Montgomery County Council

Committee: Joint
Staff: Pam Dunn, Senior Legislative Analyst; Glenn Orlin, Senior Analyst; Robert Drummer, Senior Legislative Attorney
Purpose: To make preliminary decisions – straw vote expected
Keywords: #subdivision staging policy, impact tax, recordation tax

AGENDA ITEM #1
November 12, 2020
Worksession

SUBJECT

2020-2024 Subdivision Staging Policy
Bill 37-20, Subdivision - Preliminary Plan - Adequate Public Facilities – Amendments
Bill 38-20, Taxation - Development Impact Taxes for Transportation and Public School Improvements - Amendments
Expedited Bill 39-20, Taxation - Recordation Tax - Amendments

EXPECTED ATTENDEES

Casey Anderson, Planning Board Chair
Gwen Wright, Tanya Stern, Jason Sartori, Lisa Govoni, Hye-Soo Baek, Eric Graye and David Anspacher, Planning Department
Meredith Wellington, Office of the County Executive
Essie McGuire and Adrienne Karamihas, Montgomery County Public Schools (MCPS)
Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)
David Platt and Estela Boronat de Gomes, Department of Finance

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

There have been 11 Committee worksessions and six Council worksessions. This is the last scheduled worksession on the Planning Board Draft Subdivision Staging Policy and related bills. Final action is tentatively scheduled for November 16.

DESCRIPTION/ISSUE

The issues are described in detail in the attached the staff reports.

<u>This report contains:</u>

Staff report

AGENDA ITEM #1
November 12, 2020

M E M O R A N D U M

November 11, 2020

TO: County Council

FROM: Pamela Dunn, Senior Legislative Analyst
Glenn Orlin, Senior Analyst
Robert H. Drummer, Senior Legislative Attorney

SUBJECT: 2020-2024 Subdivision Staging Policy (SSP), Bill 37-20 – Subdivision, APF Amendments, Bill 38-20 - Development Impact Taxes for Public School Improvements, and Expedited Bill 39-20 - Recordation Tax Amendments

PURPOSE: Worksession

Expected Attendees for this Worksession:
Casey Anderson, Planning Board Chair
Gwen Wright, Jason Sartori, Lisa Govoni, and Eric Graye, Planning Department
Meredith Wellington, Office of the County Executive
Christopher Conklin, Gary Erenrich, and Andrew Bossi, Department of Transportation (DOT)
Mary Beck, Pofen Salem, and Veronica Jaua, Office of Management and Budget (OMB)
David Platt, and Estela Boronat de Gomes, Finance Department

Councilmembers: Please bring your copies of the SSP Draft and Appendices to this worksession.

This worksession is a continuation of the November 10 worksession. It will include a summary of the potential fiscal impact of all straw-votes and will also cover recommended changes to the recordation tax. Attached on © 1-18 is a chart showing the Council straw-vote recommendations. Attached on © 28-53 are updated drafts of Bills 37-20, 38-20, and 39-20. Final action is tentatively scheduled for November 16.

A. ***Summary of Council straw votes and potential fiscal impact***

To date, the Council has conducted six worksessions on the Subdivision Staging Policy and related bills. Before that, 11 Committee worksession were held. Attached on © 1-18 is a chart showing the Planning Board, Committee, and Council straw-vote recommendations. Below are two tables showing the revenue impacts of these straw-vote decisions. It is important to note that these estimates are based on the pipeline of approved development. These estimates are not a forecast of revenue. The pipeline analysis provides a comparison of the relative impacts (magnitude and direction) of different decisions across different scenarios using one consistent dataset. The pipeline, which changes on a weekly basis, includes projects that may never be built, and has no set timeframe for development, should not be interpreted as a forecast. However, the analysis provides useful information regarding the nature of change that can be expected by the proposed recommendations.

The first table includes information on potential changes in revenue associated with changes to the school impact tax based on the Council straw votes to date. The Utilization Premium Payment (UPP) revenue included below is based on setting the UPP at 40, 80, and 120 percent of the applicable impact tax at the 105, 120, and 135 percent utilization thresholds, respectively.

SCHOOL IMPACT TAX PIPELINE REVENUE ESTIMATES		
	Current Rates and Exemptions	**Council Straw Vote Recommendations**
Standard Impact Tax Rates	$448,159,659	$273,964,399
MPDU Exemption	($57,808,228)	($34,850,988)
Desired Growth and Investment Areas	$0	$0
AR Zone	$0	$0
Active Enterprise Zone Exemption	($13,186,738)	($7,922,366)
Former Enterprise Zone Exemption	($21,834,108)	$0
Opportunity Zone Exemption	$0	($27,700,473)
25% Affordable Exemption - Additional MPDUs	($2,694,758)	($2,233,379)
25% Affordable Exemption - Market Rate Units	($16,572,920)	($10,462,752)
IMPACT TAX REVENUE	**$336,062,908**	**$190,794,441**
Utilization Premium Payments (FY21)	$0	$38,007,931
IMPACT TAX + UPP REVENUE	**$336,062,908**	**$228,802,372**
Moratorium Impact Tax Loss	($29,010,428)	$0
Moratorium UPP Loss	$0	$0
MORATORIUM ADJUSTED REVENUE	**$307,052,479**	**$228,802,372**
Annual Amount 10yr Buildout (3683 units/year)	$30,705,248	$22,880,237
Annual Large Home Premium	$1,663,385	$0
ANNUAL REVENUE	**$32,368,633**	**$22,880,237**
DIFFERENCE FROM CURRENT		**($9,488,396)**

As noted above, the potential revenue from the UPP will change annually with the adoption of the Annual School Test and corresponding changes in school adequacy. Planning staff has provided a preliminary look at the FY22 Annual School Test results[1] as a comparison to the FY21 results used in the UPP calculation above. Using the FY22 school test, the pipeline UPP revenue falls from $38,007,931 to $11,914,964. The annualized revenue falls from $22,880,237 to $20,270,941, which is a decrease of

[1] Based on the recently released FY22 Capital Budget for Montgomery County Public Schools (MCPS)

$2,609,297. This means that the potential loss in annual revenue resulting from changes in the SSP and school impact taxes, using FY21 and FY22 school test results, is between $9.5 and $12.1 million.

The second table includes information on potential changes in revenue associated with changes to the transportation impact tax based on the Council straw votes to date.

TRANSPORTATION IMPACT TAX PIPELINE REVENUE ESTIMATES		
	Current	**Council**
Standard Impact Tax Rates	$682,204,845	$681,042,928
DGIA Discount	$0	($130,836,661)
MPDU Exemption	($35,310,750)	($30,703,359)
Active Enterprise Zone Exemption	($5,960,931)	($5,510,807)
Former Enterprise Zone Exemption	($23,803,977)	$0
Opportunity Zone Exemption	$0	($86,539,214)
25% Affordable Exemption - Additional MPDUs	($1,917,879)	($1,917,879)
25% Affordable Exemption - Market Rate Units	($11,742,836)	($4,559,055)
IMPACT TAX REVENUE	**$603,468,472**	**$420,975,954**
Annualize/Correct for Credits (/60)*	**$10,057,808**	**$7,016,266**
DIFFERENCE FROM CURRENT		**($3,041,542)**
* Current annual transportation impact tax revenue after credits is about $10 million per year. To get this into comparable scale, total revenue has been divided by 60 here.		

B. <u>Recommended Changes to the Recordation Tax</u>

General history of recordation taxes for the CIP. Recordation taxes are levied under Md. Tax-Property Code §§12-101 to 12-118, as amended. The tax applies to the principal amount of the debt secured by a mortgage or deed of trust. When a mortgage is refinanced, the tax applies to the amount of the principal debt that is greater than the principal remaining on the original debt.

The County has levied a recordation tax for many decades, with the proceeds used to supplement the General Fund. At the beginning of this century the rate was $2.20 per $500, with the first $50,000 of a recordation exempt. In 2004, the County began to levy a $1.25 per $500 increase to the tax that could be used for any MCPS capital project or a Montgomery College information technology capital project; this has been referred to as the School Increment to the recordation tax.

In 2008, the Council began to levy a third tier—the so-called Recordation Tax Premium—at $1.55 per $500 on the amount a recordation exceeded $500,000. Half of the Premium's revenue is allocated to the County Government CIP (e.g., transportation, public safety, library, recreation, and general government projects) and the other half for rental assistance programs for low-to-moderate income households. During the recession years of FYs10-11, the Premium funds were directed to the General Fund instead.

In 2016, the Council reduced the rate associated with the General Fund allocation from $2.20 to $2.08 and increased the School Increment rate from $1.25 to $2.37. It also increased the Premium rate from $1.55 to $2.30. Revenue collected since FY13 from the School Increment and Premium is shown below:

Revenue from Recordation Taxes since FY 2013

Year	School Increment	Premium[2]
FY13	$27,640,951	$18,601,744
FY14	$24,948,565	$15,993,814
FY15	$26,147,938	$17,147,580
FY16	$28,930,069	$19,158,439
FY17	$57,826,469	$30,836,056
FY18	$55,495,916	$25,872,555
FY19	$62,274,141	$32,049,271
FY20	$65,652,722	$36,751,680

The Planning Board recommendation for changes to the recordation tax, Rec. 6.9 (pp. 101-103; App. Q, pp. 122-124), suggests increasing the tax to provide additional funding for school construction and the County's Housing Initiative Fund. The table below highlights the current recordation tax steps and rates and the respective funding targets and compares these to the Planning Board's recommended modifications.

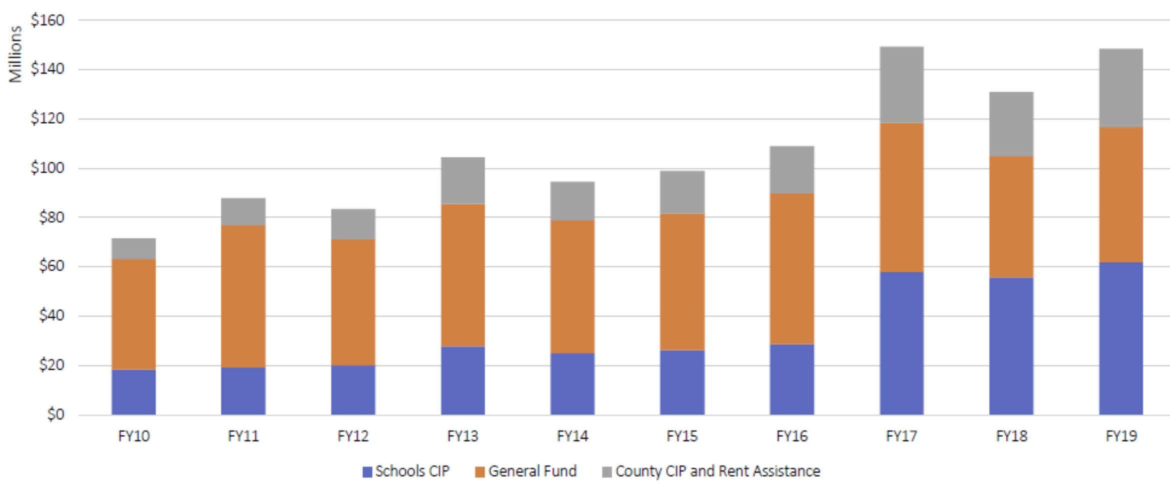
Past, Current, and Planning Board Proposed Changes to the Recordation Tax			
	Prior to September 2016	Current Recordation Tax	Planning Board Proposed
Exemptions	• First $50,000 of consideration payable, if it is the homebuyer's principal residence	• First $100,000 of consideration payable, if it is the homebuyer's principal residence	• First $100,000 of consideration payable, if it is the homebuyer's principal residence • First $500,000 of consideration payable, if the purchaser is a first-time home buyer and it is the homebuyer's principal residence
For each $500 that the sales price exceeds $100,000	• $1.25 to the CIP for Schools • $2.20 to the County's General Fund	• $2.37 to the MCPS CIP • $2.08 to the County's General Fund	• $2.87 to the MCPS CIP • $2.08 to the County's General Fund
For each $500 that the sales price exceeds $500,000	• $1.55 split evenly between the County CIP and rental assistance	• $2.30 split evenly between the County's CIP and rental assistance	• $2.30 split evenly between the County's CIP and rental assistance • $0.50 to the MCPS CIP
For each $500 that the sales price exceeds $1,000,000	• Not Applicable	• Not Applicable	• $1 to the County's Housing Initiative Fund

[2] Half is used for funding County Government CIP projects and half for funding rental assistance programs.

Currently, the recordation tax provides $2.37 to the Montgomery County Public Schools (MCPS) Capital Improvements Program (CIP) for every $500 interval (or part thereof) above $100,000 in the sales price of a home. The Planning Board recommends increasing that component by 50 cents to $2.87. Additionally, the Board recommends adding a new 50 cent charge earmarked for the MCPS CIP for every $500 interval above $500,000. The Board is also recommending a charge of $1.00 for every $500 interval in excess of $1 million on single-family homes to be allocated to the Housing Initiative Fund (HIF) to support rental assistance. And finally, the Planning Board is proposing an exemption from the recordation tax for the first $500,000 in consideration for first-time home buyers.

In May 2016, the County Council adopted Bill 15-16, which dedicated more recordation tax revenue to the MCPS CIP; the portion dedicated to schools was increased from $1.25 for each $500 increment in sales price to $2.37. The impact of this change can be seen in Figure 44 in the Planning Board Draft, copied below.

Figure 44. Recordation Tax Revenue, FY2010 to FY2019.



It shows recordation tax funding for the schools CIP increased from approximately $29 million in FY2016 to almost $58 million in FY2017.

Since 2017, when the recordation tax rate was raised, the recordation tax has consistently generated much more revenue for the schools CIP than development impact taxes. Below are the collections of each for the past four years.

Collections		
Year	Recordation Tax	School Impact Tax
	$ millions	
2017	$57.8	$39.3
2018	$55.5	$20.8
2019	$62.3	$27.7
2020	$65.7	$22.9
Total	**$241.3**	**$110.7**
Source: Montgomery County Department of Finance		

In fact, the relative school impact tax collections from 2017-2020 was about 31 percent of the combined impact tax and recordation tax collections from this period (thus making recordation tax collections approximately 69 percent of the total). This is generally equivalent to the proportion of student enrollment growth from new development compared to student enrollment growth from the turnover of existing homes, suggesting, perhaps, that the relative revenue from these funding sources lines up fairly well with their relative impact on school facilities. In fact, the Approved FY21-26 CIP assumes that $447.2 million of resources for the MCPS CIP will be derived from the recordation tax, while only $121.3 million will come from the impact tax, thus making the recordation tax collections about 79% of the total of the two, and the school impact tax 21%.

The following tables are from the Fiscal Impact Analysis prepared by OMB and Finance (see © 23-27).

Recordation Tax	Funding Allocation	Current Rate	Proposed Rate Changes		
		FY19 Tax Collection	Additional Revenue for School CIP	Additional Revenue for MHI	Increases Related to Rate Increase
BASE - for each $500 that the sales price <$500K	General Fund	$ 54,465,614			$ -
	MCPS Capital Improvement	$ 62,038,090	$ 13,088,205		$ 13,088,205
PREMIUM -for each $500 that the sales price >$500K	MCPS Capital Improvement	$ 15,904,800	$ 6,915,087		$ 6,915,087
	Rent Assistance	$ 15,904,599			
MHI - for $500 that the sales price >$1M	Montgomery Housing Initiative (MHI)	$ -		$ 2,027,000	$ 2,027,000
	Total	**$ 148,313,103**	**$ 20,003,291**	**$ 2,027,000.00**	**$ 22,030,292**

The above table shows that the two 50 cent increases (one for sales prices less than $500,000 and one for sales prices greater than $500,000) for the MCPS CIP result in approximately $20 million in additional revenue based on FY19 collections. It shows the $1 increase for sales prices over $1 million results in just over $2 million in funding for the HIF.

Adding the first-time homebuyer exemption reduces the potential gains from the increases noted above. It should be noted that OMB's estimation of first-time home buyers is based on a study by The Housing Center of the American Institute that reported a 44.9 percent share of first-time homebuyers for Montgomery County in 2019. The Housing Center's report uses the U.S. Department of Housing and Urban Development (HUD) definition of a first-time homebuyer, "an individual who has not had an ownership interest in a principal residence (anywhere) for the previous three (3) years" as the basis for its estimation. However, Maryland Tax-Property Code Ann. §12-103 authorizes the County to exempt a first-time homebuyer from paying the recordation tax as follows:

> ***(3)*** *The governing body of a county or Baltimore City may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:*

(i)

1. *the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and*
2. *the residence will be occupied by the grantee as the grantee's principal residence; or*

(ii)

1. *the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and*
2. *the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.*

Thus, the HUD definition used in OMB's analysis may lead to a much larger first-time homebuyer group than the Maryland definition above limiting a first-time home buyer to someone who has never owned a principal residence in Maryland, but it is difficult to know. At the least, OMB's estimate of the revenue lost due to the proposed first-time homebuyer credit should be viewed with caution as the County is required to follow the State definition of a first-time homebuyer for this exemption. That said, below is a table that shows the estimated loss in revenue from the first-time homebuyer exemption.

2019 Home Sales	# of Sales	Average Sold Price (Est.)	Current Rate	Proposed Rate Changes			% Change
			Amount	Estimated Amount	Est. Exemption (1st $500K for 1st Homebuyer)	Total Amount	
>$100,000 to <$499,999	7,290	$ 330,062	$ 14,926,635	$ 16,603,785	$ (13,005,007)	$ 3,598,778	-76%
>$500K to <$999,999	4,247	$ 689,958	$ 26,010,445	$ 29,322,745	$ -	$ 29,322,745	13%
>$1M	1,180	$ 1,858,898	$ 25,848,050	$ 31,554,050	$ -	$ 31,554,050	22%
Total Residential	**12,717**	**$ 554,555**	**$ 66,785,130**	**$ 77,480,580**	**$ (13,005,007)**	**$ 64,475,573**	**-3%**

Of course, a decrease in revenue due to an exemption is expected; however, one consequence of the first-time homebuyer's exemption (regardless of magnitude) is a decrease to the General Fund. The table below shows the impact of the first-time homebuyer exemption by fund.

Recordation Tax Proposed Bill 39-20 - Annual Estimated Revenue changes by Fund Type		Forecast-"Proposed Rates" FY21-FY26
MCPS Capital Improvement increase	$ 12,463,015	$ 74,778,088
Montgomery Housing Initiative increase	$ 2,027,000	$ 12,162,000
General Fund Operating decrease	$ (5,464,730)	$ (32,788,381)
Grand Total Revenue increase	**$ 9,025,285**	**$ 54,151,707**

Several stakeholders weighed in regarding the proposed changes to the recordation tax. The Executive expressed concern with the motivation for raising the tax and the impact on the General Fund as a result of the first-time homebuyers exemption. Others whose testimony expresses concern or opposition to the proposed changes include the Apartment and Office Building Association of Metropolitan Washington, the Greater Capital Area Association of Realtors, and Lerch, Early and Brewer. However, several others, such as the League of Women Voters and several area residents, expressed support for the proposed changes, both the increase that could provide more funding for MCPS and the exemption for first-time homebuyers. The City of Gaithersburg requests that the County enter into a MOU with the City that would allow a portion of the Recordation Tax to be allocated to the City's Housing Initiative Fund.

Given the challenge in estimating the fiscal impact of the first-time home buyer exemption, the fact that any first-time homebuyer exemption will decrease funding for both the General Fund and MCPS, and the potential benefit of further analysis, Council staff recommends holding off on the first-time home buyer exemption at this time. Attached on ©54 are several scenarios showing possible changes to the Planning Board recommendations and the resulting MCPS CIP and HIF estimates, excluding the first-time homebuyer exemption. If ultimately the Council decides to grant a first-time home buyer exemption, Council staff recommends that it not apply to the portion of the tax allocated to the General Fund[3]. These funds are needed to sustain the programs funded in the Operating Budget.

Furthermore, Council staff does not recommend sharing a portion of Recordation Tax revenue with the City of Gaithersburg. This is a County-imposed tax, and the County's HIF can and has been used within the City for low- and moderate-income rental assistance.

C. ***Recent correspondence regarding transition date for the SSP***

The Council and Council staff received a letter from Washington Properties on November 11 requesting a delay in the effective date of the SSP citing concern with increased costs. Under the Council straw vote recommendations, there is no increase in the transportation impact tax or the school impact tax for this project, located in downtown Bethesda. There would be an 80 percent Utilization Premium Payment at the elementary level required should the project seek approval prior to the next Annual School Test. However, due to the decrease in the applicable school impact tax rate, the sum of the potential UPP and the updated tax remains *below* the current school impact tax rate. It is likely the elements of the SSP that would impact the proposed project after January 1 are the changes to the Local Area Transportation Review test. Under the new rules this project would no longer be required to submit a traffic study, but would be required to meet new standards related to pedestrian and bicycle adequacy.

This packet contains:	Circle #
Summary Chart of Planning Board, Committee and Council (straw vote) recommendations	1-18
Bill 38-20 and 39-20 Fiscal Impact Statements	19-27
Bill 37-20	28-31
Bill 38-20	32-49
Bill 39-20	50-53
Recordation Tax Scenarios	54
Letter from the City of Gaithersburg	55-56
Letter from Washington Properties	57-58
Updated School Impact Tax Rates	59

[3] Resulting in an exemption from those portions of the recordation tax collected for the MCPS CIP and rental assistance funding, but not the portion attributable to the General Fund.