GO Item 2
April 4, 2013
Worksession 2

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director
Linda McMillan, Senior Legislative Analyst

SUBJECT: **Worksession 2:** Bill 39-11, Taxation – Development Impact Tax - Exemptions

Bill 39-11, Taxation – Development Impact Tax - Exemptions, sponsored by Councilmembers Floreen and Rice, then-Council Vice President Navarro, and Councilmember Ervin, was introduced on December 6, 2011. Bill 39-11 would exempt the market-rate rental dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes.

A public hearing was held on January 24, 2012 (see testimony, ©17-24). Representatives of the Housing Opportunities Commission, Maryland-National Capital Building Industry Association, and Montgomery Housing Partnership all urged that the Bill be broadened to cover sale as well as rental units. Attorney Jody Kline also urged that the Bill exempt productivity housing units in non-residential zones. Jim Humphrey of the County Civic Federation opposed the Bill, suggesting that the Council revisit it when the County's fiscal situation improves. Also see the letter from the Walter Johnson cluster PTA on ©25-26, opposing the diversion of school impact tax funds.

A Government Operations and Fiscal Policy Committee worksession was held on February 25. Committee members directed Council staff to develop estimates of foregone impact tax revenue, assuming that the bill would not apply to already approved subdivisions or to any development on public land, and assuming various limits on the exemption available in a given year and various sunset provisions.

Fiscal impact estimates

OMB An OMB/Finance Department fiscal and economic impact statement (see ©5-14) concluded that the exemption allowed under this Bill could result in an impact tax revenue loss of as much as $56.7 million. Council staff believes that this estimate may be substantially overstated because, among other reasons:

- it assumed that no transportation impact tax credits would be granted on account of the housing built in specific areas with major transportation programs; and
- it appears not to take into account a provision in current law (County Code §52-90(d)) which reduces the school impact tax by 50% for any non-exempt dwelling unit located in a development where at least 30% of the dwelling units are MPDU's or other affordable units.

The OMB fiscal impact statement calculated that the impact tax revenue loss per added affordable housing unit in selected areas would range from $38,525 to $446,227, and would average $89,449. The breadth of these estimates suggests the difficulty of generating them. This also assumes, as OMB noted, that this exemption will give developers sufficient incentive to actually use it, about which Finance Department staff in the economic impact statement was skeptical (see ©11-14).

Council staff Using a simple method, Council staff initially estimated the impact tax revenue loss from a hypothetical 100-unit 2-bedroom garden apartment development, not located in an enterprise zone, in which the developer would increase the number of MPDU's from 15% to 25% to take advantage of the exemption in this Bill. We calculated the impact tax lost per each of the 10 added MPDU's, at current impact tax rates, to be $163,744.[1]

At the February worksession the Committee asked for Council staff's best estimate of the fiscal impact of Bill 39-11 if the Bill were amended to exclude both already-approved subdivisions and developments on public land (where the value of the land was reduced as part of a development agreement that requires a certain number of affordable units.) from its impact tax exemption. Council staff conferred with staffs from M-NCPPC (Richard DuBose and Roberto Ruiz), the Departments of Permitting Services (Reggie Jetter) and Finance (David Platt and Mike Coveyou), and the Office of Management and Budget (Mary Beck) in developing our assumptions and analysis.

One assumption we made is that the only developments that would take advantage of the exemption would be multi-family residential or multi-family mixed-use projects. The Bill as introduced exempts only rental units from the impact tax, and it is unlikely that a development of rental attached or detached single family homes would use this provision.

Another assumption we used is that no additional affordable housing units resulting from Bill 39-11 would occur in the next 4 years. Data from M-NCPPC and DPS indicate that 4 years is the average time between site plan approval and occupancy for multi-family residential buildings. If this Bill is enacted this spring, it likely would have no effect — and so, would not reduce impact tax revenue -- in FYs 14-17. The revenue loss would begin in FY18, the last year of the current CIP.

[1]The calculation was: impact taxes per unit (school $11,358 + transportation $7906 = total impact tax/unit $19264) x 85 tax-forgiven units = $1,637,440 total impact tax revenue loss/10 added MPDU's = $163,744 revenue loss per added MPDU.

M-NCPPC's Center for Research and Information Systems estimated that, under current master plans, about 55,000 multi-family units yet to be built are not already in the pipeline of approved subdivisions. During 2001-2010 only 5.3% of the units were built in what are now State-designated Enterprise Zones (EZ's), where impact taxes are not collected: Wheaton CBD, Long Branch, and Gaithersburg Town Center. However, this percentage does not include Silver Spring CBD, which is no longer an EZ but is treated as one for impact tax purposes. The State is considering establishing an EZ in Glenmont, and the County has already exempted the White Flint special taxing district from payment of the transportation impact tax.

Taking these factors into account, Council staff believes that about 15% of all multi-family units would not be subject to impact taxes, reducing the number of units in developments where impact taxes would be levied to 46,750. Assuming that all these developments must meet the minimum 12.5% MPDU requirement — and that MPDU's themselves are exempt from impact taxes, as the law provides —the impact tax would apply to about 40,900 units. Finally, the number of units in known multi-family dwellings to be built on County land — County Service Park West (Shady Grove) and the Public Service Training Academy (Great Seneca Science Corridor) — is about 2,700, bringing the number of units where the tax would be apply down to about 38,200.

The loss of impact tax revenue also depends on the split between garden apartments and high-rise units, since the rates differ between them. The rates projected to apply on July 1, when the 8.7% inflation index takes effect, are:

	Garden apartments	**High-rise apartments**
School Impact Tax	$12,346/unit	$5,234/unit
Transportation Impact Tax		
Metro Station Policy Areas	$4,297/unit	$3,090/unit
General District	$8,594/unit	$6,181/unit

During 2001-2010, about 20% of multi-family units were garden apartments with two or more bedrooms, and 80% were high-rise units (which, for impact tax purposes, also include studio and one-bedroom garden apartments). We assumed that only 25% of the 38,200 units would be located in the remaining, non-exempt Metro Station Policy Areas: Friendship Heights, Bethesda CBD, Grosvenor, Twinbrook, Rockville Town Center, and Shady Grove; and that the rest would be built elsewhere. Therefore, if all future multi-family developments were to take the exemption offered by this Bill, amounting to about 5,500 more affordable units over the rest of the County's buildout, the exemption would result in an aggregate impact tax revenue loss of $477 million, or about $87,000 of revenue for each added affordable unit. (Although calculated in a very different way, OMB's Fiscal Impact Statement estimated a revenue loss of about $89,000 for each added affordable unit.) Our calculations are shown below:

New affordable units: 38,200 total units x 0.125/0.875 = 5,457 ~ 5,500 affordable units

School tax lost: 38,200 total units x 0.20 garden units x $12,346/unit = $94.3 million
38,200 total units x 0.80 high rise x $5,234/unit = $160.0 million
Total = $254.3 million

Transportation tax lost:

38,200 total units x 0.25 Metro x 0.20 gardens x \$4,297/unit = \$8.2 million
38,200 total units x 0.75 General x 0.20 gardens x \$8,594/unit = \$49.2 million
38,200 total units x 0.25 Metro x 0.80 high rise x \$3,090/unit = \$23.6 million
38,200 total units x 0.75 General x 0.80 high rise x \$6,181/unit = \$141.7 million
Total = \$222.7 million

Of course, for other reasons not every developer would increase its share of affordable units in return for an exemption on its impact taxes. So the challenging part of any fiscal impact estimate is to hypothesize how many developers in a given time period would be likely to take this option. In our educated guess, not more than one building a year is likely to do so, and that developer is likely to be a mission-driven organization rather than a conventional developer.

Thus an alternative way to estimate this Bill's fiscal impact is to make an assumption about how many developments that use this option might be completed in any fiscal year and what a likely building might consist of. For example, if a 175-unit multi-family building has 6 efficiency units, 115 one-bedroom apartments, 50 two-bedroom apartments, and 4 three-bedroom apartments (this distribution is modeled after an existing building in Wheaton), the minimum requirement for MPDU is 22 units (12.5%). Revenue loss would be \$1.8 million if the building would be located in a Metro Station Policy area, or \$2.45 million if it would be in the General District. The cost for each additional MPDU (22) in the Metro Station Policy Area would be about \$81,600, and in the General District about \$111,520. Assuming that one such building would begin occupancy in FY18, then our revenue loss assumption would reduce the revenue estimates by about \$2.1 million, split between the transportation (\$1 million) and school (\$1.1 million) taxes.

Issues and options/Tentative Committee recommendations

At the February 25 worksession, Committee members discussed the following issues and made several tentative recommendations, subject to further review after receiving Council staff's fiscal impact estimates.

Balance In Council staff's view, the central issue this Bill raises is how best to allocate scarce County funds to promote affordable housing. The Draft 2012 Housing Policy, now before the Planning, Housing, and Economic Development Committee, includes action plans and recommendations that support increased incentives such as this Bill would provide. The Draft Policy recommends that the County should "explore financial and other incentives for high-rise rental development to make the construction of MPDU's more feasible, especially for projects providing more than the minimum number of MPDU's and for those providing units with more bedrooms", that the County should "create and design incentives that will lead to the construction of well-located affordable rental housing", and that the County should "consider incentives such as increased heights, additional density, waiver of transportation and school construction impact taxes and fees from the Washington Suburban Sanitary Commission

(WSSC), and other fees and taxes that contribute to increased cost of developing affordable housing."

The critical question then is whether an estimated $2 million is best spent to increase the number of MPDU's in any single applicable rental building, or to send an equal amount of funds to the HIF where they could be targeted as a grant or repayable loan for a specific project. The same amount of funds could also be allocated to increase the ceiling on non-HOC Payments in Lieu of Taxes (PILOT's). Many projects where the HIF is used to provide interim or low cost financing in exchange for additional MPDU's result in additional affordable housing at no or low cost to the County. Conversely, creating permanent affordable housing that does not depend on an ongoing subsidy for very low-income people can be costly on a per unit basis. Very low-income people are not generally able to be housed in a MPDU without an ongoing subsidy, and those units are unlikely to be built without a County contribution.

Possible modifications Committee members discussed ways to more narrowly channel this kind of exemption in order to make it a more efficient use of County funds. (No Committee member expressed interest in broadening the Bill's scope to include sale units, as several speakers at the hearing proposed.) Modifications to limit the exemption could include:

Publicly owned land Should developments on publicly owned land be eligible for an exemption? (Publicly-owned land, rather than only County-owned, would include, for example, school or WMATA property.) The tax exemption probably should not apply to developments on publicly owned land where the value of the land is part of a negotiated development agreement that requires more than the minimum number of affordable housing units. Similarly, should developments in the CR zone which receive extra density when they furnish more affordable housing units also be eligible for this kind of exemption?

Tentative Committee recommendation: exclude developments on publicly-owned land.

Applicability Should this exemption, if enacted, only apply to developments that have not already received preliminary subdivision approval or site plan approval? In staff's view, developments that have gone beyond those points arguably have already "made their pro forma's" and don't need further County assistance.

Tentative Committee recommendation: exclude developments that have already received subdivision or site plan approval.

Higher thresholds Is 25% the optimal amount to trigger an impact tax exemption? HOC and others that looked at this when this Bill was drafted noted that 25% was the highest the exemption could go and still let the numbers work to move forward with a development. HOC staff noted that the 25% ceiling came from "mission driven" developers. On the other hand, in Bill 11-12 last year the Council selected 30% as the level of affordable housing that would be substantial enough to shortcut the property disposition process, and DHCA is generally seeking at least 30% affordable housing in projects developed on publicly owned land.

Dollar or unit limits Should the law limit the number of units eligible for this exemption each year, or the amount of County funds allocated, much like the current system to set the level of payments in lieu of taxes (PILOT's)? Committee members expressed interest in setting either an annual unit limit or revenue loss limit, or both, but did not decide on any specific limits.

Zoning credits Committee members considered whether to exclude from this exemption developments that receive extra credits under a CR zone for providing more affordable housing, but did not decide

Sunset If this exemption approach (or any variant of it) is used, should it be reviewed after several years to see whether it has in fact accomplished its goals at a reasonable cost?

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CORRECTED COPY

Bill No. 39-11
Concerning: Taxation - Development Impact Tax - Exemptions
Revised: 12-6-11 Draft No. 3
Introduced: December 6, 2011
Expires: June 6, 2013
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. _____, Laws of Mont. Co.

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen, Rice, Council Vice President Navarro, And Councilmember Ervin

AN ACT to:
(1) exempt certain market-rate dwelling units from certain development impact taxes; and
(2) generally amend the law governing development 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:

Section 1. Sections 52-49 and 52-89 are amended as follows:

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

* * *

(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 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 rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; and

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

* * *

52-89. Imposition and applicability of tax.

* * *

(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 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 rental dwelling unit in a development in which at least 25% of the dwelling units are exempt under paragraph (1), (2), (3), or (4), or any combination of them; and

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

* * *

Approved:

Nancy Navarro, President, County Council | Date

LEGISLATIVE REQUEST REPORT

Bill 39-11
Taxation – Development Impact Tax - Exemptions

DESCRIPTION:	Exempts the market-rate rental dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes.
PROBLEM:	Need to encourage provision of affordable housing.
GOALS AND OBJECTIVES:	To create further incentives to increase the share of low- and moderate-income housing in new developments
COORDINATION:	Department of Permitting Services, Department of Housing and Community Affairs, Planning Board
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 Glenn Orlin, Deputy Council Staff Director, 240-777-7936
APPLICATION WITHIN MUNICIPALITIES:	Impact taxes apply County-wide.
PENALTIES:	Not applicable.

Fiscal Impact Statement
Council Bill 39-11
Taxation – Development Impact Tax - Exemptions

1. **Legislative Summary.**

   Bill 39-11 would exempt the rental market-rate dwelling units in any housing development which consists of at least 25% affordable housing units from the transportation and school development impact taxes they would otherwise have to pay.

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.**

   DPS examined several areas that have major rental housing projects in the pipeline and that are assumed to be moving forward. This analysis assumes anticipated development in three planning areas (Great Seneca Science Corridor (GSSC); White Flint; and Shady Grove-County Service Park West (CSWP)) and projects the lost impact tax revenue if *all potential* projects took advantage of the proposed bill.

Potential Lost Impact Tax Revenues under Maximum-Loss Scenario

Master/Sector Plan Area	Total Rental Units Supplied	Additional MPDUs	Loss in Transportation Impact Taxes	Loss in School Impact Taxes	Loss in Total Impact Taxes	Cost per Additional MPDU
GSSC	1,550	193	$10,728,442	$15,401,448	$26,129,890	$135,388
White Flint	3,266	408	N/A	$15,727,790	$15,727,790	$38,525
CSPW	1,114	33	$3,850,222	$11,062,692	$14,912,914	$446,227
Totals:	**5,390**	**635**	**$14,578,664**	**$42,191,130**	**$56,770,594**	**$89,449**[1]

Under the above scenario, the additional 635 affordable units provided under the waiver would result in $56,770,594 in lost impact tax revenues at an average cost of $89,449 per each additional MPDU constructed.

See Attachment A for sources, assumptions, methodologies, additional scenarios, and potential lost impact tax revenues projections.

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

   No additional expenditures are expected as a result of this bill. Illustrative revenue impacts are described above.

[1]Total lost impact tax revenues divided by total additional MPDUs of 635 units.

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

   Not applicable.

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

   Not applicable.

6. **An estimate of the staff time needed to implement the bill.**

   No additional staff time is needed from DHCA, DPS, and Finance.

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

   Not applicable.

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

   Not applicable.

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

   Revenues (or lost impact tax revenues) may be affected by changes in the impact tax rate. The quantity of additional MPDUs developers elect to build may also affect revenues (or lost impact tax revenues).

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

    The change in impact tax receipts is difficult to project. Impact tax revenues would vary, depending on the number of developers that elect to build under this waiver.

    Additionally, the market dictates whether projects will be condominium or rentals and it is difficult to predict what future shifts will be. If expected development in different plan areas changes from rental to fee simple sales, fewer projects would make use of the provisions of this bill.

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

    The fiscal impact of this bill is difficult to determine since it depends completely on the number of developers who avail themselves of this credit. A number of developers have indicated it is unlikely that the credit provides them with a sufficient incentive to build additional MPDUs (up to the 25% required for the waiver).

    If that is the case, then it is unlikely this bill will result in a significant fiscal impact as it will not achieve the stated goal of the legislation.

12. Other fiscal impacts or comments.

Not applicable.

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

Rick Nelson, Department of Housing and Community Affairs

Chris Anderson, Department of Housing and Community Affairs

Diane Schwartz Jones, Department of Permitting Services

Reginald Jetter, Department of Permitting Services

Mary Beck, Office of Management and Budget

Naeem Mia, Office of Management and Budget

J. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

1/18/12
Date

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Attachment A-1

Sources of Information:
1. Montgomery County Department of Housing Affairs (DHCA)
2. Montgomery County Department of Permitting Services (DPS)
3. Master Plans/Sector Plans for housing projects in GSSCMP, White Flint, and CSPW
4. Lost impact tax revenues are calculated by DPS based on current impact tax rates

Assumptions:
1. Developers to build to 25% of all units (in all projects) as MPDU under the legislative waiver
2. All units/projects are assumed to be rental units
3. No transportation impact tax for White Flint Area (current law)
4. All projects in White Flint are high-rise
5. Number of units are based on current Master/Sector plans or units under development

Methodologies:
DPS calculated lost impact tax revenues using the current impact tax rates as applied to all current or expected projects under development.

Attachment A-2

Potential Lost Impact Tax Revenues under Different Scenarios

Pipeline of recent GSSCMP applications (assumes developer plans at minimum MPDUs)	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1480 mfd units (mid-rise)	$10,238,270	$14,708,610	$24,946,880	185	$134,848
1480 mfd units (high-rise)	$7,312,865	$6,235,425	$13,548,290	185	$73,234
1550 mfd units (mid-rise)	$10,728,442	$15,401,448	$26,129,890	193	$135,388
1550 mfd units (high-rise)	$7,662,979	$6,533,955	$14,196,934	193	$73,559

GSSCMP Maximum-loss scenario	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1550 mfd units (mid-rise)	$10,728,442	$15,401,448	$26,129,890	193	$135,388

White Flint Sector Plan (based on sketch plans)	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
3266 mfd units	N/A	$15,727,790	$15,727,790	408	$38,525

County Service Park West	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Additional MPDUs	Potential Cost per Additional MPDU
1,114 mfd units	$3,850,222	$11,062,692	$14,912,914	33	$446,227

(6)

Attachment A-3

Potential Lost Impact Tax Revenues under Maximum-Loss Scenario

Master/Sector Plans	Total MFD units	Potential Additional MPDUs	Potential Loss in Transportation Impact Taxes	Potential Loss in School Impact Taxes	Potential Loss in Total Impact Taxes	Potential Cost per Additional MPDU
GSSCMP	1,550	193	$10,728,442	$15,401,448	$26,129,890	$135,388
White Flint Sector Plan	3,266	408	N/A	$15,727,790	$15,727,790	$38,525
County Service Park West	1,114	33	$3,850,222	$11,062,692	$14,912,914	$446,227
Totals:	**5,930**	**635**	**$14,578,664**	**$42,191,930**	**$56,770,594**	**$89,449**

Economic Impact Statement
Council Bill 39-11, Taxation – Development Impact Tax – Exemptions

Background:

1. This proposed legislation would exempt the market-rate dwelling units in any development which consists of at least 25% affordable housing units from the transportation and school development impact taxes. The goal of the proposed legislation is to create further incentives to increase the share of low- and moderate-income housing in the new development. Specially, Bill 39-11 (Bill) exempts "any non-exempt *rental* dwelling unit in a development in which at least 25% of the dwelling units are exempt."

   The analysis that follows is a determination of whether a developer of rental property would opt for the 25% exemption and is based on a number of economic assumptions and data sources.

2. The sources of information, assumptions, and methodologies used.

   Sources:

   Montgomery Department of Housing and Community Affairs (DHCA)
   National Apartment Association (www.naahq.org)
   "Determinants of Operating Costs of Multifamily Rental Housing", Jack Goodman, Hartrey Advisers, December 18, 2003.
   Engineering News Record
   McGraw-Hill Dodge Local Construction
   Metropolitan Regional Information System

   Assumptions:

   Current market rental rates for two high-rise developments (DHCA and Finance) with 250 units each.
   Current market rates for MPDUs (DHCA)
   Developments are located in the General County transportation area to employ the transportation impact tax rate for high-rise developments
   Gross operating profit margin for rental units (www.naahq.org and Goodman article)

   Methodologies:

   Gross operating profit margin is derived from data provided by www.naahq.org and Goodman article by subtracting operating expenses and capital expenditures per unit from revenue per rental unit and dividing the result into the revenue per rental unit to derive gross operating margin. That result is used to calculate gross profit margin per unit.

3. A description of any variable that could affect the economic impact estimates.
   a. Derivation of gross profit which is based on data based on a national survey and may or may not be truly reflective of the Washington Metropolitan Area or Montgomery County.
   b. Rental rates and MPDU rates are current rates and are not adjusted for inflation.

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

   The Bill could have an effect on the profitability of new rental development. However, this effect is based on the assumptions listed above. Those assumptions include: gross profit margin, impact tax rates, and rental rates – both market and MPDU.

   Using data provided by DHCA, Finance selected two sample properties located in the General County transportation impact tax district and calculated the gross profit margin (please see the tables, below).

Finance calculated the loss in *average annual gross profits* for a "new" rental development assuming 25 percent and 12.5 percent. For the two examples, Finance calculated an *average annual gross profit* of $2.6 million for the two properties providing 25 percent MPDUs, and slightly less than $2.8 million for the two properties providing 12.5 percent MPDUs. The impact tax fees are estimated at $3,321,750 (250 * $13,287/tax per unit) for the entire project. However, gross profits are higher than net profits or net income, therefore the book profits for the two properties will be less than the gross profits. Second, the gross profits are calculated based on a national survey and the gross profit margin used in this analysis may not reflect the actual gross profit margin for rental properties in Montgomery County. While the exemption of the impact taxes offset the loss of revenues/profits, that amount of offset depends on the assumptions listed above.

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

   Not applicable.

6. The following contributed to and concurred with this analysis: David Platt, Finance; Mike Coveyou, Finance

Joseph F. Beach, Director
Department of Finance

1/18/12
Date

SAMPLE Project Initial Investment	12.5% MPDUs	25% MDPUs
Unit Construction Costs	$136,296	$136,296
Number of Units	250	250
TOTAL CONSTRUCTION COSTS	**$34,074,116**	**$34,074,116**
Development Impact Tax Per Unit		
--Residential (School)	$8,472	$8,472
--Transportaion (General County	$4,815	$4,815
Subtotal	$13,287	$13,287
Number of Units	250	250
TOTAL DEVELOPMENT IMPACT TAXES	**$3,321,750**	**$3,321,750**
DEVELOPMENT IMPACT TAX MPDU DEDUCTION RATE	12.50%	100.00%
DEVELOPMENT IMPACT TAX PAID	2,906,531	0
INITIAL INVESTMENT	**$36,980,647**	**$34,074,116**
CASH FLOW		
5 Years	$13,957,035	$12,703,910
10 Years	$27,914,070	$25,407,820
15 Years	$41,871,105	$38,111,730
20 Years	$55,828,140	$50,815,640
30 Years	$83,742,210	$76,223,460

SAMPLE Project Rent		
Efficiency Units	**12.5% MPDUs**	**25% MPDUs**
Total Rent for MPDUs	$11,302	$22,604
Total Rent for Market Units	$103,542	$88,750
	$114,844	$111,354
One Bedroom Units		
Total Rent for MPDUs	$12,135	$24,271
Total Rent for Market Units	$125,052	$107,188
	$137,188	$131,458
Two Bedroom Units		
Total Rent for MPDUs	$12,917	$25,833
Total Rent for Market Units	$172,083	$147,500
	$185,000	$173,333
Total Monthly Rent	$437,031	$416,146
Total Annual Rent	$5,244,375	$4,993,750
Total Annual Op. Expense	2,452,968	2,452,968
Gross Profits	$2,791,407	$2,540,782

SAMPLE Project Rental Rates		
	Market Rate Rent	MPDU Rate Rent
Sample Project	per Month	per Month
-efficiency units (1/3 of total)	$1,420	$1,085
-one room (1/3 of total)	$1,715	$1,165
-two room (1/3 of total)	$2,360	$1,240

Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850-4166
Phone: 311 in Montgomery County or 240-777-0311
Fax (240)-777-6262
http://montgomerycountymd.gov/permittingservices/

DPS

New and Revised Impact Taxes Effective July 1, 2011

School Impact Tax

Pursuant to Chapter 52, Sections 57(e) and 90(e) of the Montgomery County Code (Development Impact Tax for Transportation Improvements and Development Impact Tax for Public School Improvements, respectively) the Director of Finance has adjusted the tax rates set under Sections 57(a) and 90(e). As prescribed by law, the Director must adjust the tax rates by the annual average increase or decrease in a published construction cost index specified by regulation for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents for rates per square foot of gross floor area or one dollar for rates per dwelling unit. Based on the change in the Engineering-News Record's Baltimore Construction Cost Index for calendar years 2009 and 2010, the existing rates were increased by a rate of 8.89 percent. The rates were adjusted to the nearest 5 cents for rates calculated per square foot of gross floor area (GFA) or adjusted to the nearest dollar for rates calculated per dwelling unit. Applicants for building permits for residential developments filed on and after July 1, 2011, will be assessed the tax rates below:

Dwelling Type	School Impact Tax Per Dwelling Unit
Single-family detached	$23,868
Single-family attached	$17,970
Single Family house surcharge	$2 per square foot of gross floor area that exceeds 3,500 square feet, to a maximum of 8,500 square feet)
Multifamily (except high-rise)	$11,358
High-rise	$4,815
Multifamily senior	$0

School Facilities Payment

In the event the school cluster has exceeded the 105% school program capacity, applicants will be required to pay a per unit School Facilities payment.

School Type	Cost per student	student generation rate/ school level / unit type			
		Single Family Detached [SFD]	Single Family Attached [SFA]	Multi Family Garden apt.	High/low rise w/parking
Elementary School Student Generation Rate x Cost of Seat	**$19,514**	0.3200	0.2110	0.1530	0.0420
Middle School Student Generation Rate x Cost of Seat	**$25,411**	0.1440	0.1220	0.0560	0.0390
High School Student Generation Rate x Cost of Seat	**$28,501**	0.1310	0.1070	0.0390	0.0330
ES facilities payment		**$6,244.48**	**$4,117.45**	**$2,985.64**	**$819.59**
MS facilities payment		**$3,659.18**	**$3,100.14**	**$1,423.02**	**$991.03**
HS facilities payment		**$3,733.63**	**$3,049.61**	**$1,111.54**	**$940.53**
facilities payment if 3 school levels are over 105% capacity		**$13,637.30**	**$10,267.20**	**$5,520.20**	**$2,751.15**

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Development Impact Tax for Transportation

In addition to the School Impact Tax, applicants for building permits in a residential development must also pay the Transportation Impact Tax.

Building Type	Metro Station	Clarksburg	General
Single-Family detached residential (per dwelling unit)	$6,213	$18,638	$12,425
Single-Family attached residential (per dwelling unit)	$5,084	$15,250	$10,166
Multifamily residential (Garden apartments) (per dwelling unit)	$3,953	$11,860	$7,906
High-rise residential (per dwelling unit)	$2,824	$8,472	$5,687
Multifamily-senior residential (per dwelling unit)	$1,129	$3,388	$2,259
Office (per sq. ft. GFA)	$5.65	$13.60	$11.30
Industrial (per sq. ft. GFA)	$2.85	$6.75	$5.65
Bioscience facility (per sq. ft. GFA)	$0	$0	$0
Retail (per sq. ft. GFA)	$5.05	$12.20	$10.15
Place of worship (per sq. ft. GFA)	$0.35	$0.80	$0.60
Private elementary and secondary school (per sq. ft. GFA)	$0.45	$1.20	$0.95
Hospital (per sq. ft. GFA)	$0	$0	$0
Social Service Agency	$0	$0	$0
Other nonresidential (per sq. ft. GFA)	$2.85	$6.75	$5.65

Bill 39-11, Taxation – Development Impact Tax – Exemptions

Housing Opportunities Commission Public Hearing Testimony
January 24, 2012

Good afternoon. I am Sally Roman, Vice-Chair of the Housing Opportunities Commission.

First, HOC wants to thank the sponsors of Bill 39-11, Councilmembers Floreen, Rice and Navarro. Clearly we need new ideas to generate development of more housing affordable to the families who work in Montgomery County. We commend the sponsors for this approach which exempts entire multi-family, rental developments from development impact taxes if at least 25% of the units are MPDUs or otherwise exempt under current law.

HOC's Real Estate Development Division has run the numbers on some hypothetical development scenarios, and this is what we found. We estimate that exempting all units, affordable and market, from impact taxes breaks even in developments of four-story buildings - stick built – in Metro and non-Metro areas, with 25% affordable units. What we mean is that the return is essentially the same for the developer as it would be with a comparably sized and located development with the standard MPDU allotment of 12.5%.

HOC believes that this incentive will have a welcome impact on developers motivated to add to the county's affordable housing inventory such as HOC and the non-profit developers. Inasmuch as the numbers seem to indicate that the developments would break even with 25% MPDU-like units, it might well also provide an incentive for market rate developers.

My fellow Commissioners and I would like to suggest an amendment to the bill. We would like to see its benefits available to multi-family developments that are for sale, as well to those that are rental.

Again, we appreciate the sponsors' developing this idea and introducing Bill No. 39-11.We look forward to working with the committee as the Council continues to address it.

BUILDING HOMES
CREATING NEIGHBORHOODS

MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION
1738 Elton Road, Suite 200, Silver Spring, Maryland 20903
Ph: (301) 445-5400; Fax: (301) 445-5499
Email: communications@mncbia.org
Web: www.mncbia.org

Testimony (Revised)
Maryland National Capital Building Industry Association
Bill 39-11, Impact Taxes
January 24, 2012

The Building Industry supports efforts to increase affordable housing in the County, including Bill 39-11 to eliminate Impact Taxes for rental communities for communities that provide an increased percentage of MPDUs. This is an important step in promoting affordable housing. However, we recommend changes that can help improve the effectiveness of this program and can expand affordable housing even more.

The concept of allowing impact tax exemptions for an increase in MPDUs overcomes one of the major obstacles to building affordable housing in the County. Every new home comes with the financial burden of over $30,000 in Impact Taxes in addition to development costs, land costs, application fees and approval fees. This bill overcomes the obstacle for affordable housing in two ways, it increases the supply of MPDUs within a community and it reduces the costs and price of market rate rental apartments substantially. We strongly support a program that will eliminate or reduce the Impact Tax burden on new housing through a builder meeting the necessary public goal of increasing housing for low and moderate income households.

Rentals: High and Low Rise
Based on our calculations and feedback from builders of multi-family rental communities, the current proposals for a requirement of 25% MPDU to eliminate Impact Tax payments for rental communities fails to offset the MPDU subsidy for high rise multi-family buildings given the high cost of construction, the cost of structured parking and the loss of market rents. For some low rise rental multi-family construction, the 25% requirement can be met but only under ideal and unrealistic conditions. We therefore recommend that the Council remand the bill to staff and for staff to work with the industry to determine an appropriate MPDU requirement for multifamily. Initial analysis indicates that the MPDU requirement for low rise rental apartments needs to be between 15-20% and that high rise apartments may not work at any percentage.

For-Sale Housing
The opportunity to provide affordable housing in the County can be enhanced by including for-sale housing in the equation. Currently a limited number of MPDUs are produced annually with sale prices in the mid $100s. The lowest priced market rate housing in the County is priced in the upper $200's and is likely to increase substantially should the market turn around. Therefore, there remains a gap today between the mid $100s and the upper $200s. We urge that the Council consider two programs to help expand the number of MPDUs and help fill the gap between the MPDUs and the market rate homes. First, we urge that Bill 39-11 be expanded to include for-sale new housing communities (subdivisions)at a 20% MPDU requirement. Communities that commit to 20% MPDUs would be exempt from all Impact Taxes for the entire residential community. This would include high rise and low rise condominium

buildings, single family attached communities, single family detached communities and mixed residential communities. We see no reason to limit affordable housing efforts to rental housing.

The second approach we propose is to exempt individual houses from Impact Taxes if the applicant commits to sell the home for below $275,000 adjusted annually to reflect changes in the Consumer Price Index for Urban areas. We propose further that the optional Moderate Price Home Incentive Program be limited to buyers who currently live or work in the County and affirm that they intend to purchase the home as their primary residence.

The need for affordable and moderate priced homes in the County is both intuitive and supported by the data. We refer to the excellent study by Stephen Fuller and the George Mason University Center for Regional Analysis. Even the recent articled by Roger Lewis on the loss of Affordable Housing highlights the difficulty in providing housing for our middle and low income families. Clearly the future of economic development hinges on the ability of the County to retain and attract moderate wage earners and the younger, skilled labor force. While these outcomes may be intuitive and obvious, the less obvious advantages of an increase in affordable and moderate price housing include the following:

- Moderate price home ownership starts the path of building household equity
- Mixing affordable and moderate priced homes in single family communities solidifies the sense of community and improves overall school achievement for low and moderate income households
- Moderate priced homes serves the market for "move-down" empty nester households
- Affordable and Moderate priced homes provide housing for single heads of household, divorced households and young starter families.

Legitimate questions opponents may ask concerning these proposals involve the apparent "loss of impact tax revenue." However, we contend that the loss is a phantom loss in that these taxes would not be collected in the first place, that without these two programs, the subdivisions and the individual housing would not otherwise be built. Clearly, if they were readily in the market, there would be no need for the programs.

Lastly, we urge the Council to reconsider the MPDU time period and deed restriction and reduce the time back to 20 years (total) for the for-sale and 30 years (total) for rental MPDU. Under current conditions and likely for some time, the resale market offers competition for the MPDU seller and builders are finding it more difficult to sell the MPDU. Buyers balance the opportunity to buy a new MPDU with the resale restrictions versus a resale home with no restrictions. For rental units, the 99 year restriction seriously erodes the resale value of the apartment complex and affects the amount banks are willing to lend against the complex. Reducing the time frame for the deed restrictions can help build stable communities, help owners build equity and encourage more home construction, especially rental buildings.

In conclusion, Montgomery County has by far the highest impact fee in the State of Maryland. There is an existing and projected deficiency in affordable housing for low and moderate income household, according to Park and Planning. The larger the household the greater the need for affordable housing options which supports are recommendation to include for sale housing in this proposal.

Nationwide studies have shown that impact fee place an unfair burden on lower income households. The resultant Montgomery County impact fees policy creates a situation in which many new residents of the County are paying more than 30% of their household income for housing.

Although this proposal will may not improve housing affordable countywide, it will improve the affordability of many hundreds of new residents.

% of Persons with Homeowner Cost > 30% of Income

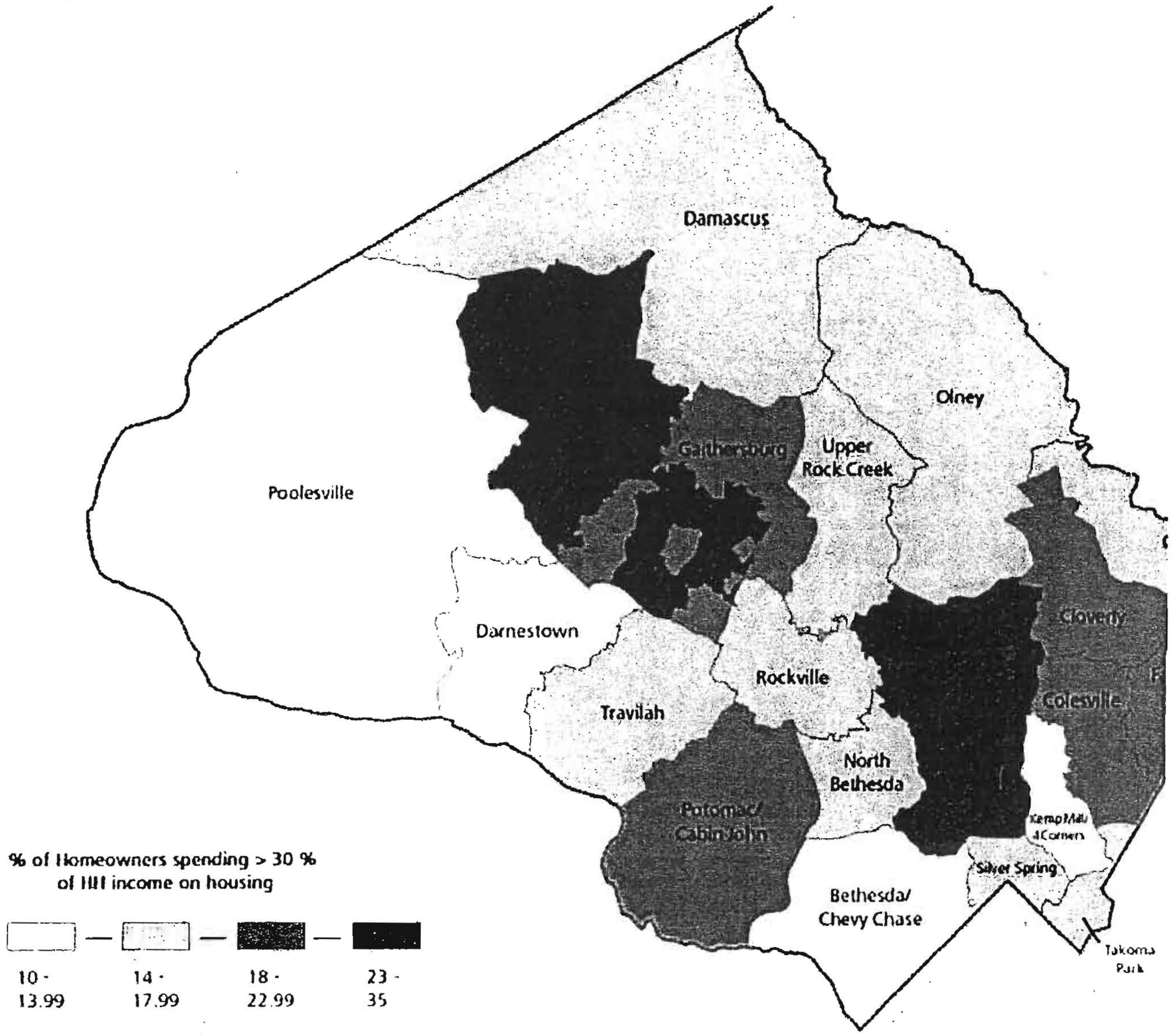

Exhibit 2
County Development Impact Fees/Excise Tax Rates

		Fee/Rate Per Dwelling[1]		
County	Type	FY 2007	FY 2008	FY 2009
Anne Arundel	Impact Fee	$4,781	$4,904	$1,759[2]
Calvert	Excise Tax	12,950	12,950	12,950
Caroline[3]	Excise Tax	5,000	5,000	5,000
Carroll	Impact Fee	6,836	6,836	6,836
Charles	Excise Tax	10,859	11,400	11,598
Dorchester[4]	Excise Tax	3,671	3,671	3,671
Frederick[5]	Both	11,595	13,121	13,733
Harford	Impact Fee	7,442	8,269	8,269
Howard[6]	Excise Tax	See note	See note	See note
Montgomery[7]	Excise Tax	14,283	31,105	31,105
Prince George's[8]	Excise Tax	19,361	19,864	20,638
Queen Anne's	Impact Fee	6,606	$3.93/sq. ft.	$4.05/sq. ft.
St. Mary's	Impact Fee	4,500	4,500	4,500
Talbot[9]	Impact Fee	5,347	5,513	5,684
Washington[10]	Excise Tax	13,000	13,000	$3.00/sq. ft.
Wicomico	Impact Fee	5,231	5,231	5,231

[1] Rates listed are generally those applicable to single-family detached dwellings and are per dwelling unless otherwise indicated.
[2] Rate for a 1,500-1,599 square foot residential unit from January 1, 2009 through December 31, 2010. Residential rates vary by the square footage of a unit and increase in 2010 and 2011.
[3] A $750 development excise tax for agricultural land preservation is also imposed on single-family residential lots created by subdivision in a "rural district."
[4] A slightly higher rate, $3,765 per dwelling, applies outside of the Cambridge and Hurlock areas.
[5] The rates shown only reflect the public school and library impact fee total. The roads tax (unchanged for all three fiscal years) is $0.10/sq. ft. or $0.25/sq. ft. (depending on the square footage), with the first 700 square feet not taxed.
[6] Roads tax is $400 for the first 500 sq. ft. and $0.90/sq. ft. ($0.88/sq. ft. in fiscal 2008 and $0.80/sq. ft. in fiscal 2007) for square footage in excess of 500 sq. ft. School surcharge is $1.14/sq. ft. ($1.09/sq. ft. in fiscal 2008 and $1.07/sq. ft. in fiscal 2007).
[7] Fiscal 2008 and 2009 amounts represent $10,649 for transportation and $20,456 for schools, effective December 1, 2007. Fiscal 2007 amount represents $5,819 for transportation and $8,464 for schools (these amounts were moderately increased at the beginning of fiscal 2008, prior to the December 1, 2007 increase.) The school excise tax is increased by $2 for each square foot between 3,500 and 8,500 gross square feet (reflecting a change effective December 1, 2007). Different transportation rates apply in the Metro Station and Clarksburg impact tax districts.
[8] Fiscal 2009 amount represents $14,019 for school facilities and $6,619 for public safety. A lower school facilities rate ($8,177 in fiscal 2009) applies inside the beltway and a lower public safety rate ($2,207 in fiscal 2009) applies inside the "developed tier" as defined in the 2002 Prince George's County Approved General Plan.
[9] A lower rate ($4,912 in fiscal 2009) applies to "in-town" development.
[10] In fiscal 2007 and 2008, the rate for a nonapartment, residential dwelling less than 1,500 sq. ft. in area was $1.00/sq. ft.

Source: Department of Legislative Services

SUMMARY OF FINDINGS

FINDING ONE: THERE IS AN EXISTING AND PROJECTED DEFICIENCY IN AFFORDABLE HOUSING FOR LOW AND MODERATE INCOME HOUSEHOLDS

There is currently not enough housing priced affordably for households earning less than $90,000 per year. Those households earning the most (greater than $150,000 annually) have an excess supply of affordable housing. This finding indicates that households are paying greater than 30% of their household income on housing; living in smaller than ideal units (greater than two persons per bedroom); or could not afford to purchase their home today.

Summary of Demand and Supply Imbalance (2005)

Annual Household Income	Affordable Monthly Housing Cost	Number of Units Demanded	Number Supplied (Owner Occupied)	Number Supplied (Renter Occupied)	Sufficiency/ (Deficiency)
Less than $30,000	Less than $749	39,942	619	12,510	(26,813)
$30,000 to $59,999	$750 to $1,499	77,926	8,325	59,940	(9,661)
$60,000 to $89,999	$1,500 to $2,249	68,196	48,337	13,680	(6,179)
$90,000 to $119,000	$2,250 to $2,999	57,585	64,790	2,340	9,545
$120 to $149,000	$3,000 to $3,749	36,099	47,083	900	11,884
$150,000 and above	$3,750 and above	67,251	93,296	630	26,676

The housing supply shortage for households earning low to moderate incomes is only expected to worsen over the next 20+ years. There is a slight amount of excess supply anticipated for households earning under $60,000. This is due to the large number of rental multifamily units projected to be built between 2005 and 2030. The majority of multifamily units have monthly rents ranging from $750 - $1,499. The excess supply will be quickly absorbed by the bordering cohorts (households earning less than $30,000 and households earning between $60,000 and $89,999.

Summary of Demand and Supply Imbalance (2030)

Annual Household Income	Affordable Monthly Housing Cost	Number of Units Demanded	Number Supplied (Owner Occupied)	Number Supplied (Renter Occupied)	Sufficiency/ (Deficiency)
Less than $30,000	Less than $749	50,797	1,491	19,478	(29,828)
$30,000 to $59,999	$750 to $1,499	99,104	12,465	93,327	6,688
$60,000 to $89,999	$1,500 to $2,249	86,729	52,631	21,300	(12,799)
$90,000 to $119,000	$2,250 to $2,999	73,234	75,304	3,643	5,713
$120 to $149,000	$3,000 to $3,749	45,909	60,197	1,401	15,689
$150,000 and above	$3,750 and above	85,527	105,701	981	21,156

MAJOR POINTS PRESENTED
IN TESTIMONY BY
JODY KLINE
ON BILL 39-11
24 JANUARY 2012

- Exemption from impact fees is a dramatic incentive to create affordable housing.
- The universe of affordable housing programs that could benefit from such an incentive is not limited to the Moderate Priced Dwelling Unit program.
- The County encourages redevelopment of under utilized commercially or industrially zoned land with multi-family residential uses.
- "Productivity Housing" (a special exception use in commercial, employment and industrial zones) is one of the few programs available to accomplish the planning goal of introducing residential uses on non-residentially zoned property.
- Productivity housing is an option available in non-residential zones for projects that provide **35%** of the units at productivity housing rates.
  - By regulation, DHCA establishes productivity housing rental rates at 75% of the area-wide median income (adjusted for family size).
- The burden of implementing this program is borne out by the fact that there is only **ONE** productivity housing project in all of Montgomery County since the creation of the program twenty-five (+/–) years ago.
- Extending the scope of Bill 39-11 to include "productivity housing" would have the following public benefits:
  - Increase the amount of affordable housing in the County.
  - Reduce the impediments to implementing the program.
  - Encourage more mixed-use development.

February 25, 2013

Government Operations & Fiscal Policy Committee
Montgomery County Council
100 Maryland Ave., Rockville, MD 20850

Dear Chairperson Navarro, and Councilmembers Ervin and Riemer:

On behalf of the PTAs in the Walter Johnson cluster, I am writing to resubmit the cluster's April 2012 letter - expressing our concerns about Bill 39-11.

Given increasing school enrollment and upcoming development, and growing demands on the MCPS capital budget, we are concerned about any strategy that would decrease resources for school construction. Thank you for your consideration of our views.

Sincerely,

Mary Cassell
Cluster Coordinator
Walter Johnson Cluster

April 17, 2012

Government Operations & Fiscal Policy Committee
Montgomery County Council
100 Maryland Ave., Rockville, MD 20850

Dear Chairperson Navarro, and Councilmembers Ervin and Riemer:

We are writing, on behalf of PTAs in our cluster, to express our concerns about Bill 39-11. While its goals are laudable, the bill funds moderately priced housing from the wrong sources. Also, it could have an enrollment impact on nearby schools.

(1) Specifically, the bill would cost up to $42,191,000 in lost school impact tax. Housing should not be funded through school capital funds, which are already insufficient.

What would $42,191,000 mean for schools? Well, if MCPS chose to spend the money in our cluster, half of that sum - $19,000,000 - could build a new elementary school. Such a school will be much needed to serve the 400+ ES students added by 3 recent and upcoming sector plans in our cluster. Or MCPS could choose to use $42,191,000 to add capacity to secondary schools in our cluster. That would meet the needs of either the projected 400+ MS students, or the estimated 350+ HS students, added by the plans.

(2) We are also concerned about Bill 39-11 because we seek an accurate projection of enrollment in our cluster. We are working with the MCPS Division of Long-Range Planning to explore whether the MPDUs that would be added by the bill – up to 408 of them in our cluster – might raise the student generation rate in the White Flint area.

We do commend the bill's sponsors for their dedication to increasing the County's moderately priced housing. We agree that the County needs more of this housing: many young teachers and families with school-age children would benefit.

However, if our County can afford to spend $42,191,000 on MPDUs, we ask the Council to pay for them directly, without siphoning the money out of school accounts. Or, provide $42,191,000 to replace the potential school impact taxes lost under the bill. And, please consider any enrollment impact. Development should not come at the expense of school construction, especially given the development already planned for within our cluster.

Sincerely,

[Walter Johnson Cluster signatures]