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September 11, 2020

RE: Subdivision Staging Policy/County Growth Policy

Dear Council President Katz and County Councilmembers:

On behalf of the Town of Chevy Chase, we appreciate this opportunity to provide comments on the draft Subdivision Staging Policy/County Growth Policy (CGP) now before the County Council. We have followed this process closely and commend the work done by the Planning Department staff and Planning Board members. Overall, we support some of the specific recommendations contained in the draft, but we believe the draft comes up short in several critical areas. Most importantly, it fails to provide substantive alternatives to the current use of building moratoria to control school overcrowding and to the motor vehicle adequacy test. As a result, the CGP fails to comply satisfactorily with the requirements of the County's Adequate Public Facilities Ordinance (APFO). Further, the draft CGP proposes substantial changes in school impact and recordation taxes, but the financial impact of these changes has not yet been adequately evaluated.

The high quality of the County's schools is a primary reason why many people have decided to make Montgomery County their home and why businesses choose to locate here. Given the challenging budget circumstances facing the County and State, we do not want to see policy changes that further limit options to address school overcrowding, which is already problematic. Unfortunately, we identified several key proposals contained in the draft that would do exactly that.

We believe that the Planning Board should not solely be responsible for addressing school overcrowding under the APFO. Many of the appropriate tools and policies rest squarely with the Board of Education. Given the complexities of addressing school overcrowding, we have one overarching request:

- To find an effective alternative to building moratoria, we propose that the County maintain the building moratoria for one year. During that year, a task force consisting of Planning staff, MCPS/Board of Education staff, and County residents study the County's

future school capacity needs and explore policy and fiscal tools that could replace moratoria to address school overcrowding. The task force should be led by either the County Council or a representative of the County Executive.

Detailed explanations of the rationales underpinning this request, and other comments on the CGP, follow.

I. Schools - Residential Development Moratoria

- We support elimination of residential moratoria only if they are replaced with effective policy and fiscal tools to ensure adequate school infrastructure. The draft CGP does not offer an effective replacement for moratoria, so we suggest retention of this tool for one year while a task force identifies an effective replacement tool.

To maintain the high quality of the County's schools, the primary goal of the CGP must continue to be effective implementation of the County's Adequate Public Facilities Ordinance (APFO). The APFO requires that the Planning Board only approve a preliminary plan when it finds that public facilities will be adequate to support and service the new development. Residential development moratoria have been the primary mechanism used to advance school infrastructure improvements and correct overcrowding. The draft CGP proposes to terminate residential building moratoria in 92.8 percent of the County, retaining them only in the Greenfield Impact Zone (Clarksburg), but it does not offer an effective alternative mechanism.

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

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

Given the problems with residential moratoria, we support their elimination, provided they are replaced with effective policy and fiscal tools to ensure adequate school infrastructure. However, only one tool is offered in the draft CGP as a replacement for the residential moratoria: a modest Utilization Premium Payment that does not kick in until a school is above the 120 percent capacity threshold. This surcharge is not an adequate replacement for moratoria. Under any reasonable standard, it fails to meet the requirements of the APFO. The surcharge will allow new residential development to proceed even if no school expansions are planned and no matter how overcrowded schools become. It is also applied late in the game, once schools are already seriously overcrowded. In contrast, the former Adequate Facility Payments were applied when a school's enrollment exceeded 105 percent capacity. We should not allow our schools to reach 120% utilization without intervention.

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

The County Council must not approve a CGP which lacks an effective tool for dealing with school overcrowding. Doing so shifts the responsibility for the problem of school overcrowding from the Planning Board to the Board of Education. As a result, the Council itself will be faced with addressing the inevitable school overcrowding problems without any structure or policy tools at its disposal. These considerations led us to propose retention of the moratoria for one year and formation of a task force to develop effective policy and fiscal tools to replace moratoria. Following a comprehensive review that balances both Planning and Board of Education perspectives, the County Council will be in a far better position to address this fundamental concern in a year's time.

II. Schools - Annual School Test

- With regard to Recommendation 4.5, we support the proposal to base the Annual School Test on three years of school utilization projections, rather than on five years as is currently done.

Using the shorter time frame results in more reliable utilization estimates and conforms better with the County's Capital Improvement Program schedule.

- With regard to Recommendation 4.6, we oppose the proposal to establish each school service area's adequacy status for the entirety of the applicable fiscal year.

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

III. Other School-Related Policy Changes

- With regard to Recommendation 4.15, we support the proposed requirement to add a Montgomery County Public Schools (MCPS) representative to the Development Review Committee.

We agree this change will better tie the development review process with school facility planning. It is critical that MCPS be more involved in the development process, so that cooperation and coordination between schools and development can be improved.

IV. School Impact and Recordation Taxes

- With regard to fees and taxes, we propose that the County Council undertake a comprehensive financial analysis of the impacts that the proposed changes in fees and taxes will have on revenues prior to approval of the proposed changes.

The draft CGP proposes numerous changes that impact the revenues collected to fund schools. Before these changes are approved, especially changes to the tax structure, we believe that a comprehensive evaluation of their financial impacts is needed. A thorough financial analysis will allow the County Council to have a good understanding of the impacts the proposed changes will have on revenues and development in the County. In addition, the County Council should consider whether the CGP should remain revenue neutral, or whether, given the enormous pressures currently on state and county budgets and the importance of having sufficient funding to maintain the high quality of our schools, it should generate a net increase in funding for schools.

In addition to advocating for an overall financial analysis, we provide the following comments on certain aspects of specific tax proposals:

- With regard to Recommendation 6.2, we support reducing the standard school impact tax from 120 percent to 100 percent.

We support this reduction because the objectives of the school impact tax are met by requiring developers to pay 100 percent of the costs of a seat for a new student and because the additional Utilization Premium Payments would be imposed where school overcrowding exists.

- We oppose further discounting the School Impact taxes to 60 percent of student costs for residential development in areas identified by the Planning Board as desirable for additional growth and investment.

The stated goal for this proposed discount is to incentivize residential development in these areas. The draft CGP proposes to retain the 100% rate for a few activity centers already experiencing growth (Bethesda, Clarksburg) and a few where growth is not desired (Olney, Kensington, NIH-Walter Reed), but to reduce it to 60 percent in all other activity centers in Infill and Turnover zones (those near Metro or Purple Line stations – some of which are experiencing growth) and all along the US 29, MD 355, Veirs Mill Road BRT lines. This proposed discount significantly alters the stated purpose of school impact taxes, which is to recoup the cost of the additional infrastructure needed to accommodate new students. We believe that school impact taxes should remain focused on their primary objective – providing funding for the burdens placed by new development on our schools. Other policies are already in place that support the county’s goals of smart development and affordable housing, such as the school impact tax discount for MPDUs, various other tax incentives, zoning provisions, and master plans. Further, nearly 30% of the growth in the student population is attributable to new housing in Infill zones. We question whether it is reasonable or appropriate to shift so much of the cost of the new students generated by this new housing from the developers to homeowners.

- With regard to Recommendation 4.16, we support the proposed Utilization Premium Payment.

We support this new tax, which will be applied to new residential development in areas where school enrollment exceeds utilization thresholds, because it is consistent with the principle of school impact taxes as user fees and because it would recoup a small amount of the revenue lost from reducing the school impact taxes from 120 percent to 100 percent. However, we consider that it should be applied well before a school reaches 120 percent capacity. The former Adequate Facilities Payments were applied when a school’s enrollment exceeded 105 percent capacity. We also suggest that the County Council should review the proposed amount of the Utilization Premium Payment to determine if it is sufficient. How does it compare with the former Adequate Facility Payments? Finally, as stated above, we do not consider this tax to be an adequate or effective replacement for residential moratoria.

- With regard to Recommendation 6.9, we support the proposed progressively-staged increases in recordation taxes to provide school funding.

Using a portion of the recordation tax to fund schools is also consistent with the principle of school impact and related taxes as user fees. We note that while recordation taxes are collected on all property sales, the proposed recordation tax increases will primarily impact homeowners. We do not believe that it is appropriate or desirable for a portion of the increased tax homeowners will pay to be used to offset the revenues lost by reducing school impact taxes to

60% in designated areas, rather than be used towards increased school funding. As stated above, we do not support reducing school impact fees to 60 percent in designated areas. As much as affordable housing is needed, we question whether it is appropriate for the CGP to collect taxes that will be used for that housing rather than to ensure adequate school facilities.

V. Transportation: Traffic Still Matters

- With regard to Recommendation 5.6, we support elimination of the motor vehicle adequacy test from the Local Area Transportation Review (LATR), provided that the proposed biennial monitoring program is well-defined and operational, and after the Bethesda UMP is operational and UMPs for other areas are scheduled.

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

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

In Recommendation 5.6, the draft CGP proposes a “biennial monitoring program” in place of the current LATR motor vehicle adequacy test in Red Policy areas. In the draft, the substitute biennial program is less well-defined than the more rigorous LATR motor vehicle adequacy test. The draft does not set a timeline for the biennial monitoring program, only stating that it “would

be developed during the spring of each odd-numbered year” (i.e., 2021, or possibly deferred to 2023). If the motor vehicle adequacy test is eliminated for Red Policy areas, then the nature of the biennial monitoring program must be clearly specified in the CGP, with explicit processes and metrics for measuring the program’s goals and a definitive timeline for conducting the program.

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

With regard to other transportation-related recommendations (Recommendations 5.1 - 5.5):

- We support the addition of System Safety, Pedestrian Safety, Bicycle System Safety, and Transit System Safety adequacy tests to the LATR.
- We support updating the CGP to align with Vision Zero’s safety priorities for pedestrians and cyclists.

Pedestrian safety, cyclist safety, and the safe use of mass transit are important to us, and we believe these recommendations will increase safety while implementing a multi-modal approach to evaluate transportation adequacy. Safety concerns underlie our strong support of funding in the Capital Improvements Program budget for the Capital Crescent Trail Tunnel under Wisconsin Avenue. Providing residents with safe and comfortable walking and cycling routes to the services and amenities they need will help get them out of their cars and reduce the County’s traffic problems.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cecily E. Baskir", followed by a long horizontal line extending to the right.

Cecily E. Baskir

Mayor, Town of Chevy Chase