

**MEMORANDUM**

July 29, 2016

TO: County Council

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

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

Bill 37-16, sponsored by Lead Sponsor Council President Floreen at the request of the Planning Board, is scheduled to be introduced on August 2, 2016. A public hearing is tentatively scheduled for September 13 at 7:30 p.m.

**Background**

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

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

This packet contains:

Bill 37-16

Legislative Request Report

Planning Board Transmittal Memorandum

Circle #

1

18

19

Bill No. 37-16  
Concerning: Taxation – Development  
Impact Tax – Transportation and  
Public School Improvements -  
Amendments  
Revised: July 28, 2016 Draft No. 1  
Introduced: August 2, 2016  
Expires: February 2, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

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

---

**AN ACT** to:

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

By amending

Montgomery County Code

Chapter 52, Taxation

Sections 52-47, 52-49, 52-53, 52-55, 52-57, 52-58, 52-59, 52-89, 52-90, 52-91, 52-93, and 52-94

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*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:*



- 28 (1) *[Metro Station: Friendship Heights, Bethesda CBD, Grosvenor,*  
 29 *White Flint, Twinbrook, Rockville Town Center, Shady Grove*  
 30 *Metro, Silver Spring CBD, Wheaton CBD, and Glenmont Metro*  
 31 *station policy areas, as defined in the most recent Subdivision*  
 32 *Staging policy, except as modified by paragraph (3) for the White*  
 33 *Flint policy area;*
- 34 (2) *Clarksburg: Clarksburg policy area, as defined in the most recent*  
 35 *Subdivision Staging Policy;*
- 36 (3)] *White Flint: The part of the White Flint Metro Station Policy Area*  
 37 *included in the White Flint Special Taxing District in Section 68C-*  
 38 *2; [and]*
- 39 (2) *Red Policy Areas: Bethesda CBD, Friendship Heights, Grosvenor,*  
 40 *Glenmont, Rockville Town Center, Shady Grove Metro Station,*  
 41 *Silver Spring CBD, Twinbrook, and Wheaton CBD Metro Station*  
 42 *Policy Areas;*
- 43 (3) *Orange Policy Areas: Bethesda/Chevy Chase, Chevy Chase Lake,*  
 44 *Clarksburg, Derwood, Gaithersburg City, Germantown Town*  
 45 *Center, Kensington/Wheaton, Long Branch, North Bethesda, R &*  
 46 *D Village, Rockville City, Silver Spring/Takoma Park,*  
 47 *Takoma/Langley, and White Oak Policy Areas;*
- 48 (4) *Yellow Policy Areas: Aspen Hill, Cloverly, Fairland/Colesville,*  
 49 *Germantown East, Germantown West, Montgomery*  
 50 *Village/Airpark, North Potomac, Olney, and Potomac Policy*  
 51 *Areas; and*
- 52 (5) *Green Policy Areas: Damascus, Rural East, and Rural West Policy*  
 53 *Areas.*

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

56 (d) Reserved.

57 \* \* \*

58 **52-53. Restrictions on use and accounting of development impact tax funds.**

59 \* \* \*

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

64 **52-55. Credits.**

65 \* \* \*

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

70 \* \* \*

71 **52-57. Tax rates.**

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

74

<b>Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)</b>				
<b>Land Use</b>	<b>Red Policy Areas (Metro Stations)</b>	<b>Orange Policy Areas</b>	<b>Yellow Policy Areas</b>	<b>Green Policy Areas</b>
<b>Residential Uses</b>				

SF Detached	\$3,653	\$10,959	\$18,266	\$29,225
MF Residential				
SF Attached	\$2,552	\$7,656	\$12,759	\$20,415
Garden Apartments	\$2,312	\$6,937	\$11,562	\$18,499
High - Rise Apartments	\$1,652	\$4,955	\$8,259	\$13,214
Multi-Family Senior	\$661	\$1,982	\$3,303	\$5,286
<b>Commercial Uses</b>				
Office	\$10.08	\$13.45	\$16.81	\$16.81
Industrial	\$5.01	\$6.69	\$8.36	\$8.36
Bioscience	\$0.00	\$0.00	\$0.00	\$0.00
Retail	\$8.97	\$11.96	\$14.95	\$14.95
Place of Worship	\$0.53	\$0.70	\$0.88	\$0.88
Private School	\$0.80	\$1.06	\$1.33	\$1.33
Hospital	\$0.00	\$0.00	\$0.00	\$0.00
Social Service Agencies	\$0.00	\$0.00	\$0.00	\$0.00
Other Non-Residential	\$5.02	\$6.69	\$8.36	\$8.36

75

I

**Tax per Dwelling Unit or per Square Foot of Gross Floor Area (GFA)**

<b><u>Land Use</u></b>	<b><u>Red Policy Areas (Metro Stations)</u></b>	<b><u>Orange Policy Areas</u></b>	<b><u>Yellow Policy Areas</u></b>	<b><u>Green Policy Areas</u></b>
<b><u>Residential Uses</u></b>				
<u>SF Detached</u>	<u>\$3,653</u>	<u>\$10,959</u>	<u>\$18,266</u>	<u>\$29,225</u>
<u>MF Residential</u>				

<u>SF Attached</u>	<u>\$2,552</u>	<u>\$7,656</u>	<u>\$12,759</u>	<u>\$20,415</u>
<u>Garden Apartments</u>	<u>\$2,312</u>	<u>\$6,937</u>	<u>\$11,562</u>	<u>\$18,499</u>
<u>High - Rise Apartments</u>	<u>\$1,652</u>	<u>\$4,955</u>	<u>\$8,259</u>	<u>\$13,214</u>
<u>Multi-Family Senior</u>	<u>\$661</u>	<u>\$1,982</u>	<u>\$3,303</u>	<u>\$5,286</u>
<b><u>Commercial Uses</u></b>				
<u>Office</u>	<u>\$10.08</u>	<u>\$13.45</u>	<u>\$16.81</u>	<u>\$16.81</u>
<u>Industrial</u>	<u>\$5.01</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>
<u>Bioscience</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Retail</u>	<u>\$8.97</u>	<u>\$11.96</u>	<u>\$14.95</u>	<u>\$14.95</u>
<u>Place of Worship</u>	<u>\$0.53</u>	<u>\$0.70</u>	<u>\$0.88</u>	<u>\$0.88</u>
<u>Private School</u>	<u>\$0.80</u>	<u>\$1.06</u>	<u>\$1.33</u>	<u>\$1.33</u>
<u>Hospital</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Social Service Agencies</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Other Non-Residential</u>	<u>\$5.02</u>	<u>\$6.69</u>	<u>\$8.36</u>	<u>\$8.36</u>

76

77

(b) For any development located in the White Flint Impact Tax District, the

78

tax rates are:

79

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

81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93

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

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

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

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

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

106 **52-58. Use of impact tax funds.**

107 Impact tax funds may be used for any:

- 108 (a) new road, widening of an existing road, or total reconstruction of all or  
 109 part of an existing road required as part of widening of an existing road,  
 110 that adds highway or intersection capacity or improves transit service or  
 111 bicycle commuting, such as bus lanes or bike lanes;
- 112 (b) new or expanded transit center or park-and-ride lot;
- 113 (c) bus added to the Ride-On bus fleet, but not a replacement bus;
- 114 (d) new bus shelter, but not a replacement bus shelter;
- 115 (e) hiker-biker trail or other bike facility used primarily for transportation;
- 116 (f) bicycle locker that holds at least 8 bicycles;
- 117 (g) bikesharing station (including bicycles) approved by the Department of  
 118 Transportation;
- 119 (h) sidewalk connector to or within a major activity center or along an arterial  
 120 or major highway; or

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

122 **52-59. Transportation Mitigation Payment.**

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

130 (b) The amount of the Payment [for each building must be calculated by  
 131 multiplying the Payment rate by the total peak hour trips generated by the  
 132 development] is based upon the latest finding of adequacy for transit  
 133 accessibility for each Policy Area as approved and applicable under the  
 134 County Subdivision Staging Policy process. The initial findings of  
 135 applicability and adequacy as adopted on \_\_\_\_\_ are as follows: [.]

136

<u>Policy Area</u>	<u>Transit Accessibility Mitigation</u>
<b><u>Red Group</u></b>	
<u>Bethesda CBD</u>	<u>Exempt</u>
<u>Friendship Heights</u>	<u>Exempt</u>
<u>Grosvenor</u>	<u>Exempt</u>
<u>Glenmont</u>	<u>Exempt</u>
<u>Rockville Town Center</u>	<u>Exempt</u>
<u>Shady Grove Metro Station</u>	<u>Exempt</u>
<u>Silver Spring CBD</u>	<u>Exempt</u>
<u>Twinbrook</u>	<u>Exempt</u>
<u>Wheaton CBD</u>	<u>Exempt</u>
<u>White Flint</u>	<u>Exempt</u>
<b><u>Orange Group</u></b>	
<u>Bethesda/Chevy Chase</u>	<u>Adequate</u>

<u>Clarksburg</u>	<u>Inadequate, Full Mitigation</u>
<u>Derwood</u>	<u>Inadequate, Partial Mitigation</u>
<u>Gaithersburg City</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown Town Center</u>	<u>Inadequate, Full Mitigation</u>
<u>Kensington/Wheaton</u>	<u>Inadequate, Full Mitigation</u>
<u>North Bethesda</u>	<u>Inadequate, Full Mitigation</u>
<u>R&amp;D Village</u>	<u>Inadequate, Full Mitigation</u>
<u>Rockville City</u>	<u>Inadequate, Full Mitigation</u>
<u>Silver Spring/Takoma Park</u>	<u>Inadequate, Full Mitigation</u>
<u>White Oak</u>	<u>Adequate</u>
<b><u>Yellow Group</u></b>	
<u>Aspen Hill</u>	<u>Inadequate, Full Mitigation</u>
<u>Cloverly</u>	<u>Inadequate, Full Mitigation</u>
<u>Fairland/Colesville</u>	<u>Inadequate, Partial Mitigation</u>
<u>Germantown East</u>	<u>Inadequate, Full Mitigation</u>
<u>Germantown West</u>	<u>Inadequate, Full Mitigation</u>
<u>Montgomery Village/Airpark</u>	<u>Adequate</u>
<u>North Potomac</u>	<u>Inadequate, Full Mitigation</u>
<u>Olney</u>	<u>Inadequate, Full Mitigation</u>
<u>Potomac</u>	<u>Adequate</u>
<b><u>Green Group</u></b>	
<u>Damascus</u>	<u>Exempt</u>
<u>Rural East</u>	<u>Exempt</u>
<u>Rural West</u>	<u>Exempt</u>

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

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

- 143            (1)    Full Mitigation Required – 25% of tax due under this Article; and
- 144            (2)    Partial Mitigation Required – 15% of tax due under this Article.

145            The rate must be set by Council resolution, including a resolution that  
 146            amends the Subdivision Staging Policy. [The Director of Finance must  
 147            adjust the then-applicable Payment rate as of July 1 of 2015 and each later  
 148            odd-numbered year by the annual average increase or decrease in a

published construction cost index specified by regulation for the two most recent calendar years to the nearest multiple of \$10. The Director must publish the amount of this adjustment in the County Register not later than May 1 of each odd numbered year. The Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the Payment rate or set different rates for different types of development.]

\* \* \*

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

\* \* \*

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

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

- (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville;
- (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size;
- (3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;
- (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

- 176 (5) any non-exempt dwelling unit in a development in which at least  
 177 25% of the dwelling units are exempt under paragraph (1), (2), (3),  
 178 or (4), or any combination of them; and
- 179 (6) any development located in an enterprise zone designated by the  
 180 State or in an area previously designated as an enterprise zone  
 181 based upon the length of time since the expiration of its enterprise  
 182 zone status. Within 1 year of its expiration, a full exemption must  
 183 apply. Within 2 years of its expiration, 25% of the applicable  
 184 development impact tax must apply. Within 3 years, 50% of the  
 185 applicable development impact tax must apply. Within 4 years,  
 186 75% of the applicable development impact tax must apply. A  
 187 project within an area previously designated as an enterprise zone  
 188 must be required to pay 100% of the applicable development  
 189 impact tax for public school improvements beginning 4 years after  
 190 its expiration.

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

- 192 (1) any reconstruction or alteration of an existing building or part of a  
 193 building that does not increase the number of dwelling units of the  
 194 building;
- 195 (2) any ancillary building in a residential development that:  
 196 (A) does not increase the number of dwelling units in that  
 197 development; and  
 198 (B) is used only by residents of that development and their  
 199 guests, and is not open to the public; and
- 200 (3) any building that replaces an existing building on the same site or  
 201 in the same project (as approved by the Planning Board or the

202 equivalent body in Rockville or Gaithersburg) to the extent of the  
 203 number of dwelling units of the previous building, if:

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

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

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

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

219 **52-90. Tax rates.**

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

221

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

222

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

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

228 (d) [Any non-exempt dwelling unit located in a development where at least  
 229 30% of the dwelling units are exempt from this tax under Section 52-  
 230 89(c)(1)-(4) must pay the tax at 50% of the applicable rate in subsection  
 231 (a).]

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

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

247 **52-91. Accounting; use of funds.**

248 \* \* \*

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

- 250 (1) new public elementary or secondary school;
- 251 (2) addition to an existing public elementary or secondary school that
- 252 adds one or more teaching stations; [or]
- 253 (3) modernization of an existing public elementary or secondary
- 254 school to the extent that the modernization adds one or more
- 255 teaching stations; or
- 256 (4) acquisition of land for a public elementary or secondary school.
- 257 (e) Any funds collected for the acquisition of land must be placed in the
- 258 MCPS Advance Land Acquisition Revolving Fund (ALARF), to be used
- 259 for the purchase of property for new public schools.

**52-93. Credits.**

- 261 (a) Section 52-55 does not apply to the tax under this Article. A property
- 262 owner must receive a credit for constructing or contributing to an
- 263 improvement of the type listed in Section 52-91(d), including costs of site
- 264 preparation. [A credit must not be allowed for the cost of any land
- 265 dedicated for school use, including any land on which the property owner
- 266 constructs a school] A property owner may receive credit for land
- 267 dedicated for a school site, if:
  - 268 (1) the density calculated for the dedication area is excluded from the
  - 269 density calculation for the site; and
  - 270 (2) the Montgomery County School Board agrees to the site
  - 271 dedication.
- 272 (b) If the property owner elects to make a qualified improvement or
- 273 dedication, the owner must enter into an agreement with the Director of
- 274 Permitting Services, or receive a development approval based on making
- 275 the improvement, before any building permit is issued. The agreement
- 276 or development approval must contain:

- 277 (1) the estimated cost of the improvement or the fair market value of
- 278 the dedicated land, if known then;
- 279 (2) the dates or triggering actions to start and, if known then, finish the
- 280 improvement or land transfer;
- 281 (3) a requirement that the property owner complete the improvement
- 282 according to Montgomery County Public Schools standards; and
- 283 (4) such other terms and conditions as MCPS finds necessary.

- 284 (c) MCPS must:
- 285 (1) review the improvement plan or dedication;
- 286 (2) verify costs or land value and time schedules;
- 287 (3) determine whether the improvement is a public school
- 288 improvement of the type listed in Section 52-91(d) or meets the
- 289 dedication requirements in subsection (a);
- 290 (4) determine the amount of the credit for the improvement or
- 291 dedication; and

292 \* \* \*

293 **52-94. School Facilities Payment.**

294 \* \* \*

295 (b) The amount of the Payment for each building must be calculated by

296 multiplying the Payment rate by the latest per-unit student yield ratio for

297 any level of school or individual school found to be inadequate for the

298 purposes of imposing the School Facilities Payment in the applicable

299 Subdivision Staging Policy and for that type of dwelling unit and

300 geographic area issued by MCPS.

301 (c) The Payment rates must be set by Council resolution. The Director of

302 Finance must adjust the then-applicable Payment rates [as of] on July 1

303 of [2015 and] each [later odd- numbered] even-numbered year, or on

304 November 15, in accordance with the update to the Subdivision Staging  
 305 Policy by using the latest student generation rates and school construction  
 306 cost data. The Director must calculate the adjustment to the nearest  
 307 multiple of one dollar. [based on the construction cost of a student seat  
 308 for each school level as certified by the Superintendent of Montgomery  
 309 County Public Schools for the two most recent calendar years, to the  
 310 nearest multiple of \$10.] The Director must publish the amount of this  
 311 adjustment in the County Register not later than May 1 of each [odd  
 312 numbered] even-numbered year. The Council by resolution, after a  
 313 public hearing advertised at least 15 days in advance, may increase or  
 314 decrease the Payment rate or set different rates for different types of  
 315 housing unit. The Council must not increase or decrease the rate by more  
 316 than 5%.

\* \* \*

318 *Approved:*

319

---

Nancy Floreen, President, County Council

Date

320 *Approved:*

321

---

Isiah Leggett, County Executive

Date

322 *This is a correct copy of Council action.*

323

---

Linda M. Lauer, Clerk of the Council

Date

324

## LEGISLATIVE REQUEST REPORT

Bill 37-16

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

**DESCRIPTION:** The Bill would amend the law concerning the Development Impact Tax for Transportation and Public Schools.

**PROBLEM:** Development impact taxes were last calculated in 2007 based on infrastructure cost estimates current at that time.

**GOALS AND OBJECTIVES:** To update development impact tax calculations based on more recent cost data and information.

**COORDINATION:** Department of Permitting Services, Finance, County Attorney

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Pamela Dunn, Montgomery County Planning Board

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** None

July 2016



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

has → GO  
has → CL  
SOF  
LL  
has → MM

OFFICE OF THE CHAIR

**5043118**

July 27, 2016

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2016 JUL 27 PM 3:22

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

Dear Ms. Floreen:

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

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

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

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

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

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

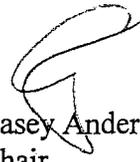
The Public Hearing Draft SSP report was published on May 19, 2016 and posted on the Planning Department Web page. A public hearing was held on June 2, 2016 to receive testimony on the proposed policy. Planning Board worksessions were held on June 9, June 16, June 23, June 28, and June 30, 2016. The Planning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

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

Ms. Nancy Floreen  
July 27, 2016  
Page 3

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey Anderson', written over the printed name.

Casey Anderson  
Chair

cc: County Executive Isiah Leggett  
Glenn Orlin

Enclosures