

TO: Town Council
FROM: Subcommittee on Regional Growth and Development
RE: Review of Planning Board's draft County Growth Policy for 2020-2024
DATE: August 29, 2020

The Subcommittee on Regional Growth and Development has reviewed the draft County Growth Policy for 2020-2024 transmitted to the County Council by the Planning Board on July 31, 2020 (available at: <https://montgomeryplanning.org/wp-content/uploads/2020/07/County-Growth-Policy-1.pdf>). The draft County Growth Policy contains many recommendations for changes to the 2016-2020 Subdivision Staging Policy provisions pertaining to schools, transportation, and taxes. From among the many recommendations, the subcommittee has selected for comment those that it thinks are the most significant for Town residents. The subcommittee can provide comments on the other recommendations in the County Growth Policy if desired.

Summary Comments:

- I. Schools – Residential Development Moratoria: As school overcrowding is likely to increase over time, it is critical that if moratoria are eliminated, they must be replaced with effective policy and fiscal tools to ensure adequate school infrastructure. With that, the modest Utilization Premium Payment surcharge is not an adequate replacement for moratoria. We propose that the Council either extend the current SSP or adopt the proposed County Growth Policy (with some critical changes) for only one year while establishing a task force to study the likely future school capacity needs of the county and conduct a targeted analysis of policy and fiscal tools that could be adopted to address school overcrowding.
- II. Schools – Annual School Test: We are skeptical that a blanket “red light” or “green light” policy for all development for a year (Policy 4.6) complies with the mandate of Chapter 50’s Adequate Public Facilities Ordinance, and therefore oppose this policy change.
- III. Other School Related Policy Changes: We support Policy 4.15, which would require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning.
- IV. School Impact and Recordation Taxes: Consistent with the principle of the school impact and related taxes as user fees, we support both the proposed Utilization Premium Payment and increases in recordation taxes. However, the proposed recordation tax increases warrant close review and analysis in terms of fiscal impact. We support reducing the standard school impact tax from 120 percent to 100 percent, but generally oppose further discounts to the standard rate. We oppose continuing the application of school impact taxes on a net impact basis.
- V. Transportation – Traffic Still Matters: Traffic patterns will inevitably change and evolve, especially as development in Red Policy areas progresses and the County Growth Policy must have the tools needed to monitor and mitigate the impacts of these changes. For example, the details of the “biennial monitoring program”, which will replace the LATR motor vehicle

adequacy test in Red Policy areas, must be clear. Also, the Bethesda UMP should be completed and made operational prior to the elimination of the LATR motor vehicle adequacy test, and establishment of UMPs for other areas should be scheduled.

Detailed comments

I. Schools - Residential Development Moratoria

We fully support the County Council's goal of ensuring that school capacity is adequate for children throughout the county. Thus far, the County's Adequate Public Facilities Ordinance (APFO) has been the primary policy to achieve this goal by requiring that the Planning Board only approve a preliminary plan when it finds that public facilities will be adequate to support and service the new development. Residential development moratoria have been the mechanism used to advance school infrastructure improvements and correct overcrowding. The County Growth Policy proposes to terminate residential building moratoria, in 92.8 percent of the County, retaining them only in the Greenfield Impact Zone (Clarksburg).

We acknowledge that there are problems with the current building moratoria policy. It can restrict new housing which is badly needed across the county. Because more than 70 percent of new students come from turnover in the existing housing stock, holding new housing development hostage is both unfair and doesn't address the root cause of overcrowding. The building moratoria policy has sometimes been implemented inequitably – funding for new school capacity for high growth areas where economic pressures are greatest has jumped the line shortchanging other underserved areas. The current policy is in some respects counterproductive because housing growth generates school impact taxes and grows property tax revenues to fund schools.

Notwithstanding the adverse unintended consequences of moratoria, they have proven to be largely effective. From 2016-2020, overcrowding in 20 individual schools triggered a building moratorium. Ten of these schools exited the moratorium after 1 year and an additional 5 schools were delisted within 2 years. Only one school remained on the list throughout these 5 years. In recent years, the desire to avoid a building moratorium in Bethesda spurred County Council actions to support expansion of schools in the B-CC school cluster (a new middle school and additions to BCC High School and Bethesda Elementary School).

Given the problems with residential moratoria, we do not oppose their elimination. But school overcrowding is likely to increase over time and it is critical that if moratoria are eliminated they must be replaced with effective policy and fiscal tools to ensure adequate school infrastructure. The only tool offered in the draft County Growth Policy as a replacement for the residential moratoria is a modest Utilization Premium Payment that does not kick in until a school is above the 120 percent capacity threshold. This surcharge is not an adequate replacement for moratoria and under any reasonable standard fails to meet the requirements of the APFO. The surcharge will allow new residential development to proceed even if no school expansions are planned and no matter how overcrowded schools become. It is also applied late in the game, once schools are already seriously overcrowded -- the former Adequate Facility payments were applied when a school's enrollment exceeded 105 percent capacity.

Replacement of residential moratoria (except in Clarksburg) with the proposed Utilization Premium Payments is likely to exacerbate future school overcrowding and make this issue more of a challenge for the County Council. In 2019, 54 percent of schools in the county were at 100 percent capacity or greater. According to the MD State Planning Department (Jan 2018), the county population is projected to increase from just over 1 million currently to 1.2 million through 2045. School age children (ages 5-19) are projected to increase from 196,000 in 2020 to 223,000 over the same period. It is clear that the problem of school overcrowding will not solve itself and will only get worse over time.

The County Council needs to responsibly address this issue. It can't allow the problem of school overcrowding to be passed off from the Planning Board to the School Board without either taking responsibility or having the policies in place to address overcrowding.

We propose that the Council either extend the current SSP or adopt the proposed County Growth Policy (with some critical changes) for only one year while establishing a task force to study the likely future school capacity needs of the county and conduct a targeted analysis of policy and fiscal tools that could be adopted to address school overcrowding. Any such study should not be undertaken by the Planning Board alone, but should include Board of Education and MCPS representatives, and should possibly be led by a representative of the County Executive or County Council. Based on a more comprehensive review that balances both planning and school boards perspectives, the County Council would be in a far better position to more effectively address this fundamental concern in a year's time.

II. Schools - Annual School Test

We are skeptical that a blanket "red light" or "green light" policy for all development for a year (Policy 4.6) complies with the mandate of Chapter 50's Adequate Public Facilities Ordinance, and therefore oppose this policy change. Under the red light-green light approach, it will not matter if the number of additional students generated by a residential project pushes the school over the utilization threshold. A project that results in exceeding thresholds would not trigger a moratorium in the Greenfield area and countywide would not be charged the Utilization Premium Payment.

We support the proposal to base the Annual School Test on three years of school utilization projections (Recommendation 4.5), rather than on five years as is currently done. Using the shorter time frame results in more reliable utilization estimates and also conforms better with the County's CIP schedule.

III. Other School-Related Policy Changes

We support Policy 4.15, which would require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. It is critical that MCPS be more involved in the development process so that there can be improved cooperation and coordination between schools and development.

IV. School Impact and Recordation Taxes

The draft County Growth Policy proposes numerous changes that impact the revenues that will be collected to fund schools. The most significant change is that school impact taxes are reduced in certain designated areas identified by the Planning Board as desirable for additional growth and investment, with the goal of providing a financial incentive for housing development in these areas. This significantly alters the stated purpose of school impact taxes, shifting them away from paying for the burden on schools created by new developments. Zoning provisions and development bonuses are policies already widely used throughout the county to incentivize growth in these areas. We believe that school impact taxes should remain focused on their primary objective – providing funding for the burdens placed by new development on our schools

The proposed County Growth Policy seeks to offset the revenue losses resulting from reduced school impact taxes in two ways. A new Utilization Premium Payment assessed against residential developments in areas where school enrollment exceeds utilization thresholds would make up a small amount of the revenue loss. Most of the revenue loss would be offset by progressively staged increases in recordation taxes (these taxes are collected on all property sales, but the proposed recordation tax increases will primarily impact homeowners). The Planning Department staff presented data showing that 70 percent of student growth comes from turnover in existing neighborhoods primarily as older, long-time residents without school-aged children sell to younger families with children. Consistent with the principle of the school impact and related taxes as user fees, we support both the proposed Utilization Premium Payment (Recommendation 4.16) and increases in recordation taxes (Recommendation 6.9).

We support reducing the standard school impact tax from 120 percent to 100 percent, but generally oppose further discounts to the standard rate (Recommendation 6.2). We support reducing the current charge of 120 percent to 100 percent because the objectives of the school impact tax are met by requiring developers to pay 100 percent of the costs of new students and because the additional Utilization Premium Payments would be imposed where school overcrowding exists. As stated above, we generally oppose discounting the School Impact taxes to 60 percent of student costs for all development in desired growth and investment areas. The draft County Growth Policy proposes to retain the 100% rate for a few activity centers already experiencing growth (Bethesda, Clarksburg) and a few where growth is not desired (Olney, Kensington, NIH-Walter Reed), but reduce it to 60 percent in all other activity centers in Infill and Turnover zones (those near Metro or Purple Line stations) and all along the US 29, MD 355 and Veirs Mill Road. BRT lines. While we recognize that turnover in existing housing is the primary source of estimated future growth in the student population, nearly 30% of that growth is attributable to new housing in Infill zones. We question whether it is reasonable to shift the cost of the new students generated by this new housing from the developers to homeowners. Is such a large discount needed to incentivize development in these areas? Is it necessary to apply it to so many areas? Other policies are already in place (e.g., the school impact tax discount for MPDUs, various other tax incentives, and zoning) that support the county's goals of smart development and affordable housing.

We oppose Recommendation 6.8 which would continue the application of school impact taxes on a net impact basis. As noted before, over 70 percent of future estimated growth in the student population will come from turnover of existing housing throughout the county. In many of the older neighborhoods, this turnover often involves replacement of small old houses with new larger houses, and, in the Town this has tended to generate more students. This situation is similar to when an existing single-family house is sold, it typically results in an increase in students. As a result (consistent with proposed Bill 34-

19 Housing Impact Fairness Act), we believe that replacement single-family units should be subject to school impact taxes.

Before any changes in taxes are agreed to, we believe that a comprehensive evaluation of their financial impacts is needed. How will the revenues under the new systems compare to what currently exists? If adopted, would the proposed discounts in school impact taxes actually be a significant incentive to build housing in designated areas? When the discount in the school impact tax is combined with the reduced student generation rates and the MPDU discount what percent of the cost of a new student seat is a developer paying? Are the proposed Utilization Premium Payments large enough to support school funding requirements where overcrowding exists? The preliminary fiscal analyses presented to the Planning Board at its July 21 work session must be expanded considerably if the County Council is to have a good understanding of the impacts the proposed tax changes will have both on revenues and development in the County.

V. Transportation: Traffic Still Matters

With respect to transportation, the County Growth Policy should continue to monitor and gauge traffic in all policy areas. While we agree that solution to traffic congestion isn't halting development, we believe that the County must maintain policy goals that value vehicular mobility and acceptable motor vehicle levels of service. Traffic impacts everyone, and we believe that motor vehicle traffic assessment still matters. Traffic congestion in highly urbanized areas, primarily the "Red" policy areas, imposes significant externalities on surrounding communities and on those traveling through them. Undesirable impacts take the form of added delays on major roads, increased cut-through traffic in neighborhoods, less safe conditions for pedestrians and cyclists (particularly in areas undergoing heavy construction, such as the Wisconsin Avenue corridor), and increased travel time for area residents and workers who use mass transit.

Traffic patterns will inevitably change and evolve, especially as development in Red Policy areas progresses, and the County Growth Policy must have the tools needed to monitor and mitigate the impacts of these changes. Traffic impacts from development around the Bethesda Red Policy Area are already apparent and impacts from the nearby Chevy Chase Lake development will be felt soon. Classifying Chevy Chase Lake as a Red Policy area (Recommendation 5.9) will allow increased congestion at intersections in the area, which is concerning because maintaining mobility on this major corridor linking Montgomery County communities, I-495, and the District of Columbia is important. The recently issued draft Environmental Impact Statement for the State's addition of HOV lanes for I-270 and I-495 includes an exit for Connecticut Avenue, but not Wisconsin or Georgia Avenues. If ultimately approved as the best alternative, this Connecticut Avenue exit will add traffic in this area and increase the need for all available roadway capacity. Traffic would be likely to increase at already congested intersections such as that at Connecticut Avenue and East-West Highway. We therefore urge that the County Growth Policy include well-defined measures to assess traffic impacts on communities Red Policy areas and the communities that surround them.

In Recommendation 5.6, the draft County Growth Policy proposes a "biennial monitoring program" in place of the current LATR motor vehicle adequacy test in Red Policy areas. In the draft County Growth Policy, the substitute biennial program is less well-defined than the more rigorous LATR motor vehicle adequacy test. The draft County Growth Policy does not set a timeline for the biennial monitoring program, only stating that it "would be developed during the spring of each odd-numbered year" (*i.e.*,

2021, or possibly deferred to 2023). If the motor vehicle adequacy test is eliminated for Red Policy areas, then the nature of the biennial monitoring program must be clearly specified in the County Growth Policy, with explicit processes and metrics for measuring the program's goals, and a definitive timeline for conducting the program. The biennial monitoring program should value vehicular mobility and address traffic congestion as well as other transportation goals.

Elimination of the motor vehicle adequacy test in Red Policy areas also relies on establishment of Unified Mobility Programs (UMPs) to evaluate transportation adequacy. Presently, only one UMP is operational in Montgomery County (in White Oak); one has been pending for Bethesda for some time. The Bethesda UMP should be completed and made operational prior to the elimination of the LATR motor vehicle adequacy test, and establishment of UMPs for other areas should be scheduled.

In summary, we support elimination of the motor vehicle adequacy test from the LATR provided the biennial monitoring program is well-defined and operational, and after the Bethesda UMP is operational and UMPs for other areas are scheduled.

With regard to other Transportation-related recommendations, we support the addition of System Safety, Pedestrian Safety, Bicycle System Safety, and Transit System Safety adequacy tests to the LATR. To achieve a multi-modal approach to evaluate transportation adequacy., We also support We support updating the County Growth Policy to align with Vision Zero's safety priorities for pedestrians and cyclists (Recommendations 5.1-5.5). Pedestrian safety, cyclist safety, and the safe use of mass transit are important to us. They underlie our strong support of funding in the Capital Improvements Program budget for the Capital Crescent Trail Tunnel under Wisconsin Avenue. Providing residents with safe and comfortable walking and cycling routes to the services and amenities they need to reach will help get them out of their cars and reduce the county's traffic problems.