OMB, and Finance have been working diligently over the past two weeks to provide accurate revenue forecasts for options under consideration for the transportation impact tax. Unfortunately, at this writing, these offices are not finished with their work. Council staff's understanding is that their estimates should be available in the next few days, certainly prior to the Council's November 1 worksession on the transportation test in the SSP and the transportation impact tax in Bill 37-16.

2. Crossover SSP/Bill 37-16 proposals. During the PHED Committee's deliberations on the SSP, Council President Floreen proposed eliminating the school facility payment element of the school test and raising the base school impact tax rates by 10% instead (©2). 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. MCCPTA endorsed this proposal, but with the condition that the base rates be increased by 20% instead. On October 18 the PHED Committee unanimously recommended replacing the school facility payment with a higher impact tax, but it also recognized that the impact tax was the purview of the GO Committee so it did not vote on how much to raise the base rates (e.g. 10%, 20%, or some other percentage).

Council staff recommendation: Concur with the Council President. Raising the school impact tax's base rate by 10% over the Planning Board's recommendation will more than compensate for the loss of school facility payment revenue.

Also during the PHED Committee deliberations, Council staff suggested considering replacing policy area transportation review (TPAR) and its associated traffic mitigation payments with a higher transportation impact tax. The traffic mitigation payment revenue collected during the past 6 years is $1.46 million, equal to about 2% of the transportation impact tax over that period. This likely underestimates the revenue collected in the next several years as developments approved with the condition of a traffic mitigation payment bring their projects to the point where their payments are made: 6 months after building permit issuance for residential development (9 months for commercial), or final inspection, whichever comes first. Nevertheless a somewhat higher transportation tax rate would more than cover the revenue lost by eliminating TPAR and its associated mitigation payments. The PHED Committee will continue to review this matter, and it should be ready to make a recommendation when the full Council takes up the SSP transportation test and Bill 37-16 transportation impact tax on November 1.

On October 13 the Council President circulated her proposal regarding the SSP transportation test and transportation impact taxes (©3-5). In summary, she proposes to:

1. Eliminate TPAR.
2. Eliminate LATR.
3. Establish a package of specific projects—across all modes—for each planning area, and funding them with impact taxes collected in each area.
4. Apply the current General District impact tax rate—increased by 5% to offset the loss of traffic mitigation payment revenue—to all parts of the County, which would include MSPAs, Clarksburg, and areas within a ½-mile radius of certain MARC stations.
5. Eliminate the 5% rate increase once transportation management districts (TMDs) are established across most of the County and TMD fees are established for them.
6. Continue to exempt enterprise zones (but not former enterprise zones), affordable housing, bioscience projects, hospitals and social service agencies.
7. Discontinue impact taxes on places of worship and private schools.

The first two points apply to the SSP. On Point #1 the PHED has voted unanimously to recommend eliminating TPAR and no longer having a policy area review test. On Point #2 it has recommended a limited LATR test in Metro Station policy areas for now, until a comprehensive local area transportation review (following the White Oak model) is completed in the next couple of years. Points #3-7 fall under the jurisdiction of the GO Committee, a discussion of which follows:

Point #3: **Council staff does not concur.** The White Oak model for LATR approved in an earlier SSP amendment calls for: (1) establishing a package of specific local area transportation projects (as opposed to larger, more regional projects, like BRT, new major roads, and grade-separated interchanges) across all modes; (2) calculating the per-trip fee of these local area improvements by dividing their cumulative cost by the trips that will be generated by the remaining development under the master plan there. Not collecting this per-trip fee and applying the impact tax funds for local projects in lieu of the per-trip fee would mean significantly *less* revenue than the County would otherwise receive from new development.

Point #4: **Council staff concurs.** These are recommendations brought forward at the October 6 GO worksession. The percentage impact tax rate increase to replace TPAR's mitigation payment—whether it be 5% or another percentage—is still being reviewed by the PHED Committee.

Point #5: **Council staff does not concur.** The more robust transportation management program was not proposed as a replacement for TPAR, so the 5% (or whatever percentage is decided upon) should not expire. Any TMD fees would not be paid by the developer anyway; this is an annual fee paid by the property owner for transportation management services provided over time.

Point #6: The enterprise zone exemption is addressed later in this packet. Council staff has already presented its case for discontinuing the exemption for bioscience developments; the Committee will make its recommendation at a subsequent worksession. There is no proposal to change the exempt status of affordable housing, hospitals, or social service agencies.

Point #7: **Council staff does not concur.** The place of worship and private school rates have been in existence for 30 years. The rates are very low and Council staff is not aware of any testimony or correspondence advocating exempting these uses. The rates have not been a serious impediment to any church or private school that has been built in the last three decades.

II. EXEMPTIONS FOR SPECIAL USES

1. Student-built houses. For 40 years MCPS has sponsored a program out of Edison HS (and, formerly, Wheaton HS) whereby its students construct market-rate houses as part of their training in the construction trades. Montgomery County Students Construction Trades Foundation, Inc. (CTF) is a non-profit that acquires property, arranges financing and sells the home. The process involves paying all permit fees, as well as school and transportation impact taxes.

Council President Floreen proposes exempting houses built under this program from school and transportation impact taxes (©6-7). She notes that CTF and the students have built 40 homes over the past four decades, but that the last four homes built under the program has resulted in a net loss to CTF. Currently a house of 3,500sf or less pays transportation and school impact taxes totaling $40,793.

Over its useful life any house built by the students will house school children and generate demand for travel. It should be charged a tax just as for any other single-family-detached house; the tax is based on the impact of the home's residents over time, not who is building the house. Creating an exemption in the law for this particular non-profit opens the door for other, perhaps equally worthy enterprises. Furthermore, it is unlikely that an impact tax exemption would provide exactly what CTF needs to break even.

A better course would be for CTF to apply to the Executive and the Council for a community grant when it finds it is short on resources, for whatever combination of reasons. In any given year the request might be larger or smaller than the impact tax payment, depending on the circumstances.

Council staff recommendation: Do not approve this proposal, but consider CTF as a candidate for a community grant in those years where it can demonstrate a need for aid.

2. Clergy houses. Last May the County Executive proposed a bill that would exempt from school and transportation impact taxes the residential portion of a clergy house that is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located and which is incidental and subordinate to the principal building used by the religious institution as its place of worship.

The Council has deferred action on this provision until now so it can be taken up as part of the comprehensive review of the impact tax law. The Executive's transmittal, the proposed bill, its Legislative Request Report, and its Fiscal and Economic Impact Statements are on ©8-15.

The motivation for this bill is a proposed 7,791sf house across the street from an existing place of worship in North Potomac. The Department of Finance calculates that the house, if charged as a single-family detached house, would currently pay $49,375 in impact taxes: $13,966 in transportation taxes and $35,409 in school taxes. The Executive's proposal would backdate the effective date for this provision to January 1, 2016 so that when the house goes to final inspection (it hasn't yet), it would be charged at the current tax rates, not any that are now under consideration by the Council. Finance notes that there has only been one other clergy house approved in the past 6 years, and it was a teardown/rebuild and so was not subject to an impact tax.

As with a student-built house, over its useful life a clergy house will house school children and generate demand for travel. In this respect it should be charged a tax just as for any other single-family-detached house. On other hand, if the Council were to agree with the Executive that a clergy house is "incidental and subordinate" to the place of worship, then the law could explicitly note that point and direct that it pay the "place of worship" rate, which, under the current transportation impact tax rate schedule, would be a tax of $5,064 (7,791 sf x $0.65/sf).

Council staff recommendation: Either add a provision noting that a clergy house is incidental and subordinate to a place of worship and to be taxed as such, or continue to treat it as a single-family-detached house.

3. HOC. On October 18 William Kominers, representing the Housing Opportunities Commission (HOC), transmitted two proposals (©16-19). One relates to what extent HOC space is exempt from impact taxes: he would extend the current exemption for buildings owned by HOC to buildings not owned by HOC, but controlled by HOC. The other proposal would change Bill 8-15 that allows market-rate units to be exempt in a development if at least 25% of units were moderately priced dwelling units (MPDUs) housing families with an income less than 60% of the county's area median income (AMI); he proposes expanding the provision to exempt market-rate units in a development if 20% served families less than 50% of AMI or if 15% served families less than 40% of AMI.

Council staff recommends that the Committee take up these proposals at a separate worksession in the next couple of weeks after there is time to analyze its ramifications. The Committee's review should be timely enough to include it in Bill 37-16, if the Council so chooses.

III. REFUNDS

For the past three decades County Code §52-46(a) has allowed only three reasons for a refund to impact taxes paid:

(1) the County has not appropriated the funds for impact transportation improvements of the types listed in Section 52-50, or otherwise formally designated a specific improvement of a type listed in Section 52-50 to receive funds, by the end of the sixth fiscal year after the tax is collected;

(2) the building permit has been revoked or has lapsed because construction did not start; or

(3) the project has been physically altered, resulting in a decrease in the amount of impact tax due.

Councilmember Rice proposes a fourth reason. He recommends that if an impact tax rate goes down within 6 months of when a person pays the tax, then that person should receive a refund of the difference between the rate paid and the new (lower) rate, as long as the application for a refund is submitted within 60 days of when the new rate is adopted. He notes that if the Planning Board's recommendations are approved, then the retail rates in Clarksburg would drop from $13.70/sf to $11.96/sf. He notes, that as a matter of fairness, if the Council were to agree with the Planning Board that the rates had been set too high, then those who have recently paid the fee should receive a refund (©20-21).

Persons who have recently paid the impact tax long ago decided that they would go forward with their developments, knowing what the rates were. Presumably, their pro formas demonstrated that they could afford the higher rates and still made a requisite profit, otherwise they would not have proceeded to build in the first place. Nor would a refund to these developments promote economic development; it would merely be an after-the-fact gift to the developer.

Fairness is a two-way street. If it makes sense to provide a refund to builders who paid impact taxes in the past 6 months where impact tax rates will now drop, would it not also make sense to add another tax to other builders who paid impact taxes in the past 6 months where the impact taxes will now rise? The Council would never contemplate the latter scenario; it should never contemplate the former, either.

Council staff recommendation: Do not approve this recommendation.

IV. GRANDFATHER CLAUSES/EFFECTIVE DATES

The Planning Board did not recommend a particular grandfather clause/effective date for when a new impact tax rate schedule would go into effect, leaving that issue entirely at the Council's discretion.

In the past, when the Council has raised the rates across the board, the new rates were applied to any building permits applied for after a certain date. The effective dates have varied. On November 15, 2007, when the Council raised transportation and school impact tax rates by roughly 70%, the new rates went into effect for any building permits applied for on or after December 1, 2007: 16 days later. In late fall of 2003, when the Council approved countywide impact taxes for transportation for the first time, the rates went into effect for any building permits applied for on or after March 1, 2004: about 4 months later.

The revenue estimates prepared by OMB and Finance have assumed that the new rates would be in effect so that taxes at the higher rate would be paid starting on July 1, 2017. Since impact taxes are paid within 6 months after a residential building permit is issued (within 9 months for a non-residential permit) or final inspection, whichever is sooner, this effectively means they assumed the rates would go into effect at the time of—or shortly after—the adoption of Bill 37-16.

In setting the grandfather clause/effective date for the new rates, the Council should balance the burden placed on the developer or builder with the need for additional revenue. Past Councils have grandfathered those who have applied for building permits, because by that stage the developers/builders have detailed plans, secured financing, and most have likely received their building permits and are under construction. More than 30% of the residential units in the pipeline of approved development—and nearly 50% of the non-residential square footage in the pipeline—have applied or received building permits, or are under construction. For such a development there is little opportunity to revise plans to accommodate higher taxes unless last-minute savings in amenities and finishes are incorporated into the construction, or unless the developer/builder is willing to accept a smaller profit margin than in the pro forma. On the other hand, the level of investment prior to building application is but a fraction of the overall cost of development, except land acquisition; but land that is bought may be sold to another developer that might make the numbers work, even with the higher tax.

Another important consideration is to provide enough time for the Departments of Permitting Services and Finance to prepare their respective collection systems to adjust to the new set of rates, and any other new definitions in the law that would affect the rates, credits, or other aspects of the law.

Council staff recommendation: With the exception for the provisions regarding enterprise zones and the former enterprise zone of Silver Spring CBD (see below), set the effective date for Bill 37-16 at March 1, 2017 and grandfather developments that have applied for building permits before March 1, 2017. This would allow some time for subdivisions that are close to starting construction to lock in the current rates. It should also provide DPS and Finance enough time to adjust to the new set of rates and conditions. If this grandfather clause/effective date recommendation is approved, then the rates and conditions would go into effect 4 months before the beginning of FY18, so the first impact tax payments made at the new rates would not occur until after the start of FY18.

V. ENTERPRISE ZONES AND FORMER ENTERPRISE ZONES

There are currently four State-designated enterprise zones in the county: Wheaton CBD, Long Branch/Takoma Park, Glenmont, and Old Town Gaithersburg. Under current County law, development in these enterprise zones are exempt from school and transportation impact taxes, as well as—if otherwise applicable—school facility payments and traffic mitigation payments. In 2006 the Silver Spring Enterprise Zone expired, but in 2007 the Council amended the impact tax law to extend these exemptions to former enterprise zones, too.

The State of Maryland established the enterprise zone to promote job creation, not housing. Nevertheless, a recent review of enterprise zones in the county by the Office of Legislative Oversight (OLO)[1] reported that 89% of the $14.4 million in school and transportation impact tax exemptions—nearly all in the Silver Spring and Wheaton CBDs—have benefited apartment houses and condominiums, not office, retail, industrial, or other job-related land uses. About $5.8 million of the $14.4 million exemption has been for Silver Spring since it ceased being an enterprise zone.

[1] Office of Legislative Oversight, The Experience and Effect of County Administered Enterprise Zones, August 2, 2016.

OLO's conclusion is that the enterprise zone has had a negligible effect to date on job creation in the Wheaton CBD, Long Branch/Takoma, and Glenmont. Silver Spring is the only enterprise zone in Montgomery County—and in the State—where there has been significant business investment. But this business investment likely had more to do with the County and State government's direct investment of about $450 million and the government's direct involvement in assembling the land for the Town Center, rather than the $8.3 million in impact tax exemptions over the years.

The Planning Board recommends phasing out the school impact tax and school facility payment exemption for Silver Spring and for any other enterprise zone once it expires. The Board's recommended phase out for the Silver Spring former enterprise zone is as follows:

Amend lines 179-190 at ©12 as follows:

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

This means that in Silver Spring the phase out of the exemption would proceed as follows:

For subdivisions approved by November 15, 2017: full exemption
For subdivisions approved by November 15, 2018: 75% of exemption
For subdivisions approved by November 15, 2019: 50% of exemption
For subdivisions approved by November 15, 2020: 25% of exemption
For subdivisions approved after November 15, 2020: no exemption

The Board's recommended phase out for an existing enterprise zone, once it expires, is:

For subdivisions approved within 1 year of expiration: full exemption
For subdivisions approved within 2 years of expiration: 75% of exemption
For subdivisions approved within 3 years of expiration: 50% of exemption

For subdivisions approved within 4 years of expiration: 25% of exemption
For subdivisions approved after 4 years of expiration: no exemption

The Board does not recommend phasing out the exemption for the transportation impact tax and traffic mitigation payments.[2] The Board is also not recommending any changes to the exemptions in the existing enterprise zones.

The Council has heard from several developers in Silver Spring who oppose eliminating the CBD's impact tax exemption, but stated that if it must be eliminated, it should occur according to the Board's gradual phase out. Representative is a letter from Washington Property Company, a major developer in the Ripley District of Silver Spring (©22-24). The Greater Silver Spring Chamber of Commerce makes the argument that Silver Spring should retain the exemption because otherwise it cannot compete with Bethesda, which can command higher rents (©25-26).

The Montgomery County Civic Federation (MCCF) recommends a more complete and rapid phase out of the Silver Spring exemption. It supports reestablishing both school and transportation impact taxes, with no phase in for residential subdivision approvals. For commercial subdivision approvals MCCF supports a phase-in of 2 years: approvals by November 15, 2017 would retain the full exemption, and approvals by November 15, 2018 would be 50% of the applicable impact taxes and any applicable mitigation payments. After November 15, 2018, commercial development approval would pay 100% of both impact taxes and applicable mitigation payments. Furthermore, MCCF recommends collecting impact taxes and applicable mitigation payments on housing in existing enterprise zones, since the purpose of such zones is to incentivize employment, not housing.

Council staff concurs entirely with MCCF's conclusion that the enterprise zone impact tax exemption should apply only to commercial development, and that it should not apply at all in former enterprise zones. It is a job creation program, not a housing creation program. There is no policy rationale for continuing the exemption for the transportation tax while phasing it out for the school tax; both should be eliminated. Continuing the housing exemption in existing enterprise zones undercuts the potential for more affordable housing that was the objective of Bill 8-15; if a proposed residential development in Silver Spring, Wheaton, Long Branch, Takoma/Langley, or Old Town Gaithersburg would pay no impact tax, why would the developer provide 25% of its units as MPDUs rather than the minimum required by law?

Silver Spring is no longer eligible for enterprise zone status and hasn't been for a decade; the question should not be whether it can compete with Bethesda, but whether it has a built-in advantage over development in Rock Spring Park, Twinbrook, Shady Grove, the Great Seneca Science Corridor, White Oak, Twinbrook, Rockville, Gaithersburg, Germantown, Clarksburg, and other development nodes, all of which must pay both taxes.[3]

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[2] On October 18 the PHED recommended that school facility and traffic mitigation payments be discontinued as conditions of some future subdivisions, but raising the school and transportation impact tax rates by amounts that would cover more than the lost payment.

[3] In White Flint, housing developments must pay the school impact tax, and all development pays an annual property tax surcharge that, over time, is arguably larger than a one-time transportation impact tax payment.

The phase out periods under consideration are also much too long. Eliminating an exemption is equivalent to raising an impact tax, and impact tax effective dates have always been tied to building permit filing. Recall, again, that when the taxes went up by 70% across the board in 2007, the rates went into effect on building permits filed *16 days later*. The proposed phase out applies at the time of subdivision approval—and extended out over 4 years—and building permit filings are usually years after subdivision approval. So, under the Planning Board's proposal, the foregone revenue for schools and transportation projects effectively will not be recouped for years.

Council staff, above, has recommended that developments filing for building permits on or after March 1, 2017 pay the new impact tax rates. The distinction in the case of enterprise zones and Silver Spring is that the effective rate is rising from $0 to the rates charged elsewhere, a much larger change. Therefore, a somewhat more gradual grandfather clause/effective date is called for.

Council staff recommendations:

1. **Eliminate all former enterprise zone school and transportation impact tax exemptions—both in Silver Spring and any future former enterprise zone.**
2. **Eliminate the school and transportation impact tax exemptions in existing enterprise zones for residential development. Retain both exemptions for non-residential development.**
3. **In Silver Spring:**
   For building permits filed by November 15, 2017: full exemption
   For building permits filed by November 15, 2018: 50% of exemption
   For building permits filed by November 15, 2018: no exemption
4. **In future former enterprise zones:**
   For building permits filed up to 1 year after expiration: full exemption
   For building permits filed up to 2 years after expiration: 50% of exemption
   For building permits filed after 2 years after expiration: no exemption
5. **In existing enterprise zones:**
   For building permits that include residential filed by November 15, 2017: full exemption
   For building permits that include residential filed by November 15, 2018: 50% of exemption
   For building permits that include residential filed by November 15, 2018: no exemption

This packet contains:

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MCPS MONTGOMERY COUNTY PUBLIC SCHOOLS
www.montgomeryschoolsmd.org MARYLAND

October 18, 2016

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

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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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

NANCY FLOREEN
COUNCIL PRESIDENT

October 13, 2016

To: Councilmembers

From: Nancy Floreen, Council President

Subject: Subdivision Staging Policy – Transportation Tests and Impact Taxes

Consistent with what I've recommended on the education side, and after having thought about this, frankly, for years, I propose that we confront reality, increase the transportation impact tax across the board, apply it consistently across the county, and impose a traffic management system across the county.

As far as I am concerned, the Planning Board's new Subdivison Staging Policy proposal of using "transit accessibility" and "vehicle miles traveled" as the basis for measuring transportation adequacy and calculating tax rates may fit squarely within the mainstream of modern planning practice, but it offers us little in the way of actual improvement. (Our staff has taken that concept further and has proposed a standard of "person miles travelled" to be used as a measure for tax rate calculation.) While I appreciate the seriousness and thoughtfulness that supports this work, I do not believe these well-intentioned standards advance our needs. Apart from the complexity of its analysis, the Planning Board's test assumes a pace of transit production that is highly unpredictable. Witness the Governor's recent removal of funds for the Corridor Cities Transitway from his capital budget.

In addition, what we have learned in the Planning, Housing and Economic Development Committee so far is that the existing policy area based test – Transportation Policy Area Review - is widely believed to be overly complex and primarily a revenue collection device. Many regard it as a multilayered "black box" of analysis and algorithms.

Similarly, we long have had a localized test, Local Area Traffic Review, designed to measure traffic congestion, although LATR is not particularly related to transit accessibility. As with the TPAR test, this process is elaborate and mysterious, using the questionable Critical Lane Volume and shifting Level of Service analyses, and is subject to discretionary standards and application.

Historic data reveals that we have collected $1.457 million over five years in transportation mitigation revenues under TPAR, which is equivalent to two percent of our impact tax receipts during the same period. LATR also has produced an additional multitude of well-intentioned and varied ways of addressing congestion. At the same time, we do not know what transportation facilities have actually been constructed to meet our traffic adequacy requirements under all these tests, although I assume this information could be compiled. The total cost of all of these tests, not to mention staff and consultant time, has not been calculated.

So what do we have to show for all our work over all these years to address our adequate public facilities needs? A variety of ad hoc intersection, roadway, sidewalk and bicycle improvements, a number of traffic mitigation agreements, and about $75 million in receipts, assigned to random transportation initiatives - NONE of which is particularly coordinated.

I propose we think differently.

I agree with staff's proposal, similar to what we did in White Oak, to establish a formal list of needed transportation facilities - whether they are based on car, bus, pedestrian or bicycle travel needs. (We already have a pretty comprehensive compendium.) This list would constitute our priorities for adequate public facilities needs for each planning area. While such a list may evolve over time, our master plans already detail much of what needs to be done and can be the starting resource. As projects come along, I would allocate their transportation impact tax to those projects, some of which might be funded entirely, others of which would only provide a drop in the bucket, but at least would constitute a start. I would substitute this process for the current policy area review proposal and eliminate LATR. This concept is consistent with the Planning Board's recommendations for the Road Code Urban areas and Bicycle Pedestrian Priority areas. Why not apply it everywhere?

Some might argue that the transportation impact tax has historically been applied to big network type projects. Maybe that is the case, but the amount raised has never been enough to fund any one big project. It makes far more sense to spend the revenue in the community receiving the impact of any development project. Others may argue that the State requires an LATR analysis for projects that seek access to state roads. I would point out that we are not the State, and, in any event, we would expect that whatever the State requires would be consistent with our master plans. We should permit credits against the impact tax in such cases, because such improvements achieve community goals.

I would establish the transportation impact tax at the 2015 General District Rate. (The Planning Board analysis concludes that it is at a reasonable level.) I would add an additional five percent to account for the replacement of LATR revenue. I would further proceed to apply the revised transportation impact tax to ALL projects that have not yet submitted an application for subdivision approval. Current applications could choose the new approach or be subject to the current requirements. I would exempt current enterprise zones (not former ones), affordable housing, bioscience projects, hospitals, social service agencies, churches and private schools. The transportation impact tax would increase annually based on the regional Consumer Price Index.

I would apply this tax equally to all projects in each of the Planning Board's use categories, without regard to location. For example, commercial projects in Bethesda would pay the same square footage base rate as those in Damascus. This approach is consistent with our staff's recommendation. While the dollars in Bethesda might be dedicated to bike lanes or Bus Rapid Transit stations, those in Damascus are more likely to go to roadway improvements. If a developer preferred to actually deliver a listed improvement instead of contributing to it, a credit against the impact tax due should be granted, whether or not the project involves a county or state facility.

The PHED and Transportation, Infrastructure, Energy & Environment committees have been briefed on an ongoing effort to establish Transportation Demand Management Districts across the county, with different levels of goals depending on the Planning Board's color coded districts. This plan would form the basis for an annual per square foot assessment of all commercial and medium to higher density residential projects to manage community based transportation demand. I applaud this effort. Once the plan's elements have been fleshed out for public review, amendment and adoption, I propose we eliminate the five percent increase to the transportation impact tax I propose above, and use the new TDM plan as a community based substitute for LATR.

These proposals would add simplicity, predictability, and rationality to our never-ending commitment to address transportation adequacy. What's more, it would add a new element of community based coordination. It would respect the fact that all communities have infrastructure needs, of varying types but of equal importance. And it would eliminate the current cost differentials between various parts of the county. Our zoning and parking policies already create strong incentives for locational choices, particularly at Metro stations. Encouraging a mix of uses throughout the county can help with vehicle miles travelled, and its demand for supporting infrastructure, everywhere.

I further point out that if we continue down the current path of tests and measurements, it is likely that the net revenue collected will be comparable to what I have outlined above, but that the actual experience of community transportation benefits will be even more marginal than it is today. The underlying objective of achieving adequacy of public facilities should be recognized as serving a far more local need that we have previously acknowledged, which my proposal does. At the end of the day, we should judge ourselves on what we have achieved for our community, not on how many numbers we have crunched.

I trust that you will find this approach simple, understandable, straightforward, community based and cost effective. I therefore ask for your support of this worthy approach.

cc: Isiah Leggett, Montgomery County Executive
Casey Anderson, Chair Montgomery County Planning Board
Gwen Wright, Planning Director
Glenn Orlin, Deputy Staff Director
Bob Drummer, Council Staff Attorney
Al Roshdieh, Director, Montgomery County Department of Transportation
Jeremy Criss, Director, Office of Agricultural Services
Gigi Godwin, Montgomery County Chamber of Commerce
Marilyn Balcombe, Gaithersburg-Germantown.Chamber of Commerce
Ginanne Italiano, Bethesda-Chevy Chase Chamber of Commerce
Jane Redicker, Greater Silver Spring Chamber of Commerce
Frank Jamison, Charles H. Jamison, LLC
Dan Wilhelm, Greater Colesville Civic Association
Jim Zepp, President, Montgomery County Civic Federation

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY FLOREEN
COUNCIL PRESIDENT

MEMORANDUM

September 27, 2016

To: Councilmembers

From: Nancy Floreen, Council President

Subject: Impact Tax Exemption for Student Built Houses

I propose that we exempt student built houses from impact taxes.

MCPS students get real world experience building houses so that after high school they are prepared either to pursue additional education or to enter apprenticeships in the construction trades. I'm very impressed with what a worthwhile and unique opportunity this program provides for many of our students who prefer or need non-college track education options. We can help this worthwhile program by exempting student-built houses from impact taxes.

MCPS' Thomas Edison High School of Technology offers the Construction Technology Pathway Cluster in which students learn construction trades such as electrical, masonry, HVAC, carpentry, plumbing, and principles of architecture and CAD technology. The program culminates with the Young American Design/Build Project, with students building a house which is sold at market rates. Since 1976, the program has produced 40 homes. Students receive instruction at Edison, and the Montgomery County Students Construction Trades Foundation, Inc., a nonprofit organization, manages the rest of the process in cooperation with MCPS. CTF buys the land, arranges the construction loan, and manages the sale of the home.

This program encourages our students to learn about and become inspired to pursue careers in construction. Graduates meet Apprenticeship Training requirements and may earn industry certifications as well as college credits through dual enrollment at Montgomery College.

CTF houses go through the permit process just like any other development, and CTF is responsible for the same infrastructure, such as roads, stormwater management and sediment control, as any other project. CTF also pays impact taxes.

In recent years, students have completed a home every two years. The last four homes have resulted in financial losses to CTF.

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Here's a link to CTF's website: http://ctfcareers.org/.

We can support this worthwhile effort by providing an exemption from one of the expenses, impact taxes. I would appreciate your support of my proposal.

cc: Glenn Orlin, Deputy Staff Director
Bob Drummer, Council Staff Attorney
Casey Anderson, Chair Montgomery County Planning Board
Gwen Wright, Planning Director
Steve Boden, MCPS Supervisor and Executive V.P., Construction Trade Foundation

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 11, 2016

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive

SUBJECT: Request for Introduction of Legislation to Exempt Clergy House from Impact Taxes

I am writing to ask that you introduce the attached proposed legislation to exempt clergy houses from development impact taxes when the clergy house is accessory to and supports an on-site or neighboring place of worship. The fiscal impact statement is attached. My staff is available to answer questions. I hope that the County Council will favorably consider this request.

Attachment

Bill No. XX-16
Concerning: Taxation – Development Impact Taxes – Exemptions – Clergy House
Revised: ______________ Draft No. ____
Introduced: ______________
Expires: ______________
Enacted: ______________
Executive: ______________
Effective: January 1, 2016
Sunset Date: none
Ch. _____, Laws of Mont. Co. ________

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Floreen at the Request of the County Executive

AN ACT to:

(1) exempt certain clergy houses from development and school impact taxes; and
(2) generally amend the law governing impact taxes.

By amending
Montgomery County Code
Chapter 52. Taxation.
Sections 42-47, 42-49(h), 52-89(d)

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 and 52-89 are amended as follows:

52-47. Definitions.

* * *

Clergy House means a single family dwelling unit provided for the designated religious leader of a place of worship to live.

* * *

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

* * *

(h) The development impact tax does not apply to:

* * *

(4) a Clergy House that is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located and which is incidental and subordinate to the principal building used by the religious organization as its place of worship. This exemption does not apply to any portion of a Clergy House that is nonresidential development.

* * *

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

* * *

(d) The tax under this article does not apply to:

* * *

(4) a Clergy House that is on the same lot or parcel, adjacent to, or confronting the property on which the place of worship is located and which is incidental and subordinate to the principal building used by the religious organization as its place of worship.

* * *

Sec. 2. Effective Date: The Council intends for this Act to take effect retroactively. The effective date of this Act is January 1, 2016.

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

APPROVED AS TO FORM AND LEGAL
OFFICE OF THE COUNTY ATTORNEY
BY: Clarke J. Fuller
DATE: 6 May 2016

11

LEGISLATIVE REQUEST REPORT

Bill XX-16
Development Impact Taxes—Exemptions—Clergy House

DESCRIPTION: The proposed changes would exempt certain clergy houses from transportation and school development impact taxes.

PROBLEM: A concern has been raised relative to clergy houses that are accessory and incidental to places of worship.

GOALS AND OBJECTIONS: The proposed legislation, which would retroactively take effect on January 1, 2016, is intended to accommodate certain clergy houses that are accessory and incidental to places of worship.

COORDINATION: Department of Permitting Services

FISCAL IMPACT: The fiscal impact would be a rare loss of tax revenue, and the expected fiscal impact would be minor.

ECONOMIC IMPACT: No economic impact is expected, however, there would be an economic benefit for a place of worship seeking to locate a new accessory clergy house. Places of worship may provide services to their membership which can help with the community health and welfare.

EVALUATION: The proposed development and school impact tax exemptions will accommodate clergy houses that are accessory and incidental to places of worship.

EXPERIENCE ELSEWHERE:

SOURCE OF INFORMATION: Department of Permitting Services

APPLICATION WITHIN MUNICIPALITIES: Impact taxes apply County-wide.

PENALTIES: Not applicable.

Fiscal Impact Statement
Council Bill ____ Impact Taxes – Exemptions – Clergy House

1. Legislative Summary:

   This Bill would exempt from development transportation and school impact taxes a single family house provided for the designated religious leader of a place of worship to live in to carry out duties as the leader for the religious institution and which is incidental and subordinate to a place of worship structure for religious assembly. Clergy House does not include any portion of the single family house that is for non-residential use. The Clergy House must be on the same lot as, adjacent to or confronting the place of worship.

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.

   For a single family detached house subject to the general rate the decrease in revenues would be $13,966 for transportation impact tax, $35,409 for school impact tax which is a total of $49,375. This revenue loss would be rare. There were only two identified in a search of DPS records for the past 6 years, one of which was a rebuild and not subject to the tax.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

   There are no additional revenue or expenditure estimates as a result of the Bill.

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

   There is no impact to retiree pension or group insurance costs.

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

   No additional systems or resource planning will be required to implement the Bill.

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

   This Bill does not authorize future spending.

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

   The Bill does not result in the addition of any new staff responsibilities.

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

   See number 7.

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

   This Bill will not require an additional appropriation.

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

    There are no additional revenue or costs estimates as a result of this Bill.

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

    See number 10.

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

    The Bill is likely to have a limited fiscal impact as described in question 2.

13. Other fiscal impacts or comments.

    Not applicable.

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

    Diane Schwartz Jones, DPS
    Joseph Beach, Finance
    Gail Lucas, DPS
    Dennis Hetman, OMB

J Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

5/9/16
Date

Economic Impact Statement
Bill ##-16, Impact Taxes – Exemptions – Clergy House

Background:

This legislation would exempt the development transportation and school impact taxes for a single-family house, or Clergy House, that is provided for the designated religious leader of a place of worship to reside and to carry out his or her duties as the leader for the religious institution. The Clergy House does not include any portion of the single-family house that is used for non-residential use if that use exceeds thirty-three percent (33%) of the gross floor area of the house. The Clergy House must be located on the same lot as, adjacent to, or confronting the place of worship.

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

   The source of information includes the Department of Permitting Services (DPS). According the DPS, there are only two identified houses during the past six years that qualified as Clergy Houses with one of the houses a tear down and rebuild and not subject to the tax. For a single-family detached house subject to the development transportation and school impact taxes, the total tax amounts to $49,375 per unit. Therefore, only a total of $49,375 were collected over the past six years.

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

   There are no variables that could affect the economic impact estimates.

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

   Because of the small number of Clergy Houses that paid the development transportation and school impact taxes, the number of such houses that would be exempt from the tax is uncertain. Therefore, Bill ##-16 would likely have no significant economic impact on employment, spending, savings, investment, income, and property values in the County.

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

   See paragraph #3

5. **The following contributed to or concurred with this analysis**: David Platt and Rob Hagedoorn, Finance; Gail Lucas, DPS, and Dennis Hetman, OMB.

FOR

Joseph F. Beach, Director
Department of Finance

5/10/16
Date

Orlin, Glenn

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

Glenn,

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

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

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

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

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

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

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

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

Bill

--

16

Marked in an effort to show changes

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

[TRANSPORTATION IMPACT TAX]

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

* * *

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

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

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

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

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

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

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

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

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

(h) * * *

<u>[SCHOOL IMPACT TAX]</u>

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

* * *

(a) * * *

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

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

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

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

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

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

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

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

* * *

(d) * * *
(e) * * *

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

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

CRAIG RICE
COUNCILMEMBER
DISTRICT 2

CHAIRMAN
EDUCATION COMMITTEE

Memorandum

Date: October 3, 2016

To: Glenn Orlin

FROM: Craig Rice, Councilmember

RE: Clarksburg Impact tax rate

The pending impact tax changes propose eliminating the Clarksburg impact tax rate differential and, instead, creating a more uniform transportation impact tax rate structure for the County. This recommendation comes from the Montgomery County Planning Board after their Staff conducted a comprehensive analysis of the different tax rates throughout the County and the use of impact taxes to fund transportation infrastructure. The current impact tax rates for the Clarksburg Policy Area are considerably higher than they are throughout the rest of the County, including planning areas with land use characteristics very similar to Clarksburg, (For example , the transportation impact tax for a single-family home in Clarksburg is $20,948 while the rate in Damascus or Germantown is $13,966 and the rate for retail development in Clarksburg is $13.70 per square foot while it is $11.40 per square foot in policy areas directly adjoining Clarksburg). Through its comprehensive study of impact tax rates, the Planning Board concluded that impact tax rates for Clarksburg should be lowered in order to be consistent with areas similar to Clarksburg. The transportation impact tax for retail in Clarksburg would be reduced from $13.70 per square foot to $11.96 per square foot, a rate still higher than the current general rate for the County ($11.40 per square for), but am important reduction that would facilitate such development in Clarksburg.

Assuming the Council agrees with the Planning Board and revises the Clarksburg transportation impact tax rate, at least some development in Clarksburg will have paid the prior rate just before the lower rates take effect. Given the Planning Board's' recognition that the prior rates were too high and should be adjusted downward consistent with similar areas, there is a question of fairness for someone who just paid the higher rate. (Note, even the new, lower Clarksburg rate will be higher than the current general rate applicable throughout the County). The attached revision to Section 52-54 addresses this by allowing an applicant to seek a refund with respect to the recent payment of the higher tax.

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Sec. 52-54 Refunds

(a) Any person who has paid a development impact tax may apply for a refund of the impact tax if:

(1) the County has not appropriated the funds for impact transportation improvements of the types listed in Section 52-58, or otherwise formally designated a specific improvement of a type listed in Section 52-58 to receive funds, by the end of the sixth fiscal year after the tax is collected;

(2) the building permit has been revoked or has lapsed because construction did not start; or

(3) the project has been physically altered, resulting in a decrease in the amount of impact tax due

(b) Only the current owner of property may petition for a refund of the impact tax. A petition for refund of the impact tax must be filed within the time established for filing a claim for refund of a local tax under state law.

(c) The petition for refund of the impact tax must be submitted to the Director of Permitting Services on a form provided by the County. The petition must contain at least:

(1) A statement that petitioner is the current owner of the property;

(2) A copy of the dated receipt for payment of the development impact tax issued by the Department of Permitting Services.

(3) A certified copy of the latest recorded deed for the subject property; and

(4) The reasons why a refund of the impact tax is sought.

(d) The Director of Permitting Services must investigate each claim and hold a hearing if the petitioner requests a hearing. Within 3 months after receiving a petition for refund of the impact tax, the Director of Permitting Services must provide the petitioner, in writing, with a decision on the impact tax refund request. The decision must include the reasons for the decision, including, as appropriate, a determination of whether impact tax funds collected from the petitioner, calculated on a first-in-first-out basis, have been appropriated or otherwise formally designated for impact transportation improvements of the types listed in Section 52-58 within 6 fiscal years. If a refund of the impact tax is due the petitioner, the Director of Permitting Services must notify the Department of Finance and, if the property is located in Gaithersburg or Rockville, the finance director of that city.

(e) <u>If the County reduces an impact tax rate within six (6) months of the person's payment of an impact tax, the person shall be entitled to a refund of the difference between the former impact tax and the current impact tax by filing a request for a refund within 60 days of the adoption of the new impact tax rate.</u>

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

September 13, 2016

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Heather Dlhopolsky
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HAND DELIVERY
Council President Floreen
and Members of the Montgomery County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

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

Dear Council President Floreen and Members of the Montgomery County Council:

On behalf of Washington Property Company ("WPC"), the parent company of entities developing properties in (among many other areas) the Ripley District of the Silver Spring Central Business District ("CBD"), we are submitting this letter into the record (supplementing oral testimony) for the Montgomery County Council's (the "County Council") September 13th public hearing on Bill 37-16. To the extent that the Council, in its consideration of the 2016-20 Subdivision Staging Policy ("SSP") and related Bill 37-16, determines to reinstate the school impact tax and school facility payment in the former Silver Spring Enterprise Zone (which includes the Ripley District), which reinstatement WPC strongly opposes, Bill 37-16 must include grandfathering (discussed below) to soften the detrimental economic impacts that this change in policy will create.

Generally speaking, WPC does not support the reinstatement of the tax payments that have been exempted for the former Silver Spring Enterprise Zone. Being very familiar with the economic realities of developing properties in this CBD, WPC can speak firsthand in relaying that the current proposal to eventually fully reinstate these taxes in the former Silver Spring Enterprise Zone fails to recognize the difficult economics that continue to face projects in this area. While the balance of this letter discusses grandfathering necessary to protect ongoing projects that WPC has in the Ripley District (which grandfathering we believe is supported by the Planning Board and Council Staff), it is important that WPC reiterate that the economic realities of redeveloping property in this area are such that additional regulatory costs and burdens will render redevelopment infeasible.

The project that we are primarily bringing to your attention in the specific context of Bill 37-16 and the SSP is a public/private project involving the construction of a new Progress Place facility for the County ("New Progress Place") and the private mixed-use redevelopment of the existing Progress Place property ("Ripley II") (collectively, the "Progress Place Public/Private Project"). When the 2016 SSP was originally introduced, it proposed to reinstate the school impact tax and school facility payment in former Enterprise Zones with no grandfathering provision. Simply stated, the ability to commence construction of the Ripley II project – a mixed-use public/private project that is extremely important to the continuing redevelopment and revitalization of the Ripley District and Downtown Silver Spring - could not absorb the imposition of the school impact tax and school facility payment. Without grandfathering, the entire economic model and structure for the Progress Place Public/Private Project would be dismantled, and would become the source of great conflict.

WPC has an executed (June 18, 2014) General Development Agreement (the "GDA") with Montgomery County for the Progress Place Public/Private Project, whereby WPC (through a related development entity) is in the midst of construction on the New Progress Place on property shared with Silver Spring Fire Station #1 in the southern part of the Ripley District. WPC is also purchasing the Parking Lot District's ("PLD") adjacent property pursuant to the GDA. The GDA provides for the subsequent private redevelopment by WPC of Ripley II on the existing Progress Place and PLD properties, located just north of the New Progress Place. If Ripley II were subject to the school impact tax and school facility payment, the additional cost to the Ripley II project would be over $1,000,000. The pro forma for Ripley II and the New Progress Place was not based on accommodating this additional tax, and certainly not at such a late hour in the project's development approvals process. The entire rationale for the land values of the County and PLD properties and the terms negotiated and reflected in the GDA was predicated on Ripley II being exempt from the impact tax payments per the County Code.

As part of the proposed 2016 SSP, the Planning Board has proposed grandfathering language whereby in the former Silver Spring Enterprise Zone, so long as a project receives approval of its preliminary plan of subdivision within one year of the effective date of the 2016 SSP (which effective date is proposed to be November 15, 2016), such project would not be subject to the proposed reinstatement of the school impact tax and school facility payment so long as its preliminary plan remains valid. While Bill 37-16 is intended (we believe) to provide this grandfathering, we note that the language of the Bill is not consistent with the Planning Board's recommended grandfathering set out above - it is our understanding; however, that Council Staff (Dr. Orlin) will present corrective language to have the Bill be in accordance with the Planning Board's recommendations at the first PHED Committee worksession on the Bill. Assuming that this takes place and that the County Council recognizes that fairness and equity necessitate inclusion of grandfathering provisions into the Bill, and given that the Planning Board public hearing on Ripley II's preliminary plan is scheduled for September 22nd, we believe that Ripley II will remain exempt from the school impact tax and school facility payment. However, we are submitting this written (and oral) testimony at this time to clearly establish that Ripley II cannot survive without grandfathering, and to convey the broader point of the difficult economics still facing development in the Silver Spring CBD and the fact that additional regulatory costs creates a volatile and unpredictable business climate in this County generally and in this CBD specifically.

WPC has demonstrated over the years a commitment to the redevelopment and the success of the Ripley District beyond any other private developer, having invested hundreds of millions of dollars in pursuing its vision for this area even before the turn of the century. The construction of the Progress Place Public/Private Project (as well as WPC's Ripley East, on which construction is anticipated to begin soon, and the recent completion of The Solaire, an existing mixed-use residential high-rise project developed and owned by WPC), is a vital piece in the Ripley District's continuing evolution and success (as well as the evolution and success of the entire redevelopment of the Silver Spring CBD). The grandfathering spelled out herein is mandatory to allow this vision to continue to become reality.

Thank you for your consideration of WPC's positions relative to this critically important matter.

Very truly yours,

LINOWES AND BLOCHER LLP

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Heather Dlhopolsky (CRD)

cc: Dr. Glenn Orlin
Mr. Charles Nulsen
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GREATER SILVER SPRING
CHAMBER OF COMMERCE

Testimony of
The Greater Silver Spring Chamber of Commerce
Bill 37-16 Transportation and School Impact Tax Amendments
Montgomery County Council Public Hearing
Tuesday, September 13, 2016

Council President Floreen, members of the Council, good evening. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. Our Chamber represents more than 400 member organizations, for which success depends on the continued growth and prosperity of downtown Silver Spring.

I come before you today to address the sections of Bill 37-16 which would alter the application of school impact taxes in former enterprise zones. I am here to urge you to strike those sections from the bill and make no changes in the treatment of former enterprise zones like Silver Spring.

As most of you know, the revitalization of Silver Spring occurred, in part, because of its designation as a State Enterprise Zone, in which special tax considerations were provided to businesses that chose to locate in the downtown area. Montgomery County further supported the redevelopment of Silver Spring by providing special tax incentives that made it cost effective for property owners to create new commercial and residential spaces that would contribute to the growth. That has all been very effective, but, as you have heard me say before, "We're not done yet."

Commercial development in Silver Spring has is at a virtual standstill. The only exception is United Therapeutics's expansion. Everything else is residential. Now, don't get me wrong. Residential is good. Bringing more people into Silver Spring to support the businesses already here is welcome. Indeed, Silver Spring is evolving into a "hip, very cool" place, especially for the millennial generation. We have the Metro. We have an evolving and growing nighttime economy. We have apartments that are affordable for this young generation, and for seniors looking to down-size in an affordable, walkable community with lots of amenities.

The operative word here is "affordability," and that's where being exempt from certain impact taxes becomes so critical. The cost of constructing an identical building in Silver Spring, or Bethesda, or elsewhere in the County is exactly the same. But because Silver Spring is more affordable than, say Bethesda, the return on development investment is much lower.

Why do I set up a comparison between Silver Spring and Bethesda, as opposed to elsewhere in the County? Because both have similar qualities that make them attractive. They are "close-in," immediately on the Red Line, and have an increasingly bustling night life. But, given all this, Silver Spring has a long way to go to becoming the prime market it should be.

According to the latest census data, the average residential rent in Silver Spring is more than $500 lower than that in Bethesda. Further, a comparison of average rents on the multifamily properties built in Silver Spring and Bethesda over the past eight years shows that average rents in Silver Spring are 23% lower than in Bethesda.

8601 Georgia Avenue, Suite 203, Silver Spring, Maryland 20910

So, why would a developer choose to build apartments in Silver Spring, when there is more money to be made in Bethesda and is easier for a developer to arrange financing? Because Silver Spring has an equalizer – the exemption from transportation and school impact taxes. This exemption has and is an incentive for further growth and development in Silver Spring. And that is why it should not be taken away.

But now, let's take a look at this legislation from another perspective. Let's look at it, not for how it will affect the continued redevelopment of Silver Spring, or the cost of doing business for private property owners. Let's look at it for what it will mean for Montgomery County in the long term. Yes, eliminating the exemption will mean income for the County from one-time payments of these impact taxes. But at what cost? An increase in the developer's upfront costs will have to be offset by finding savings somewhere. This will likely be in the quality of the units or the finishes. The result is likely to lower the potential rental income, which lowers the general property tax that the County can collect. And this decrease is not just a one-time thing. It affects the property value for years to come, dramatically reducing the expected income the County will realize from the developed property.

And, what if the property owners cannot get financing to redevelop, or decide that it is just not worth the investment. Silver Spring AND Montgomery County both lose. The much needed affordable housing that is included in redevelopment projects will not be built. And, the road improvements, environmental enhancements to control storm water and run-off, and creation of new public spaces will not happen.

For all these reasons, we urge you to make no change in the exemption for former enterprise zones. However, if you decide that a change must be made, we urge you to approve the Planning Board's proposal to continue the exemption for existing approvals and phase out the exemption for new development in Silver Spring (attached). In order to clarify and better reflect what we believe was the Board's intent, we recommend an amendment (attached) that specifies continuing the current exemption for existing preliminary plan approvals and their amendments, and timing the four-year phase in for new approvals to begin with the date of the Subdivision Staging Policy adoption.