



OFFICES OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

November 10, 2020

Dear Councilmembers,

I am writing regarding the Subdivision Staging Policy (SSP), which you have been reviewing in both committee and full Council sessions. You have heard from various Executive staff with their concerns, and I appreciate your working with them.

As you move to final consideration of the SSP, I would urge you to consider the following:

Revenue Loss. In this time of great budget uncertainty and great public need, this bill should not be reducing revenue to fund adequate infrastructure. If new development does not pay for the costs of infrastructure, then current and future residents, will pay a disproportionate share. As documented in your current Council packet, the changes in school and transportation impact taxes will be reduced about \$13 million per year. I understand that the lost revenue is proposed to be replaced by an increase in the recordation tax, but that revenue source (recordation tax) should, at the very least, be reserved for other needs. These needs could include covering COVID-related budget shortfalls or providing more local match for state aid for schools.

Regarding **transportation impact tax revenue reductions**, the November 10 packet (pg. 3) shows a transportation impact tax revenue reduction of over \$182 million from pipeline development, which, while widely acknowledged to be an unreliable estimate of the revenue generated from these taxes, does give a sense of the magnitude of potential revenue loss. The financial analysis translates this to a 30% reduction in annual revenues. If our County is to improve our competitiveness in attracting business and quality jobs and if we are to provide safer and more sustainable transportation options for our residents, we need to maintain and increase our ability to invest in transportation facilities that meet the needs of tomorrow. Reducing our revenues by lowering impact taxes runs counter to our need to invest and suggests an indifference to the consequences of further neglect of our transportation system. If the Council ultimately decides to adopt these impact tax reductions, I encourage immediate, focused exploration of other strategies so that our transportation system receives the funding that it so desperately needs, and real estate development pays its fair share. It is unfair to shift this burden to our property-owning residents when County residents have worked for years to get the County government to create a tax structure that brings in money for infrastructure from the projects that drive the need for that infrastructure. These costs should not be shifted back to tax-payers.

Local Area Policy Area Review (LATR) Tests

While new approaches to transit, pedestrian and bicycle tests appear to be promising, I profoundly disagree with the decision to remove consideration of traffic conditions in the Red Policy Areas. My concern is compounded by the coincident decision to expand the Red Policy Areas into communities that are newly unprotected from increased traffic, and that will no longer be studied, even when there is new development. Residents have the right to know what the impacts of decisions will be and obfuscating the impacts is simply wrong. Moreover, despite the canard that these tests are about roads, that is simply not true. Expanding roads is not the foregone solution, there are many important policies for reducing congestion. We look to tools such as setting mode share splits, using parking policy to drive shifts to transit and, most important, to actually provide the transit as ways to mitigate the impacts. Washington's business leaders have repeatedly cited transit as the number one impediment to economic development here, and have called on us to improve and expand transit – which we have largely failed to do. No one is seeking to create a major expansion of traffic capacity in these areas (nor could you even do that in our cores), but our residents deserve an honest assessment of the impact of new development on traffic conditions. On the basis of the LATR auto analysis, DOT understands what tools to employ, other than roads, to abate congestion. Again, this proposed County policy further shifts the responsibility for addressing the transportation impacts from the developers to the public, while simultaneously reducing the amount of public dollars available to address these problems.

Opportunity zones should not be exempted from impact taxes. Removing all impact taxes from opportunity zone areas is a large revenue loss not justified by policy. Revenue loss is justified only when it generates additional affordable housing, not when it generates market rate housing. As the COG study and other studies have shown, the greatest need is for more affordable housing. Additionally, the exemption of the Opportunity Zones will disincentivize the existing policy that allows exemption from impact taxes for projects with 25% MPDU; if impact taxes are automatically waived in opportunity zones, then the developer has no incentive to provide 25% MPDUs. Furthermore, the exemption will likely result in an increase in the cost of land in these areas because the exempted properties become more valuable due to the absence of impact taxes. I have attached the memo, dated November 2, from DHCA Director Aseem Nigam that addresses some of these concerns.

Purple Line stations should not be classified as Red policy areas for transportation impact taxes. I would urge you to adopt the recommendation of the Planning Staff and Council Staff to create Purple policy areas around the Purple Line Stations, rather than including them as Red policy areas. This is important because the Purple Line is fundamentally different from Metro in terms of frequency, speed, and capacity, and, most importantly, in terms of the location of Purple Line stations, most of which are in residential neighborhoods. The areas around most of the Purple Line stations do not resemble the other Red policy areas, which are either in commercial business districts--our established downtowns--or areas where suburban commercial development is being replaced with higher density transit-oriented development. Aside from the locations that are already Red policy areas, the Purple Line stations are mostly located in long-established, economically diverse residential communities. Declaring them as

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Red policy areas creates great uncertainty for the established residential communities that surround the Purple Line, and will increase development pressure on these neighborhoods. Potential redevelopment may also mean the loss of naturally occurring affordable housing. The concept of Purple Line policy areas represents a more appropriate treatment for these communities; it reflects the potential growth and development opportunities around the Purple Line stations, while preserving appropriate transportation standards for the existing communities and generating revenue to invest in the infrastructure needed to support the Purple Line. I strongly encourage the Council to reconsider its straw vote and adopt the Purple Policy area approach for these communities.

Emergency button. I understand that the Council voted unanimously to eliminate the moratorium related to schools, which was designed to exert pressure for funding for adequate facilities. I understand the concern about the moratorium, but like Councilmember Will Jawando, I believe that some sort of “emergency button” is necessary to signal a needed response to severe school overcrowding. Right now, the Council has set no outside cap on school overcrowding—it can go to 150% or even higher. Perhaps, the Council will consider higher Utilization Premium Payments (UPP) payments at the 150% level, and even adding another tier of payments at 165%.

In conclusion, the decisions you make in adopting this SSP will be extremely consequential when it comes to the ability of Montgomery County to meet the infrastructure needs of a growing population. I hope you will consider the above points before taking a final vote. Future growth with meaningful economic development is an important goal, and it will follow from our having a first class transportation system, first class schools, and opportunities for our residents to participate in the prosperity that, along with our diverse population, has been a hallmark of Montgomery County.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Elrich". The signature is fluid and cursive, with a large, stylized initial "M" and "E".

Marc Elrich



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Marc Elrich
County Executive

Aseem K. Nigam
Director
Executive

MEMORANDUM

TO: Pam Dunn, Senior Legislative Analyst
Montgomery County Council

FROM: Aseem Nigam, Director *AKN*
Department of Housing and Community Affairs

DATE: November 2, 2020

SUBJECT: County Growth Policy Proposed Impact Tax Exemption for Qualified
Opportunity Zone Developments

I am writing to express concerns about the County Growth Policy/Subdivision Staging Plan Planning Board Draft of July 30, 2020 recommendation for the extension of impact tax exemptions to all developments in a Qualified Opportunity Zones irrespective of affordability. Providing the exemption from impact taxes based solely on location in the Qualified Opportunity Zone will also eliminate the incentive to deliver 25% MPDUs to achieve the same benefit.

The exemption of impact taxes for residential developments in Qualified Opportunity Zones (QOZs) does not advance affordable housing objectives and will likely negatively impact availability of affordable housing in these census tracts. The federal capital gains benefits provide incentives for equity capital to invest in new construction residential development in the defined census tract, irrespective of affordability. As currently structured, Qualified Opportunity Zone investors target realizing capital gain tax benefits after ten years, which does not align with long-term affordable housing rent levels, creating specific advantage to market rate housing over affordable housing in these zones.

The areas in the County designated by the state as QOZs include areas with existing redevelopment incentives: Silver Spring and Wheaton CBDs; tracts abutting Rockville Pike between Twinbrook and Rockville; Montgomery College campus area in Gaithersburg; and the Longbranch/Langley Park Purple Line corridor. The County has made significant transit and amenity investments in these areas and exempting impact taxes would put additional pressure on affordability of existing housing.

Providing Impact Tax exemption on top of the QOZ federal tax incentives for market rate housing is inconsistent with the use of Impact Tax exemptions to address critical housing needs.

Office of the Director

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