2024 - 2028 GROWTH AND INFRASTRUCTURE POLICY WORK SESSION #3 – IMPACT TAXES

Description

Montgomery Planning is undertaking the quadrennial update of the Growth and Infrastructure Policy (GIP). On Thursday, May 23, 2024, the Planning Board held a public hearing for the 2024 GIP draft. Over the course of five weeks, the Planning Board will have the opportunity to review and provide commentary on each recommendation throughout a series of work sessions. The third work session will focus on recommendations for impact taxes.

Complete: 06-06-2024

MCPB

Item No. 4

6/13/2024

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Summary

- The GIP addresses the adequacy of public facilities as it relates to the regulatory or development review process. It sets standards for evaluating individual development proposals to determine if the surrounding public infrastructure, such as transportation networks and school facilities, can accommodate the demands of the development. It also outlines requirements for mitigating inadequate infrastructure.

- This staff report outlines the recommendations for impact taxes in the 2024 – 2028 Growth and Infrastructure Policy (GIP) update.

- The County Code directs the Planning Board to transmit a draft of the GIP to the County Council by August 1, 2024, and for the County Council to adopt the 2024-2028 policy by November 15, 2024.

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Overview of Work Sessions

The Planning Board has held two previous work sessions on the Growth and Infrastructure Policy:

- Work Session #1: On May 30, 2024, the Planning Board began its review of the schools element recommendations (**Attachment C**).
- Work Session #2: On Thursday, June 6, 2024, the Planning Board began its review of the transportation element recommendations (**Attachment D**).

On June 14, Work Session #3, the Planning Board will begin reviewing the impact tax recommendations.

The GIP comment matrix (**Attachment F**) provides Planning Staff's responses to comments and testimony.

During Work Session #4, scheduled for June 20, 2024, the Planning Board will continue the impact tax discussion and will address outstanding topics on the schools and transportation elements.

Chapter 33A of the County Code requires a quadrennial review of the GIP, with the current review to be completed in 2024. The Planning Board must transmit its policy recommendations along with a report on the county's growth context to the County Council by August 1, 2024. The Council will adopt the updated policy via resolution by November 15, 2024. The following table highlights the upcoming timeline for GIP milestones and activities.

Milestone	Dates	Notes
~~Work Session #1~~	~~May 30, 2024~~	~~Schools~~
~~Work Session #2~~	~~June 6, 2024~~	~~Transportation~~
Work Session #3	June 13, 2024	Impact Taxes
Work Session #4	June 20, 2024	Impact Taxes (continued), Schools and Transportation (outstanding topics)
Work Session #5	June 27, 2024	If needed
Work Session #6	July 18, 2024	Track Changes
Planning Board approval of Planning Board Draft and Resolution	July 25, 2024	Transmit to the County Council and County Executive by August 1
County Council Public Hearing	September 2024	

County Council Review and Approval	September – November 2024	Council adoption is required by November 15, 2024

Background

Private developers are responsible for investing in public schools, roads, and sidewalks by paying development impact taxes on new development. Development impact taxes are an important source of funds, representing 4% of the transportation capital budget and 7% of the school capital budget in fiscal year 2024.

Development Impact Taxes are set by the Montgomery County Council, assessed on new residential and commercial buildings and additions to commercial buildings in the county to fund, in part, the improvements necessary to increase transportation or public-school systems capacity. The Department of Permitting Services (DPS) is charged with the collection of Development Impact Taxes. **Attachment E** illustrates the current impact tax rates for Montgomery County. Impact taxes are charged on a per-unit basis for four different housing types (single-family detached, single-family attached, multifamily low rise, and multifamily high rise and also charged on commercial properties.

The Planning Department typically reviews and prepares recommendations related to impact taxes in conjunction with the GIP update because they are closely related. Policy updates applied a context-based framework to the impact tax regime to help focus growth by with Transportation Policy Areas and School Impact Areas. Recent updates have also focused on encouraging the production of housing while balancing the need to ensure our school and transportation systems are adequately funded.

School impact tax rates are calculated on a biennial basis by the Planning Department, on behalf of the Department of Finance, based on the latest school enrollment data (from MCPS), housing inventory data (from SDAT), and school construction costs (from MCPS). Student generation rates (SGRs) capture the average number of public school students living in a particular housing type and geography combination. Montgomery Planning calculates SGRs for eight combinations of housing types (single-family detached and attached, and multifamily low-rise and high-rise) and context-sensitive school impact areas (turnover and infill) using the current school year’s official and complete enrollment and a corresponding housing dataset. For the school impact taxes, the tax rates are reset and recalculated to their true value every biennial update based on actual SGRs and actual MCPS school construction costs.

The current law requires the transportation impact tax rates to be recalculated based on the cumulative increase or decrease in a published construction cost index over the most recent two calendar years. Transportation impact tax rates are similar to the school rates in that they are context-sensitive for four different policy areas (red, orange, yellow, and green).

The recommendations for development impact taxes as part of the 2024 GIP update continue advancing county priorities, like housing for all, economic competitiveness, and racial equity and social justice.

Impact Taxes Recommendations

Impact taxes have become a significant discussion point in the county. Many note that impact taxes represent a relatively small percentage of the capital budget (4% of the transportation capital budget and 7% of the schools capital budget in fiscal year 2024) and that they do not result in enough money to cover enough of the infrastructure needed in the county. Also noted is the perceived high number of exemptions and waivers for impact taxes that impede the amount of impact taxes collected.

However, many others note that Montgomery County has perhaps the most expensive impact taxes in the state. These high rates hinder the production of needed housing in the county.

Planning Staff is sensitive to the importance of development-provided transportation and school funding, however, in the view of Planning Staff, the county pays a significant price when development projects do not advance or are pared down due to the county's high development costs. This includes the loss of impact tax revenues, offsite mitigation and frontage improvements that these projects would otherwise have generated.

While some proposed changes discussed in the recommendations may result in less impact on tax revenue from specific projects, others may lead to increased revenues. Additional development will provide new long-term sustainable revenue through increased property tax receipts to support the county's capital budget priorities, including transportation and schools.

COMMENTS

Recommendation 4.1: With the recommended continued use of Utilization Premium Payments, continue to calculate standard school impact taxes at 100% of the cost of a seat using School Impact area student generation rates.

Public Testimony

Miles & Stockbridge P.C. ("The Miles Group") notes that MCPS receives funding from the state for construction costs associated with a student seat, thereby lowering the cost to MCPS. Therefore, impact taxes should be recalibrated to reflect the actual cost to MCPS.

Planning Staff Response

- Planning Staff is evaluating this issue and will discuss the findings with the Planning Board in a future work session.

Recommendation 4.2: Continue the use of the cap and carryover system as adopted through Bill 25-23E. Its implementation is relatively new and will help soften any anticipated upward adjustments.

Public Testimony

- None.

Recommendation 4.3: Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,500 square feet or smaller.

Public Testimony

David Barnes, on behalf of the **Edgemoor Citizens Association**: The County's approach to measuring infrastructure impact, which focuses on large-scale development and excludes small-scale residential development, may have worked previously when most single-family homes were torn down and replaced with larger single-family homes. But if conversions of single-family homes to duplexes, triplexes, and quadplexes increases once the Attainable Housing Strategies initiative is implemented, the GIP should incorporate infrastructure assessments of attainable housing units.

Planning Staff Response

- Small scale attainable housing units will pay both transportation and school impact taxes and school UPP payments if necessary. However, small scale attainable housing units are unlikely to be required to contribute to offsite transportation improvements due to the de minimis threshold for transportation adequacy.

Michael Larkin, **Montgomery for All Steering Committee**, and Dan Reed, **Greater Greater Washington (GGWash),** support this recommendation.

Pat Harris of **Lerch, Early & Brewer,** recommends raising the 1,500 square foot (SF) threshold to at least 1,600 SF. The **Miles Group** also supports increasing the eligible unit size. Katie Wagner**, on behalf of the NAIOP and MBIA**, supports a threshold of 2,000 SF, explaining that it is not financially viable to build homes smaller than 1,500 SF because of the required width of the units and the market preferences for the larger number of bedrooms.

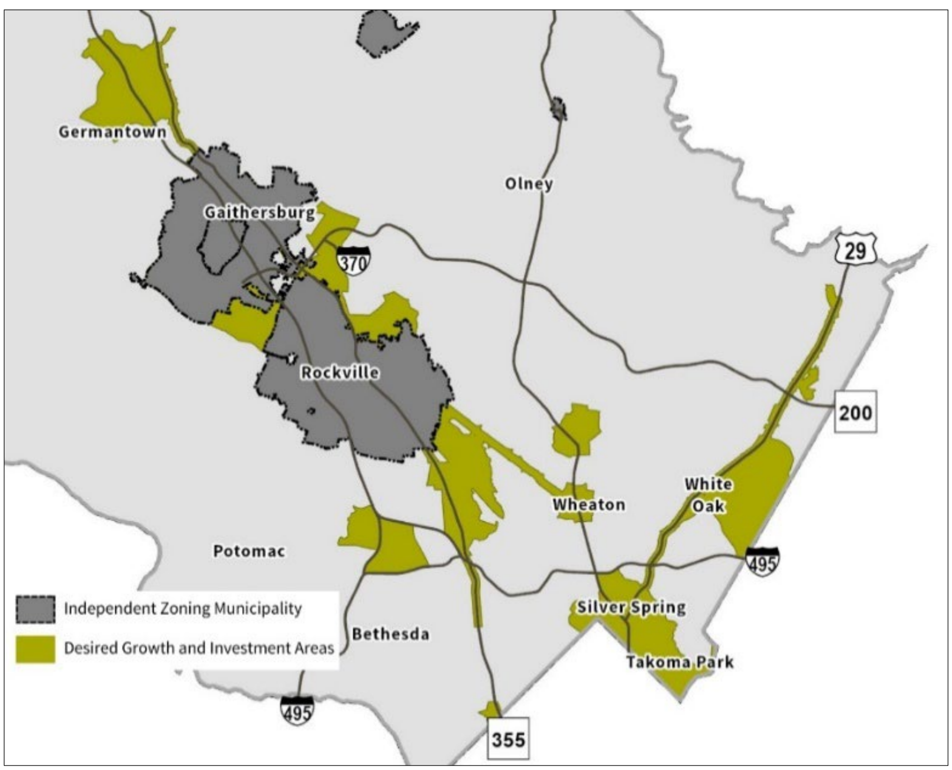
Matthew Gordon and Robert Dalrymple on **behalf of Selzer Gurvitch Rabin Wertheimer & Polott, P.C. ("Selzer Gurvitch"),** say the recommendation is insufficient to incentivize conversions from office to multifamily as the market demands housing units that are larger than 1,500 SF.

Planning Staff Response

- This recommendation is intended to align the GIP with the Attainable Housing Strategies report. For the Attainable Housing Optional Method (AHOM), the most practical means of ensuring attainability is to establish a maximum average unit size across all unit types within a development project. The Planning Board recommended 1,500 SF as the maximum average unit size. Planning Staff is open to changing the square footage threshold required to qualify for the 50% impact tax discount, however, we want to reiterate that the recommendation is intended to incentivize the production of smaller homes. Planning Staff is currently evaluating average square footage from DPS' building permit data to better understand the unit sizes of the units being built. Regardless, if a change is made to this recommendation, it should also be reflected in the Attainable Housing Strategies report, which the Planning Board will also review on June 13, 2024.

Recommendation 4.4: Remove the Desired Growth and Investment Areas exemption and rely on other policies to advance corridor-focused compact growth and housing. This will simplify the number of boundaries used in conjunction with the policy.

Figure 1 Desired Growth and Investment Areas



Public Testimony

MCDOT supports the recommendation to remove the desired growth and investment area discount.

Planning Staff Response

- Planning Staff notes that this could potentially help offset some of the impact tax exemptions and discounts that MCDOT and the Executive Branch have expressed concerns about.

Recommendation 4.5: Expand the current discount for units with three or more bedroom units to a total impact tax exemption for both transportation and school impact taxes and in all impact areas and policy areas.

Public Testimony

Selzer Gurvitch, Greater Greater Washington, The Miles Group, and the **Montgomery for All Steering Committee** support the full development impact tax exemption for multifamily units with three or more bedrooms.

MCDOT voices minor opposition to this recommendation, while noting that the anticipated fiscal impact of is minor due to the limited number of 3+ bedroom units built over recent years. MCDOT recommends clearly defining units with three or more bedrooms, such as whether boarding / rooming houses or other forms of shared or group housing, would qualify for the proposed changes.

Planning Staff Response

- Planning Staff recommends developing a definition for 3+ bedroom units as the 3+ bedroom exemption is intended only 3+ bedroom units in multifamily projects and will propose a definition at the work session. Also, Planning Staff notes that this is an existing impact tax waiver that is being broadened and has already been applied to existing projects.

Recommendation 4.6: Exempt office-to-residential conversion projects from impact taxes, given the high office vacancy rate in the county and the difficulty of converting office space to residential use.

Public Testimony

The **Miles Group, Montgomery for All Steering Committee**, and **Mike English** support this recommendation.

Selzer Gurvitch recommends adding a new recommendation that provides a 50% exemption from school impact taxes for development projects that involve the demolition of office buildings for infill attached and/or multifamily housing. Selzer Gurvitch reasons that this will allow for a 100% exemption where projects adaptively reuse an office building for multifamily housing and incentivize a wider range of housing types.

MCDOT voices minor opposition to this recommendation, as this recommendation may slightly reduce available revenues to address needs. Recommends precisely define what constitutes an office-to-residential conversion, particularly for projects that may include both conversions as well as new non-conversion development.

Planning Staff Response

- Planning Staff plan to have a detailed discussion with the Planning Board on how to define office-to-residential conversion at the June 13 work session, and if this recommendation will include just the conversion of existing office space or also include demolition of office space and newly built residential.

Recommendation 4.7: Given the importance of this sector to the economic vitality of the county, continue exempting bioscience projects and add the exemption to the county code.

Public Testimony

MCDOT neither supports nor opposes this recommendation; it would have no or negligible fiscal impact as compared to the current policy.

William Kominers of Lerch, Early, & Brewer and **The Miles Group** recommend maintaining the current policy, recognizing the importance of this sector to the County's economic vitality.

Recommendation 4.8: Update the County Code to provide more clarity and allow credit for capacity improvements along state roadways.

Public Testimony

County Executive Marc Elrich cautions that the proposal will significantly impact the County's financial ability to build priority infrastructure projects to accommodate growth. If credits are allowed for improvements on State roads, impact tax rates should be increased to account for the additional scope of work the County would have to fund.

MCDOT strongly opposes this recommendation because credits for improvements on state roads would further reduce the available funds and serve to de-prioritize the projects that have been carefully selected through master planning and County budget approvals.

Planning Staff Response

- This recommendation creates a fairer and more equitable development process. State roadways are critical transportation assets and the site of significant corridor-focused growth.

Developer-built improvements along these roadways improve safety and create value for county residents and visitors.

- The County regularly funds and constructs sidewalks and sidepaths along and adjacent to State-owned roadways. Planning Staff also notes that expanding credits to state-owned roadways aligns with the county's current use of impact tax funds. While impact taxes are not used for State-led projects, they are used for improvements on state-owned roadways. For example, impact tax funds were used to advance the BRT projects on Veirs Mill Road, MD 355, and US 29.

NAIOP and MBIA support the recommendation to allow tax credits for projects along state roadways and suggest furthering credits to include all projects that align with County's current policies including the Complete Streets Design Guideline and Vision Zero. NAIOP and MBIA recommend that the credits be acknowledged during preliminary plan and/or site plan review and confirmed prior to building permit issuance.

William Kominers of Lerch, Early & Brewer supports the recommendation, saying "the credits for improvements to state roads are long overdue." Mr. Kominers reasons that where the County is the source of the requirement, there should be credit given for improvements, even if it is on a state road.

The Miles Group agrees that the impact tax law needs comprehensive review and revision. The existing law (including the credit provisions) contains unclear language with complicated procedures, unreasonably restricts eligible improvements, and result in unpredictable and arbitrary determinations. It can encourage multimodal transportation and enhance safety, but it is an expensive and complicated frontage improvement that can make projects unviable or lead to increased costs that get passed on to homeowners or renters. This has been a focus in surrounding jurisdictions such as Gaithersburg. Suggests undergrounding of utilities be added as an improvement eligible for impact tax credits.

Recommendation 4.9: Given that the Opportunity Zone program is expected to expire at the end of 2026, Planning Staff recommends adding legacy language to allow Planning Board–approved projects that have not yet received building permits to continue to receive the impact tax exemption.

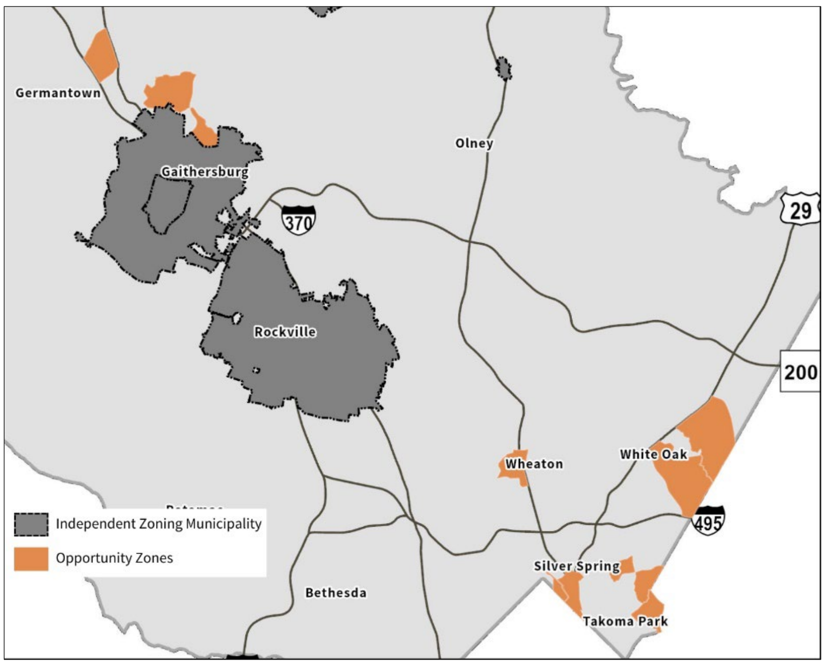
Public Testimony

<u>Scott Wallace</u>, of Miles & Stockbridge, **on behalf of MCB White Oak LLC**, for long-term projects with existing plan approvals like Viva White Oak, it is essential that the Opportunity Zone tax exemption be maintained after the designation expires in a few years. Leveraging the economic advantages of this designation is critical to the project's success. Mr. Wallace recommends including legacy language.

Selzer Gurvitch recommends continuing to exempt development projects under Opportunity Zones and Enterprise Zones so long as the underlying APF approval remains valid at the time of building permit issuance when impact taxes are calculated. The current exemption for Enterprise Zones should remain in effect until they expire. If such transitional language is not included, it will continue to hinder the development process in these qualified Opportunity Zones.

William Kominers of Lerch, Early & Brewer and Daniel L. Wilhelm, on behalf of the **Greater Colesville Civic Association (GCCA)**, recommend continuing the impact tax exemption for Enterprise Zones and Opportunity Zones beyond the expiration dates. These areas will remain distressed and in need of economic development and investment beyond the lapse of the federal designation and continuing to provide impact tax exemptions will provide incentives to continue development there.

Figure 2 Opportunity Zones



Planning Staff Response

- Planning Staff will update its recommendation to recommend maintaining the Opportunity Zone exemption regardless in currently designated areas beyond the expiration date. The impact tax exemption for former Enterprise Zones was phased out in the last GIP update and Planning Staff does not intend to bring it back. Planning Staff is, however, supportive of retaining the exemption for current Enterprise Zones.

General Impact Tax Comments

Public Testimony

County Executive Marc Elrich recommends that the Planning Board explore a more equitable tax structure akin to Northern Virginia's, where long-term payments sustain infrastructure funding and foster business growth. In Northern Virginia, taxes allocated for infrastructure directly contribute to essential projects, showcasing a model for effective and sustainable development.

Planning Staff Response

- Planning Staff would welcome future collaboration with Executive Branch agencies on funding infrastructure. Planning Staff recognizes that there is insufficient funding to implement infrastructure recommendations in master plans and is supportive of the County Executive's efforts to convene a larger discussion about infrastructure funding and welcomes the opportunity to participate.

County Executive Marc Elrich says that if further exemptions and reductions in impact taxes are adopted, alternative funding sources must be identified. Absent that, the growth policy may intensify the inequitable distribution of public services throughout the County.

Planning Staff Response

- While the County Executive asserts that the GIP may intensify the inequitable distribution of public services, it's not clear that this is the case for the impact tax recommendations. Impact taxes are not geographically bound to the extent offsite improvements are. One of the main benefits of adding additional impact tax waivers and exemptions in the GIP is to incentivize new development in more parts of the county, especially in places where projects struggle to advance due to the high impact taxes.

MCDOT strongly recommends that the collective portfolio of GIP recommendations be neutral in value to the County as compared to the current GIP policy. It would be their preference that recommendations provide a net positive value to the County, which would improve the county's ability to ensure adequate public facilities and achieve master planned visions.

Planning Staff Response

- Planning Staff focused on crafting a policy that further aligns the GIP and the impact tax recommendations with county goals and priorities. It is important that this policy helps further the county's goals, especially given that the county is not producing sufficient housing to meet its housing goals, especially affordable housing. Impact taxes are one of the tools that county has at its disposal to help incentivize the production of housing.

The Greater Colesville Civic Association (GCCA) recommends reducing transportation impact tax rates for developments that meet or exceed the non-auto driver mode share (NADMS) rates.[1] The tax rate could be the value per auto trip. Thus, trips taken by transit, walking, or biking would not be charged an impact tax, thus encouraging their usage.

Planning Staff Response

- Planning Staff does not have an accurate way of measuring the impact of transportation demand management (TDM) measures on mode-share and trip generation for individual projects. The current impact tax regime, which is based on square footage and number of

[1] NADMS is the percentage of commuter trips made by travel modes other than the single occupant auto (i.e., walk, bike, transit and auto passenger) coupled with the percentage of commuters connecting to work electronically.

units, would also stand in the way of this proposal. However, under the current system, projects with high NADMS rates are typically located in Red policy areas, which have the lowest tax rates.

Attachments

Attachment A – 2024 Growth and Infrastructure Policy Update – Public Hearing Draft
Attachment B – 2024 Growth and Infrastructure Policy Update – Appendices
Attachment C – GIP Work Session #1: Schools Element (May 30, 2024) Staff Report
Attachment D – GIP Work Session #2: Transportation Element (June 6, 2024) Staff Report
Attachment E – Current Impact Tax Rates
Attachment F – Testimony and Comment Response Matrix