GO Item 2
January 29, 2015
**Worksession**

# MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 62-14, Taxation - Development Impact Taxes – Exemption – Ancillary Facilities

Bill 62-14, Taxation - Development Impact Taxes – Exemption – Ancillary Facilities, sponsored by then-Council President Rice, was introduced on November 25, 2014. After the Bill was introduced, Council President Leventhal and Councilmembers Floreen, Katz, and Riemer added themselves as co-sponsors.

Bill 62-14 would exempt from development impact taxes certain ancillary facilities in residential developments that do not increase the number of dwelling units in the development and are not open to the public, such as clubhouses, fitness centers, or administration buildings.

A public hearing was held on January 13, 2015, at which the only speaker was Philip Marks, representing the Leisure World Board of Directors, who supported the Bill. Mr. Marks noted that Leisure World had paid about $75,000 in impact taxes in 2005 for an accessory building after having their appeal of the tax denied. They now plan to build a new fitness center, restricted to current residents, for which the impact tax would amount to $60-90,000.

A fiscal impact statement, received from the Office of Management and Budget after the hearing, concluded that "the amount of square footage and revenue potentially affected by this legislation cannot be determined" because of a lack of historical data.

In Council staff's view, taxing these kinds of ancillary buildings, which are not open to the public and therefore would not add any outside traffic, is not justified by the purposes of the development impact tax – to assess new development a fair share of the cost of new or expended transportation facilities needed to serve that development. The school impact tax also should not be assessed because these ancillary facilities do not add new dwelling units and therefore do not increase the number of students in the development. **Council staff recommendation:** enact Bill 62-14 as introduced.

**Executive amendments** The County Executive, in a memo received after the hearing (see ©11-14), supported Bill 62-14 but urged the Council to further amend this Bill by, among other changes, deleting the term "social service provider" and replacing it with "charitable, philanthropic institution", and inserting the term "cultural institution" in the same rate category as private elementary and secondary schools. These terms were used in the recent zoning recodification, and the Executive suggested that these amendments take effect retroactively as of October 30, 2014, when the zoning rewrite took effect.

**Council staff does not recommend these amendments for several reasons.** *First,* although technically they fit within the scope of advertising for this Bill because it was advertised broadly (as most bills are, with a "generally amend..." clause), these amendments are substantive, effectively broadening the current law's exemptions, and have not been specifically advertised or made the subject of any hearing. Council staff doubts that any disinterested member of the public is even aware of them. *Second,* these amendments could potentially reduce the tax due in one or more upcoming development applications, and the Executive did not include any revenue loss estimates for them. *Third,* these amendments would complicate the passage of a relatively simple bill, one that the management of Leisure World has sought for some time. *Fourth,* making tax law changes, even those that broaden exemptions, retroactively as the Executive urged is uncommon and, in our view, appropriate only when those changes are urgently needed, and we have not been given any reason why that is the case here.

Thus, rather than attach these amendments to the pending Bill, **Council staff recommends** that, if the Executive wants to pursue them, he should transmit them to the Council to be introduced as a separate Bill, to be given its own public hearing.



F:\LAW\BILLS\1462 Impact Tax - Exemption - Ancillary Facilities\GO Memo.Docx

Bill No. 62-14
Concerning: Taxation – Development Impact Taxes – Exemptions – Ancillary Facilities
Revised: 11-18-14 Draft No. 1
Introduced: November 25, 2014
Expires: May 25, 2016
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. ____, Laws of Mont. Co. ______

# COUNTY COUNCIL
# FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Rice

**AN ACT** to:
(1) exempt from development and school impact taxes certain ancillary facilities in certain residential developments; and
(2) generally amend the law governing impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-49 and 52-89

| | |
|---|---|
| **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 52-49 and 52-89 are amended as follows:**

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

* * *

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

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the gross floor area of the building;

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

[(2)] (3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the gross floor area of the previous building, if:

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

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

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

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

* * *

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

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building;

(2) any ancillary building in a residential development that:

(A) does not increase the number of dwelling units in that development; and

(B) is used only by residents of that development and their guests, and is not open to the public; and

[(2)] (3) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the number of dwelling units of the previous building, if:

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

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

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

*   *   *

*Approved:*

Craig L. Rice, President, County Council    Date

*Approved:*

Isiah Leggett, County Executive    Date

*This is a correct copy of Council action.*

Linda M. Lauer, Clerk of the Council    Date

## LEGISLATIVE REQUEST REPORT

Bill 62-14

*Taxation - Development Impact Taxes – Exemption – Ancillary Facilities*

| | |
|---|---|
| **DESCRIPTION:** | Would exempt from development impact taxes ancillary facilities in residential developments that do not increase the number of dwelling units in the development or attract members of the public, such as clubhouses, fitness centers, or administration buildings. |
| **PROBLEM:** | Under current interpretations of County law, development impact taxes could be charged for new or enlarged ancillary facilities in residential developments that do not increase the number of units in the development or the traffic to or from the development. |
| **GOALS AND OBJECTIVES:** | To clarify the application of the development impact taxes to certain ancillary facilities. |
| **COORDINATION:** | Finance Department, Department of Permitting Services |
| **FISCAL IMPACT:** | To be requested. |
| **ECONOMIC IMPACT:** | To be requested. |
| **EVALUATION:** | To be requested. |
| **EXPERIENCE ELSEWHERE:** | To be researched. |
| **SOURCE OF INFORMATION:** | Michael Faden, Senior Legislative Attorney, 240-777-7905 |
| **APPLICATION WITHIN MUNICIPALITIES:** | Applies only to County impact taxes, which apply Countywide. |
| **PENALTIES:** | Not applicable. |

**Fiscal Impact Statement**
**Bill 62-14 Development Impact Taxes – Exemption – Ancillary Facilities**

1. Bill Summary

   Bill 62-14 would exempt certain ancillary facilities in residential developments from development impact taxes. Structures that do not increase the number of dwelling units in the development and are not open to the public, such as clubhouses, fitness centers, or administration buildings, would be exempt from such taxes.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

   There will be a loss of tax revenue; however, the exact amount cannot be determined. The Bill will not change County expenditures.

   The County does not maintain data on development impact taxes collected for ancillary facilities as described in the legislation. Due to the absence of specific data for the square footage of ancillary facilities, a chart showing the development impact tax by square footage and impact tax area is provided to show potential lost revenue from exempting space previously subject to taxation. The square footage amounts shown below are illustrative; the amount of square footage and revenue potentially affected by this legislation cannot be determined.

**Impact Tax Rates by Area**

| Impact Tax by Building Area | Metro Station | Clarksburg | General |
|---|---|---|---|
| Other residential (per SF GFA) | $3.10 | $7.35 | $6.15 |

| Square Footage Amounts | Potential Lost Revenue Assuming Different Square Footage Amounts by Impact Tax Area for Bill 62-14 | | |
|---|---|---|---|
| | Metro Station | Clarksburg | General |
| 1,000 | $3,100 | $7,350 | $6,150 |
| 10,000 | $31,000 | $73,500 | $61,500 |
| 50,000 | $155,000 | $367,500 | $307,500 |
| 100,000 | $310,000 | $735,000 | $615,000 |
| 200,000 | $620,000 | $1,470,000 | $1,230,000 |

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

   No current or historical data is available for the revenue associated with this legislation.

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

   This is not applicable to this Bill.

5. Later actions that may affect future revenue and expenditures if the legislation authorizes future spending.

   This is not applicable to this Bill.

6. An estimate of the staff time needed to implement the legislation.

   Implementation of this Bill will require minimal staff time.

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

   This is not applicable to this Bill.

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

   This is not applicable to this Bill.

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

   The square footage of structures meeting the Bill's qualifications will affect the amount of revenue loss associated with this legislation. However, this is unpredictable given the lack of historical data.

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

    It is difficult to predict the potential lost revenue as there are no estimates of the revenue obtained from the associated square footage for the ancillary facilities that are proposed for exemption.

11. If a legislation is likely to have no fiscal impact, why that is the case.

    This is not applicable to this Bill.

12. Other fiscal impacts or comments.

    This is not applicable to this Bill.



7

13. The following contributed to and concurred with this analysis (enter name and dept.)

Robert Hagedoorn, Department of Finance

Michael Coveyou, Department of Finance

David Platt, Department of Finance

Mary Casciotti, Department of Finance

Hadi Mansouri, Department of Permitting Services

Elyse Greenwald, Office of Management and Budget

Dennis Hetman, Office of Management and Budget

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

1/23/15
Date



8

**Economic Impact Statement**
**Bill 62-14, Development Impact Taxes – Exemption-Ancillary Facilities**

**Background:**

This legislation would exempt from development impact taxes certain ancillary facilities in residential developments that do not increase the number of dwelling units in the development and are not open to the public, such as clubhouses, fitness centers, or administration buildings.

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

Department of Finance, Fiscal Management staff contacted the Department of Permitting Services (DPS) and Department of Finance Treasury staff to determine if any information is available as to the number of permits and square footage that are received for the types of structures to be included in the impact tax exemption.

According to DPS, since permit and square footage data are not specifically segregated, permits and square footage in the legislative category cannot be identified. Permit data are maintained by residential and commercial categories. Townhome developments which would have homeowner association sponsored facilities, such as swimming pools and fitness centers, are included in the residential category and apartments or multi-family structures which would have similar facilities are contained in the commercial category. Therefore, the total number of permits and associated square footage data for the ancillary facilities are not available.

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

Variables would be the number of new facilities being constructed and required permits as well as the number of facilities being permitted for redevelopment.
The location of the facilities being exempted from the impact tax is another variable with respect to the revenue loss of the County. The transportation impact tax has three non-residential tax rates per square footage for three geographical areas of the County. The Metro Station impact tax rate is $3.10 per sq. ft., for Clarksburg it is $7.35 per sq. ft. and for General Areas - other than Metro and Clarksburg - it is $6.15 per sq. ft. The transportation tax also has fifteen impact tax rates for the three geographical areas and five building types ranging from a minimum of $1,228 for a multifamily-senior residential dwelling unit in the Metro Station area to a maximum of $20,258 for a single-family detached residential dwelling unit in the Clarksburg area.

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

Bill 62-14 applies to ancillary buildings (community serving clubhouses, pool houses, workout rooms, party rooms, etc.) in a residential development that do not increase the number of dwelling units in the development and that are only for the use of residents and their guests. Transportation impact taxes for this type of use range between $3.10/sf to

$7.35/sf depending upon location. Therefore, for a 5,000 sq. ft. structure, the cost savings for a development or community would range between $15,500 and $36,750. For an existing community association, the added cost would be a direct pass through to home owners or renters. For a new community, this cost savings would likely have a small impact, but would result in avoided costs to either the developer or as pass-through to the purchasers.

Where communities are pressed for funds, this cost savings removes an impediment to community investment which maintains and enhances the property values and quality of life of a community.

For reasons discussed in #1 above, this legislation will reduce the County's revenue base but the specific impact is unknown.

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

This bill will have an economic impact; however, no precise estimate of the economic impact can be made as no data are available on the number and square footage of the possible future facility structures that would qualify for the exemption.

5. **The following contributed to or concurred with this analysis**: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance; Hadi Mansouri, DPS

Joseph F. Beach, Director
Department of Finance

1/20/15
Date

B 62-14

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

2015 JAN 14 AM 9:00

RECEIVED
MONTGOMERY COUNTY
COUNCIL

MF
CC
SBF
LL
BD
JZ
GO

Isiah Leggett
*County Executive*

MEMORANDUM

January 13, 2015

TO: George Leventhal, President, County Council
Roger Berliner, Councilmember
Marc Elrich, Councilmember
Nancy Floreen, Councilmember
Tom Hucker, Councilmember
Sidney Katz, Councilmember
Nancy Navarro, Councilmember
Craig Rice, Councilmember
Hans Riemer, Councilmember

FROM: Isiah Leggett, County Executive

SUBJECT: Bill 62-14, Taxation – Development Impact Taxes – Exemptions – Ancillary Facilities

I am writing to express my support for Bill 62-14 that would create a limited development impact tax exemption for ancillary buildings that do not increase the number of dwelling units in a subdivision and are dedicated to the use and enjoyment of the residents of the subdivision and their guests. This bill is consistent with the intent of development impact taxes and I believe that the ancillary buildings contemplated may actually help reduce the drain on transportation system capacity as the ancillary building serves the community and reduces the need for travel to areas outside of the community for the activities provided at the accessory building.

As the County Council considers Bill 62-14, I urge the Council to consider an amendment that would carry forward recent definitions adopted by the Council in the Zoning Rewrite (Zoning Text Amendment 13-04) and clarify an existing ambiguity within chapter 52 with respect to "social service provider" – a term that is defined but not actually used in Chapter 52. Specifically, Zoning Text Amendment 13-04 defines "Charitable, Philanthropic Institution," which reflects the concept of "social service provider." To further capture the Council's intent when that definition was created, I recommend adding a row to the table in Montgomery County Code Section 52-57 providing for the Charitable, Philanthropic Institution. I also recommend that Cultural Institutions, as defined in the Zoning Rewrite, be added to the table row providing for reduced rates for private elementary and secondary schools. The educational function of Cultural Institutions justifies treatment similar to private elementary and secondary schools. It would make sense for these changes to take effect as of the effective date of Zoning Text Amendment 13-04 (October 30, 2014).

As you consider the Bill, there are some clarifications that have been identified by Executive staff that may be beneficial. One question that staff has raised is why the exemption is needed for school impact taxes which are based upon dwelling units when, by definition, the ancillary building in the bill does not increase the number of dwelling units. Additionally, it may be advisable to substitute the term "subdivision" in place of "development" that is used in the bill and which has a specific definition in Montgomery County Code section 52-47.

Executive staff is available to work with you as you consider these amendments.

Attachment

Sec. 52-47. Definitions.

In this Article the following terms have the following meanings:

***

Capital improvements program (CIP) means the current adopted six-year capital improvements program.

Charitable, Philanthropic Institution means a private, tax-exempt organization whose primary function is to provide services, research, or educational activities in areas such as health, social service, recreation, or environmental conservation.

Cultural Institution means any privately owned or operated structure and land where works of art or other objects are kept and displayed, or where books, periodicals, and other reading material is offered for reading, viewing, listening, study, or reference, but not typically offered for sale. Cultural Institution includes a museum, cultural or art exhibit, and library.

Development means the carrying out of any building activity or the making of any material change in the use of any structure or land which requires issuance of a building permit and:

(1) Increases the number of dwelling units; or

(2) Increases the gross floor area of nonresidential development.

***

[[Social service provider means a locally-based, federally tax-exempt nonprofit direct provider of social services whose primary service area is Montgomery County.]]

Sec. 52-57. Tax rates.

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

*Editor's note—The current rates, in accordance with paragraph (f), below, can be obtained from the Department of Permitting Services, 240-777-6240.

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

| Building Type | Metro Station | Clarksburg | General |
|---|---|---|---|
| Single-family detached residential (per dwelling unit) | $ 2,750 | $ 8,250 | $ 5,500 |
| Single-family attached residential (per dwelling unit) | $ 2,250 | $ 6,750 | $ 4,500 |
| Multifamily residential (except high-rise) (per dwelling unit) | $ 1,750 | $ 5,250 | $ 3,500 |
| High-rise residential (per dwelling unit) | $ 1,250 | $ 3,750 | $ 2,500 |
| Multifamily-senior residential (per dwelling unit) | $ 500 | $ 1,500 | $ 1,000 |
| Office (per sq.ft. GFA) | $ 2.50 | $ 6 | $ 5 |
| Industrial (per sq.ft. GFA) | $ 1.25 | $ 3 | $ 2.50 |
| Bioscience facility (per sq.ft. GFA) | $ 0 | $ 0 | $ 0 |
| Retail (per sq.ft. GFA) | $ 2.25 | $ 5.40 | $ 4.50 |
| Place of worship (per sq.ft. GFA) | $ 0.15 | $ 0.35 | $ 0.30 |
| Private elementary and secondary school (per sq.ft. GFA) And cultural institutions | $ 0.20 | $ 0.50 | $ 0.40 |
| Hospital (per sq.ft. GFA) | $ 0 | $ 0 | $ 0 |
| Other nonresidential (per sq.ft. GFA) | $ 1.25 | $ 3 | $ 2.50 |
| Charitable, philanthropic institution | $ 0 | $ 0 | $ 0 |