

June 10, 2020

By Electronic Mail

MCP-Chair@mncppc-mc.org

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Comments on May 28, 2020 Public Hearing Draft of 2020-2024 County Growth Policy
(a/k/a Subdivision Staging Policy)

Dear Chair Anderson and Members of the Planning Board:

This letter is submitted on behalf of Lerch, Early & Brewer's land use practice group regarding the recommendations contained in the May 28, 2020 Public Hearing Draft of the 2020-2024 County Growth Policy. Our firm represents a significant number of property owners, home builders, hospitals, biotech companies, private schools, senior housing providers, and many other businesses and clients in the County who stand to be impacted by the current recommendations and the ultimate final version of the document. Because of the significance of the Growth Policy, we provide comments below on each one of the schools, transportation, and tax recommendations from the Public Hearing Draft. We want to thank the Functional Planning Staff for its availability over the last several months to provide updates on the proposed ideas and recommendations and to answer various questions.

Preliminarily, we want to recognize the time, hard work, and thought that went into the Public Hearing Draft. It contains some very good themes – notably, curtailing the imposition of automatic moratoria, recognizing the impact from turnover of existing housing, and updating the impact tax structure in a more equitable manner. At the same time, similar to other broad-scale policy documents, it leaves some important details to be determined later, particularly with respect to Vision Zero principles. It also contains some ideas that we do not support, such as the proposed cap on the validity period extensions for determination of adequate public facilities. As discussed in our comments, we believe that many ideas from the Public Hearing Draft should be adopted while others should be modified or eliminated to advance the County's economic growth, housing objectives, and overall competitiveness more effectively.

Some of our individual attorneys will participate further in the public hearing process on behalf of specific clients or projects or with respect to specific items contained in the Public Hearing Draft. But on behalf of our entire practice group, we offer these comments which are organized according to the Index of Recommendations found on page 91 of the Public Hearing Draft.

Schools Recommendations: School Impact Areas

- 4.1 *Classify county neighborhoods into School Impact Areas based on their recent and anticipated growth contexts. Update the classifications with each quadrennial update to the County Growth Policy.*

Comments: We understand the School Impact Area classifications and the logic and data behind their creation. While we do not have concerns with the classifications in principle, we have concerns with the recommendations within the Greenfield Impact Areas (see further comments under Recommendation 4.8). Our understanding is that the Planning Department is working on either a detailed map reflecting impact area boundaries or some other easy mechanism for determining the applicable impact area for each property.

Schools Recommendations: Annual School Test and Utilization Report

- 4.2 *By January 1, 2021, the Planning Board must adopt a set of Annual School Test Guidelines which outline the methodologies used to conduct the Annual School Test and to evaluate the enrollment impacts of development applications and master plans.*

Comments: We support this recommendation.

- 4.3 *The Annual School Test will be conducted at the individual school level only, for each and every elementary, middle and high school, for the purposes of determining school utilization adequacy.*

Comments: We support eliminating the cluster test.

- 4.4 *The Annual School Test will evaluate projected school utilization three years in the future using the following school utilization adequacy standards:*

- *Elementary School Adequacy Standard: Seat Deficit < 110 seats or Percent Utilization \leq 120%*
- *Middle School Adequacy Standard: Seat Deficit < 180 seats or Percent Utilization \leq 120%*
- *High School Adequacy Standard: Percent Utilization \leq 120%*

Comments: We oppose the recommended change from the five year timeframe to the three year timeframe. The five year timeframe is more consistent with the County CIP process (six years) and more reliably reflects when students from new development will actually enroll. The proposed school utilization adequacy standards appear to be consistent with the current Subdivision Staging Policy.

- 4.5 *The Annual School Test will establish each school service area's adequacy status for the entirety of the applicable fiscal year.*

Comments: We support this recommendation.

4.6 *The Annual School Test will include a Utilization Report that will provide a countywide analysis of utilization at each school level.*

Comments: We support this recommendation.

4.7 *The Utilization Report will also provide additional utilization and facility condition information for each school, as available.*

Comments: We do not oppose providing additional information for each school. We also do not oppose, in principle, the observation that “The information would also facilitate discussions between developers and MCPS about potential ways the developers can make improvements to school facility conditions (roof replacements, HVAC system upgrades, etc.)” provided that the costs of any such improvements can be credited against applicable school impact taxes (consistent with Recommendation 6.3).

Schools Recommendations: Residential Development Moratorium

4.8 *Automatic moratoria will only apply in Greenfield Impact Areas. The Planning Board cannot approve any preliminary plan of subdivision for residential uses in an area under a moratorium, unless it meets certain exceptions.*

Comments: We support the recommendation to eliminate the automatic moratoria within the Turnover and Infill Impact Areas for the reasons outlined in the Public Hearing Draft (pages 43-45). But for those same reasons, we support elimination of the automatic moratoria in the Greenfield Impact Area as well (*i.e.*, moratoria should be eliminated across the entire County consistent with many other jurisdictions as set forth in Appendix I). The Clarksburg area is important for meeting the County’s housing goals, and the single-family housing market is important particularly in the face of the existing pandemic.

In lieu of an automatic moratorium in the Greenfield Impact Area, Recommendation 4.12 could be applied which would give the Planning Board discretion to deny a project based on particular school infrastructure data. While we do not favor a discretionary process as proposed in Recommendation 4.12 (*see* our comments below under that recommendation), the flexibility it offers would be preferable to an automatic moratorium, which is the worst case option. The most preferable alternative, however, would be to allow development to move forward within the Greenfield Impact Area without an automatic moratorium and without Planning Board discretion to deny a project based on particular school data, but with payment of the Utilization Premium Payment, as described in Recommendation 4.16. We support making the entire County consistent in that regard.

We ask the Planning Board to include flexibility with respect to the provisions for Greenfield Impact Areas, in particular Clarksburg. The vast majority of planned development in Clarksburg has already been approved. There are, however, two pending residential projects, filed under the current Subdivision Staging Policy rules and the school capacity calculations

confirmed last November. Both projects would have satisfied the school capacity test when they were filed. The revised calculations for 2022, combined with the new proposed Growth Policy standards for a three-year test rather than a five-year test, however, would prevent these two projects from obtaining approval for an undetermined period of time. This result is particularly troubling because the boundary adjustment approved last year for Clarksburg High School was intended to address the capacity issues. (There is ample elementary and middle school capacity for both projects). There should be some relief either in the form of grandfather provisions or otherwise to enable these two pending projects to be approved. Their impact on high school capacity will be minimal and spread over a period of years, by which time other projects such as the Damascus expansion will address any concerns.

- 4.9 *Exceptions to moratoria will include commercial development projects, residential projects estimated to generate fewer than one full student at any school in moratorium, and projects where the residential component consists entirely of senior living units.*

Comments: We support the recommended exceptions. The *de minimus* exception should be clear in being interpreted as net additional units. For example, a project that proposes to remove one unit and build three new units should be considered two units (net additional units) for purposes of calculating the school impact and meeting the *de minimus* exception.

- 4.10 *Eliminate the moratorium exception adopted in 2019 pertaining to projects providing high quantities of deeply affordable housing or projects removing condemned buildings.*

Comments: We oppose this recommendation. If any portions of the County are subject to potential moratoria then this exception should remain.

Schools Recommendations: Student Generation Rate Calculation

- 4.11 *Calculate countywide and School Impact Area student generation rates by analyzing all single-family units and multifamily units built since 1990, without distinguishing multifamily buildings by height.*

Comments: We support this recommendation.

Schools Recommendations: Development Application Review

- 4.12 *The County Growth Policy should explicitly allow the Planning Board to deny a residential development project in Turnover Impact Areas and Infill Impact Areas if it deems there is inadequate public school infrastructure, after consideration of the applicable data and circumstances.*

Comments: We oppose this recommendation. To avoid any confusion, the summary of this recommendation should be clarified to reflect that Planning Board discretion would apply only if the Annual School Test determines that a school exceeds the adequacy standards. The

Planning Board would not have discretion to deny a project if schools meet the adequacy standards. Having said that, we are very concerned with this proposal because it potentially could lead to subjective determinations and arbitrary results. At the same time, this recommendation is preferable to an automatic moratorium in the Turnover and Infill Impact Areas. But we also believe that this recommendation is unnecessary and unwarranted in light of Recommendation 4.16 -- payment of the Utilization Premium Payments in Turnover and Infill Impact Areas. Additional payments would help address the capacity problem and are a known and fixed amount that provides certainty to an applicant. Planning Board discretion to deny a project, on the other hand, does not provide the certainty that is critical to the development industry and subjects the Board to case-by-case determinations, potentially inconsistent results, and legal challenges. The Planning Board conclusively determined that moratoria should be eliminated. Preserving this discretion directly contradicts this policy decision now and in the future.

4.13 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to require a development application to be retested for school infrastructure adequacy when an applicant requests an extension of their Adequate Public Facilities validity period.

Comments: We oppose this recommendation. Extension requests are intended to preserve the original approval for the time period necessary to implement the project, and are not intended to subject the approval to a new Adequate Public Facilities test that could jeopardize the very project that is to be extended. Projected student generation from an approved project already is factored into background school capacity calculations and should not be difficult to monitor. If the Board feels differently, this additional testing requirement should be discretionary, as is the Board's current ability to request additional traffic information for an extension.

4.14 Amend Chapter 50, Article II, Section 4.3.J.7. of the County Code to cap the Adequate Public Facilities validity period for development to no more than 22 years, at which point the applicant can no longer request an extension of the approval and must restart the plan application process.

Comments: We adamantly oppose this recommendation, and if it is adopted, it will have serious impacts on important County projects. The County should not adopt this recommendation for a variety of reasons.

First, this appears to be a solution in search of a problem. The reason cited for this recommendation is that "Lengthy extensions can complicate long-term planning and school enrollment projection efforts" (Public Hearing Draft, page 53). Respectfully, we do not consider this to be a serious challenge. The Public Hearing Draft makes clear that new projects account for a very small portion of school enrollment growth. Approved projects become part of the background conditions for analysis of future development and can be monitored easily. Enrollment projection efforts only apply to residential projects. Although this recommendation falls under the schools recommendations, it would apply to all projects -- nonresidential projects and residential projects -- as currently proposed. Further, under the current development review

process, we do not believe that long term projects create problematic “queueing” scenarios that prevent other projects. Whatever modest planning benefit might be achieved by imposing an automatic termination after 22 years does not outweigh the cost to the County and the significant cost to the potential projects which may need extensions for a variety of legitimate reasons.

Second, there are many valid reasons why projects require a lengthy validity period and multiple extensions. These include market conditions, changing industries or facility needs, ownership changes, financial challenges, internal business decisions, and changes of direction with respect to design and operational needs. Implementation of development should be deliberate, logical, and responsive to new demands in a constantly changing world. This takes time.

Third, the types of projects that require lengthy validity periods are often complex, large-scale, multi-phased, long-term projects that meet many County strategic policy objectives and significantly benefit the County economically. These are just the types of opportunities the County should be seeking and preserving. The County should not automatically prevent implementation of these important projects and deprive itself of the existing flexibility to make case-by-case determinations. Flexibility is necessary to compete with neighboring jurisdictions to attract and/or retain major businesses or developments.

Fourth, many projects provide public benefits in the form of infrastructure improvements or financial contributions well in advance of realizing full build out. It would be grossly inequitable not to allow projects to proceed after providing costly facilities required by the regulatory approvals. There is a vested contractual interest that must be respected.

Finally, projects seek entitlements and proceed in good faith based on an existing set of rules and expectations. This recommendation will detrimentally impact many projects, and it attempts to change an expectation on which projects have relied. If this recommendation is not rejected outright, then as an alternative it should only apply to completely new development approvals with original validity periods that commence after January 1, 2021, the effective date of the 2020 Growth Policy. All legacy development projects that received approval prior to January 1, 2021, regardless of their extension status, should be grandfathered and should be allowed to request amendments and extensions and without a statutory Adequate Public Facilities cap.

- 4.15 Require MCPS to designate a representative to the Development Review Committee to better tie the development review process with school facility planning. Ensure this representative has appropriate authority to represent MCPS’ official positions.*

Comments: We support this recommendation.

- 4.16 Require applicants to pay Utilization Premium Payments in Turnover and Infill Impact Areas when a school’s projected utilization three years in the future exceeds established adequacy standards.*

Comments: This recommendation appears to be a return to something along the lines of the “School Facilities Payment” that was eliminated in 2016. As we stated in our comments on Recommendation 4.12, if this recommendation is adopted, and a project is subject to additional Utilization Premium Payments, then the Planning Board should not have the discretion to deny the project on school capacity grounds. We also question whether the three year time period for evaluating school capacity is the appropriate trigger (*see* comments on Recommendation 4.4). Finally, the recommendation is that the amount of Utilization Premium Payments, if applicable, will be established at the time of approval, but will be paid at building permit. At the time of building permit, if a school’s projected utilization three years in the future no longer exceeds adequacy standards, then the Utilization Premium Payments should no longer be applicable.

Transportation Recommendations: Vision Zero

5.1 *Design roads immediately adjacent to new development to account for all identified recommendations from applicable planning documents including Functional Plans, Master Plans and Area Plans.*

Comments: When there are conflicts between multiple plans, the most recently adopted plan should supersede any prior plans. However, when a project has relied on a prior plan in the entitlement process before the adoption of a new plan, reasonable grandfathering provisions should apply.

5.2 *Prioritize mitigation strategies designed to improve travel safety.*

Comments: No one opposes safety. But the cost of trying to achieve maximum safety must be balanced with the County’s underlying economic development objectives. The County Department of Transportation should actively participate in the safety evaluation and mitigation strategies. To the extent that safety measures slow or otherwise impair vehicle movements, then vehicular adequacy and delay standards must be adjusted accordingly.

5.3 *Given the additional focus on Vision Zero principles in the development review process, add a specific Vision Zero representative to the Development Review Committee to review the development application and Vision Zero elements of LATR transportation impact studies and to make recommendations regarding how to incorporate the conclusions and safety recommendations of LATR transportation impact studies.*

Comments: The Vision Zero representative should be a DOT official who is familiar with the overall development review process and the inherent need to balance multiple objectives.

5.4 *Introduce a Vision Zero Impact Statement for all LATR studies pertaining to subdivisions that will generate 50 or more peak-hour person trips.*

Comments: It is difficult to comment on this recommendation without new LATR Guidelines and further information as to the required scope of these statements and how these statements must be prepared. All information necessary to prepare Vision Zero Impact Statements, such as accident investigation data, must be available and easily obtainable. Any proposed safety improvements resulting from a Vision Zero Impact Statement must meet a basic nexus and proportionality test. Any financial contributions collected based on the Vision Zero Impact Statement should be spent on Vision Zero improvements (as opposed to going into a general fund), and total funds collected across multiple nearby projects should not exceed the total cost of Vision Zero improvements that would serve those projects.

- 5.5 *For LATR studies of new development generating 50 or more peak-hour weekday person trips, couple current multi-modal transportation adequacy tests with options that can be implemented over time utilizing Vision Zero-related tools and resources currently available and under development.*

Comments: We oppose lowering the requirement for pedestrian, bicycle and transit system adequacy tests if the given mode generates at least five peak-hour trips by that mode (Public Hearing Draft, pages 64-66). This threshold is too onerous and would capture small projects that do not justify this level of testing. This testing is expensive and time consuming and would not be competitive with other local jurisdictions. Additionally, any potential improvements that are imposed cannot be disproportionate to the size of the project.

Transportation Recommendations: LATR in Metrorail Station Policy Areas

- 5.6 *Eliminate the LATR study requirement for motor vehicle adequacy in Metrorail Station Policy Areas (MSPAs).*

Comments: We support this recommendation. It is in line with policies articulated throughout the Public Hearing Draft.

Transportation Recommendations: Intersection Delay

- 5.7 *Increase the intersection delay standard to 100 seconds/vehicle for transit corridor roadways in Orange and Yellow policy areas to promote multi-modal access to planned Bus Rapid Transit service in transit corridors.*

Comments: We support this recommendation.

Transportation Recommendations: Purple Line Station Policy Areas

- 5.8 *As depicted in the map below, place the three Purple Line Station policy areas in a new dark red policy area category. Conceptually, this change will reflect a “hybrid” between the red and orange policy area categorization. Commensurate with this new categorization, the congestion standard for signalized intersections and transportation impact tax rates in the Purple Line Station policy areas will change as described in Table 17 and Table 18, respectively.*

Comments: The Purple Line Station policy areas should be categorized in the Red policy area. This categorization is what would have occurred in 2016 if the Purple Line was fully funded for construction. Alternatively, if Recommendation 5.7 is adopted, which increases certain intersection delay standards in Orange policy areas to 100 seconds/vehicle, then a better “hybrid” between Orange (100 seconds/vehicle) and Red (120 seconds/vehicle) would be 110 seconds/vehicle, as opposed to the 100 seconds/vehicle recommended (Public Hearing Draft, page 71).

Transportation Recommendations: Mobility Assessment Report

- 5.9 *Continue producing the Mobility Assessment Report (MAR) on a biennial schedule as a key travel monitoring element of the County Growth Policy.*

Comments: We support this recommendation.

Transportation Recommendations: Auto and Transit Accessibility

- 5.10 *The proposed auto and transit accessibility metric is the average number of jobs that can be reached within a 45-minute travel time by automobile or walk access transit.*

Transportation Recommendations: Auto and Transit Travel Times

- 5.11 *The proposed metric for auto and transit travel times is average time per trip, considering all trip purposes.*

Transportation Recommendations: Vehicles Miles Traveled (VMT) per Capita

- 5.12 *The proposed metric for vehicle miles traveled per capita (See Figure 30) is daily miles traveled per “service population”, where “service population” is the sum of population and total employment for a particular TAZ.*

Transportation Recommendations: Non-Auto Driver Mode Share (NADMS)

- 5.13 *The proposed metric for non-auto driver mode share is the percentage of non-auto driver trips (i.e., HOV, transit and nonmotorized trips) for trips of all purposes.*

Comments: We do not have enough information to take a position on Recommendations 5.10 – 5.13.

Transportation Recommendations: Bicycle Accessibility

- 5.14 *The proposed metric for bicycle accessibility is the Countywide Connectivity metric documented in the 2018 Montgomery County Bicycle Master Plan (page 200).*

Comments: We need additional time to assess how this metric will impact development projects.

Tax Recommendations

6.1 *Change the calculation of school impact taxes to include one tax rate for all multifamily units, in both low-rise and high-rise buildings, based on the student generation rate for multifamily units built since 1990.*

Comments: We support this recommendation.

6.2 *Calculate standard school impact taxes at 100% of the cost of a student seat using School Impact Area student generation rates. Apply discount factors to incentivize growth in certain activity centers. Maintain the current 120% factor within the Agricultural Reserve Zone, except for projects with a net increase of only one housing unit, in which case a 60% factor would be applied.*

Comments: As a general policy, development impact taxes should be lowered as much as possible to increase the County's economic competitiveness. Our understanding is that the Planning Department is preparing a detailed map or some other easy mechanism for determining whether a property is located within an Activity Center.

6.3 *Allow a school impact tax credit for any school facility improvement constructed or funded by a property owner with MCPS' agreement.*

Comments: We support this recommendation. Credits for land dedication should be allowed to continue and any school facility condition improvements – whether or not they add classroom capacity – should be given credit.

6.4 *Eliminate the current impact tax surcharge on units larger than 3,500 square feet.*

Comments: We support this recommendation.

6.5 *Eliminate the current impact tax exemptions for development in former Enterprise Zones.*

Comments: We oppose the recommended elimination of the exemption for Former Enterprise Zones. Silver Spring and Wheaton, the Former Enterprise Zones, are not yet self-sustaining. These areas, with their fragile market and lower rent structure, are not able to absorb either the existing or the proposed new impact taxes. The impact tax exemption is what allows the equalization of the market place between the Former Enterprise Zones and other areas of the County, such as Bethesda or White Flint. The construction cost for buildings is the same in all four areas, but the rental return in Silver Spring and Wheaton is far below that of Bethesda or White Flint. The impact tax exemption is what allows Silver Spring and Wheaton to make their lower rental rates economically viable, by reducing the cost economics of the project in a way that it can be sustained by a lesser income stream from those lower rents.

The Silver Spring Former Enterprise Zone essentially is coterminous with the CBD and the new Opportunity Zone boundaries. The fact that Silver Spring and Wheaton received Opportunity Zone designations reflects that the Former Enterprise Zones are not ready to lose the benefits of having been Enterprise Zones. To be designated as an Opportunity Zone requires being composed of Low Income Community Census Tracts (“LICCT”). Downtown Silver Spring, essentially a single census tract, is sufficiently below the Washington Metropolitan Statistical Area Average Median Income, and therefore, qualifies as an Opportunity Zone. Silver Spring and Wheaton are not finished with needing the benefits of the exemption.

Projects that have been approved in Silver Spring have relied upon the impact tax exemption as a part of their economic model. Several of these projects have been approved with multiple phases, intending to be implemented over time. Portions are begun and other portions remain for the future. However, that phasing process and long gestation and development process was expected from the outset. These projects should not be adversely affected economically by the retrospective application of a change in the impact tax structure.

While many projects have site plan review, and therefore would, in theory, be protected in the recommended grandfathering, the likelihood is that over the course of the development process, site plan amendments will be required, as is often the case with long term multi-phased projects. Regardless of the final decision on the merits of removing the exemption, and applying it to post-January 1, 2021 site plans, the eventual action, if implemented, should make clear that amendments to previously approved site plans do not change the grandfather protections of those projects.

Existing applications and approvals should be protected in a manner that allows these existing in-progress projects to proceed to completion using the previous tax exemption rules. This equitable reasoning should apply to any of the tax exemptions if they are to be removed. They should remain available in their previous form to those projects which were approved while the exemption was a part of the law, and upon which law the application relied.

Regarding the other current impact tax exemptions, we support maintaining all current exemptions. Additionally, we support exemption for Opportunity Zone properties within Central Business Districts. Finally, for dwelling units for seniors age 55 and above, we support converting the classification from “rate set at \$0” to “exempt.”

- 6.6 *Modify the current impact tax exemptions applied to all housing units when a project includes 25% affordable units to:*
1. *not apply the exemption to school impact taxes in the Greenfield Impact Areas,*
 2. *require the affordable units be placed in the county’s MPDU program, and*
 3. *require the project to include two times the standard share of MPDUs applicable to the project location.*

Comments: We oppose this recommendation. This proposal will effectively restrict the use of the exemption to HOC and other affordable housing providers only. A number of private developers have begun proposing 25% affordable housing, seeking to utilize the exemption. Now that the existing provision is finally achieving some success with the private sector, the recommendation proposes to cripple the program in a way to effectively eliminate it for most developers. This seems to be the worst possible time to make these changes.

The current exemption supports providing more housing generally, and with it more affordable units as MPDUs. As has been argued for many years, the best way to achieve more MPDUs is to provide more housing generally, which then increases the number of MPDUs required. When the MPDU requirement is the standard 12.5%, doubling it to 25% is no change from current law, and therefore not really needed. In the 15% MPDU areas, needing to reach 30% is excessive. In those areas, most projects will simply comply with the required 15%, thus losing the additional 10% that could be encouraged by the current law. The amount lost is not the 5% difference between 25% and 30%, but the 10% between 15% and 25%.

The benefit of gaining the additional housing overall as well as the added 10% MPDUs over the base 15% to achieve 25%, seems worthwhile, particularly in those areas where the 15% minimum applies. However, if the economics do not work at 30% MPDUs, but would work at 25%, then this recommended change would lose that additional 10%. In some parts of the County with the 15% MPDU minimum requirement, the impact tax exemption is already significantly less valuable than in other locations, and thus unlikely to be used. In some areas, the economic value of the exemption is already negative at the 25% affordable housing rate, let alone the 30% that would now be required.

Use of the exemption has already been factored into the economics of projects. If changes are made, then a grandfather provision should be added to protect those projects that are in progress, relying on the exemption as it is today, so there is no confusion about its continued use. If site plan approval after January 1, 2021 remains the trigger, there should be clarity that subsequent amendments do not change the protection received by the previously-approved site plan.

6.7 *Continue to apply impact taxes on a net impact basis, providing a credit for any residential units demolished.*

Comments: We support this recommendation.

6.8 *Incorporate progressive modifications into calculation of the Recordation Tax to provide additional funding for school construction and the county's Housing Initiative Fund.*

Comments: Recordation Taxes should be as low as possible to make the County competitive when it comes to tax policy.

As a final general comment, and as emphasized several times in this letter, comprehensive grandfathering provisions are necessary. Protection should be provided for all projects that have filed, are in process, or have approvals that may require amendments later. Specifically regarding impact taxes and exemptions, we support Staff's recommendation in Appendix N (Page 121) related to the Transition from the existing Subdivision Staging Policy to the updated Growth Policy. This Transition language is important because projects with site plan approval have relied on current exemptions in their planning process. We propose that language be added to clarify that projects with site plan approval under the existing Subdivision Staging Policy provisions can propose a site plan amendment after the effective date of January 1, 2021 and still claim any exemptions under the existing Subdivision Staging Policy. This clarification would allow amendments to existing site plans approved under the existing Subdivision Staging Policy so that necessary changes can be made to plans without triggering unplanned costs or unnecessary expirations, all of which could prevent a project from moving forward. We thus propose the following:

“Sec. 2. Transition. The amendments made in Section 1 must apply to any development that receives original site plan approval from the Planning Board after this Act takes effect.”

* * *

We appreciate all of your efforts to solicit comments from various stakeholders and we thank the Board for its consideration of this input. We look forward to participating in the hearing on Thursday, June 11, 2020, and in the following worksessions. After you have had a chance to review our comments, we would welcome the opportunity to continue the discussion if you have any questions. Thank you very much.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.
LAND USE PRACTICE



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