"Ideas on Increasing the Housing Supply" Material

Ideas on Increasing Housing Supply Through Changing MPDU Law - July 17, 2003

According to builder testimony at last week's AGP public hearing before the Planning Board, 3500 housing units are to be built in Montgomery County this year. The reason that there are such a tiny number of MPDUs being produced is not because of MPDU buyouts but because most houses are built in projects of less than 35 units. Over the last few years, a great deal of energy was put into lowering the MPDU threshold from 50 to 35 and to allow for voluntary MPDUs/increased density for 20-35 units developments. More energy is now being spent to consider putting MPDUs in Large Lot Zones.

It now seems that all of this was and is symbolic, feel good efforts that barely touch the problem of collapsing MPDU production. The only possible way to make sure that this vast majority of new, market rate housing that is being built as infill projects helps create the maximum number of MPDUs is to set a fee based on size and/or sales price of each house. Even the 12.5% is not really equitable to the MPDU program if the market rate units, which might have been built to sell for $300,000 three years are now being built to sell for $600,000 because lower interest rates have dramatically increased the buying power of people and they want as much house as they can afford. The inequity is that the developer still only has to produce one 1100- square foot unit in a duplex or quadraplex at $80/square foot, which is only marginally more than 3 years ago, but his profits on the market units are considerably higher than three years ago because of the greater markup on the more expensive house.

It is incredibly ironic that we may be heading for the lowest MPDU output since 1976 in the year where there has been the most talk and hype about increasing the amount of affordable housing. I have been attending the Planning Board work sessions on rewriting the Annual Growth Policy and have watched them have very honest and objective conversations about growth rates and how to perhaps fund roads and schools with separate fees on new house construction. I'm guessing the builders are running scared because some of them are offering to pay $3,000-$6,000 per unit for schools and also for roads, if contemplated growth rate caps are either raised substantially or taken off the table. If builders are offering to pay up to $12,000 per unit to be able to keep on building in this county, they should also be willing to accept an additional fee for affordable housing.

Here's some ideas backed up by some math, subject to adjustment. If the typical MPDU is 1100 square feet and at $80/ft., cost $88,000, and the cost of the land under it is $22,000, that's $110,000 to produce each MPDU. At the 12.5% rate, that means that for every seven market rate houses built, there must be one MPDU. Based on this production cost, each of the seven houses is paying a fee of $15,714 each. However, the builder then gets to sell the MPDU and presumably breaks even or makes a modest profit. Thus, the fee is refundable and the only real cost to the builder is the lowered opportunity cost of the money he borrowed to build the MPDU because he didn't make as much return as if such borrowed funds had been used to produce a far more profitable market rate unit.

It also seems more equitable to have MPDU creation tied to the sales price/square footage of the market rate houses in the development. If ten years ago, a builder constructed one 1100-square foot MPDU for seven 2500-square foot market rate houses, then maybe he should be required to build two 1100-square foot MPDUs for today's seven 5000-square foot market rate houses, because it should be based on a percentage of the gross square footage built, not a percentage of the toal units built. FYI, that 1100-square foot MPDU, tucked among those seven "mid-priced" 5000-square foot houses, with 35,000 gross square feet between them, is 3.1% of that total. What was the percentage ratio when the program began in 1975? I'm sure it was much higher.

If my assumptions are correct, then it seems that the MPDU percentage should be higher, at least going back to the 15% in the original MPDU law, and even the 20% proposed by County Executive Gleason when the issue was heating up in 1973. There is much talk about the bonus density being necessary to prevent an unconstitutional taking. On the other hand, a fee is okay. In order to equitably assure that the social responsibility to produce MPDUs is met by the new infill housing, including the teardowns that cram McMansions into neighborhoods, there needs to be a fee that goes intro the HIF that is only used to build new affordable units.

The county may have to create a 2-tiered system, where one group builds the MPDUs themselves and the other group pays the county to then go out and build them. We already do that with the MPDU buyout that may have a builder constructing some MPDUs on site and paying a fee to the county to "build" the rest elsewhere, except that the county seems to instead use the money to renovate existing units. What is a fair fee? Certainly, any new unit selling for less than $200,000 should be considered affordable and shouldn't have to pay the fee.

Perhaps there should be a sliding scale, starting at 1% for houses priced under $300,000 going up to 5% for houses priced at $2 million or more. Also, introduce a transfer tax for house resales dedicated to affordable housing, again with a sliding scale. It seems equitable to have the buyer of a new mansion pay enough to build the equivalent of one MPDU since this will allow a few of the many who provide services to this house, the nannies, housekeepers, landscapers, pool cleaner, etc. to be able to live in this county.

How about an MPDU fee for new office or commercial construction? If a new facility brings new jobs into the county, particularly part-time, retail jobs, or office cleaning and clerical jobs, shouldn't there be a fee paid to allow the county to build affordable housing for some of those workers who probably have to commute from D.C. or Prince George's County?

Wayne Goldstein 3009 Jennings Rd. Kensington, MD 20895 301-942-8079

PHED COMMITTEE #1
July 21, 2003

MEMORANDUM

July 17, 2003

TO: Planning, Housing, and Economic Development Committee

FROM: Aron Trombka, Legislative Analyst AT

SUBJECT: MPDU Alternative Agreements

The purpose of this session is for the Planning, Housing, and Economic Development (PHED) Committee to discuss policies and procedures associated with Moderately Priced Dwelling Unit (MPDU) alternative agreements. The MPDU program is a mandatory inclusionary zoning program in which developers of residential projects with 35 or more units receive a density bonus in exchange for including affordable housing in the development. MDPU income eligibility limits are established and periodically revised through Executive Regulation. Alternative agreements allow a developer to provide money, land, or off-site units in lieu of the required (or a portion of the required) MPDU production in a residential project.

MPDU Alternative Agreements in the County Code

The County Code (Chapter 25A-5(e)) provides for alternative MPDU agreements (see complete text of this Section of the Code on © 9). In exceptional cases, instead of building the required number of MPDUs on-site, the Director of the Department of Housing and Community Affairs (DHCA) may approve an agreement wherein the developer would:

(A) build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;
(B) convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;
(C) contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or
(D) do any combination of these alternatives that will result in building significantly more MPDUs.

The Code does not define the term "significantly more" nor does the Code set a standard for measuring whether an alternative agreement achieves the "significantly more" requirement.

Approved/Pending Alternative Agreements

To date, DHCA has entered into 17 alternative MPDU agreements. A list of approved alternative agreements appears on © 5 - 8. DHCA reports that it is currently negotiating two additional alternative agreement requests.

The tables below display the number of MPDUs produced in projects without alternative agreements since 2000 as well as the number of MPDUs approved and excused in exchange for payment in projects with alternative agreements since 2000.

Projects without Alternative Agreements
MPDU Production

	2000	2001	2002	2003*
Sale Units				
Single Family Detached	33	21		
Single Family Attached	88	108	100	13
Multi-Family	0	13	28	
Rental Units				
Garden Apartments	65	71	70	65
High-Rise Apartments	0	0	10	65
TOTAL	186	213	208	143

Projects with Alternative Agreements
MPDU Approvals

	2000	2001	2002	2003*
Payment in Lieu of On-Site Units				
Single Family Attached	0	0	10	0
High-Rise Apartments	21	0	133	10
Senior Apartments	0	0	16	5
Garden Apartments	0	0	36	0
TOTAL	21	0	195	15
Units Provided On-Site				
High-Rise Apts.	11	0	95	11
Garden Apartments	0	0	14	10
TOTAL	11	0	109	21

* 2003 data is year-to-date and includes pending but not finally approved alternative agreements

Source: DHCA

Alternative Agreement Payment Amounts

In March, DHCA Director Elizabeth Davison wrote a memorandum to Councilmember Silverman describing the DHCA approach to alternative agreements (see © 1 – 8). Ms. Davison lists two categories of projects that may warrant entering into an alternative agreement: (1) developments with high homeowner association fees; or, (2) high-rise developments with high construction costs, unusual site conditions, and sector plan height restrictions.

DHCA has found that alternative agreements along with other types of assistance (such as payment in lieu of taxes agreements) may be necessary to allow a high-rise development to obtain financing. The cost of land in some of the County's Central Business Districts coupled with the cost of constructing a high-rise structure make the economics of this type of residential development very different from that of a single-family or low-rise/garden multi-family development. The economic viability of a high-rise project is related to the ability to spread land and construction costs among the total number of units in the structure.

DHCA entered into six alternative agreements in 2002. Of the six agreements signed in 2002, four were for high-rise developments. Each of these high-rise developments involved properties that could not achieve maximum optional method density because of sector plan height restrictions. In each case, the developer provided some MPDUs on-site and made a payment to the Housing Initiative Fund for the portion of required MPDUs not provided on site. For each of the four high rise alternative agreements approved in 2002, DHCA accepted a payment of $21,000 for each MPDU unit not provided on site. As detailed in the DHCA Director's March 13 memo, the Department arrived at the $21,000 per unit payments for recent agreements based on the convergence of three calculations (see © 4).

a. residential high rise land value calculated on a per unit basis; and,
b. typical per unit costs for Housing Initiative Fund projects (with an assumed 7.5-to-1 rate of leverage); and
c. the cost to buy down rents of existing apartments to MPDU levels for 20 years.

Staff has asked that DHCA be prepared to discuss at the session how money from alternative agreement payments has been used for specific affordable housing projects.

Related Policies

MPDU alternative agreements and the calculation of payment amounts are closely interrelated to other County policies.

Purpose of MPDU Program: As stated in the County Code (Chapter 25A-2), one of the purposes of the MPDU program is to "assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans." The Code further describes an intent to "ensure that private developers constructing

moderately priced dwelling units ... incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision."

MPDU Density Bonuses: The MPDU law requires that a residential development of 35 or more units include MPDUs that equal at least 12.5 percent of the total number of units at that location. The MPDU formula applies to the full amount of units included in an approved project including density achieved through Optional Method development. The County Code establishes the formula for calculating MPDU requirements with a direct relationship between overall density bonus provided to a development and the amount of MPDUs required.

Optional Method Density Bonuses and Amenity Requirements: The County Zoning Ordinance (Chapter 59-C-6.2) provides for Central Business District (CBD) zones intended to encourage residential and commercial development at densities that can be supported by public facilities and that are responsive to market conditions as well as the needs of area workers, shoppers and residents. Two methods of development are permitted in CBD zones. Under the Standard Method, a development must comply with a specific set of development standards and uses defined in the Zoning Ordinance. Under the Optional method, increased densities over the Standard Method may be permitted in return for the developer providing certain public facilities and amenities.

The Zoning Ordinance further states that densities in CBD zones (under either the Standard or the Optional Method) may be increased to accommodate the construction of MPDUs. The Zoning Ordinance explicitly states that for residential development in the CBD zones, "the number of moderately priced dwelling units must be at least 12.5 percent of the total number of dwelling units in accordance with Chapter 25A [the MPDU section of the Code]."

Sector Plan Height Limitations: In addition to the zoning applied to particular parcels through the master plan and sectional map amendment processes, some Central Business District sector plans also impose maximum building heights for development. Sector plans establish height limits to achieve compatibility of development with surrounding land uses. In some cases, sector plan height restrictions effectively prevent a development from achieving most of the density bonus that otherwise would have been possible through Optional Method development.

Payment in Lieu of Taxes Agreements: State law authorizes Counties to negotiate agreements with real property owners for payment in lieu of taxes (PILOT) as a condition for the development and maintenance of low- and moderate-income housing. PILOT agreements support affordable housing by reducing a project's operating costs to allow for below market rents or sale prices. Generally, an agreement to waive property tax payments requires only a nominal payment by the property owner. Recently, DHCA has begun negotiating PILOT agreements for high rise residential projects. DHCA negotiates a tax abatement as deemed necessary to allow the project to acquire private financing while retaining MPDUs on site.

Last year, the Council approved legislation limiting the amount of tax revenue that may be foregone through PILOT agreements. The legislation prohibits the Finance Director from approving PILOT agreements (excluding agreements with the Housing Opportunities Commission) that exceed the amounts set annually by the Council for the following ten-year period.

MPDU Alternative Agreement Working Group

In March, the PHED Committee asked Council Staff to form a working group to provide the Committee input on the best means to achieve a consistent, rational, and fair methodology to calculate MPDU alternative agreement payment amounts. Staff convened a 17-member group consisting of representatives of civic associations, the building industry, housing advocates, financing agents, and government staff. A list of working group members appears on © 10.

The group met on three occasions during the last month and discussed the current and possible alternative approaches for determining the appropriate payment amount for alternative agreements. The group concluded that consideration of payment amounts is inextricably connected to the broader issue of how to maximize the number of MPDUs built in the County. The group found that related County policies (see previous section of this memorandum) necessarily influence MPDU production and affect how the County should approach establishing payment amounts for alternative agreements.

For example, the group wrestled with the question of how to measure whether an alternative agreement for a high-rise project meets the standard of producing "significantly more" units as set for in the County Code. The group considered factors such as the varying cost of providing housing in different parts of the County, the goal of geographical dispersion of MPDUs, protecting the developer's "reasonable prospects of realizing a profit," the use of PILOT agreements to promote affordable housing, and the effect of sector plan limits on densities. The group considered the payment amount should be derived from the actual cost of providing affordable housing or through the cost to the County assuming the leveraging of funds from other sources.

The working group concluded that the topic of alternative agreement payment amounts should be linked with other issues related to MPDU production including:

1. the effect of zoning, master/sector plans and other land use policies on MPDU production;

2. the effect of environmental policies and regulations on MPDU production;

3. the effect of parking and transportation policies and regulations on MPDU production;

4. the applicability of the MPDU alternative agreement law to high-rise development;

5. the different economic realities of high-rise multi-family development as opposed to suburban-style single family development;

6. the geographic concentration of projects receiving alternative agreements;

7. the geographic relationship between the location of projects with alternative agreements and the location where affordable housing is provided;

8. the relationship between MPDU alternative agreements and development costs and benefits (such as optional method amenity requirements, payment in lieu of taxes agreements, reduced parking requirements, and MPDU density bonuses);

9. a review of how money from MPDU alternative agreements has been used;

10. the relationship between MPDU alternative agreements and the annual funding commitment to the Housing Initiative Fund;

11. a review of the "exceptional" circumstances that should be present for the County to enter into an alternative agreement;

12. a review of the current "significantly more" standard (perhaps with a quantifiable standard such as a percent increase or with a one-to-one replacement standard); and,

13. a review of whether a different standard should apply when an alternative agreement results in construction of MPDUs off-site rather than a payment to the Housing Initiative Fund.

Evaluating Payment Amounts – Staff Comments

As identified by the working group, the "significantly more" standard provides little quantitative basis upon which to evaluate the suitability of any payment level. While the "more" portion of the standard would require a payment above a one-to-one MPDU replacement amount, the term "significantly" provides little quantitative guidance. The working group agreed that a payment that would produce ten percent more units probably would be "significant" in the context of high-rise development. A different quantitative standard of significance might apply to more suburban-style development.

A further complication derives from how one measures the cost of producing a unit of housing. Alternative agreement payments are contributions to the Housing Initiative Fund and HIF expenditures generally leverage additional private sector investment and public sector grants, loans, and tax credits. Therefore, DHCA has

predicated its payment calculation (in part) on the amount of County funds needed -- $21,000 in most recent cases -- to attract sufficient funds from other sources to yield the total resources needed to produce a unit. Councilmembers may wish to consider whether alternative agreement payments indeed leverage new funds or whether these payments merely attract existing finite funds to particular projects.

Builders as well as DHCA maintain that excessively high alternative agreement payment amounts would prevent a high-rise project from obtaining financing and would result in no housing being built at that site. In some cases where a sector plan has restricted a project from achieving the maximum allowable optional method density, DHCA has concluded that MPDU relief in the form of an alternative agreement payment is necessary to allow the project to move forward. The alternative agreement helps the project obtain financing by relieving a portion of the "loss" associated with MPDUs. DHCA has estimated the value that a market rate unit in a high rise project has a value between $75,000 and $100,000 above that of an MPDU. This amount corresponds to the "gap" between building a MPDU instead of a market unit rate unit and represents the value of having a MPDU relieved under an alternative agreement.

The Council has received comments from some members of the community asserting that alternative agreement payment amounts of $21,000 are well below the value of being able to rent/sell a unit at market rather than at MPDU rates. Councilmembers may wish to consider whether alternative agreement payment amounts should be associated with the economic value of replacing an MPDU with a market rate unit. Staff suggests that the full gap amount is not a reasonable payment amount. If a project is "non-financeable" without any MPDU relief, it would be equally non-financeable if the developer would be required to pay 100% of the gap amount as a payment. Rather, Staff believes that an alternative agreement serves its policy purpose when it provides sufficient relief to bring a project to the threshold of "financeability" and profitability while preserving the remainder of the gap value as payment to the Housing Initiative Fund.

Staff introduces the following calculations as a means of assessing the burden of an alternative agreement payment. The minimum MPDU requirement is 12.5 percent or one-eighth of the total number of units provided in a development. Thus, a typical project would have seven market rate units for every one MPDU. As recent alternative agreements for high-rise projects have halved the MPDU requirement, this type of project would have fifteen market rate units for every one MPDU. Thus, to be made whole, the builder would have to recoup the payment cost for each relieved MPDU from the sale price or rental revenues from 15 market rate units. At $21,000 per relieved MPDU, the burden on each market unit would be $1,400. To recover $21,000 from 15 rental units, market rate rents (from luxury apartments) would have to absorb less than $12 per month (assuming a discount rate of eight percent over twenty years).

Future Council Consideration of the Alternative Agreements

Staff has identified two issues that Councilmembers should address in considering the future application of alternative agreements.

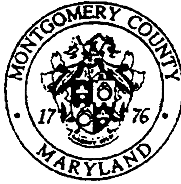
1. The MPDU law currently allows contributions to the Housing Initiative Fund in an amount "that will produce significantly more MPDUs." The working group identified the problem of measuring achievement of the imprecise "significantly more" standard. In addition, Staff suggests that the Council consider revising the text to allow payments into HIF for a variety of affordable housing uses rather than specifically for production of MPDUs.

2. The MPDU law currently lists a series of conditions for alternative agreements primarily rooted in the assumption that the development would include "an indivisible package of resident services and facilities to be provided to all households." The Council may consider updating the law to address other exceptional cases that may warrant an alternative agreement.

The Council very likely will review the alternative agreements portion of the MPDU law later this year. Staff understands that Councilmember Perez intends to propose a bill within the next two weeks that would eliminate the alternative agreement provision from the MPDU law. The Housing Opportunities Commission (HOC) have expressed a similar view as detailed in the attached memorandum from HOC Executive Director Scott Minton (see © 11 – 14).

Attachments

F:\Trombka\PHED Packets - 2003\MPDU Alternative Agreements 7-21-03



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan
County Executive

Elizabeth B. Davison
Director

MEMORANDUM

March 13, 2003

TO: Steven A. Silverman, Chair
Planning, Housing and Economic Development Committee

FROM: Elizabeth B. Davison, Director
Department of Housing and Community Affairs

SUBJECT: Alternative Agreements for MPDUs

ALTERNATIVE AGREEMENTS IN CHAPTER 25A

Chapter 25A of the Montgomery County Code, Moderately Priced Dwelling Unit Law, provides that the Director of the Department of Housing and Community Affairs (DHCA) negotiate an "Alternative Agreement" with the developer when the units cannot be provided on site under certain circumstances. The code allows for several options including:

"1. In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:
   a) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;
   b) Convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;
   c) Contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or
   d) Do any combination of these alternatives that will result in building significantly more MPDUs."

The law states that in cases where there are resident services and facilities that make it unaffordable to MPDU eligible households an offer is made by the applicant that will achieve more MPDUs or units which low and moderate income households can more easily afford, and the public benefits outweigh the benefit of constructing the MPDUs, the director must accept the offer made by the applicant. This portion of the law refers primarily to condominium and to elderly housing projects where condominium fees or other resident services such as housekeeping, meals, and recreation facilities would make the units unaffordable to MPDU certificate holders. In condominiums these fees can often be several hundred dollars, and in some elderly complexes can be up to several thousand dollars per month.

Office of the Director
100 Maryland Avenue, 4th Floor • Rockville, Maryland 20850 • 240/777-3600, TDD 240/777-3679, FAX 240/777-3677

ALTERNATIVE AGREEMENTS IN PRACTICE

Since 1989 when the law was amended to add the alternative provisions, a total of 20 agreements have been signed. These include a range of conditions and types of properties (see Attachment). The Housing Initiative Fund has received $1,229,000 and an additional 19 units from these agreements. Payments totaling $4,135,000 are approved but not scheduled for payment until FY04 and 05.

There are several situations for which these agreements have been negotiated:

1. Condominiums or developments with high homeowner association fees.

2. High-rise developments which have a variety of conditions including:
   a. high construction costs;
   b. extraordinary or unusual site conditions which may include significant utility relocation, preservation of historic structures and substantial amenities;
   c. no bonus density was provided to the developer; therefore, MPDUs are substituted for market rate units, or the full density was not allowed in the zone because the master plan limited the height of buildings that would impact existing neighborhoods.

CONDOMINIUMS OR HOMEOWNER ASSOCIATION FEES TOO HIGH

In some situations while a MPDU qualified household could afford to buy a unit at the approved sales price, when the condominium or homeowner association (HOA) fees are added the unit becomes unaffordable. In many new buildings, the level of amenities is very high with health clubs, concierge service, structured parking, etc. which requires much higher fees. In the case of HOA fees, we have examples such as the MPDUs in the Avenel Subdivision, where numerous complaints were received over several years that the MPDU residents were being stretched very thin by the required homeowner fees for grass cutting, maintenance of parking lots, and other common community facilities.

In some cases, MPDU qualified residents have not chosen to buy in a development because of the high fees. When MPDUs are not sold during the 90 day priority marketing period, the developer may sell the unit at the MPDU price to anyone regardless of their income. In this scenario, an upper income person gets a windfall by being able to purchase a unit at below the market price; this does not provide any public purpose.

HIGH-RISE BUILDINGS

The market for high-rise developments near Metro stations in Friendship Heights, Bethesda and White Flint is very strong. The shortage of rental units (even with some current softening in the market) has led to very high rents which can cover the high construction costs. In many cases, the developer has not received a bonus density. In a few cases, there are situations where additional costs are required to deal with historic buildings or working with difficult sites resulting in extremely high development costs.

In these cases, the rents that can be charged for an MPDU do not cover the cost of debt service and operating costs for the unit. The losses are so great that the entire project is not feasible. In order to obtain financing on a building, typically a rate of return in the range of eight to nine percent is a minimum level for a low risk development. When the rate of return on the building is below this level, an investor, bank or financial institution will not provide financing for the development.

In these cases, we have taken the following approach:

1. Providing property tax abatement in the form of Payment in Lieu of Taxes (PILOT) agreements.

2. Provide half the MPDUs on-site and accept an alternative agreement in the form of a contribution to the Housing Initiative Fund (HIF) for the half of the MPDUs not included in the building.

The major public purposes served in these cases is to provide some MPDUs on-site, to contribute a substantial amount of money into the HIF which can produce a significantly more units for low income residents, and to have the project feasibility obtain a level where it can be financed, so that we can add to the housing stock in desired locations

AMOUNT OF THE PILOT

The PILOT agreements are negotiated after substantial information on construction and operating costs, unique circumstances and other conditions have been disclosed to DHCA. The PILOT is then negotiated to be in place over a seven year period with a declining amount in each year. The PILOT reduces the taxes which in turn reduces the operating costs for the building, thereby increasing the rate of return to the point where the building can be financed. The PILOT does not compensate for the entire amount of lost rent on the property due to the lower rent level of an MPDU compared with a market rate unit. Although PILOT agreements are typically for a seven year period, the control period for the MPDUs in a rental property is 20 years. In Enterprise Zones in Silver Spring and Wheaton these can be up to 10 years, like those for commercial buildings. These PILOTs have been discussed with the County Council in that context.

A fiscal impact analysis of the property is also prepared, which calculates the expected return in income taxes and future property taxes. The amount is a four to five times multiple of the amount of the PILOT because of the high incomes of the residents and the low level of public services that they require.

PAYMENT INTO THE HOUSING INITIATIVE FUND

The calculation of the payment into the Housing Initiative Fund is another topic for which there has been much discussion. In my experience, when there is not one individual compelling methodology or approach to a problem, it is useful to evaluate the problem from several perspectives to see if the answers cluster in a certain range.

This has been done in several ways:

1. **Land Value:** In most traditional MPDU agreements the developer provides the land for the units, so the value of the land on a per unit basis is examined. In the case of the projects that have been analyzed, land values per unit are in the range of $15,000 to $20,000. Currently, because of the shortage of sites, land prices have been bid up in certain parts of the County, and I expect these could well be higher in the future.

2. **Per Unit Cost for HIF Fund Projects:** Because the payments are made to the HIF, which is leveraged approximately $7.50 per dollar by other sources, a logical method of valuing what the cost would be to provide a unit based on an HIF contribution. Our analysis shows that the HIF typically contributes $8,000 to $15,000 per unit to provide a low- to moderate-income unit.

3. **Buy Down of Market Rents in Nearby Older Properties:** To provide a unit at MPDU rents another alternative is to buy down the rent of existing apartments over a period of 20 years. To calculate this, we have reviewed the market rates in the County based on Department's most recent Vacancy Survey, and compared that amount with MPDU rents. The spread recently has ranged from $150 to $250 per unit depending on the area of the County where the project is located. The calculation of how much payment is needed to generate $200 to $250 in rent over a twenty year period can be accomplished through a present value calculation which yields a number of approximately $20,000 to $32,000 in 2002. As rents change in the future, this number could also change as rents over the past ten years have shown both increases and decreases.

All of these numbers are dynamic over time, and we expect that they will be increasing, as conditions change.

CONCLUSION

The complexity of this problem is exacerbated by many competing public objectives, and many regulations under various County agencies which when viewed together are in conflict. There seems to be no perfect resolution of these issues, but we feel that our approach is working well at present. We have chosen an approach to this problem that does the following:

- Achieves some moderate priced units in virtually all new buildings;
- Allows new projects to be financially feasible and to get built;
- Achieves a supply of new housing in desirable locations
- Provides money into the Housing Initiative Fund which can provide more units in nearby locations for persons of lower income than the MPDU program provides
- Does not create a large hit on future tax revenues
- Creates an efficient and effective use of public funds;

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Attachment
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Attachment

ALTERNATIVE MPDU AGREEMENTS

Date	Address	Developer	Unit Type	MPDU Requirement	Alternate Payment	Payment Per Unit	Notes
1989	8100 Connecticut Avenue Chevy Chase, MD	Forest City	HR Condo	N/A	$107,000	N/A	
1990	Madison Park Bethesda, MD	Madison Park LLC	HR Condo	8	$280,000	$35,000	based on land price
1991	Beacon Hill Grosvenor Lane North Bethesda, MD	Richard Dubin	TH	10	$400,000	$40,000	based on land price
1993	Fairmont Plaza Bethesda, MD	Nathan Landow	HR rental	12	None	None	Provided 18 units in nearby building in Bethesda, The Seasons
1994	Chase Grove Gaithersburg, MD	Avalon Properties	Townhouse Condo	11	None	None	Provided 22 apartments in same development
1995	James Creek Olney, MD	Martin Alloy	SF Detached	1	$69,000	$69,000	based on land price
1996	Sumner Gate @ Avenel Potomac, MD	Natelli Communities	SF Detached	2	$200,000	$100,000	based on land price
1998	Cameron Hill Silver Spring, MD	Eakin/ Youngentaub	Piggy-back TH Condo	7	$97,634	$13,948	based on land price
1998	Crescent Park Bethesda, MD	Nathan Landow	HR Rental	22	none	none	Provided 24 units in the Seasons
1999	Charrington Rockville, MD	Pulte Homes	TH	1	$75,000	$75,000	based on land price
2000	7791 Wisconsin Avenue Bethesda, MD	Bethesda Theater, LLC	Highrise Rental	21	$335,000	$16,905	Provide 10 units on site

Source: DHCA as of March, 2003

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ALTERNATIVE MPDU AGREEMENTS

Date	Address	Developer	Unit Type	MPDU Requirement	Alternate Payment	Payment Per Unit	Notes
2002	Bethesda Air Rights Waverly Street *	Lowe Northwest	Highrise Rental	28	$294,000	$21,000	Provide 14 mpdus on site
2002	Burning Tree & River Road Bethesda, MD	Marriot Senior Living	Elderly CCRC	36	$756,000	$21,000	
2002	White Flint Place *	White Flint Place LLC	Highrise Rental	124	$1,500,000	$21,000	40 mpdus provided on site
2002	Wheaton CBD Metro Property (located in Enterprise Zone) *	Eakin-Youngentaub Buzzutto Construction	Piggyback townhouse midrise rental apartments	10 30	$245,000 $270,000	$20,434 $18,000	Price of unimproved lot for 12 lots Provide 14 mpdus on site, 30 year controls
2002	Wisconsin Place Wisconsin & Western Chevy Chase, MD *	New England Development	High rise Rental	34	$357,000	$21,000	17 mpdus provided on site
2002	Grosvenor Metro*	Grosvenor Station Development	High rise Rental	42	$378,000	$21,000	24 mpdus provided on site

Note: * indicates development also has a payment in lie o/ taxes (PILOT) agreement which provides a declining reduction in the property tax payment over a seven (7) year period or over ten (10) years for projects located within a designated enterprise zone.

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Notes on MPDU Alternative Agreements

1. 1989 Forest City, Chevy Chase: This elderly condominium housing project was not affordable to MPDU eligible households due to the high fees associated with services in the property. MPDU's are oriented to first time homebuyers, which is difficult to find in the elderly population. Because environmental constraints, no bonus density was obtained.

2. 1990 Madison Park High Rise condominium, Bethesda: The high condominium fees made this unaffordable to MPDU eligible households.

3. 1991 Beacon Hill, North Bethesda: The high homeowners association (HOA) fees made these units unaffordable as MPDU's.

4. 1993 Fairmont Plaza, Bethesda: The high-rise building included services and structured parking that required high fees making the units less affordab to MPDU tenants. The developer offered to provide more MPDU's than were required at a nearby building in the Bethesda CBD. Twelve (12) MPDUs required were required and 18 were provided, at lower rents which included utilities and parking.

5. 1994 Chase Grove at Washingtonian Center, Gaithersburg: Provided 11 additional MPDUs in a garden apartment portion of the development as an alternative to piggyback townhouse MPDUs with high condominium and HOA fees.

6. 1995 James Creek, Olney: This 10 unit subdivision was added to the project after all MPDUs were completed in the development. To design one detached MPDU would have unfairly burdened the development with architectural costs that are normally allocated over significantly more units.

7. 1996 Sumner Gate, Potomac: It was impossible to make the MPDU's compatible with the market priced units. This subdivision was added to the development after the MPDU requirement of 60 units was completed.

8. 1998 Cameron Hill, Silver Spring: High condominium fees in an 8 unit condominium section of this townhouse project would make these units unaffordable. The alternative payment was committed to the Manchester Manor apartments in the same planning area where 43 existing units in poo condition are being rehabed by HOC with lower rents than would have been provided in Cameron Hill.

9. 1998 Crescent Park, Bethesda: This high-rise building included service and structured parking that required high fees making the units less affordabl to MPDU tenants. The developer offered to provide more MPDU's in a nearby building in the Bethesda CBD. Twenty-two MPDUs were required and 24 will be provided at lower rents that include utilities.

10. 1999 Charington, Rockville: The MPDU requirement was completed with piggyback townhouse units. The one additional MPDU would have had t have been a market priced townhouse. The HOA fees were high, and with the increased MPDU price for the larger unit, the MPDU would have bee less affordable.

11. 2000 Bethesda Theater, Bethesda: Ten (10) One (1) bedroom rental MPDUs will be provided in the high rise building. Because of high construction costs associated with preserving the theater and extensive amenities, MPDU rents required to support construction and operating costs exceed MPD income limits.

12. 2002 Bethesda Air Rights: Seven (7) efficiencies and seven (7) one bedroom units to be provided on site in the high rise building high construction c associated with modifying and constructing over an existing parking garage and extensive amenities require very high rents to offset costs.

13. Burning Tree Elderly: Continuing Care Retirement Community with very high service fees.

14. White Flint Place: Forty (40) units evenly divided between efficiencies and one bedrooms will be provided on site in two buildings. High rise construction costs and amenity package result in high rental rates.

15. Wheaton CBD: Piggyback townhouse condominium and HOA fees reduce affordability. Project required renovation of office building and parking structure for apartments.

16. Wisconsin Place: Seventeen (17) efficiencies and one bedroom units provided in project. High rise construction costs excessive.

17. Grosvenor Metro Station: Twenty-four (24) efficiencies and one bedroom MPDUs provided on site. High rise construction and structured parking cost excessive.

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(e) (1) In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:

(A) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;

(B) Convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;

(C) Contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or

(D) Do any combination of these alternatives that will result in building significantly more MPDUs.

(2) If the Director finds that:

(A) In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible households; and

(B) An offer made by an applicant under subsection (e)(1) will achieve significantly more MPDUs or units which low- and moderate-income households can more easily afford; and

(C) These public benefits outweigh the benefit of constructing MPDUs in each subdivision throughout the County, and acceptance of the applicant's offer will achieve the objective of providing a broad range of housing opportunities throughout the County;

the Director must accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant. If the applicant can feasibly build significantly more MPDUs at another site, the Director must not approve any other alternative under subsection (e)(1).

(3) The procedures for considering and implementing alternative offers must be established by executive regulation. To implement an offer, the applicant must sign an agreement with the Director not later than a time provided in the regulations

MPDU Alternative Agreement Working Group

Tad Baldwin (Action in Montgomery)

Chuck Covell (Bozzuto Group)

Elizabeth Davison (Dept. of Housing and Community Affairs)

Peter Engel (Housing Opportunities Commission)

Mike Faden (County Council Staff)

Rob Goldman (Maryland Housing Partnership)

Cecilia Hodges (Provident Bank)

Melpi Jeffries (League of Women Voters)

Eric Larsen (Dept. of Housing and Community Affairs)

Scott Reed (Magruder Corporation)

Steve Robins (Lerch, Early & Brewer)

Sally Roman (Consultant to MNCPPC)

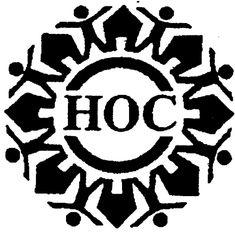
Stan Schiff (Montgomery County Civic Federation)

Sharon Suarez (MNCPPC)

Rick Sullivan, Jr. (Classic Communities)

Aron Trombka (County Council Staff)

Marv Weinman (Taxpayers League)



HOUSING OPPORTUNITIES COMMISSION
OF MONTGOMERY COUNTY, MD

10400 Detrick Avenue
Kensington, Maryland 20895-2484
(301) 929-6700

MEMORANDUM

TO: Steven A. Silverman, Chair
Planning, Housing and Economic Development Committee

FROM: D. Scott Minton, Executive Director

DATE: July 16, 2003

RE: MPDU Alternative Agreements

Under Chapter 25A of the Montgomery County Code, the Department of Housing and Community Affairs ("DHCA") is empowered to accept an "alternative agreement" with the developer of new housing in lieu of the mandated MPDU requirements. Recently, a number of such agreements have been executed, allowing developers to pay a fee to the Housing Initiative Fund (the "HIF"), administered by DHCA, for each MPDU not built.

While alternative agreements are appropriate from time to time, it is the Housing Opportunities Commission's ("HOC") belief that the agreements are currently being over-utilized and that the price received for each MPDU is not adequate. The provision of Chapter 25A that allows for the buyout of MPDUs should be eliminated, or at least modified to ensure that a reasonable price is reached in the exceptional cases that require such a solution. Planning and zoning obstacles that limit the density bonuses allowed for under 25A should also be removed. With these amendments, the County's landmark affordable housing program can continue to be successful for years to come.

Background

There continues to be an affordable housing crisis throughout Montgomery County. The problem, which most strongly affects the County's low, moderate and even middle income residents, is only projected to worsen over the coming years. As the area's economy and work force continue to grow, there will be increasing pressure on the housing stock, increasing pressure on land development in the more distant suburbs and rural areas, and increasing pressure on prices. While upper income residents can usually find a way around the problem, lower income residents cannot. There is simply

not enough production of housing appropriately dispersed around the County that is affordable to low and moderate income families.

At the same time, the March 13, 2003 report prepared by DHCA (the "Report") shows that buyouts eliminated 195 MPDUs in 2002. Of a required 304 MPDUs in seven developments largely along the Bethesda, Chevy Chase, Rockville corridor, only 109 units will actually be built. The remainder were bought out for about $21,000 each, far lower than what it costs to actually produce a home for a moderate income family. Montgomery County is known nationally for the MPDU program, which is widely cited as a model for creating affordable housing while simultaneously deconcentrating poverty and its associated problems. The model only works, however, if it is enforced.

Lack of Criteria for Alternative Agreements and Buyout Prices

The County Code requires that MPDU buyouts be allowed only under exceptional circumstances. There are no regulations or policies describing what these exceptional circumstances might be. The Report provides little additional guidance, except to note that in projects with high market rents, MPDU rents cannot cover project expenses. While this may be true at times, it is clearly not always the case. There is at least one high-rise development in Bethesda that is providing its full complement of MPDUs on site.

With an increasing number of projects aimed at the high-end market, a methodology needs to be developed to assess whether or not the projects approved for alternative agreements would actually be economically feasible if MPDUs were required. Financial projections may be kept artificially low. Anecdotal evidence suggests that, in particular, for-sale townhomes in Silver Spring and Wheaton, which provided no MPDUs, sold for prices much higher than were originally anticipated. This means that the developer ultimately achieved an increased profit margin – perhaps more than enough to meet the MPDU requirements. While it is impossible to foresee future market conditions with perfect accuracy, an improved process and substantive guidelines would mitigate the loss of MPDUs described in the Report.

The County Code also requires that any buyouts be in an amount that will produce significantly more MPDUs than were originally required. The 2002 buyout amount, which never went above $21,000 per unit, is approximately 20% of the price of a single MPDU home. The cost to build an apartment unit in the Rockville area is generally well above $100,000. Public subsidies to produce an affordable unit in the same area average well over $50,000.

The MPDU buyout amount was justified with statistics showing that the HIF contribution per affordable unit in a housing project was between $8,000 and $15,000. Thus, a payment of $21,000 could produce one or more units. Given how housing projects are actually financed, the case cannot be made that the HIF contribution by itself produces the affordable housing units. The vast majority of projects that benefit from the HIF also benefit from other public subsidies. The Gramax building, one of the

44

biggest recent recipients of HIF funding, also received tax exempt bond funding and federal low income housing tax credits. These resources are generally fully utilized, meaning that to produce more units, the real cost is in the $50,000 range instead of the $20,000 range.

The Report also justified the buyout amount by calculating the rent differential between an MPDU and a market rate unit and finding its present value over a 20 year period. Unfortunately, the rent differential was not accurate for the units being built. In Bethesda, for example, where two of the 2002 projects will be located, market rents for the types of buildings being constructed are about $900 per month over MPDU rents, not the estimated $150 to $250. The more accurate figure leads to a buyout price of around $125,000. It would appear that the Report contemplated replacing Bethesda MPDUs with units in areas that have much lower rents. This approach would concentrate lower and moderate income homes, and is diametrically opposed to the MPDU concept.

Furthermore, contributions to the HIF do not actually increase the fund. Under current budgeting, the HIF is essentially level funded at a fixed amount annually. Any payments into the fund from buyouts or other sources simply decrease the County's contribution. The total annual fund does not change. In this sense, the buyout provisions as currently enforced do not produce any MPDUs much less the number required under the Code.

HOC Proposals

The Housing Opportunities Commission believes that the buyout option is difficult to justify. While HOC has held long held this view, the Report adds new evidence demonstrating problems with the buyout process. A price that would allow for the production of an MPDU would be high enough to preclude any use of the provision. Given the County's shortage of developable land and increasing land prices, buyouts become less and less useful. The geographic spread of HIF funds does not track the production of new rental and for-sale homes, resulting in greater concentrations of affordable housing. Finally, the use of buyouts to replace County funding for the HIF means that no new MPDUs are produced through this exception.

The buyout option should be eliminated from the law. The two remaining options, the donation of land and the provision of MPDUs in other locations, are adequate to ensure that the truly exceptional projects, which cannot create MPDUs on site, can meet the law's requirements in other ways. As housing prices continue to increase, the gap between market rates and MPDU rates will widen, making the buyout option more desirable for developers. MPDU production will decrease just when the affordable units are needed the most.

For all alternatives to the production of MPDUs, the County should amend the manner in which agreements are reached. Criteria should be established for

45

determining when a project can qualify for an alternative agreement and for setting the terms of the agreement. The lack of such rules causes uncertainty for both developers and the public officials involved in the process, making development more difficult. A clear set of guidelines will allow the development community to better plan for future housing projects and will create public confidence that the MPDU law is achieving its purpose of maximizing the creation of MPDUs.

Most, if not all, of the 2002 MPDU buyouts occurred in high-end projects where market prices and rents significantly exceeded MPDU prices and rents. These projects frequently need the density bonuses allowed under the County Code in order not to be financially penalized by the MPDU requirements. In some cases, the density bonuses are not allowed and in others, densities that are permitted under the zoning code cannot be achieved due to restrictions imposed during the planning process. The best solution to the buyout problem is to allow for zoned densities. By allowing for the additional density, developers will be able to recover revenues lost with the inclusion of MPDUs, making buyouts less necessary. While maximum densities may not be appropriate in all areas of the County, in the rapidly urbanizing inner core, higher concentrations of housing should not outstrip facilities and would make a substantial difference in the County's goal of promoting mixed-income communities. In order to facilitate this goal, changes that allow for greater densities should be enacted. Height and setback restrictions and other requirements that limit density bonuses should be amended. The MPDU ordinance and affordable housing goals should be a strong consideration in the County's review of development projects.

Working together with the private sector, Montgomery County can continue to provide desirable neighborhoods for people of all income levels. The changes proposed here will make a real difference, creating more moderately priced homes and maximizing the use of the County's Housing Initiative Fund and other resources. Thank you for your continued support of affordable housing and I look forward to discussing these issues with you in the future.

School Impact Tax Material

10 QUESTIONS ABOUT BILL 9-03
(Development Impact Tax – School Facilities)

1. **What is a development impact tax?** In Montgomery County, the current transportation impact tax is a one-time charge paid by a developer or builder to help cover the cost of major County roads and other transportation improvements needed because of traffic generated by new development. The developer pays this tax before receiving a building permit. Bill 9-03 would create a parallel impact tax to help pay for new schools and additions to existing schools needed to reduce school overcrowding and reflect enrollment increases.

2. **Where are impact taxes assessed now, and how much has the tax been?** Impact fees or taxes have been assessed on new development since 1986 in the Fairland, White Oak, and Cloverly policy areas (Eastern Montgomery County), in the Germantown area, and since 2001 in the Clarksburg area. The rates vary among these three areas, as shown in the rate tables below. In 2002, the impact tax was extended to the rest of the County, with a somewhat lower rate scale.

3. **Who would pay school impact taxes?** Bill 9-03 would assess impact taxes on all new residential development in Montgomery County except low- and moderate-income housing and housing in enterprise zones (all exempt from the current impact tax). All 9 other counties in Maryland that assess impact taxes apply the tax countywide or nearly countywide.

4. **What impact tax rates are proposed in Bill 9-03?** Bill 9-03 proposes the following rates (per dwelling unit) which were based on the comparative student generation rates of the various types of new housing, as calculated by Montgomery County Public Schools staff.

Single-family-detached houses	$3920
Townhouses	$3220
Garden apartments	$1960
High-rise apartments	$770
Apartments for seniors	$0

5. **How much impact tax revenue would be collected?** The amount of revenue collected would depend upupon the pace of new construction, which can fluctuate widely from year to year. Council staff estimates that a countywide school impact tax would yield about $10 million in an average year.

6. **What would impact tax revenue be used for?** Under Bill 9-03 the funds could only be used for new public school construction and additions to existing public schools.

7. **If Bill 9-03 is enacted, when would impact taxes be levied?** If enacted, Bill 9-03 would take effect on September 1, 2003. The bill grandfathers building permit applications received by that date. For applications made between September 1 and December 31, 2003 the tax rates would be 50% of those set in the bill, and for applications made between January 1 and June 30, 2004 the rates would be 75% of those set in the bill. The full rates would go into effect on July 1, 2004.

8. **How do these rates compare to other Maryland counties?** The following table compares the proposed **residential** rates in this bill to the current rates in the County and those in other Maryland counties (tax/dwelling unit). For each category, the rates proposed in Bill 9-03 are near the mid-range of Maryland impact tax rates.

Residential Impact Tax/Fee Rates (tax/dwelling unit)

County	Detached	Townhouses	Apartments
Proposed rates in Bill 9-03*	**$3,920**	**$3,220**	**$1,960**
County District	$2,100	$2,100	$1,100
Clarksburg	$2,753	$2,753	$1,981
Germantown	$2,492	$2,492	$1,794
Eastern Montgomery	$1,727	$1,727	$1,243
Anne Arundel	$4,069	$2,809	$2,068
Calvert	$3,950	$2,950	$1,950
Caroline	$1,500	$1,500	N/A
Carroll	$4,744	$3,595	$1,925
Charles	$9,700	$9,200	$7,000
Frederick**	$7,446	$4,811	$1,518
Howard***	$2,640	$1,200	$880
Prince George's****	$5,000	$5,000	$5,000
Queen Anne's	$5,744	$3,397	$3,397
St. Mary's	$4,500	$4,500	$4,500

*Add these to the existing rates in the County District, Clarksburg, Germantown, and Eastern Montgomery to calculate the cumulative impact tax rates for each area.
**Part of the Frederick County charge is a road excise tax.*Part of the Frederick County charge is a road excise tax. The charges per unit shown here are based on the median size of dwelling units in each category in Montgomery County: 3,300 sq.ft. for single-family detached units; 1,500 sq.ft. for townhouses; and 1,100 sq.ft. for multi-family units (all not including basements).
**Howard County charges $.80/sq.ft. These costs per unit are based on the median size of dwelling units in each category in Montgomery County (see above).
***A bill has passed both branches of the General Assembly that would raise these rates to $7,000/unit for units inside the Beltway and $12,000/unit for units outside the Beltway, but it has not yet become law.

9. How do these rates compare to the school impact tax rates in other Maryland counties? The following table compares the proposed rates in this bill to the school impact taxes imposed in other Maryland counties (tax/dwelling unit).

Public School Impact Tax/Fee Rates (fee or tax/dwelling unit)

County	Detached	Townhouses	Apartments
Proposed rates in Bill 9-03	**$3,920**	**$3,220**	**$1,960***
Anne Arundel	$3,161	$1,997	$1,433
Calvert	$3,000	$2,000	$1,000
Caroline	$750	$750	N/A
Carroll	$4,197	$3,097	$1,543
Charles	$9,700	$9,200	$7,000
Frederick	$6,509	$4,365	$1,218
Prince George's**	$5,000	$5,000	$5,000
Queen Anne's	$4,730	$2,569	$2,569
St. Mary's	$3,375	$3,375	$3,375

* This is the proposed rate for multi-family units that are neither high-rise nor senior-only units. The proposed rates for multi-family high-rise and senior are $770/unit and $0/unit, respectively.
** See the note in the prior table regarding the pending change in Prince George's rates.

10. When will the Council consider Bill 9-03? The Council has scheduled a public hearing on April 28, 2003 to take testimony on this Bill and other revenue measures.

AGENDA ITEM 3.1
April 8, 2003
Introduction

MEMORANDUM

April 7, 2003

TO: County Council

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

SUBJECT: ***Introduction:*** Bill 9-03, Development Impact Tax – School Facilities

Councilmembers Perez and Andrews expect to introduce Bill 9-03, *Development Impact Tax – School Facilities,* on April 8. Bill 9-03 would establish a development impact tax to pay for new and expanded public schools. This tax would be similar to the current transportation impact tax, but levied only on new residential development anywhere in the County. At the rates proposed in the bill, Council staff estimates that it would raise about $10.5 million a year when fully in effect.

The Council has tentatively scheduled a public hearing on Bill 9-03 on April 28 at 7 p.m.

This packet contains:	© number
Bill 9-03	1
Legislative Request Report	11
Question and answer fact sheet	12

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LEGISLATIVE REQUEST REPORT

Bill 9-03

Development Impact Tax – School Facilities

DESCRIPTION:	Establishes an impact tax on the development of residential property, similar to the transportation impact tax already in effect. Proceeds of this tax would be used to build new public schools or add capacity to existing public schools. Tax rates would be uniform Countywide, and would be based on the relative student generation rates of each type of housing. Housing in enterprise zones and low- and moderate-income would be exempt.
PROBLEM:	Shortfalls in state aid and otherwise insufficient funds to keep pace with school construction needs.
GOALS AND OBJECTIVES:	To provide an additional funding source for school construction that relates directly to the added students generated by new residences.
COORDINATION:	Department of Finance, Montgomery County Public Schools
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	See question-and-answer fact sheet prepared by Council staff for rates in other Maryland counties.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	County tax and revenue laws apply Countywide.
PENALTIES:	Class A for failure to pay.

Bill No.	9-03
Concerning:	Development Impact Tax – School Facilities
Revised: 4-7-03	Draft No. 3
Introduced:	April 8, 2003
Expires:	October 8, 2004
Enacted:	
Executive:	
Effective:	September 1, 2003
Sunset Date:	None
Ch. ____, Laws of Mont. Co.	

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Perez and Andrews

AN ACT to:

(1) establish a development impact tax to pay for certain school facilities;
(2) phase in the application of the school impact tax;
(3) provide for certain exemptions from and credits against the school impact tax;
(4) provide for certain uses for revenues from the tax; and
(5) generally amend the law governing impact taxes and the funding of school facilities.

By adding
Montgomery County Code
Chapter 52, Taxation
Article XII, Development Impact Tax for Public School Improvements

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:

52

1 **Sec. 1. Chapter 52 is amended by adding the following article:**
2 **Article XII. Development Impact Tax for Public School Improvements.**
3 **52-87. Definitions.**
4 In this Article all terms defined in Section 52-47 have the same meanings, and
5 the following terms have the following meanings:
6 *Development impact tax for public school improvements* means a tax imposed
7 to defray a portion of the costs associated with public school improvements that are
8 necessary to accommodate the enrollment generated by the development.
9 *Public school improvement* means any capital project of the Montgomery
10 County Public Schools that adds to the number of teaching stations in a public
11 school.
12 *High-rise residential unit* means any dwelling unit located in a multifamily
13 building that is taller than 4 stories.
14 **52-88 Findings; purpose and intent.**
15 (a) The amount and rate of growth will place significant demands on the
16 County to provide public school improvements necessary to support and
17 accommodate that growth.
18 (b) The County, through its adoption of the Capital Improvements Program,
19 indicates its commitment to provide public school improvements.
20 (c) The County has determined that a combination of approaches will be
21 necessary to fully achieve the level of public school improvements
22 needed to accommodate growth . Thus, the County proposes to fund a
23 program of public school improvements through development impact
24 taxes to support new growth in the County.
25 (d) Imposing a development impact tax that requires new development to
26 pay a share of the costs of public school improvements necessitated by

(53)

27 that development in conjunction with other public funds is a reasonable
28 method of raising the funds to build improvements in a timely manner.
29 (e) The development impact tax for public school improvements will fund,
30 in part, the improvements necessary to increase public school capacity,
31 thereby allowing development to proceed. Development impact taxes
32 authorized in this Article will be used exclusively for public school
33 improvements.
34 (f) In order to assure that the necessary public school improvements are
35 constructed in a timely manner, the County intends to make sufficient
36 funds available to construct the public school improvements.
37 (g) The County retains the power to determine the public school
38 improvements to be funded by development impact taxes; estimate the
39 cost of such improvements; establish the proper timing of construction
40 of the improvements to meet school capacity needs as identified in the
41 Annual Growth Policy; determine when changes, if any, may be
42 necessary in the County CIP; and do all things necessary and proper to
43 accomplish the purpose and intent of this Article.
44 (h) The County intends to further the public purpose of assuring that
45 adequate public school capacity is available in support of new
46 development.
47 (i) The County's findings are based on the adopted or approved plans,
48 planning reports, capital improvements programs identified in this
49 Article, and specific studies conducted by Montgomery County Public
50 Schools.
51 (j) The County intends to impose development impact taxes for public
52 school improvements until the County has attained build-out as defined
53 by the General Plan.

54

54 52-89. Imposition and applicability of tax.

55 (a) An applicant for a building permit for a residential development must
56 pay a development impact tax for public school improvements in the
57 amount and manner provided in this Article before a building permit is
58 issued for any residential development in the County unless:
59 (1) a credit for the entire tax owed is allowed under Section 52-93; or
60 (2) an appeal bond is posted under Section 52-56.
61 (b) Except as expressly provided in this Article, this tax must be levied,
62 collected, and administered in the same way as the tax imposed under
63 Article VII. All provisions of Article VII apply to this tax unless the
64 application of that Article would be clearly inconsistent with any
65 provision of this Article. This tax is in addition to the tax imposed
66 under Article VII, and any tax paid under this Article must not be
67 credited against any tax due under Article VII.
68 (c) The tax under this Article must not be imposed on:
69 (1) any Moderately Priced Dwelling Unit built under Chapter 25A or
70 any similar program enacted by either Gaithersburg or Rockville,
71 (2) any Productivity Housing unit, as defined in Section 25B-17(j),
72 which meets the price or rent eligibility standards for a
73 moderately priced dwelling unit under Chapter 25A;
74 (3) any other dwelling unit built under a government regulation or
75 binding agreement that limits for at least 15 years the price or rent
76 charged for the unit in order to make the unit affordable to
77 households earning less than 50% of the area median income,
78 adjusted for family size;

79 (4) any Personal Living Quarters unit built under Sec. 59-A-6.15,
80 which meets the price or rent eligibility standards for a
81 moderately priced dwelling unit under Chapter 25A;
82 (5) any dwelling unit in an Opportunity Housing Project built under
83 Sections 56-28 through 56-32, which meets the price or rent
84 eligibility standards for a moderately priced dwelling unit under
85 Chapter 25A; and
86 (6) any development located in an enterprise zone designated by the
87 State.
88 (d) The tax under this Article does not apply to:
89 (1) any reconstruction or alteration of an existing building or part of
90 a building that does not increase the number of dwelling units of
91 the building; and
92 (2) any building that replaces an existing building on the same site to
93 the extent of the number of dwelling units of the previous
94 building, if construction begins within one year after demolition
95 or destruction of the previous building was substantially
96 completed.
97 However, if in either case the tax due on the new, reconstructed, or
98 altered building is greater than the tax that would have been due on the
99 previous building if it were taxed at the same time, the applicant must
100 pay the difference between those amounts.
101 (e) If the type of proposed development cannot be categorized under the
102 residential definitions in Section 52-47 and 52-87, the Department must
103 use the rate assigned to the type of residential development which
104 generates the most similar school enrollment characteristics.
105 **52-90. Tax rates.**

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

107 *Dwelling type*	*Tax per dwelling unit*
108 Single-family detached residential	$3920
109 Single-family attached residential	$3220
110 Multifamily residential (except high-rise)	$1960
111 High-rise residential	$770
112 Multifamily senior residential	$0

113 (b) The County Council by resolution, after a public hearing advertised at
114 least 15 days in advance, may increase or decrease the rates set in this
115 Section.

116 (c) The Director of Finance must adjust the tax rates set in or under this
117 Section on July 1 of each odd-numbered year by the annual average
118 increase or decrease in the Consumer Price Index for all urban
119 consumers in the Washington-Baltimore metropolitan area, or any
120 successor index, for the two most recent calendar years. The Director
121 must calculate the adjustment to the nearest multiple of one dollar. The
122 Director must publish the amount of this adjustment not later than May
123 1 of each odd numbered year.

124 **52-91. Accounting; use of funds.**

125 (a) The Department of Finance must maintain and keep adequate financial
126 records that:

127 (1) show the source and disbursement of all revenues under this
128 Article;

129 (2) account for all funds received; and

130 (3) assure that the funds are used exclusively for the public school
131 improvements listed in subsection (d).

57

132 (b) Interest earned on revenues under this Article must be used solely for
133 public school improvements.
134 (c) The Department of Finance must annually issue a statement for this
135 account.
136 (d) Revenues raised under this Article may be used to fund any:
137 (1) new public elementary or secondary school;
138 (2) addition to an existing public elementary or secondary school; or
139 (3) modernization of an existing public elementary or secondary
140 school that adds one or more teaching stations.
141 **52-92. Refunds.**
142 (a) Except as provided in this Section, Section 52-54 applies to any petition
143 for a refund of taxes paid under this Article. Subsections 52-54(a)(1)
144 and (d) do not apply to taxes paid under this Article.
145 (b) Any person who has paid a tax under this Article may apply for a refund
146 of the tax if the County has not appropriated the funds for public school
147 improvements of the types listed in Section 52-91(d) by the end of the
148 sixth fiscal year after the tax is collected.
149 (c) The Director of Permitting Services must investigate each claim and
150 hold a hearing at the request of the petitioner. Within 3 months after
151 receiving a petition for refund, the Director must provide the petitioner,
152 in writing, with a decision on the refund request. The Director must
153 specify the reasons for the decision, including, if a refund is claimed
154 under subsection (b), a determination of whether funds collected from
155 the petitioner, calculated on a first-in-first-out basis, have been
156 appropriated or otherwise formally designated for public school
157 improvements of the types listed in Section 52-91(d) within 6 fiscal
158 years.

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159 **52-93** **Credits.**

160 (a) Section 52-55 does not apply to the tax under this Article. A property
161 owner must receive a credit for constructing or contributing to an
162 improvement of the type listed in Section 52-91(d). A credit must not
163 be allowed for the cost of any land dedicated for school use, including
164 any land on which the property owner constructs a school.

165 (b) If the property owner elects to make a qualified improvement, the owner
166 must enter into an agreement with the Director of Permitting Services,
167 or receive a development approval based on making the improvement,
168 before any building permit is issued. The agreement or development
169 approval must contain:

170 (1) the estimated cost of the improvement, if known then,
171 (2) the dates or triggering actions to start and, if known then, finish
172 the improvement,
173 (3) a requirement that the property owner complete the improvement
174 according to Montgomery County Public Schools standards, and
175 (4) such other terms and conditions as MCPS finds necessary.

176 (c) MCPS must:

177 (1) review the improvement plan,
178 (2) verify costs and time schedules,
179 (3) determine whether the improvement is a public school
180 improvement of the type listed in Section 52-91(d),
181 (4) determine the amount of the credit for the improvement, and
182 (5) certify the amount of the credit to the Department of Permitting
183 Services before that Department or a municipality issues any
184 building permit.

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185 (d) An applicant for subdivision, site plan, or other development approval
186 from the County, Gaithersburg, or Rockville, or the owner of property
187 subject to an approved subdivision plan, development plan, or similar
188 development approval, may seek a declaration of allowable credits from
189 MCPS. MCPS must decide, within 30 days after receiving all necessary
190 materials from the applicant, whether any public school improvement
191 which the applicant has constructed, contributed to, or intends to
192 construct or contribute to, will receive a credit under this subsection. If
193 during the initial 30-day period after receiving all necessary materials,
194 MCPS notifies the applicant that it needs more time to review the
195 proposed improvement, MCPS may defer its decision an additional 15
196 days. If MCPS indicates under this paragraph that a specific
197 improvement is eligible to receive a credit, the Director of Permitting
198 Services must allow a credit for that improvement.
199 (e) The Director of Finance must not provide a refund for a credit which is
200 greater than the applicable tax. If, however, the amount of the credit
201 exceeds the amount of the tax due, the property owner may apply the
202 excess credit toward any tax imposed under this Article on any other
203 building permit for development with the same ownership. In this
204 Section, a property has the same ownership as another property if the
205 same legal entity owns at least 30% of the equity in both properties.
206 **Sec. 2. Effective Date; Transition.**
207 (a) This Act takes effect on September 1, 2003, and applies to any building
208 for which an application for a building permit is filed on or after that
209 date.
210 (b) Each taxpayer must pay the development impact tax at:

60

211 (1) 50% of the rates set in Section 52-90, as inserted by Section 1 of
212 this Act, for any building permit application filed between
213 September 1, 2003 and December 31, 2003;
214 (2) 75% of the rates set in Section 52-90 for any building permit
215 application filed between January 1, 2004, and June 30, 2004;
216 and
217 (3) 100% of the rates set in Section 52-90 for any building permit
218 application filed on or after July 1, 2004.
219 To the extent that any taxpayer pays a lower rate than that set in Section
220 52-90 because this subsection applies, any credit claimed under Section
221 52-93 must be reduced by the same ratio.
222 *Approved:*

223

Michael L. Subin, President, County Council Date

224 *Approved:*

225

Douglas M. Duncan, County Executive Date

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

227

Mary A. Edgar, CMC, Clerk of the Council Date

61