



August 6, 2003

The Hon. Mike Subin  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20910

The Hon. Douglas M. Duncan  
Montgomery County Executive  
101 Monroe Street  
Rockville MD 20910

Dear Mr. Subin and Mr. Duncan:

In October 2001, the Montgomery County Council directed the Montgomery County Planning Board to prepare a “top-to-bottom” review of the Annual Growth Policy during the *2003-2005 AGP Policy Element* process. The Planning Board has conducted this review and this letter transmits our findings and recommendations to you.

In this cover letter, I will summarize the highlights of our recommendations. I have attached a copy of a recent Park and Planning staff memorandum that supplies additional detail and justification for each of the Board’s recommendations. In addition, the Planning Board has asked Park and Planning staff to prepare a public information brochure that summarizes the Board’s recommendations. The Board has also asked staff to prepare information to demonstrate how the Board’s proposals might be applied to “real world” examples. These last two documents will be provided in time for the Council’s forum and public hearings this fall.

### Background

As requested, the Planning Board’s review has been comprehensive. Over the course of three months, the Planning Board held six public worksessions and two public forums. The Planning Board began its review by asking basic questions about County growth, such as how growth supports and challenges our high quality of life, and the appropriate role of the adequate public facilities ordinance (APFO) in shaping the future of Montgomery County.

The purpose of the APFO is to defer the approval of new development when public facilities are not adequate. Currently the APFO’s Policy Area Review formulas declare transportation capacity to be adequate in many geographic areas, and school capacity to be adequate countywide. However, these formulaic results do not square with the daily experience and common observation of most county residents. Traffic congestion has reached unacceptable levels in most areas of the county. The county’s

major roads, including I-270, I-495, U.S. 29 and many arterials experience traffic that far exceeds the roads' carrying capacity, compromising the quality of life of every county resident and the business climate for every county employer. School buildings throughout the county are overcrowded because the buildings do not accommodate actual class sizes. In many school service areas, the overcrowding is severe. The existing formulas for Policy Area Review simply do not reflect reality, and the Planning Board believes they should be abandoned.

The challenge for the Board was to create a more realistic approach to APFO review without resorting to a countywide moratorium on new development. The Board finds that the best long-term strategy is to (1) slow the rate of development approvals while continuing to support the County's economic well-being and (2) increase the financial resources available to construct needed facilities. The Planning Board therefore recommends that the County (1) biennially establish a *preliminary plan approval rate* that balances economic needs with infrastructure delivery and (2) increase the rates of development impact tax for transportation and establish a development impact tax for schools.

#### Pacing Growth With A Preliminary Plan Approval Rate

The Planning Board recommends that the initial preliminary plan approval rate for non-residential development be set at one percent of the existing base of development, or 5,800 jobs annually. The initial preliminary plan approval rate for housing would be slightly more than one percent (3,625 units) to achieve balance: 1.6 jobs per housing unit. The Planning Board believes the one percent approval rate is justifiable given transportation and school capacities and historic and forecast growth trends. It is important to note that a one percent *approval* rate will likely result in an *actual construction* rate that exceeds one percent. This is true because of the large pipeline of approved development which is already entitled to proceed, and because many developments are not subject to the APFO, including federal government projects and development located in Rockville and Gaithersburg.

The preliminary plan approval rate would replace the current Policy Area Transportation Review; development would continue to be subject to Local Area Transportation Review. The biennial review of the preliminary plan approval rate would be a less formula-driven assessment than the current Policy Area Transportation Review. It would determine the amount of growth Montgomery County could support over the next two years based primarily on current and expected levels of transportation congestion and school crowding, and the funding available for investment in new facilities. However, it would also take into account economic conditions, rates of past and future growth, development not subject to APFO reviews (including already-approved

development, federal government activity, and development in neighboring jurisdictions), and other factors.

The current AGP's Policy Area Transportation Review is distinguished by a complicated set of formulas that are used to determine the amount of development than can be supported by public facilities. The Planning Board finds that this level of complexity has resulted in a system that is not transparent, that can still be manipulated despite the fact that it is predominantly formula-driven, and while less precise than it appears, is more precise than necessary for staging development in Montgomery County.

#### Allocating Preliminary Plan Approvals Under the New System

To minimize the impact of new development approvals on already-strained infrastructure, the Planning Board recommends that the preliminary plan approval rate be allocated in a way that permits the most efficient land use pattern to move forward first. To achieve this, the Planning Board recommends allocating approvals to sub-areas of the County based upon expected transit usage; that is, allowing more approvals in areas with higher transit usage and fewer in areas with lower transit usage. The Board proposes replacing the current system of twenty-nine policy areas with a set of eight sub-areas that reflect the four levels of transit usage (Metro station, "Red Line," suburban, and rural), varying levels of planned development (distinguishing between higher-growth and lower-growth suburban), and the different growth pressures faced by the eastern and western sides of the County. The Planning Board also recommends that for a variety of reasons, including planned Federal job growth and traffic conditions on US 29, a separate Fairland/White Oak area be created. A map of the Board's recommended sub-areas is attached.

The Planning Board recommends allocating the preliminary plan approval rate of 5,800 jobs and 3,625 jobs to the recommended geographies in proportion to transportation efficiency, as represented by the transit mode share. Using the proposed preliminary plan approval rate of one percent, these shares would be:

<b>Area</b>	<b>Jobs</b>	<b>Housing</b>
Metro Station Areas	3,100	1,925
Red Line Areas	1,550	950
Suburban Areas	775	475
Rural Areas	375	275
Total	5,800	3,625

During future biennial growth policy reviews, the Board suggests that these allocations could be adjusted to take into account other factors, such as transportation and schools facilities, already approved development, federal government activity, and market indicators.

#### 100% Developer Mitigation

When the Planning Board approves all of the development allowed to a given sub-area under the approved preliminary plan approval rate, development approvals would be suspended in that sub-area until the next year's allocation is made, unless the developer agrees to mitigate the impact of 100 percent of the trips generated by the proposed development, either on-site or from nearby areas. The developer may mitigate the impact by providing transportation infrastructure, increasing transit usage, or a combination of the two.

#### Exceptions to the Preliminary Plan Approval Rate

The current growth policy gives preferential treatment to certain types of highly-desired development that meets specific public policy objectives. The three main types of development that are given preferential treatment are: affordable housing, strategic economic development projects, and development within Metro station areas. The Planning Board believes that this preferential treatment, appropriately limited, is still necessary, and recommends that the new growth policy continue to support these types of development by allowing their approval, under specific limited conditions, even when doing so would exceed the preliminary plan approval rate. The Planning Board recommends some modest changes to each of the current provisions, including: allowing Special Ceiling Allocation for Affordable Housing projects to pass Local Area Transportation Review, changing provisions that charge the "Development Approval Payment" to instead require payments based on the impact tax, and revising the Alternative Review Procedure for Metro Station Policy Areas to require the typical developer-funded traffic studies rather than a Comprehensive Local Area Transportation Review. The Planning Board would also restrict residential approvals under the Alternative Review Procedure for Metro Station Policy Areas to areas where the school improvements needed to support increased enrollment are feasible.

Commissioner Wellington would not continue the Alternative Review Procedure for Metro Station Policy Areas, believing that Metro station development should be accommodated within the preliminary plan approval rates the Board is recommending.

The current growth policy contains other, more specific, preferential treatment provisions. The Planning Board does not believe the need for these provisions will continue under the new growth policy. These include the provisions for “corporate support facilities,” certain hospitals, and certain free-standing child day care centers.

#### The Pipeline of Approved Development

The present size of the pipeline of approved development considerably limits the ability of the new growth policy to pace development. The County’s pipeline contains over 77,000 jobs and about 24,000 housing units, not counting development approved in Gaithersburg, Rockville, and in adjacent counties. All of this development will have an impact on a transportation network and school system that Board finds to be at capacity. The Planning Board considers this a major issue and believes that all aspects of the pipeline should be reviewed. However, because so many growth policy issues are on the table this year, the Board was persuaded to recommend that pipeline issues be addressed comprehensively in 2004. The Board is especially interested in considering further reductions in the time limit for a finding of adequate public facilities, in applying a time limit to pre-1989 residential approvals, and in reviewing the whether the extension provisions are working as intended.

#### APFO and the Capital Improvements Program (CIP)

The Planning Board believes that the new growth policy must strengthen its relationship with the capital budgeting process with a greater emphasis on reporting transportation and school levels of service, by identifying specific capital improvements to relieve transportation and school capacity deficits, and by tracking how capital programming decisions are keeping pace with development approvals.

#### Impact Taxes

As noted, the Planning Board’s growth policy strategy depends not only on moderating the rate of development approvals but also increasing the financial resources available to construct needed facilities. The Planning Board, therefore, recommends that the County increase the rates of development impact tax for transportation and establish a development impact tax for schools. The Board strongly recommends that these new revenues be dedicated to funding transportation and school capacity improvements. The Board further recommends that the increase in the recordation tax be dedicated to school construction.

The Planning Board’s recommended impact tax rates are shown in the attached Table 1. The Planning Board is sensitive to the effect of additional taxes on the cost of development, especially housing affordability, and the Board understands that there are a

host of other factors contributing to traffic congestion and school enrollment growth in addition to new development. However, the Board notes that each additional increment of new development will require additional transportation and school facilities, and the Board's proposed rates provide an appropriate balance between needed revenues and ability to pay. The Board's rates also provide a balance between jobs and housing so that, even with the school impact tax, both residential and non-residential development are paying a similar percentage of sales prices or rents in impact taxes.

The Planning Board recommends a new structure for the transportation impact tax that reflects the relative impact of new development on the transportation network. Under the Board's proposal, the transportation impact tax rates would be lowest in Metro station areas and highest in rural areas, consistent with the relative transit usage of development in these areas.

The Board would continue to apply the tax at building permit to all approved development, and would not expand the credit provisions of the impact tax.

When housing developments contain a threshold number of affordable units, both the affordable and market rate units are currently exempt from the transportation impact tax. The Board recommends that in future only the affordable units themselves be exempted from the transportation and schools impact taxes.

The Planning Board is recommending that school impact taxes be the same countywide, but they would vary by housing type. The Planning Board's proposal is very similar to school impact tax legislation introduced this spring, with the exception that the Planning Board's recommended rates are significantly higher.

An issue that is ordinarily outside the purview of the Planning Board is whether the proceeds from the recent increase in the recordation tax should be dedicated to school construction. However, several Councilmembers and the Board of Education have requested that the Planning Board consider the issue, and the Board's recent growth policy review has given the Board extensive information about both the need for new school infrastructure as well as the increase in school enrollment due to housing turnover. Therefore, the Planning Board is comfortable recommending that the recordation tax be dedicated to school construction.

### Conclusion

The Planning Board knows that you place high importance on the growth policy and impact tax discussions that will occur this fall. Changes of this magnitude will require careful thought and comprehensive public input. While we believe we have made an excellent start in that regard, we are looking forward to the Executive's comments on

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our proposal and to participating in the Council's scheduled public outreach efforts. Of course, we stand ready to provide you with any additional clarification or background information you or your staff may need to support your consideration of these issues.

Sincerely,

Derick Berlage  
Chairman

DB:KWM

Table 1

## Summary of Planning Board's Proposed Impact Tax Rates

### Proposed Transportation Impact Tax Rates

Area	Residential				
	Detached	Town	Apt.	MF Senior	MPDUs
Metro station area	\$1,500	\$1,500	\$1,000	\$500	\$0
Red Line area	\$3,000	\$3,000	\$2,000	\$1,000	\$0
Suburban area	\$4,500	\$4,500	\$3,000	\$1,500	\$0
Rural area	\$6,000	\$6,000	\$4,000	\$2,000	\$0

Area	Non-Residential					
	Office	Retail	Indust.	Bioscience	Hospitals	Other
Metro station area	\$2	\$3	\$2	\$0	\$0	\$2
Red Line area	\$4	\$6	\$4	\$0	\$0	\$4
Suburban area	\$6	\$9	\$6	\$0	\$0	\$6
Rural area	\$8	\$12	\$8	\$0	\$0	\$8

*Residential rates per unit; non-residential rates per square foot*

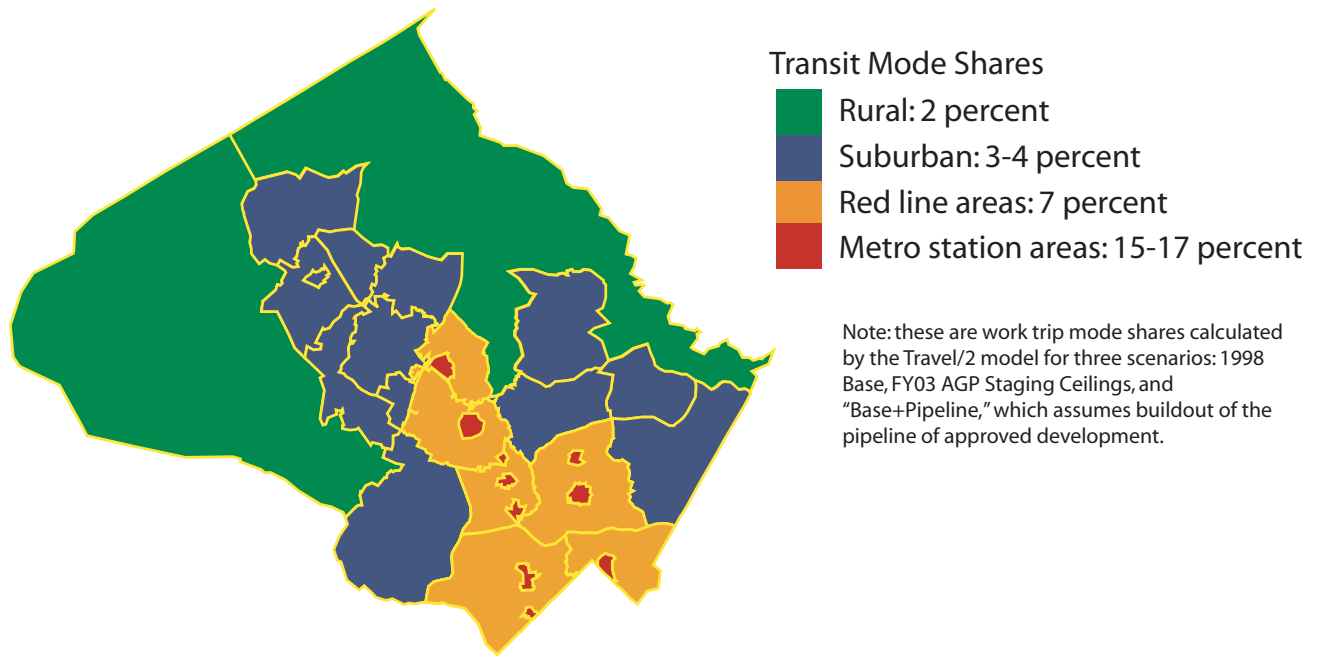
### Proposed School Impact Tax Rates

Area	Residential				
	Detached	Town	Garden	High-Rise	MPDUs
All areas	\$8,000	\$6,000	\$4,000	\$1,600	\$0

*Residential rates per unit*



# Work Trip Transit Mode Shares by Geographic Area



# Recommended Growth Policy Sub-Areas

