

**Testimony on 2024-2028 Growth & Infrastructure Policy
and Bill 16-24, Impact Taxes – Revisions**

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As a preface, it is surprising that the Council is not holding a joint public hearing on both matters. I have staffed both issues for over three two decades, during which the Planning Board has usually submitted recommendations regarding both in the same report, and the two sets of recommendations are always strongly interwoven. ***The scope of the October 1 public hearing on Bill 16-24 should be expanded to include further testimony on the 2024-2028 G&I Policy, and the Planning, Housing, and Parks (PHP) Committee worksessions on the G&I Policy should be postponed until after October 1.***

The Adequate Public Facilities concept in Montgomery County is broken. The 1973 Ordinance says that the Planning Board may only approve a subdivision when it finds that public facilities will be adequate to serve the subdivision. This means that it can be reasonably assured that such facilities will be in place when the subdivision is complete and ready to be occupied.

Over the past two decades there has been a steady diminution of this concept. The standards for adequacy have been significantly loosened, or in some cases even eliminated, often allowing developments to buy their way out of meeting the standards. The G&I Policy is also rife with exemptions, such as in Enterprise and Opportunity Zones, with what is the misguided hope that by eliminating the adequacy requirements, desirable growth will be attracted. The proposed G&I Policy would expand the number of exemptions and discounts.

Within the transportation sphere, the desire to put even modest limits on traffic congestion is mostly gone. While the standard in our most dense business districts have always been set to allow congestion well beyond what most would consider adequate, since 2020 there has been no limit at all on congestion. This even though most residents still travel by auto, and that auto driving has rebounded the fastest since the COVID pandemic, while transit has lagged, and biking remains a miniscule travel mode.

Within the public schools sphere, since 2020 there are no longer any limits on overcrowding. Development is allowed to proceed by paying an impact tax surcharge—Utilization Payments—which together are far from enough to fund a new school or addition that would provide adequate capacity.

The Planning Board's general objective during this update of the G&I Policy has been to fine-tune some of the elements of the current Policy. Many of them are fine. But to bring back the concept of adequate public facilities, more significant changes are warranted.

Regarding the transportation test:

For background, note that the transportation policy areas established in 2016 are classified as either Red (where Metrorail is within walking distance), Orange (where Metrorail is within a reasonably short bus ride and bus service is frequent), Yellow (where there is no Metrorail and bus service is less frequent), and Green (where there is very little bus service, if any). The congestion standards in these areas range from non-existent in Red areas, very tolerant of congestion in Orange areas, and progressively less tolerant of congestion in Yellow and Green areas. The rationale is that with a greater presence of high quality transit, there would be a reasonable alternative to driving. Similarly, impact taxes are set lower in the high-transit

areas, under the theory that fewer expensive road improvements would be necessary.

The Red Area congestion standard in the 2016-2020 Policy should be restored. That policy allowed up to 2 minutes of delay at each signalized intersection, which translates to 15-20 minutes of delay merely to drive through a single business district. This lax standard is defensible, because there are limits to how much space there is to add turning lanes in a business district. But to allow unlimited congestion is counterproductive if the goal is to spur economic development, and it is nothing but punitive to the thousands of commuters who have no realistic alternative to driving.

The Planning Board wishes to reclassify Great Seneca, Rock Spring, and White Oak from Orange to Red, but there is no Metrorail presence in these areas. The Board also wishes to reclassify Germantown, Montgomery Village/Airpark, Aspen Hill, Olney Town Center, and major portions of Fairland and Clarksburg from Yellow to Orange, but these areas are nowhere near Metrorail. Finally, the Board recommends reclassifying Damascus from Green to Yellow, but Damascus is served only by a solitary bus route that operates only in peak periods. These changes would allow even higher congestion at intersections where the presence of high quality transit is not present, and it would result in lower transportation impact taxes as well. ***None of these proposals should be supported.***

The Board is recommending that new units with 3 or more bedrooms in multi-family structures be exempt from the Local Area Transportation Review (LATR) requirements. This exemption would apply to all such units, including those priced at market-rate to high-end. ***A better approach is not to exempt such units, since affordable units are already proposed for exemption under a different recommendation.***

Four years ago the Council approved an LATR exemption to bioscience developments. However, that provision included a sunset at the end of 2024. As far as we know there has been no comprehensive evaluation of this exemption: has it had an influence on the amount of bioscience development approved in the past 4 years? Has traffic congestion grown in the area as a result? Without such an evaluation there is no justification to continue this exemption, especially since the long-standing impact tax exemption for bioscience is likely to continue. The Board also wants to eliminate the current requirement that any bioscience development approved under this provision proceed to building permit within 3 years.

Regarding the school test:

The test should be restored to something more akin to the standards in the 2012-2016 Policy. The current test allows for a development to proceed in a school service area if it pays a 10-16.7% impact tax surcharge for each level that will be overcapacity 4 years from now by 5-20%. It allows a development to proceed if it pays a 20-33.3% surcharge for each level that will be overcapacity by 20-35%. It allows a development to proceed if it pays a 30-50% surcharge for each level that will be overcapacity by more than 35%. There is no limit as to how much overcrowding is allowed under the current Policy.

No development should be allowed with such high degrees of overcrowding. ***A better approach would be to charge a higher set of Utilization Payments. If a school in its service area will be 5-20% over capacity in 4 years, a 20-33.3% surcharge would be appropriate. If a school will be 20-35% over capacity, a 30-50% surcharge is warranted. If any school will be more than 35% overcrowded, that service area should go into moratorium until there is a programmed solution.***

A less substantive change. In the 2020-2024 Policy, areas were classified as either Infill, Turnover, or Greenfield, all using different rates. However, in this version of the Policy the Board recognizes every area as being Infill or Turnover, with the only Greenfield area (western Clarksburg) transitioning to Turnover. Therefore, ***the Greenfield classification should be permanently eliminated: there is no way an Infill or Turnover area will become a Greenfield area in the future.***

Regarding Bill 16-24:

Preferably, all exemptions and discounts should be eliminated, except perhaps for truly affordable housing. Blanket exemptions or discounts based on geography should be prohibited; therefore, the Board's recommendation to terminate the Desired Growth and Investment Area exemption should be supported. If there is a development that is has particularly strong economic value to the county, the County could effectively offset the impact tax of that development with a Housing Initiative Fund or Economic Development Fund grant.

The suggested exemption for office-to-housing conversions should be opposed. Such conversions should be handled as would any other conversion: the tax would be equal to the tax that would be paid for the new use amount minus that which would be paid if the existing use were newly built.

The suggested impact tax exemption for units of 3+ bedrooms in multi-family buildings should be opposed, for the same reason that the corollary exemption to the LATR test is opposed.

Impact tax credits should not be allowed for improvements to State roads. The transportation impact tax rates are set to capture the cost of new County transportation projects that add capacity. If State road improvements are to be credited, then transportation impact tax rates should be raised commensurately.

Currently school impact tax rates are based on the construction cost of adding capacity by the size and type of residential development. However, the Board wants to discount these rates by the percentage of the MCPS CIP funded with State aid. ***This should be opposed: there is no rationale for this since the State will not provide the foregone revenue.***

The Board also wants to reduce the transportation and school impact tax rates by 50% for new single-family detached and attached homes if they are under 1,800 sf. The discount would apply only to market-rate units since affordable units are already exempt from both taxes. ***This proposal should also be opposed, as even smaller homes generate traffic and school children.***