

Montgomery Planning | Countywide Planning and Policy Division

06/13/2024

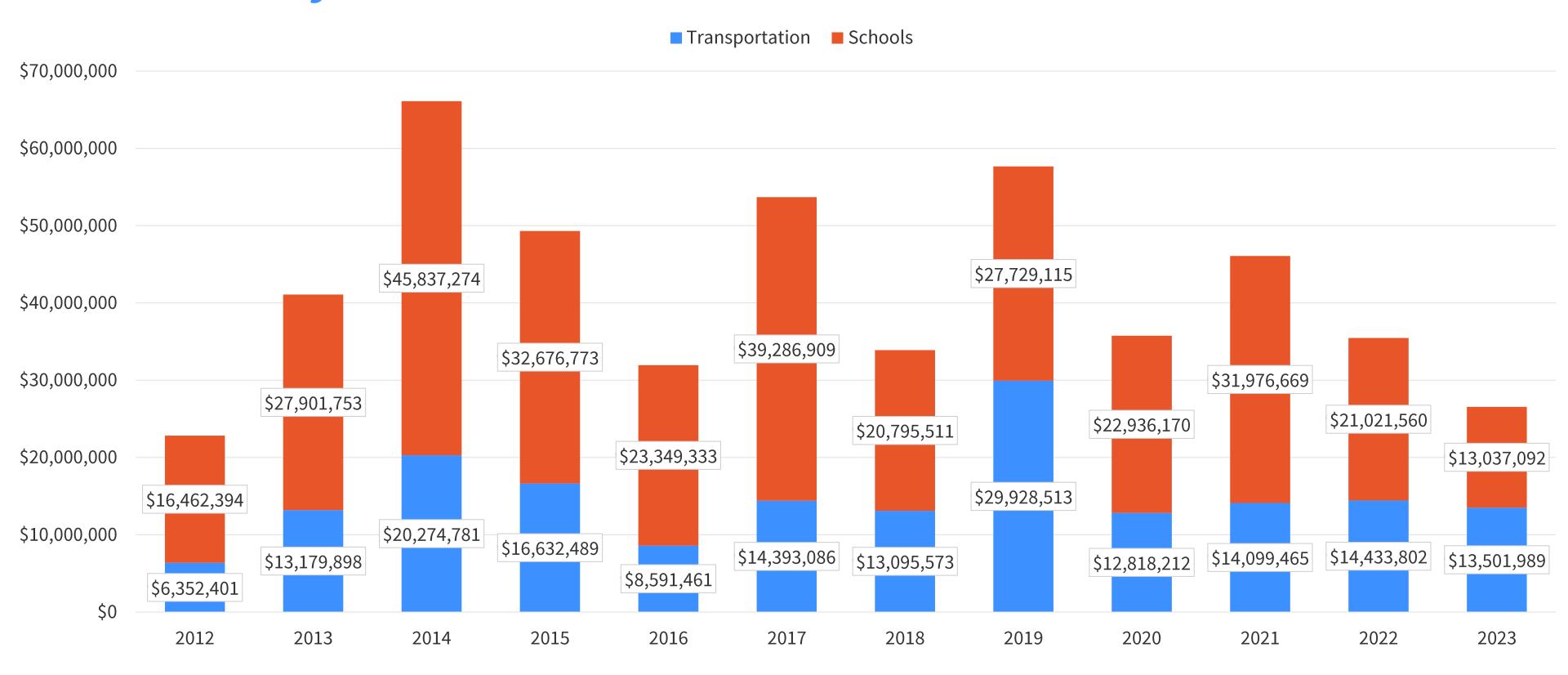
2024 Growth and Infrastructure Policy

Work Session #3 – Impact Taxes

Preliminary Assessment of Effect to Impact Taxes Planning Staff Response

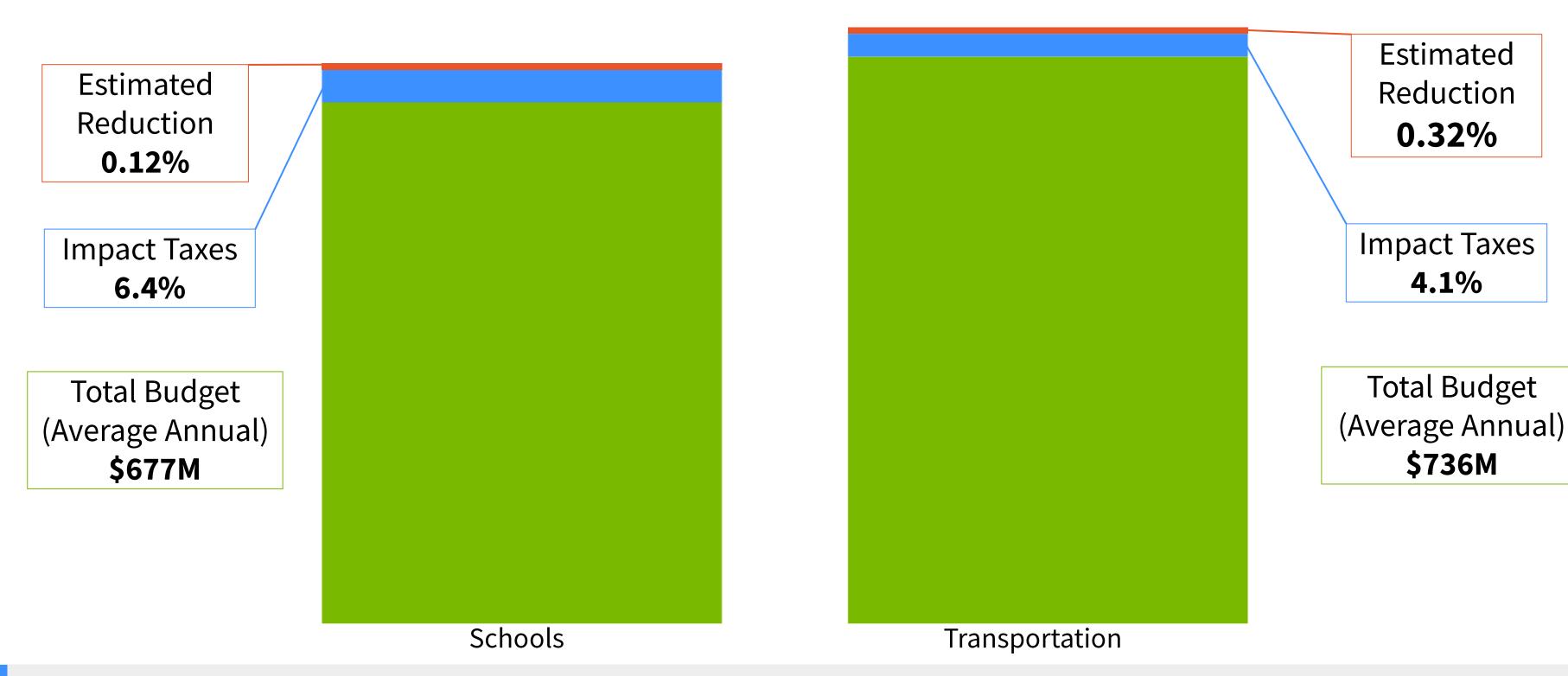
- Expected impact may be less than shown as the assessment does not account for the removal of the Desired Growth and Investment Area exemption or the impact the recommendations may have on new development.
- The reductions as shown are reasonable given the policy objectives.

Total Impact Tax Revenues in Montgomery County





Preliminary Assessment of Effect to Impact Taxes Planning Staff Response



Impact Tax Public Hearing Draft Recommendations



Impact Tax Exemptions or Discounts

Current Exemption or Discount	Schools	Transportation	Recommendation
Any Moderately Priced Dwelling Unit (MPDU)	Exempt	Exempt	Maintain
Any dwelling unit for which the price or rent charged is limited for at least 15 years to make the unit affordable to households earning equal to or less than 60% of the area median income, adjusted for family size	Exempt	Exempt	Maintain
Any Personal Living Quarters unit that meets the price or rent eligibility standards for an MPDU	Exempt	Exempt	Maintain
Any dwelling unit in an Opportunity Housing Project that meets the price or rent eligibility standards for an MPDU	Exempt	Exempt	Maintain
Any dwelling unit built by high school students under a program operated by the Board of Education	Exempt	Exempt	Maintain
Any farm tenant dwelling	Not Exempt	Exempt	Maintain
Any dwelling unit in a development that is age-restricted for seniors 55 and older	Technically not exempt, but the rate is set to \$0	Not Exempt	Maintain
Single-Family Attached or Detached Dwelling Unit smaller than 1,500 square feet.	Not Exempt	Not Exempt	Introduce 50% Discount



Impact Tax Exemptions or Discounts

Current Exemption or Discount	Schools	Transportation	Recommendation
Any development located in an Opportunity Zone certified			
by the U.S. Treasury Department (except the city of Rockville)	Exempt	Exempt	Maintain
Any development located in an Enterprise Zone designated		Exempt (including	
by the state	Exempt	commercial uses)	Maintain
		60% of applicable rate if in	
		Orange Policy Area; or 68% of	
Any development located in a Desired Growth and		applicable rate if located in a	
Investment Area (except the city of Rockville)	Not Exempt	Yellow Policy Area	Remove
Any building that would be located within one-half mile of			
the Germantown, Metropolitan Grove, Gaithersburg,			
Washington Grove, Garrett Park, or Kensington MARC			
stations	Not Exempt	Discount	Maintain
Any otherwise non-exempt dwelling unit in a development in			
which at least 25% of the dwelling units are MPDUs	Exempt or Discount	Exempt or Discount	Maintain
	Discount; pay the tax at		
	40% of the otherwise		Expand exemption for
	applicable rate in an		schools and introduce
Multi-family units with three or more bedrooms	Infill Impact Area	Not Exempt	for transportation.
Office-to-Residential Conversions	Not Exempt	Not Exempt	Introduce Exemption
Bioscience		Does not pay; rate set to zero	Maintain; add to code



Recommendation 4.1: Calculation of School Impact Taxes

- Before 2016, schools impact taxes were calculated at 90% of the cost of a student seat – given that there were school facility payments at the time.
- In 2016, with the removal of school facility payments, impact taxes were calculated at 120% of the cost of a seat.
- In 2020, with the creation of Utilization Premium Payments, the 120% cost of a student seat calculation was lowered to 100%.

Recommendation 4.1: Calculation of School Impact Taxes

• Recommendation: With a recommendation of continued use of Utilization Premium Payments for schools identified as overcrowded, the calculation should remain at a 100% cost of a seat.



Miles & Stockbridge P.C. 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.

Staff Response: Staff is evaluating this issue and will discuss the findings with the Planning Board in the next work session. We are currently researching the amount of state aid given to projects in the CIP.

Recommendation 4.1: Calculation of School Impact Taxes

• Recommendation: With a recommendation of continued use of Utilization Premium Payments for schools identified as overcrowded, the calculation should remain at a 100% cost of a seat.

Staff will revisit this recommendation at the next work session.

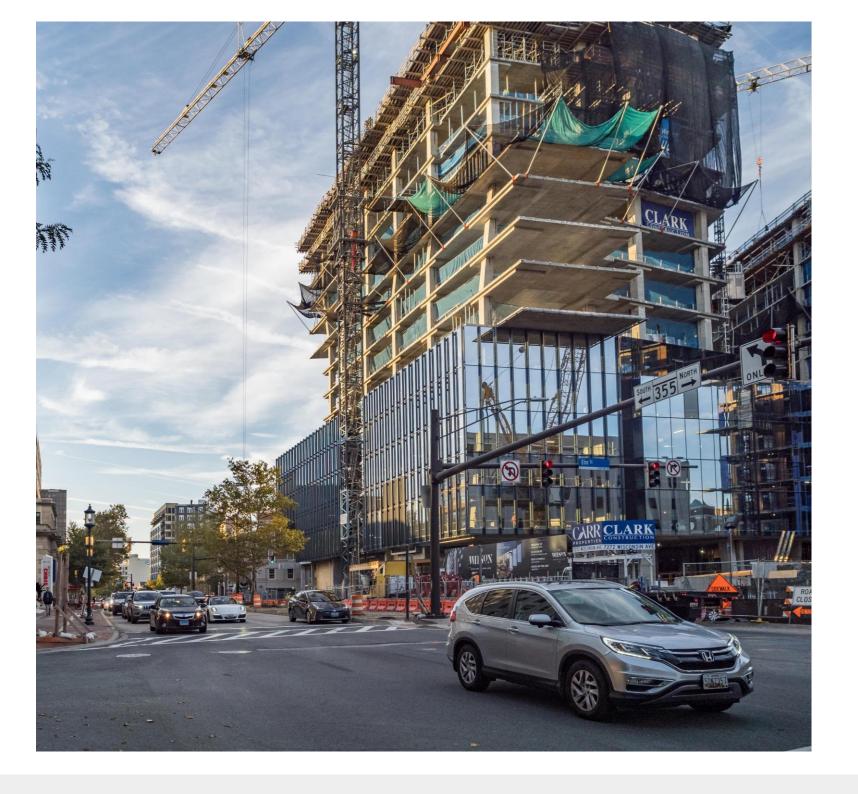


Recommendation 4.2: Cap and Carryover System

- In 2023, Bill 25-23E was passed in response to anticipated higher than usual biennial impact tax adjustments.
 - For both transportation and schools, the biennial tax rate adjustment cannot exceed 20%.
 - If it does exceed 20%, then the excess dollar amount must be carried over and added to the tax rate before calculating the next update.

Recommendation 4.2: Cap and Carryover System

• Recommendation: Keep the cap and carryover system, as its implementation is relatively new and will help soften any anticipated upward adjustments.

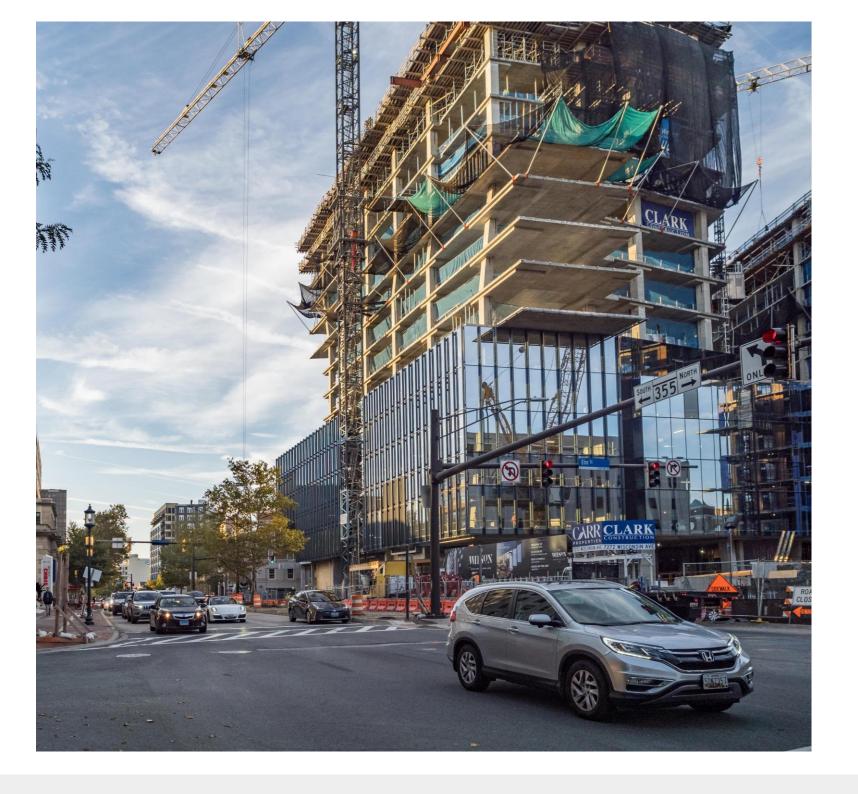


None.



Recommendation 4.2: Cap and Carryover System

• Recommendation: Keep the cap and carryover system, as its implementation is relatively new and will help soften any anticipated upward adjustments.



Recommendation 4.3: Discount for Smaller Homes

 Recently, the county has prioritized the production of smaller homes to incentivize construction of more entrylevel homes.



Recommendation 4.3: Discount for Smaller Homes

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



David Barnes (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.

➤ **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 and the current adequacy standards.



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

Pat Harris (LEB), Miles Group, Katie Wagner (NAIOP/MBIA) recommend raising the 1,500 sf threshold.

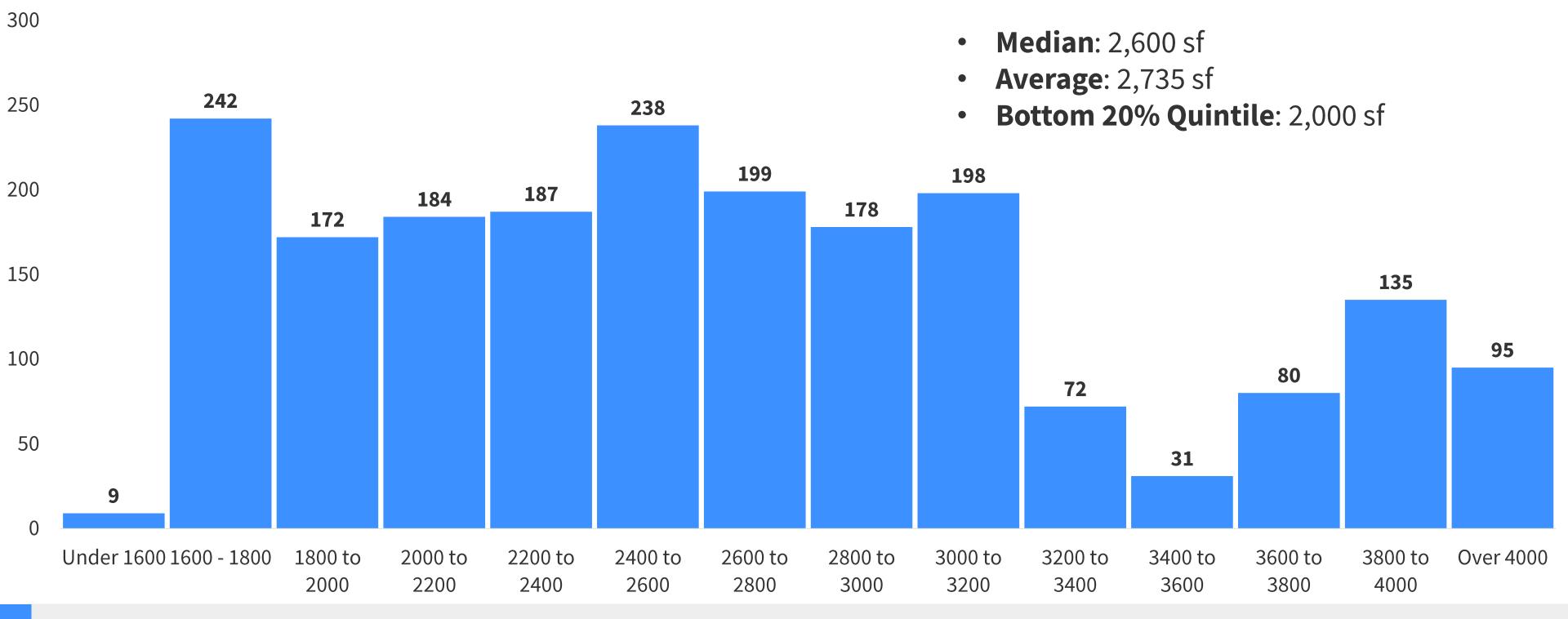
Matthew Gordon and Robert Dalrymple (Selzer Gurvitch) say the recommendation is insufficient to incentivize conversions from office to multifamily as the market demands housing units that are larger than 1,500 SF.



- > 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.
- > 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.

Analysis

DPS Building Permits Townhouses Square Feet (2020 - 2024)





Recommendation 4.3: Discount for Smaller Homes

• NEW Recommendation: Offer a 50% transportation and school impact tax discount to single-family attached and detached units that are 1,500 1,800 square feet or smaller.

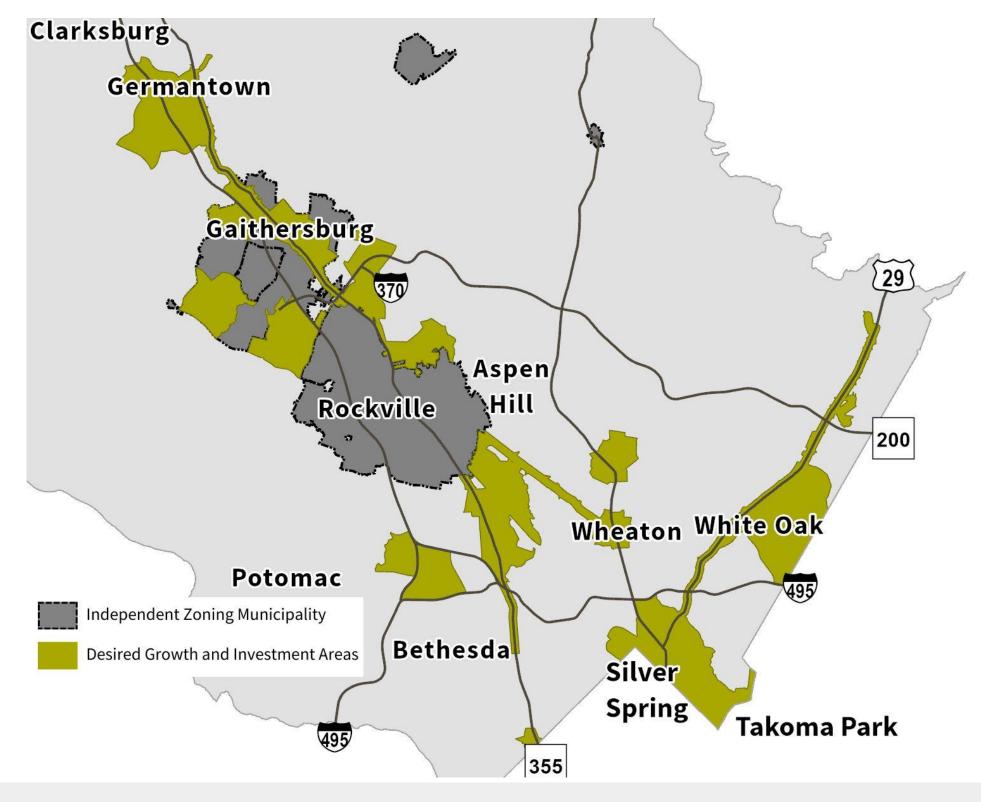


Recommendation 4.4: Desired Growth and Investment Areas

- Desired Growth and Investment Areas include specific
 Metropolitan Washington Council of Governments (MWCOG)
 designated Activity Centers and a 500-foot buffer around existing
 and specific planned bus rapid transit (BRT) lines.
- DGIAs give a 40% transportation impact tax discount for orange policy areas and 32% discount for yellow policy issues.
- Created in the 2020-2024 GIP update.

Recommendation 4.4: Desired Growth and Investment Areas

• Recommendation: Remove this exemption as it is another boundary related to the GIP that complicates the policy.

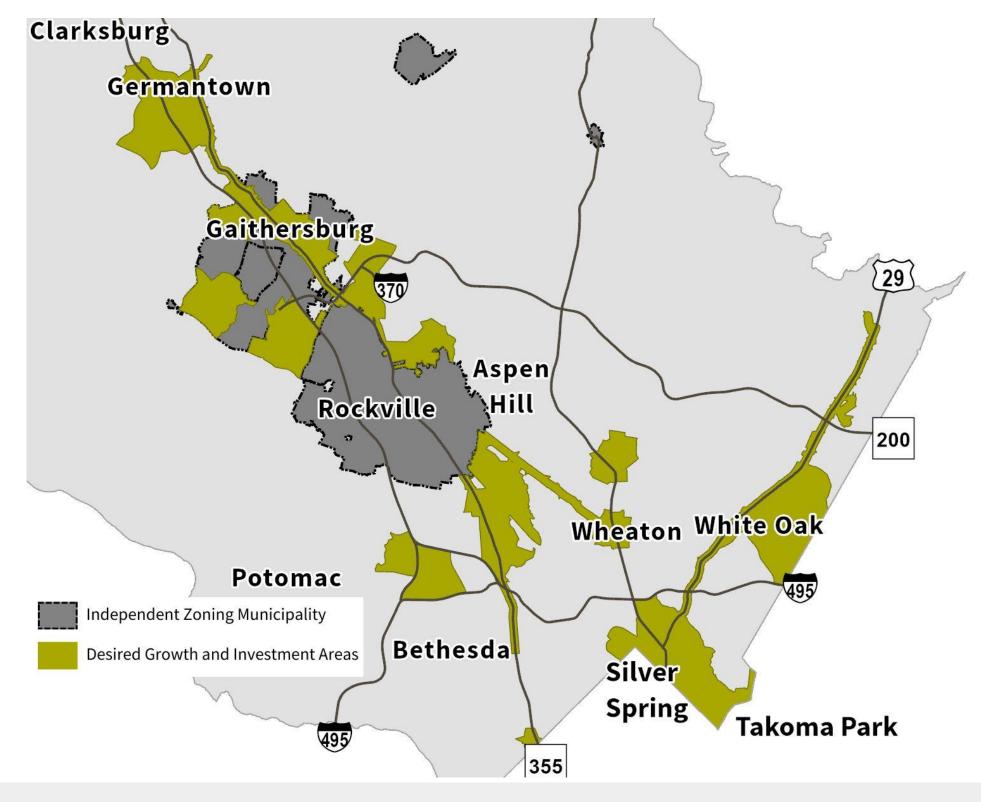


MCDOT supports the recommendation to remove the desired growth and investment area discount.

Staff Response: 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. However, the offset to impact tax exemptions is not included in the fiscal impact analysis as DPS has not yet implemented the policy yet.

Recommendation 4.4: Desired Growth and Investment Areas

• Recommendation: Remove this exemption as it is another boundary related to the GIP that complicates the policy.



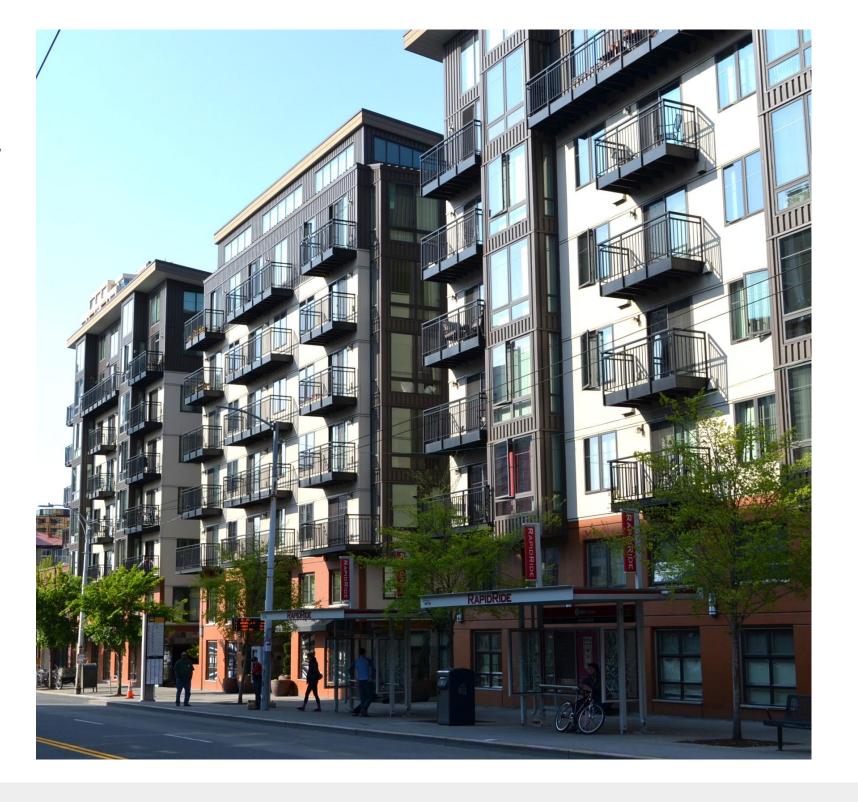
Recommendation 4.5: Three Bedrooms or More Exemption

- Currently, a three-bedroom multifamily dwelling in an Infill Impact Area pays impact taxes at 40% of the otherwise applicable rate.
- The county has prioritized building these units in the past, desiring more family-friendly units, especially in high-rise buildings.
- According to CoStar, only around 900 three-bedroom units (roughly 4% of all rental housing units) have been built since 2013 in rental projects.
- Thrive Montgomery 2050 recommends enacting policies that encourage the construction of housing units in multifamily buildings suitable for larger households. This will help increase the amount and variety of housing in the county.



Recommendation 4.5: Three Bedrooms or More Exemption

• Recommendation: Modify the exemption to fully waive impact taxes for three-bedroom units in multifamily structures.



Selzer Gurvitch, GGW, 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.

➤ Staff Response: Staff developed a definition for a 3+ bedroom unit (next slide). This is an existing impact tax waiver that is being broadened and has already been applied to existing projects.



Existing Exemption

Section 52-55: A three-bedroom multi-family dwelling unit located in an Infill Impact Area must pay the tax at 40% of the otherwise applicable rate.

Proposed Exemption

Section 52-55: Multifamily residential units that have three bedroom or more are exempt from impact taxes.

Note: Multifamily residential defined in Section 52-39 as:

- (3) Multifamily residential includes:
 - (A) garden apartments;
 - (B) mid-rise and high-rise dwelling unit structures; and
 - (C) mobile homes.



Recommendation 4.5: Three Bedrooms or More Exemption

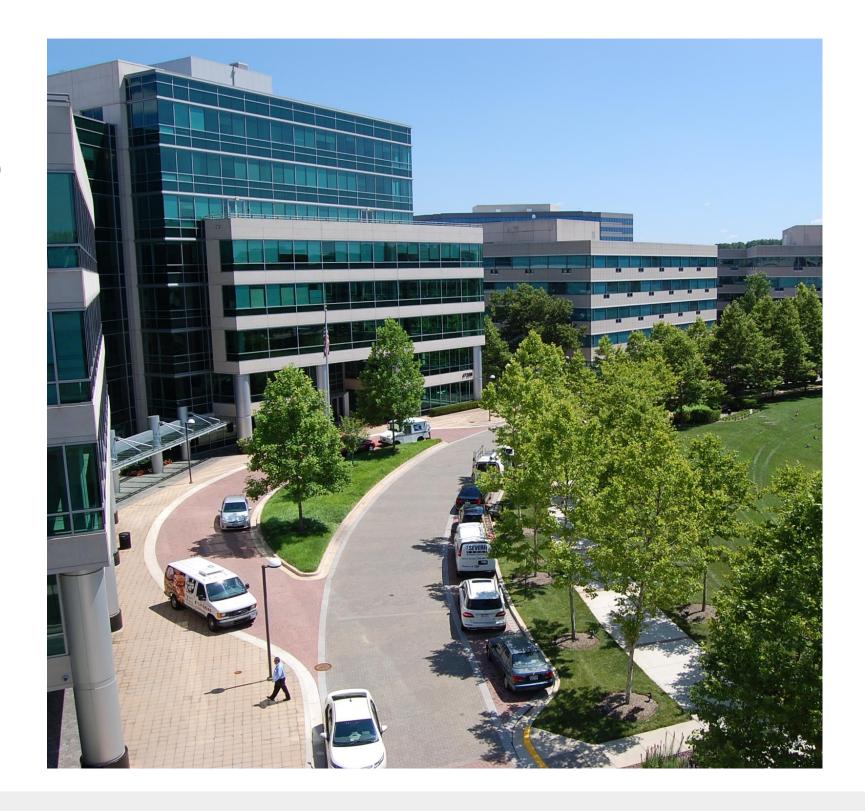
NEW Recommendation:

Modify the exemption to fully waive impact taxes for multifamily residential units that have three-bedroom units or more in multifamily structures.



Recommendation 4.6: Office-to-Residential Conversions

- Currently, office-to-residential conversions get a credit for the office use against their new residential impact taxes.
- The county has a high office vacancy rate, and converting offices to residential is difficult and expensive.



Recommendation 4.6: Office-to-Residential Conversions

• **Recommendation**: Given the high office vacancy rate and how expensive it is to convert, exempt office-to-residential conversions from impact taxes.

Original Office Impact Taxes				
Building GFA	200,000			
Transportation Impact Tax Rate (Orange)	\$22.10			
Total Impact Taxes	\$ 4,420,000			
Office-to-Residential Conversion Impact Taxes				
# of Market Rate Units Converted	175			
Transportation Impact Tax Rate (MFL/Orange)	\$15,366			
Turnover Impact Area (MFL/Turnover)	\$13,625			
Transportation Impact Tax	\$2,689,050			
School Impact Tax	\$2,384,375			
Total Impact Taxes	\$5,073,425			
Waived Office-to-Residential Conversion Impact Taxes				
\$653,425				



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

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



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.

➤ Staff Response: Staff is open to adding a 50% exemption from impact taxes for projects that involve full demolition of office buildings for attached or multifamily housing.

Recommendation 4.6: Office-to-Residential Conversions

• NEW Recommendation: Given the high office vacancy rate and how expensive it is to convert, exempt office-to-residential conversions from transportation and schools impact taxes when the building is adaptively reused or renovated for multifamily housing. Offer a 50% transportation and schools impact tax discount for office-to-residential conversions when demolition is involved in the conversion of office-to-residential to multifamily or single-family attached housing.

Recommendation 4.7: Bioscience Exemption

- Bioscience impact taxes are currently set to zero.
- Recommendation: 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.



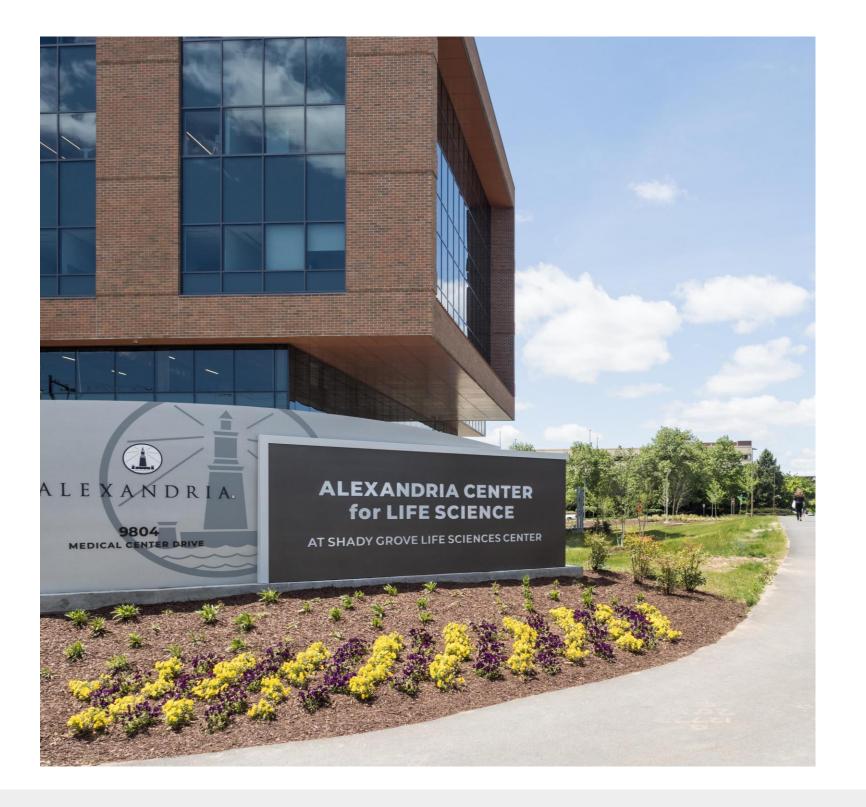
MCDOT neither supports nor opposes this recommendation; it would have no or negligible fiscal impact as compared to the current policy.

William Kominers (LEB) and The Miles Group recommend maintaining the current policy, recognizing the importance of this sector to the County's economic vitality.



Recommendation 4.7: Bioscience Exemption

- Bioscience impact taxes are currently set to zero.
- Recommendation: 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.



Recommendation 4.8: Impact Tax Credit

- The County Code permits developers to receive transportation impact tax credits for constructing transportation improvements that reduce traffic demand or increase transportation capacity.
- However, unclear and conflicting definitions in the code can create confusion during the development process.
- In practice, only improvements enhancing regional transportation capacity receive credit. Improvements along state highways are ineligible for tax credits.





Recommendation 4.8: Impact Tax Credit

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



County Executive Marc Elrich cautions that this 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.

MCDOT strongly opposes this recommendation because it would reduce collected funds and deprioritize the projects selected through master planning and County budget approvals. MCDOT's analysis estimates an approximate transportation impact tax reduction of \$250,000 per year.

- > **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. 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.
- ➤ MCDOT's analysis is that this will reduce transportation impact taxes about \$250,000 per year.



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 (LEB) 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.



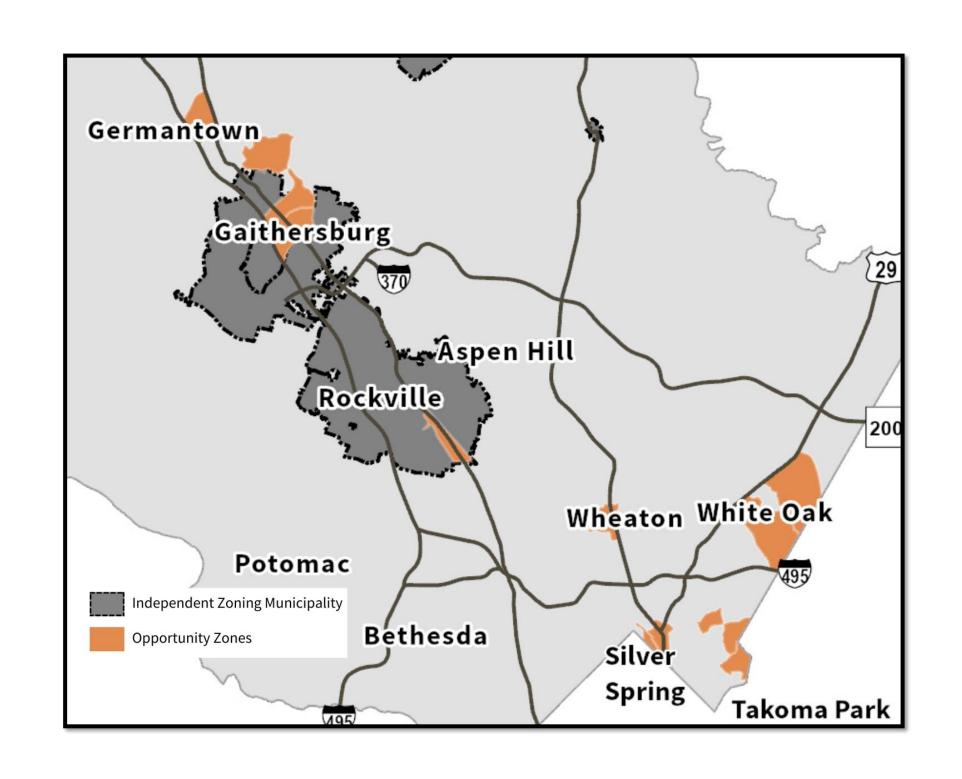
Recommendation 4.8: Impact Tax Credit

- Recommendation: Update the County Code to provide more clarity and allow credit for improvements along state roadways.
- Staff will return with specific proposed code changes at a future work session.



Recommendation 4.9: Legacy Language for Opportunity Zones

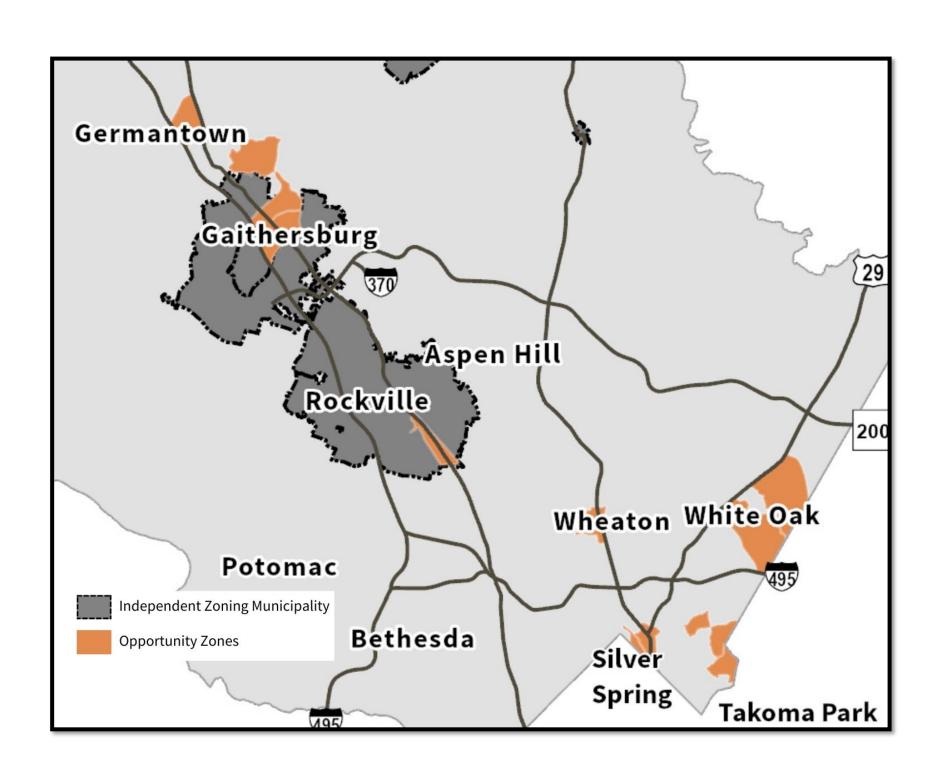
- Opportunity Zones are economically distressed communities where private investments may be eligible for capital gain tax incentives.
- In the 2020 GIP, an exemption was added that allowed projects in Opportunity Zones to have their school and transportation impact taxes fully exempted.





Recommendation 4.9: Legacy Language for Opportunity Zones

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



Scott Wallace (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.

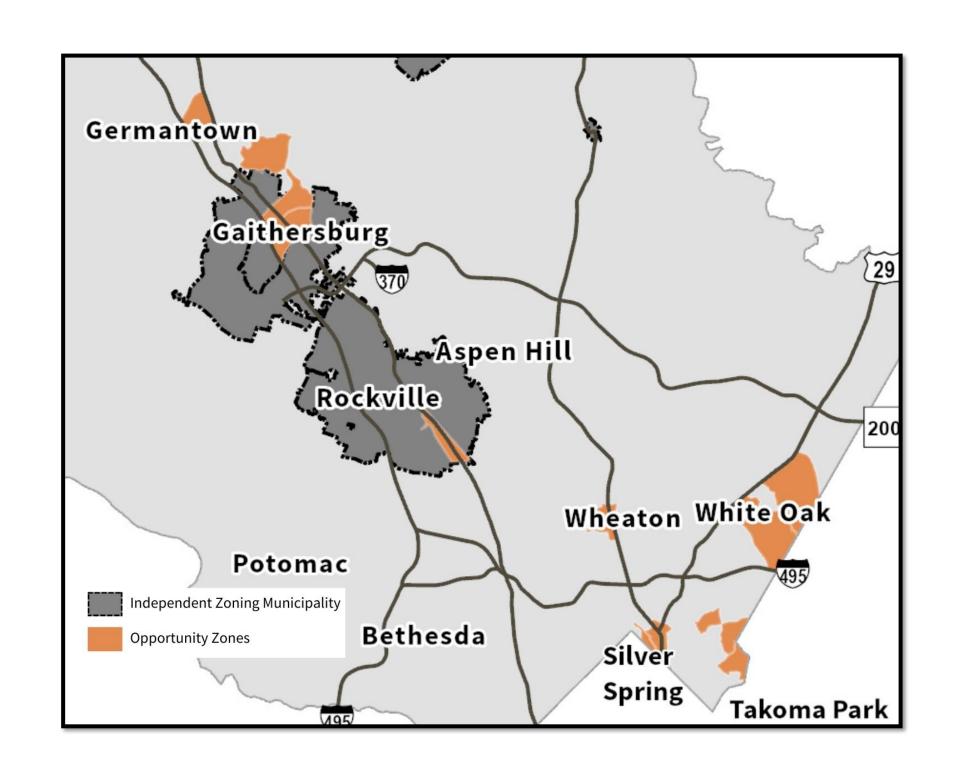
William Kominers (LEB) and Daniel L. Wilhelm (GCCA), recommend continuing the impact tax exemption for Enterprise Zones and Opportunity Zones beyond the expiration dates. These areas will remain distressed and in need of economic development and investment beyond the lapse of the federal designation and continuing to provide impact tax exemptions will provide incentives to continue development there.

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



Recommendation 4.9: Legacy Language for Opportunity Zones

- **NEW Recommendation**: Given that the program is expected to expire at the end of 2026, Planning staff recommend adding legacy language to allow Planning Board approved projects that have not yet received building permits to continue to receive the *impact tax exemption.*
- Although the federal Opportunity Zone program is expected to expire at the end of 2026, the Opportunity Zone impact tax exemption should remain for projects located in the Opportunity Zone designated census tracts regardless of federal status.



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.

➤ Staff Response: Staff would welcome future collaboration with Executive Branch agencies on funding infrastructure. 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.

➤ 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.

Staff Response: 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. 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.

➤ **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 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.

Outstanding Topics



Recommendation 2.4: Student Generation Rate (SGR) - Housing Types

Recommendation 2.4:

Reclassify stacked flats and similar housing unit types that deviate from the traditional single-family or multi-family classifications from the current multi-family low-rise category to the single-family attached category.



SGR by Housing Type

	SFD	SFA	Stacked Flats	MFL	MFH
Infill Impact Area	0.489	0.428	0.239	0.146	0.079
Turnover Impact Area	0.437	0.498	0.411	0.232	0.092

- The student generation rate of stacked flats is considerably higher than typical multi-family structures in the turnover impact area.
- The Zoning Code and SDAT (State Department of Assessments and Taxation the original dataset that Planning's SGR housing data is derived from) property records classify stacked flats as multifamily low-rise structures. They qualify as multi-family low-rises for development review as well.
- Department of Permitting Services (DPS) has stated that their current practice is to recognize stacked flats as single family attached structures and charge rates accordingly.
- Impact taxes for single-family attached are significantly higher than multi-family low rise.



Impact Taxes by Housing Type

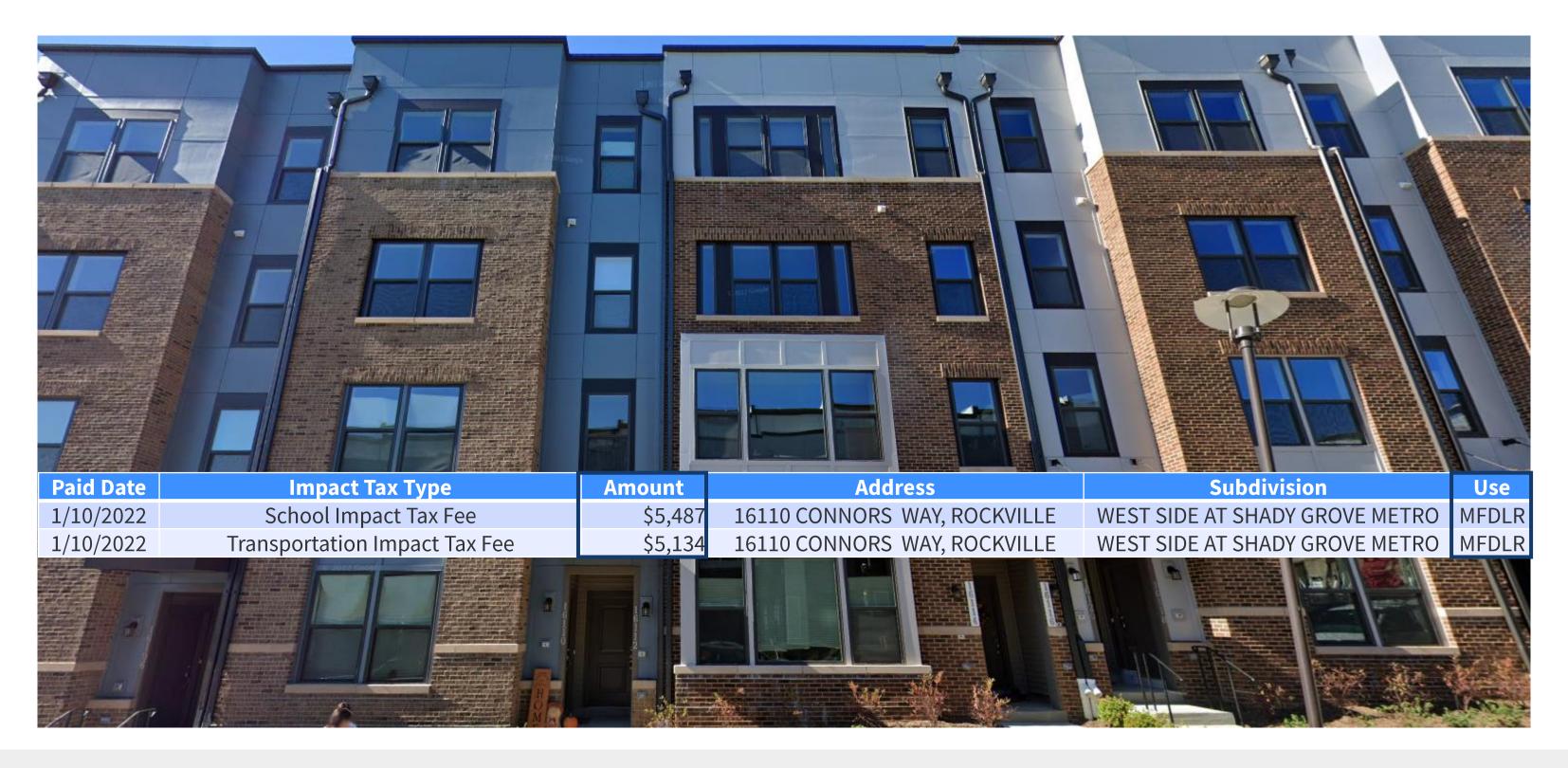
Impact Tax Rate		Option A (Stacked Flats = SFA)	Option B (Stacked Flats = MFL)	Option C (Stacked Flats as Own Type)
Infill Impact Areas	Single-Family Attached (SFA)	\$28,090	\$29,607	\$29,607
	Stacked Flats	\$28,090	\$11,211	\$16,652
	Multifamily Low-rise (MFL)	\$10,072	\$11,211	\$10,072
Turnover Impact Areas	Single-Family Attached	\$34,419	\$34,562	\$34,562
	Stacked Flats	\$34,419	\$17,997	\$28,276
	Multifamily Low-rise	\$15,981	\$17,997	\$15,981

Number of Units*		Option A (Stacked Flats = SFA)	Option B (Stacked Flats = MFL)	Option C (Stacked Flats as Own Type)
Infill Impact Areas	Single-Family Attached (SFA)	15,849	13,988	13,988
	Stacked Flats	-	-	1,861
	Multifamily Low-rise (MFL)	8,739	10,600	8,739
Turnover Impact Areas	Single-Family Attached	57,428	55,204	55,204
	Stacked Flats	-	-	2,224
	Multifamily Low-rise	11,424	13,648	11,424



^{*} includes all units for SFA, only units built 1990 or later for stacked flats and MFL.

Stacked Flats Impact Tax Example of MFL Rate





Classification Options

- **Option A**: reclassify stacked flats as single family attached units (Public Hearing Draft recommendation)
 - SGR and impact tax of stacked flats will increase, multi-family low-rise will decrease.
- Option B: maintain current classification of stacked flats as multi-family low-rise units
 - Multi-family low-rise SGR and impact tax are inflated.
 - Would have to work with DPS staff and potentially codify classification to ensure projects are charged the multi-family low-rise impact tax rates.
- **Option C**: Create an additional housing type category for stacked flats and similar units that deviate from the typical single-family or multi-family classifications.
 - Due to low record count in each impact area, SGR and impact tax may fluctuate considerably between each biennial recalculation.



Recommendation 2.4: Student Generation Rate (SGR) - Housing Types

NEW Recommendation 2.4:

Reclassify stacked flats and similar housing unit types that deviate from the traditional single-family or multifamily classifications from the current multi-family low-rise category to the single-family attached category.

Keep stacked flats in the MFL category for the purposes of both SGRs and Impact Taxes.

- For the purposes of zoning and SDAT classifications, these units are already classified at MFL.
- There is some precedent for these types of units to be charged the MFL rate.
- The lower rate makes these attainable housing typologies easier to build.



Next Steps

Upcoming Planning Board Work Sessions

Planning Board Work Sessions:

- May 30 Work Session #1 (Schools)
- June 6 Work Session #2 (Transportation)
- June 13 Work Session #3 (Impact Taxes, Outstanding Topics for Transportation and Schools)
- June 20 Work Session #4 (Outstanding Topics)
- June 27 Work Session #5 (Outstanding Topics)
- July 18 Work Session #6 (Track Changes/ Final Edits)
- July 24 Planning Board approval of Planning Board Draft and Resolution
- Transmittal of the Planning Board Draft to the County Council:
 - August 1

