

Item 3 & Item 4 **Correspondence**

From: [Matthew Gordon](#)
To: [MCP-Chair](#)
Cc: [Wright, Gwen](#); [Kronenberg, Robert](#); [Sartori, Jason](#); [C. Robert \(Bob\) Dalrymple](#)
Subject: Preliminary Comments to the Working Draft of the Growth Policy (2020 - 2024)
Date: Wednesday, May 27, 2020 12:03:09 PM
Attachments: [image001.png](#)
[Letter to the Planning Board re Briefing on Growth Policy \(Selzer Gurvitch Land Use Practice Group Initial Comments\).pdf](#)

Chair Anderson,

Please find our preliminary comments to the working draft of the Growth Policy attached. We look forward to participating in the public hearing and review processes that will follow.

Thanks,

Matt

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May 27, 2020

Via Email - MCP-Chair@mncppc-mc.org

Mr. Casey Anderson, Chair
And Members of the Planning Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: 2020 – 2024 Subdivision Staging Policy (SSP): Briefing on Staff Recommendations; Selzer Gurvitch’s Land Use Practice Group Written Comments (*Item #3 and #4*)

Dear Chair Anderson,

On behalf of the Land Use/Zoning practice group at Selzer Gurvitch, we offer these initial comments to the Working Draft of the County Growth Policy (the “Working Draft”). While many of the same comments will be shared with you by clients and others in the development industry as the public review process continues, we thought it might be useful to consolidate some collective initial comments to the Working Draft.

As a general matter, we commend Staff’s thoughtful and innovative policy recommendations in the Working Draft. It is evident that Staff took a fresh look at many aspects of the County’s longstanding Adequate Public Facilities standards and processes, which were in need of an update to accomplish many of the County’s strategic policy objectives that emphasize the creation of housing and employment centers where existing infrastructure can support such growth. We also appreciate that many of the Working Draft policy recommendations are based upon an analytical approach that is supported by historical data. We offer the following specific comments to the Working Draft below:

Recommendation 6.2: Calculate standard school impact tax rates at 100% of the cost of a student seat using School Impact Tax Area student generation rates. Apply discount factors to incentive growth in certain activity centers.

Consistent with the County Council’s Resolution to Support the Metropolitan Washington

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Council of Governments' ("MWCOG") Regional Housing Targets for Montgomery County, the Working Draft appropriately recommends changes to the school impact tax rates that will encourage transit-oriented growth and affordable housing in MWCOG's designated Activity Centers. It is sound public policy and planning to prioritize residential growth in the County's 23 designated Activity Centers because these locations have proximity to employment centers and transit.

MWCOG's Regional Housing Target Goals calls on Montgomery County to increase its share of housing by 10,000 units (inclusive of 1,000 additional units each in the City of Rockville and City of Gaithersburg) by 2030. Moreover, MWCOG recommends that at least 75% of these new housing units be developed in Activity Centers. To this end, the Working Draft properly acknowledges that prevailing County policy must be tailored to encourage growth in Activity Centers. In this same respect, the Working Draft recommendations are premised upon a finding that turnover in existing single-family homes and new development in Greenfield impact areas account for the vast majority Countywide growth in Montgomery County Public Schools ("MCPS") enrollment. Given the importance of creating housing, particularly affordable housing, that has proximity to jobs and transit, and the fact that such development generates a low proportion of growth in MCPS enrollment, it is imperative that the Planning Board support reduced school impact tax rates in designated Activity Centers. In light of the uncertainty and economic challenges created by the ongoing COVID-19 public health crisis, it has never been more important to adopt policies that encourage housing in the most appropriate locations in the County. We respectfully request that the Planning Board support the proposed reduced school impact tax rates in designated Activity Centers.

Recommendation 6.1: Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.

The Working Draft's recommendation to create one school impact tax rate for all multifamily development is based upon consistent and sound historical data. Significantly, the Working Draft found there is no distinguishable difference in the student generation rates of low-rise and high-rise multifamily units constructed since 1990. While there has been no difference in student generation rates for three decades, low-rise multifamily projects are currently assessed a school impact tax that is more than three (3) times as much as that assessed to high-rise multifamily projects. The additional cost assessed to low-rise multifamily projects creates a cost burden and constrains redevelopment opportunities for transitional sites with zoning that does not allow enough building height for a high-rise project. The elimination of this unwarranted distinction between multifamily school impact tax rates would create additional opportunities for housing in Activity Centers (especially outside of the high-density urban core areas), which is critical to meeting MWCOG's Regional Housing Targets for Montgomery County. We urge the Planning Board to support the Working Draft's recommendation that one uniform school impact tax rate be applied to all multifamily projects regardless of building height.

6.6 Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to: 1. not apply the exemption to school impact taxes in the Greenfield Impact Areas, 2. require the affordable units be placed in the county's MPDU program, and 3. require the project to include two times the standard share of MPDUs applicable to the project location.

While we understand the rationale behind the Working Draft's recommendation that the criteria be modified and clarified for the current impact tax exemption applicable to development projects with a minimum of 25% MPDUs, we think it is critical that the Planning Board recognize various development projects that have already proceeded through the development review process under the current rules. To this end, the Working Draft notes that there are seventeen development projects in various stages of the application process that have either used the impact tax exemption by providing 25% MPDUs or signaled an intent to use the exemption. The Working Draft notes that "together the seventeen projects will create over 550 additional MPDUs beyond what would otherwise have been required," and that "[i]n the past five years, the MPDU program has created on average around 220 MPDUs per year (both rental and for-sale)." Given the significant amount of additional MPDUs proposed to be generated by these seventeen projects and the concomitant costs incurred through the development review process, it is important that the Planning Board recommend grandfathering for development projects that predate the adoption of this policy change. We respectfully request that the Planning Board recommend that any development project with a preliminary plan of subdivision or site plan approval that includes 25% MPDUs be permitted to use the impact tax exemption at the time of building permit as long as the underlying preliminary plan of subdivision and/or site plan approval remain valid. Such grandfathering is necessary to balance the interests and expectations of development projects that have proceeded in good faith through the development process with the goal of substantially exceeding the minimum requirement for MPDUs against the proposed policy change that would require a minimum of 30% MPDUs in some locations.

Thank you for the opportunity to submit these preliminary comments to the Working Draft, and we look forward to continuing to work with all stakeholders through the public hearing process for the Growth Policy.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

C. Robert Dalrymple

C. Robert Dalrymple

Matthew Gordon

Matthew M. Gordon

Selzer Gurvitch Land Use/Zoning Practice Group Written Comments

May 27, 2020

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cc: Gwen Wright, Planning Director
Robert Kronenberg, Deputy Director
Jason Sartori, Functional Planning