

# History of Montgomery County's Growth Policy



Along Clopper Road in Germantown, 1979 (left) and 2004 (right)

## INTRODUCTION

Although commonly referred to as a separate ordinance, the APFO is actually part of Montgomery County's subdivision regulations: Section 50-35 (k) of the County Code. The APFO was adopted by the County Council in 1973 with the goal of synchronizing development with the availability of public facilities needed to support that development. The introductory sentence states, "A preliminary plan of subdivision must not be approved unless the Planning Board determines that public facilities will be adequate to support and service the area of the proposed subdivision."

For the following 13 years, it was the responsibility of the Planning Board to define adequate public facilities, and it developed a series of reports and guidelines to do that. Then, during the building boom of the mid 1980s, the Council became concerned that too much development was being approved. After several proposals for moratoria or caps on building permits were rejected, the Council, as a compromise, enacted legislation under which the Council each year adopted an Annual Growth Policy (AGP) for the County. Since 1986, the Growth Policy has been used by the Council to direct the Planning Board's administration of the Adequate Public Facilities Ordinance.

This report summarizes some of the milestones in the thirty-four years of growth management in Montgomery County.<sup>1</sup>

## GROWTH POLICY MILESTONES 1960s-2007

- 1960s     The County adopts its General Plan, "...On Wedges and Corridors," which, among many other accomplishments, identifies three goals that require special legislation to achieve. The goal of maintaining an

<sup>1</sup> Portions of this review draw from, or quote from, work by David Levinson, a former Planning Department staff member who worked on the Annual Growth Policy in the early 1990s, and who is currently Associate Professor in the Department of Civil Engineering at the University of Minnesota.

agricultural reserve leads to the transfer of development rights program; the goal of providing housing at all income ranges leads to the moderately-priced dwelling unit ordinance, and the goal of timing the delivery of public facilities and private development leads to the adequate public facilities ordinance.

- 1972 In *Golden v. Planning Board of the Town of Ramapo*, the United States Supreme Court finds adequate public facilities ordinances constitutional.
- 1973 The Montgomery County Council adopts the adequate public facilities ordinance to be administered by the Montgomery County Planning Board.
- 1974 The Advisory Committee on County Growth Policy is established by the Montgomery County Planning Board (Royce Hanson, Chairman; Richard Tustian, Planning Director) and organized by the League of Women Voters. This committee comprises 37 individuals, including many former or future County Council or Planning Board members, developers and citizen activists. The Committee held 91 meetings, totaling an estimated 3,000 volunteer person-hours, to produce a report called *Directions* in August of 1974. The *directions* were: 1) Analyze the impact of forecasts, 2) Manage population growth, 3) Assure a job/housing balance, 4) Provide low and moderate income housing, 5) Finance expanded public transit and concentrate development at stations, and 6) Stage growth on a countywide basis. In addition to recommending that the Planning Board develop a Countywide program to stage development, the sixth direction also recommends that use of the APFO be “extended to areas other than those required by new development,” that development district legislation be enacted, and that all master plans have staging elements.
- 1974 In October, the Planning Board adopts the first annual Growth Policy report, called a *Framework for Action*. This report includes the development of a theory of growth management for Montgomery County, analysis of growth-related trends and their implications, and recommended actions. These recommendations address a number of the issues raised by the Advisory Committee, and include recommendations to concentrate development near Metro, improve connections between the growth policy and the capital improvements program, and establishing a “quality of life” indicators program.
- 1975 The Planning Board releases the second annual Growth Policy report, *Fiscal Analysis*, which examines the fiscal impact on Montgomery County of three different rates of growth. It concludes that all three

- growth rates would require significant increases in tax rates if then-current levels of public expenditures were to be maintained.
- 1976** The third annual Growth Policy report is released, called *Forecasts: People, Jobs, and Housing*, and is apparently in response to concerns that previously existing forecasts need to be improved. Like *Fiscal Analysis*, this technical report is to be followed by a “sequel” report looking at the implications of the findings.
- 1977** The fourth annual Growth Policy report, called *Carrying Capacity and Growth Management*, establishes much of the theory tying provision of public facilities to the timing of development approval. The ecological notion of “carrying capacity” is applied to the urban system as the intellectual rationale for a comprehensive growth management system. This rationale enables the move from “accommodation” of growth to “management” of growth. This report also raises the issue of the “lumpiness” of public facilities compared to private development; that is, at some points in time there will be a surplus of public facilities, at other time a shortage, and for a few brief instances they will be in perfect balance. The rest of this report discusses the development of standards for public facilities and other steps to translate the concept of carrying capacity into guidelines for administering the adequate public facilities ordinance. In doing so, a number of sophisticated models are introduced, setting the stage (no pun intended) for future growth policies’ reliance on models.
- 1979** The fifth annual Growth Policy report, *Planning, Staging and Regulating*, is issued in June 1979. This report reviews several different systems related to growth: the transportation system, the sewerage system, the school system, the fiscal system, and the stream valley system – but focuses on sewerage and transportation as the immediate basis for managing growth. This report introduces the concept of “policy areas” as the geography by which to measure transportation adequacy and introduces the concept of regulating the pace of development by establishing “thresholds” – later called “staging ceilings” – that represent the maximum amount of development that can be supported by the transportation system while maintaining a desired level of service. It also introduces the idea that roadway congestion standards should vary depending on the availability and usage of transit.
- 1980** The Planning Board reviews a *Comprehensive Staging Plan*, subtitled “An Amendment to the General Plan for Montgomery County.” This report suggests how to implement the ideas of the fifth annual Growth Policy report by establishing roadway level of service standards and development thresholds by policy area. Thresholds are established for

housing units and jobs separately, mirroring what would later be called Policy Area Transportation Review. It envisions a process that would include adoption by the County Council. The County Council does not adopt this concept, leaving administration of the APFO to the Planning Board.

- 1980** The sixth annual Growth Policy report is called *Land Supply and Demand* and consists of two technical reports, one on land supply, and the other on land demand.
- 1981-85** The concepts and structure of the *Comprehensive Staging Plan* are included and further refined in five annual *Comprehensive Planning Policies* reports, adopted by the Planning Board, which include “guidelines for the administration of the adequate public facilities ordinance.” These are very similar in structure to the *Annual Growth Policy* documents that follow. As in earlier reports, each policy area’s profile includes growth forecasts, zoning capacity, and threshold (maximum amount of development that maintains adequacy of public facilities). There are eleven policy areas, of which three are over capacity for housing, and one is over capacity for jobs. During this period, the definition of a “countable” transportation project became progressively tighter: in 1982-84, the APFO counts a transportation project if it is at least 50 percent funded in the first six years of the CIP. By 1986, a project had to be fully funded in the first four years of the CIP to be counted for APFO purposes.
- 1985** Concerned about the rapid pace of growth and lagging public facilities, the County Council appoints a “Consensus Committee on Growth Management” that provides recommendations for alleviating facility overload, expanding infrastructure financing, tightening development controls, and other policy, organizational, and procedural changes. Infrastructure financing recommendations include increasing the property tax and the gasoline tax, a surcharge on vehicle registration fees, creation of district-level taxes, and impact fees. The Committee also addresses how and when to count public facilities, including a proposal to establish a semi-annual Approved Road Program to list roads that are countable for APF review (which was implemented).
- 1986** By 1986 it is clear that the process of setting thresholds or staging ceilings was of great interest and importance to residents, the development community, and public officials. During this period, the County is experiencing its greatest development pressure and the largest amount of new development completed. First through an interim growth policy report, and then through an *Annual Growth Policy* resolution, a greater role in administering the APFO is assumed by the County Executive and County Council – roles that have largely

continued to the present day. The Planning Board proposes a new growth policy, which is reviewed by the County Executive and other agencies, and adopted as a resolution by the County Council. In the early years of the AGP, the County Executive extensively rewrites the Planning Board's proposal; in later years the County Executive provides comments.

- FY1988** The *Annual Growth Policy* moves to the fiscal year schedule. The Planning Board releases the *Final Draft FY 1989 Annual Growth Policy* on December 1, 1986. Although not called Policy Area Transportation Review yet, there is a system for setting staging ceilings by policy area based on average congestion levels. There are 13 policy areas, of which five are over capacity for housing and six are over capacity for jobs. The new policy areas: Gaithersburg is divided into east and west, and the Damascus Policy Area is created. A "Special Ceiling Allocation for Affordable Housing" is recommended.
- FY1989** During this period, and continuing for over a decade, the *Annual Growth Policy* includes detailed reviews of policy issues relating the administration of the APFO, as well as a report on the results of staging ceiling analysis. In FY89, these include analysis of how and when to test for adequacy of transportation facilities (testing at building permit is considered and rejected), how to allocate transportation capacity between jobs and housing, proposals to retest older subdivisions, and adopting a school adequacy test. Additional policy areas are created, including Silver Spring CBD, Bethesda CBD, and Rockville. The Germantown East and West Policy Areas come out of moratorium.
- 1989** The Planning Board releases its four-volume Comprehensive Growth Policy Study (CGPS), consisting of: *A Policy Vision: Centers and Trails, Alternative Scenarios: Analysis and Evaluation, Global Factors: Assessments and Implications, and Appendices of Background Information*. The four questions addressed by the CGPS are: Can we grow without excessive congestion? Can we afford the cost of growth? How should be approach these problems? Are present management tools adequate?
- A number of alternative growth scenarios were analyzed for their impact on traffic congestion and tax rates. Conclusions were presented that traffic congestion would deteriorate to unacceptable levels by 2020 if current trends continued. Only a major shift away from single occupancy vehicles towards all forms of transit, plus an accompanying shift in the jobs-housing balance in land use, which would be costly, would make a significant difference. Recommendations for further research in how to deal with this problem were presented.

- FY1990** The *FY1990 Annual Growth Policy* tackles several policy issues, including jobs/housing balance, understanding the effect of growth on public revenues and expenditures, the structure of policy areas (Aspen Hill was separated from the Kensington/Wheaton Policy Area), and how to better manage the “queue” of pending development. Seven policy areas are in moratorium for housing, and four are in moratorium for jobs. Of concern that year: some transportation improvements in the CIP have been pushed back.
- 1990** At the request of the County Executive and County Council, the Montgomery County Economic Advisory Council establishes a Growth Assessment Task Force. The task force calls for the County to adopt a vision for growth – determining how much and what type of growth the County seeks, and the infrastructure the County is prepared to supply to support that growth. The task force also calls for more in-depth cost-benefits analyses of growth, and recommends that the County identify ways to pay for the facilities to support growth without significantly increasing the tax burden on individual residents.
- FY1991** Policy issues addressed in the *FY1991 Annual Growth Policy* include: a comprehensive review of the structure of policy areas (recommendations: carve out Metro station policy areas following completion of sector plans, municipalities should be separate policy areas); limiting Potomac intersections that are subject to Local Area Transportation review to a list of six; addressing conflicts between master plan staging elements and the AGP with respect to the special ceiling allocation for affordable housing; prioritizing unbuilt transportation projects; and finding ways to allocate more development capacity to affordable housing projects. Five policy areas are in moratorium for housing, and eight are in moratorium for jobs.
- 1991** The Planning Board appoints a Growth Management Advisory Work Group to help identify growth-related issues that should be addressed in future work programs. The work group provides numerous recommendations in six categories, among them a suggestion that the County determine and pursue a financially sustainable rate of growth and a recommendation to evaluate the effects of long-term moratoria.
- 1991** James Duncan and Associates completes a study for the Planning Board comparing Montgomery County’s Growth Policy to other growth management systems around the country. Recommendations include: codifying much of the growth policy resolution and moving to a system that performs technical updates annually and looks at policy issues less frequently (every 3-5 years).

- FY1992** The *FY1992 Annual Growth Policy* completes much of the policy area restructuring that had been previously recommended (the number of policy areas increased from 17 to 22). Ten policy areas are in moratorium for housing and thirteen for jobs.
- FY1993** The *FY1993 Annual Growth Policy* takes a break from policy issues and focuses on updating results for the tests as then-structured. All of the policy areas in moratorium in FY1992 remain in moratorium for FY1993, although no new policy areas are put into moratorium. As in previous years, schools are found to be adequate for all clusters.
- FY1994** At adoption, the *FY1994 AGP* has six policy areas in moratorium for housing and nine in moratorium for jobs. Policy issues addressed in the *FY1994 Annual Growth Policy* include proposals to deal with a very large and inactive pipeline of approved development, the creation of North Bethesda Metro Station Policy Areas and a Germantown Town Center policy area, and an overhaul of the process for conducting Policy Area Transportation Review (PATR). Changes to PATR, which include a move to measuring transit service by *accessibility*, using an equation-based method for determining auto congestion standards (“TTLOS”) and treatment of freeways separately from local roads, are adopted in a special amendment late in FY1994.
- FY1995** Policy area restructuring and a new Policy Area Transportation Review test, as well as four new transportation projects, change staging ceilings for all policy areas. The *FY1995 Annual Growth Policy* has seven areas in moratorium for housing and six for jobs. Anticipating the adoption of the Clarksburg Master Plan, the Planning Board proposes creating a Clarksburg Policy Area. This would have subjected Clarksburg to Policy Area Transportation Review for the first time; the Planning Board recommends that the new policy area have approval capacity of zero housing units and zero jobs. The Council defers the issue until the next growth policy, which allows the Clarksburg Town Center project to be approved under Local Area Transportation Review only. The Growth Policy process is revised, in part based upon the 1991 consultant report, into two parts: a “ceiling element” to be adopted annually, and a “policy element” to be conducted every two years.
- 1995** The *1995-1997 Annual Growth Policy Policy Element* again recommends the creation of a Clarksburg Policy Area, as well as a Shady Grove Policy Area and a Glenmont Policy Area. The Clarksburg area is adopted, and immediately put in deficit by an amount equal to the size of the Clarksburg Town Center project. Shady Grove is adopted, but Glenmont is deferred until the completion of the sector plan. An interagency staff panel comprehensively reviews the school

adequacy test; no changes are adopted. A comprehensive review of Local Area Transportation Review by a workgroup that includes industry professionals and interested citizens results in some changes but also a validation of basic LATR methodology.

- FY1996** The *FY1996 AGP Ceiling Element* is able to count two new transportation improvements, which increase ceilings in Germantown East, Germantown West and Gaithersburg City by a total of 2,750 housing units and 750 jobs. There are now 26 policy areas, of which nine are in moratorium for housing and seven in moratorium for jobs.
- FY1997** The *FY1997 AGP Ceiling Element* is able to count one new transportation improvement – Norbeck Road Extended – that increase ceilings in Cloverly and Olney by a total of 2,000 housing units and 250 jobs. There are now 28 policy areas, of which seven are in moratorium for housing and seven in moratorium for jobs.
- 1997** The *1997-1999 Annual Growth Policy Policy Element* addresses 13 issues. Among them: a comprehensive review of the school adequacy test (considered but not adopted: reducing the adequacy threshold from 110 percent to 100 percent, and allowing developers to build schools to relieve school moratoria), creating the Glenmont Policy Area and the Friendship Heights Policy Area, a detailed review of LATR standards (previous standards retained), evaluation of a pipeline discount (not adopted), and analysis of a proposal for a “pay-and-go” alternative to meeting transportation adequacy tests, and some policy area boundary changes in Rockville and Takoma Park.
- FY1998** The *FY1998 AGP Ceiling Element* counts one new transportation improvement: a partial interchange on the I-270 West Spur. The adopted AGP has eight policy areas in moratorium for housing and seven for jobs.
- FY1999** The *FY1999 AGP Ceiling Element* counts one new transportation improvement: a partial interchange on the I-270 East Spur. The adopted AGP had eight policy areas in moratorium for housing and six for jobs.
- 1999** In the *1999-2001 Annual Growth Policy Policy Element* the Planning Board recommends that the County implement a countywide impact tax and reflect costs of transit and school facilities in calculating the tax rates; count transportation infrastructure fully funded in first five (rather than four) years of the CIP; decrease the time limit of a finding of adequate public facilities from 12 years to 6; require existing employers to participate in transportation management organizations; substantially change and limit the “Alternative Review Procedure for

Expedited Non-Residential Development Approval' (a form of pay-and-go). The APF time limit is decreased: the default is 5 years but the Board may approve APF time limits up to 12 years. A number of the other major recommendations were recommended a second time in *the 2001-2003 AGP Policy Element* and adopted, although some require separate legislation and can not be implemented immediately.

- FY2000** The *FY2000 AGP Ceiling Element* is able to count transportation projects fully funded in the first five years of the CIP, instead of four. This year's AGP has eight policy areas in moratorium for housing and eight for jobs. The Fairland/White Oak Policy Area has been in moratorium for new housing since 1983 and new jobs since 1986. This was the eighth year that Damascus, Montgomery Village/Airpark, and North Potomac are in moratorium for new housing.
- FY2001** The *FY2001 AGP Ceiling Element* brings Damascus and North Potomac out of moratorium for housing due to the programming of new roads. Transportation improvements increase Derwood's job ceiling from -2,297 to +1, but North Bethesda goes into moratorium for jobs.
- 2001** The Planning Board's recommended *2001-2003 Annual Growth Policy Policy Element* addresses 13 issues. The major issues: the Council does not endorse the recommended changes to Policy Area Transportation Review, but does tighten the school adequacy test, and does implement a countywide transportation impact tax. The Policy Area Transportation Review issue is especially difficult: Planning staff had "revalidated" the computer model used to set staging ceilings with up-to-date traffic counts and other adjustments. These changes result in substantially different staging ceilings in many areas and also highlight a technical problem with the method used to calculate congestion standards. The Council does not accept the revised ceilings but directs the Planning Board to conduct a "top-to-bottom review" of the growth policy during the next two years. The Council also substantially revises the school adequacy test, changing the standard of adequacy from 110 percent of capacity to 100 percent and clarifying the definition of "capacity." The effect of the Council's action is to put the Damascus cluster into moratorium; this moratorium is lifted in the next Growth Policy with the programming of Clarksburg High School. The countywide transportation impact tax departs from previous versions in several ways, one of which is that it is not tied to a list of specific transportation improvements. Other issues: LATR standards are reviewed in detail and retained, several new transportation test exemptions are created, and the issue of APF tests at zoning is raised (it would be revisited periodically until the Council adopts language clarifying that the primary APF test is at subdivision).

- FY2002** Several policy areas are put into moratorium with the adoption of the *FY2002 AGP Ceiling Element*. Germantown West, North Bethesda and Olney for housing; Damascus and Twinbrook for jobs. However, Montgomery Village/Airpark comes out of moratorium for jobs for the first time since 1991.
- 2002** Park and Planning staff release a report entitled “Assessing the Effectiveness of Montgomery County’s Adequate Public Facilities Ordinance.” The report summarizes the history of the APFO, issues that have been the subject of debate over time, and how these issues can be addressed during a “top-to-bottom” review of the AGP.
- FY2003** A grade-separated interchange on Route 29 at Briggs Chaney Road brings Fairland/White Oak out of moratorium for jobs in the *FY2003 AGP Ceiling Element*. Clarksburg High School is counted in the school test for the first time.
- FY2004** Transportation improvements counted in the *FY2004 AGP Ceiling Element* include Montrose Parkway West, Nebel Street Extended, and Stringtown Road. These projects bring North Bethesda and Twinbrook out of moratorium and reduce the Clarksburg deficit. Eight policy areas are in moratorium for housing and six for jobs.
- 2003** The *2003-2005 AGP Policy Element* consists of the “top-to-bottom” review requested by the County Council in 2001. This review is described in detail at the end of this timeline.
- FY2005** The new Growth Policy goes into effect on July 1, 2004. Without Policy Area Transportation Review, the main issue is adoption of the School Adequacy Test results, which the Council had delegated to the Planning Board. All clusters are found to be adequate for the next fiscal year.
- 2005** The *2005-2007 Growth Policy* studies the time limits of a finding of adequate public facilities and how APF tests are conducted for record lots. The Planning Board recommends retaining the 5-to-12 year time limits as well as substantial changes to extension provisions and tests for recorded lots. These recommendations are adopted by the County Council in 2006. The report also contains the *2005 Highway Mobility Report*, an assessment of congestion conditions around the County, studies of the boundaries of two Metro station policy areas, and a review of development activity since the elimination of Policy Area Transportation Review. The Council does not adopt a new Growth Policy in 2005, so the *2003-2005 Growth Policy* remains in effect.

- 2006** The Council adopts changes to Chapter 8 and Chapter 50 of the County Code relating to the time limits of a finding of adequate public facilities and how APF tests are conducted for record lots. In June, the Planning Board updates the school test results and finds that all clusters are “adequate” by growth policy standards. In December, the County Council directs the Planning Board to study the major aspects of the growth policy and return with recommendations by May 21, 2007.

## IN DETAIL: THE 2003 REVIEW OF THE ANNUAL GROWTH POLICY

The *2003-2005 AGP Policy Element* consists of the “top-to-bottom” review requested by the County Council in 2001. The following summarizes this review and the changes to the growth policy adopted by the Council.

### The Top-to-Bottom Review Begins

In the period leading up to the start of the 2003 growth policy review, Park and Planning staff conduct research and analysis on growth policy issues. The resulting reports are presented to the Planning Board and County Council in February 2003. These reports consist of:

- An update/revision of the summer 2002 paper, consisting of an in-depth review of growth policy-related issues and a list of alternative approaches that staff would explore in the *Staff Draft 2003-2005 AGP*;
- A review of how adequate public facilities ordinances are administered in other jurisdictions around the country,
- A review of the “effectiveness” of Policy Area Transportation Review in slowing development;
- A report of two growth policy “focus groups” designed to elicit concerns about the current approach;
- Impact of the AGP on traffic congestion; and
- Factors affecting school enrollment changes.

Park and Planning staff release the *Staff Draft 2003-2005 AGP* on May 1, 2003. Among the recommendations in the Staff Draft:

- *Transportation*: Staff explore three options for reforming Policy Area Transportation Review: (1) keeping the current system but fixing the main problem: how to calculate transit service; (2) change to a new and much simpler system for setting staging ceilings; and (3) eliminate Policy Area Transportation Review and strengthen Local Area Transportation Review. Of these, staff recommends option 2.

- *Schools*: Staff recommends the changes that were ultimately adopted by the County Council.
- *Impact taxes*: A bill to expand and increase impact taxes had previously been introduced and staff endorses the basic properties of that bill.

### **2003: Planning Board Recommendations**

On May 15, the Planning Board holds a public forum on the growth policy and begins a series of public worksessions that last through July. The Planning Board begins by asking basic questions about growth and its implications for the County. The Board reviews the County's plans and policies related to growth and develops a policy framework to support those policies and plans.

The administration of the adequate public facilities ordinance had been based on detailed measurements and standards of infrastructure availability and usage. These measurements and standards were adjusted from time to time to account for County policies. The result was a very complicated system with many individual calculations being conducted, which – critics charged – did not always adding up to a coherent growth policy for the County.

The Planning Board breaks with this tradition by suggesting that an APFO, once justified by sufficient objective analysis, could then be administered without a complicated system of measurements and standards that only a few people fully understand. The Board recommends that the County use all of its traffic counts, transit service measurements, analysis of past and future growth, the likely pace of construction of new infrastructure, and other calculations to identify an overall pace of growth that the County can absorb without further strain on public facilities. Once that overall pace of growth is identified, the Board suggests, a relatively simple process can be used to determine where new development could take place, as long as the process is consistent with the County's General Plan and land use policies. The Board's approach prioritizes development approvals based on transit service – more approvals would be permitted in metro areas, fewer in other areas.

The Planning Board also endorses increased/expanded transportation impact taxes and a new school impact tax.

The Planning Board releases these recommendations to the public and transmits them to the County Council and County Executive on August 6, 2003.

### **2003: County Council Consideration**

The County Council's review of the Annual Growth Policy begins with a public "teach-in" on Saturday, September 13, 2003 in the Council Office Building cafeteria. The County Council then holds public hearings on September 16 and 24. The PHED Committee holds worksessions on September 22, 29, October 7 and 14. The MFP Committee holds a worksession on proposed impact taxes of October 16. The full Council holds AGP and impact tax worksessions on October 21 and 23.

During the Council's review, Council staff expresses the viewpoint that "staging ceilings are no longer warranted." Among the reasons cited in their October 21, 2003 memo to the Council:

- Staging ceilings measure the capacity of roadway links, but "today the biggest source of travel delay is at intersections, which is measured by Local Area Transportation Review" and
- "Most important, with the possible exception of Clarksburg, no policy areas are left with extensive amounts of master planned development that doesn't already exist or is in the pipeline. Therefore, there is not much more upstream/downstream effect about which to be concerned. Even Clarksburg is not a central issue: its employment will draw traffic mainly from either outside the County or in a reverse commute from downcounty, and most of its housing will be built as part of development districts."

The County Council takes action on the growth policy on October 28, 2003. The changes to the impact tax go into effect on March 1, 2004 and the new growth policy goes into effect on July 1, 2004.

- The Policy Area Transportation Review test is eliminated. The Planning Board must prepare an annual report on congestion, including a list of priority transportation improvements. (First called the *Approved Development and Congestion* report, it is now called the *Highway Mobility* report.)
- Local Area Transportation Review is tightened.
  - Intersection congestion standards are tightened by 50 Critical Lane Volume (CLV) in all areas except Metro Station Policy Areas.
  - Transportation projects that are fully funded in the first 4 years of the State or County capital improvements programs may be counted for capacity (instead of the first 5 years, as was the previous practice).
  - Limited LATR applies to subdivisions generating 30-49 peak-hour vehicle trips. The Planning Board must either require the development to meet LATR requirements or, at the Board's discretion, allow the developer to pay a fee equal to 50% of the applicable impact tax.

- The Planning Board is given explicit authorization to require that larger subdivisions test more distant intersections.
  - The Planning Board is given more latitude to reject proposed LATR improvements if the Board finds that the proposed improvements (such as additional turning lanes) are not desirable, will have a negative impact on pedestrians, etc. The Planning Board has explicit authorization to require trip mitigation instead of a physical improvement, even if the developer prefers to make a physical improvement.
  - At the Planning Board's discretion, trip mitigation programs must be at least 12 years but no more than 15 years in duration.
  - Three more intersections are added to the list of intersections in the Potomac Policy Area that are subject to LATR.
- The Alternative Review Procedures are modified.
  - The Metro Station Areas procedure only applies to LATR now. The fee has changed (now based on impact tax). The Planning Board is no longer required to perform Comprehensive LATR in policy areas where the procedure is used.
  - The Special Ceiling Allocation for Affordable Housing is eliminated.
  - The Corporate Headquarters procedure was eliminated, except that Lockheed Martin remains eligible to use it for expansion of their headquarters, if needed.
  - The Strategic Economic Development Projects procedure is retained, but the fee is changed (now based on impact tax).
- The Development Districts process is unchanged, except that PATR will no longer be a basis for requiring transportation improvements.
- The School Test is tightened.
  - The adequacy test (enrollment compared to capacity) is 100% at the high school level and 105% at the middle and elementary school levels. The test continues to look 5 years into the future.
  - There is no longer any “borrowing” at the elementary or middle school levels. At the high school level, capacity may be borrowed from one adjacent cluster if needed to meet the 100% standard.
  - If enrollment exceeds the standard, but is below 110%, the developer must make a “school facilities payment” to the County. The payment is \$12,500 per student, using the most recent student generation rates. Student generation varies by housing type.
  - If enrollment exceeds 110% of capacity at the elementary or middle school level, there is a moratorium on all new residential approvals

except senior housing. The same is true at the high school level, except that the capacity borrowing provisions (see "b") apply.

- There is no definitive way to predict which areas might go into moratorium because of schools. However, in FY 2005 no areas would go into moratorium, or be subject to the school facilities payment, if the projects that add school capacity in the Superintendent's Recommended FY 2005-10 CIP are fully funded.
- Development Impact Taxes are changed.
  - The impact taxes go into effect for building permits applied for starting March 1, 2004.
  - The transportation impact tax structure is changed and its rates generally are raised.
    - There are three transportation impact tax areas: Metro Station Policy Areas, Clarksburg, and everywhere else (the 'General District').
    - New rates are set. Rates in Metro Station Policy Areas are half those in the General District. Rates in Clarksburg are 50% higher for residential development and 20% higher for commercial development than in the General District.
    - Affordable housing units are exempt from the tax. Formerly, all units in a development with a significant percentage of affordable units were exempt.
    - The rate for a productivity housing unit is half the otherwise applicable rate.
    - The tax does not apply in State-designated Enterprise Zones, of which there are currently two in Montgomery County: the Silver Spring and Wheaton Central Business Districts.
    - The new transportation impact tax is anticipated to raise about \$20 million annually. The revenue will be variable depending upon the residential and commercial construction activity, as well as the amount of impact tax credits drawn down in a given year.
    - The revenue collected in Clarksburg, Gaithersburg, and Rockville must be spent in the same area from which it is collected. Elsewhere, the revenue collected from a development should be spent on projects that serve the traffic generated by the development, if feasible.
    - There is a limited grandfather clause that is expected to allow four projects to pay the old rates: Fairfield development project in Germantown Town Center (residential portion), the

Hecht's site in Friendship Heights, White Flint Place (non-residential portion), and the Air Rights Building project in Bethesda CBD.

- The credit provisions were tightened prospectively.
  - A developer can receive a dollar-for-dollar credit against his impact tax for transportation capacity improvements. Until now, if a developer has spent more for a transportation improvement than the calculated impact tax, not only would there be no impact taxes paid, but the developer could apply the 'excess' credit against the impact tax on a future development for which the developer owns at least a 30% interest. New 'excess' credits will no longer be applicable, although existing excess credit may still be applied.
  - A developer can receive a credit against the applicable impact tax for capacity improvements to County roads, but not to State roads (unless, in Rockville or Gaithersburg, a Memorandum of Understanding between the City and County allows for a State road credit).
  - Credits issued after March 1, 2004 expire after 6 years from the date of their issuance.
- A new school impact tax on residential development is enacted.
  - The base rates for single-family housing are \$8,000 for a detached unit and \$6,000 for an attached unit. For single-family units there is a surcharge of \$1 per square foot for each square foot of gross floor area above 4,500 square feet to a maximum of 8,500 square feet (gross floor area calculation includes basement). Therefore, the top rate for a single-family-detached unit is \$12,000 and the top rate for a single-family attached unit is \$10,000.
  - The rates for multi-family units are \$4,000 for a garden apartment (except 1-bedroom garden apartments) and \$1,600 for high-rise and 1-bedroom garden apartments.
  - The rate for senior housing units is zero.
  - Affordable housing units are exempt from the tax.
  - The rate for a productivity housing unit is half the otherwise applicable rate.
  - The school impact tax does not apply in State-designated Enterprise Zones, of which there are currently two in

Montgomery County: the Silver Spring and Wheaton Central Business Districts.

- The school impact tax is anticipated to raise about \$25 million annually. The revenue will be variable depending upon residential construction activity.
- There is a limited grandfather clause. This clause is expected to allow three projects to be exempt: Fairfield development project in Germantown Town Center (residential portion), the Hecht's site in Friendship Heights, and the Air Rights Building project in the Bethesda Central Business District.
- Revenue from the school impact tax must be used only for public school projects that add capacity: new schools, additional permanent classrooms, and the portion of modernizations that add permanent classrooms.