



City of Rockville, Maryland

MEMORANDUM

January 23, 2009

TO: City of Rockville Planning Commission
FROM: Joe Thompson, Planner II, Community Planning & Development Services
ITEM: Proposed Fee in Lieu of Public Use Space Requirements policy

Honorable Members of the Planning Commission:

Enclosed, please find the provided Staff Report and PowerPoint handout germane to the proposed Fee in Lieu of Public Use Space Requirement policy pursuant to Subsection 25.17.01 d. of the recently adopted Zoning Ordinance (ZO).

The item was taken before the Recreation and Parks Advisory Board on January 22, 2009, and is scheduled for a February 9, 2009 presentation/discussion, and February 23, 2009, public hearing before the Mayor and Council.

Staff respectfully requests your indulgence of this item at your January 28, 2009 meeting.

MEMORANDUM



City of Rockville
Mayor and Council
Agenda Item

For the meeting on:	February 9, 2009
Agenda Item Type:	Discussion, Presentation
Department:	Community Planning and Development Services
Division:	Planning
Responsible staff:	Joe Thompson, Planner II phone: (240) 314-8225 email: jthompson@rockvillemd.gov

Subject

Proposed Fee in Lieu of Public Use Space Requirement policy and fee establishment pursuant to Subsection 25.17.01 d.2 of the recently adopted Zoning Ordinance (ZO)

Recommendation

Recommend that the Mayor and Council consider and discuss the proposed policy recommendation and fee establishment. Staff recommends that a public hearing be held on the item if public input is desired

Change in Law or Policy

Per Subsection 25.17.01.d.2. of the recently adopted Zoning Ordinance, "Any approved fee in lieu of the public use space requirement shall be paid in an amount set by resolution of the Mayor and Council." The approved resolution will set the fee in lieu of public use space requirement policy as it relates to administration and implementation. The subject policy should become effective with the new Zoning Ordinance on March 16, 2009.

Discussion

In accordance with Subsection 25.13.05.b of the recently adopted Zoning Ordinance, developments within all Mixed-Use Zones, e.g., Mixed-Use Transit District Zone (MXTD), Mixed-Use Corridor District Zone (MXCD), Mixed-Use Employment Zone (MXE), Mixed-Use Business Zone (MXB), Mixed-Use Neighborhood Commercial Zone (MXNC), and Mixed-Use Transition Zone (MXT), are to provide a minimum of 20% "public use space" on site in conjunction with any development or redevelopment project(s).

Section 25.03.02 of the ZO defines public use space as "*an open area associated with and located on the same tract of land as a principal building or group of buildings providing light and air, recreational space, or other similar purpose. Such open area must be accessible for use and enjoyment by the general public, and may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening, or a general appearance of openness. Internal landscaping within a parking facility, as required in Section 4.d of the Landscaping, Screening and Lighting Manual, does not constitute Public Use Space.*"

Subsection 25.17.01.d.1. of the Zoning Ordinance outlines the criteria behind the new fee in lieu of public use space requirement. Subsection 25.17.01.d. notes that *"The Approving Authority may approve the payment of a fee in lieu of some or all the public use space requirement under any of the following circumstances: (a) The City could use the fee to provide and/or improve another more useable public space in the vicinity of the project; or (b) The site cannot realistically provide the required area for public use and meet all of the other City development standard requirements."*

In essence, the new fee in lieu of public use space requirement can be utilized under three separate sets of circumstances: (1) the City decides there is a need to provide more useable public use space in the vicinity of the project; (2) the City decides there is a need to improve existing public use space in the vicinity of the project; and (3) the project site cannot realistically provide the required area for public use space and meet all applicable City development standards.

To better describe the fee in lieu of public use space requirement from a cost recovery perspective, staff does not anticipate, nor expect, the proposed fee in lieu calculation to recover 100% of the cost associated with providing an equal amount of public use space in an alternative area of the City. The City traditionally provides public use space in the form of park projects. Land acquisition associated with the development and redevelopment of park projects is customarily funded through ad valorem tax revenue.

However, given the City's ambitious goals and objectives associated with the proposed Parks, Recreation and Open Space (PROS) Plan, additional revenue will be needed to adequately service the future needs of City residents in relation to providing a sufficient amount of parkland within the identified geographic recreational service areas. In terms of aligning future fee revenue with the City's existing financial management policies, staff believes that this fee can be categorized under "Community Benefit – Core Programs, Services and Facilities" and "Community/Individual Benefit Services."

In accordance with the aforementioned fiscal management policies, the latter category provides that, "These services provide benefits that occur both to the community at large as well to the individual served..." In addition, there is a reference to the "private sector" providing some of these services on occasion. The public use space requirement is, in effect, requiring a private developer to provide a supplemental community benefit, e.g., privately developed public use space, that is an amenity conventionally provided by government. As such, in cases where the fee in lieu of public use space is approved, its calculation should be designed with "Community/Individual Benefit Services" in mind as it relates to the expected ratio of cost recovery.

As such, these services have been generally designated to recover a substantial percentage of direct and indirect cost. The recovery estimate ranges from 25%-100% of actual cost recovery. As mentioned above, staff does not anticipate, nor expect, the proposed fee in lieu calculation to recover 100% of future cost. A more realistic cost recovery estimate for the fee in lieu of public use space requirement would be approximately 35%-45% of the future expenditures associated with parkland acquisition.

Analysis

Since the fee in lieu of public use space requirement is new, and has no prior Mayor and Council history or action to reference as guidance for policy formulation purposes, staff researched and analyzed comparable policies of regionally comparative jurisdictions' public use or open space requirements. The resulting analysis revealed only two regionally comparative jurisdictions with similar regulations. Montgomery County and Prince George's County both have adopted legislation germane to administering a "fee in lieu" type policy for public use or open space requirements.

Montgomery County

The Montgomery County Council recently adopted, via Zoning Text Amendment (ZTA) No. 07-10, a "payment instead of" procedure relative to public use space, or public facilities and amenities. A portion of

Subsection 59-D-2.3.1 of Montgomery County's Zoning Code – from ZTA No. 07-10 – reads as follows: "*Procedure – Payment instead of providing public use space, or public facilities and amenities on site. The Planning Board may approve a payment instead of any required public use space, public facilities, or amenities on site if the payment complies with the following conditions: (a) Any payment accepted for public use space must be sufficient to secure an equivalent amount of improved public use space off-site. The amount of any payment accepted for public facilities and amenities must not be less than the cost of constructing and equal amount of the public facilities and amenities on-site. The Planning Board must issue regulations to implement this section... "*

Based upon the foregoing excerpt from Subsection 59-D-2.3.1., it is evident that the specific implementing "payment instead of" regulations have yet to be adopted by the Montgomery County Planning Board (MCPB). In recognition of the fact that there is no implementing policy in place, staff contacted senior staff members from the Montgomery County Planning Department (MCPD) who are intimately involved with policy formulation as it relates to the subject regulation. Those involved are currently in the process of formulating policies for the subject subsection.

Prince George's County

The Prince George's County comparison stems from Section 24-135 of their Zoning Code, entitled, "Fee in Lieu and Recreational Facilities." A portion of Subsection 24-135 (a) reads as follows: "*(a) Fee in Lieu. The Planning Board may require the payment of a fee in lieu of dedication equal to five percent (5%) of the total new market value of the land as stated on the final assessment notice issued by the State Department of Assessment and Taxation [SDAT] when it finds that dedication of parkland is unsuitable or impractical due to size, topography, drainage, physical characteristics, or similar reasons, or if adequate open space has been acquired and is available to serve the subdivision. The fee shall be paid prior to recording the subdivision and shall be used by the commission to purchase or improve parkland for the benefit of the future residents ..."*

Prince George's County – Issue Associated with Existing Approach

According to the Prince George's County Planning Department (PGCPD) staff involved with fee in lieu administration, there was an issue associated with the design of the previous policy. Some involved labeled the previous calculative approach as being "too low" to produce the revenue needed to engage in market rate acquisition of parkland. M-NCPPC collected \$410,000 in fees in lieu of open space in fiscal year 2006. As a result of this criticism, the Maryland-National Capital Park and Planning Commission's (M-NCPPC) Prince George's County and Montgomery County Delegation proposed a legislative remedy to the General Assembly and successfully lobbied to have their proposal enacted in the form of House Bill 711.

House Bill 711 repealed, amended then reenacted with amendments, Article 28, Section 7-116(a) of the Maryland Annotated Code. The amendment eliminated the aforementioned fee in lieu criterion (the one locally adopted by Prince George's County) and replaced it with a revised calculation, "*...based on the current market value of the land after the land is approved for development ..."*

It is important to note however, that House Bill 711 is enabling legislation and has yet to be implemented in the form of an amendment to the Prince George's County or Montgomery County Zoning Code. Notwithstanding the fact that this amendment has yet to be tested locally, it represents an important point with respect to "assessed" vs. "market" insofar as to recognize the differential between the two property value fee calculation approaches with respect to the substantial difference of the resulting revenue when viewed from a fee in lieu calculative methodology context.

Mayor and Council History

This is the first time this item has been brought before the Mayor and Council.

Options Considered

Property Value

The property value fee calculation can be approached in a number of ways. However, staff decided to hone in on two approaches. The first property value approach referenced is connected to the abovementioned House Bill 711 which repealed, amended then reenacted, M-NCPPC's previous fee in lieu calculation and changed the methodology to be "based on the current market value of the land after the land is approved for development." The alternative property value approach being recommended is based off the total property value (land and improvements combined) in accordance with the most recent assessment notice issued by SDAT.

In terms of implementation, each property value calculation will yield a substantially different result in relation to the revenue collected. For example, if the fee in lieu calculation were to be based off the market value of a site after it is approved for development, the resulting value would be significantly higher than the most recent SDAT property assessment notice. Conversely, if the fee in lieu calculation were based off the most recent SDAT property assessment notice, the resulting revenue would be much less than if the calculation were based off the market value after the site is approved for development.

Actual Cost

When attempting to determine the actual cost of public use space, staff felt the best estimate would come from recent City Park projects. Staff consulted the Capital Improvement Program (CIP) and evaluated two Department of Recreation and Parks projects: (1) Falls Grove Park, Project Number 420-900-1B61 and, (2) Mattie J. T. Stepanek Park, Project Number 420-900-3A60.

Many of the amenities associated with these park projects align with "public use space," as defined by the new Zoning Ordinance (ZO). Both Falls Grove Park and Mattie J. T. Stepanek Park provide public use space amenities such as, but not limited to, garden plots, gazebos, picnic areas, pathways, passive areas, wooded areas, landscaping, etc. To identify the actual cost, staff examined the CIP appropriation data for each of the referenced park projects. For the purpose of establishing a public use space "actual cost" estimation, staff rounded the resulting \$2.99 per sq. ft. average of the City park projects to \$3 per sq. ft.

Example calculation with no public use space provided on site

1. Unidentified actual site on Rockville Pike (291,205 sq. ft. land area; current market land value per SDAT, \$19,586,700)

20% total SDAT value and the per square foot actual cost estimate of creating public use space:

\$19,586,700 total land value per SDAT x 20% + required public use space of 58,241 sq. ft. x \$3 per sq. ft. actual cost estimate = \$3,917,430 + \$174,723 = \$4,092,063 fee

Fee in lieu calculation in cases of some public use space being provided on site

As noted above, subsection 25.17.01 d.1. states, "The Approving Authority may approve the payment of a fee in lieu **of some or all** the public use space requirement under any of the following circumstances:"

As such, staff anticipates cases where, depending upon the location and/or configuration of a given site, a developer may end up providing some of the public use space on site, while paying a fee in lieu for the remainder not provided.

Should the recommended 20% fee calculation be used, the following chart would apply:

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Public Use Space % Remainder	Fee Calculation %
20	20
19	19
18	18
17	17
16	16
15	15
14	14
13	13
12	12
11	11
10	10
9	9
8	8
7	7
6	6
5	5
4	4
3	3
2	2
1	1

If a developer were to provide 7% public use space on site, a fee in lieu for the remaining 13% of required public use space would be applied. In this case, the fee would be 13% of the most recent assessment notice issued by SDAT.

Advantages

Both property value calculative approaches would arguably produce the revenue needed to significantly supplement existing parkland acquisition funds. Given the adoption and gubernatorial approval of HB711, M-NCPPC now has a market value based fee in lieu calculation at their disposal. It should be noted that HB711 is an amendment to Article 28 of the Annotated Code. The subject amendment applies exclusively to the M-NCPPC. However, the recent legislation can be viewed as an advantage because it represents a regionally comparable planning agency that has amended their fee in lieu calculation to a market value after development approval approach.

Disadvantages

Should either property value calculation methodology be utilized, staff anticipates the possibility of the development community claiming that the subject calculation places an inordinate economic burden on development or redevelopment. Further, should the M-NCPPC market value approach be considered, it could prove problematic to determine market value. If the calculation were based on market value after the land is approved for development, the total market value estimate would not be available until SDAT reassessed the subject property.

Assuming a reassessment may not have occurred recently, it could take up to three years before SDAT coordinates another reassessment. If that were the case, market value would have to be determined through a developer initiated property appraisal. If an appraisal were conducted, the City would have to ensure that each appraisal be prepared in conformance with the Uniform Standards of Professional

Appraisal Practices and with other standards as may be required by Maryland law.

Staff Recommended Policy: Require 20% of the total SDAT property value (land/improvements combined) and the per square foot actual cost estimate of creating public use space

Boards and Commissions Review

This item was presented to the Recreation and Parks Advisory Board on January 22, 2009. The Board motioned, and unanimously voted to support the staff recommended policy with three supplemental recommendations for the Mayor and Council to consider.

The first recommendation dealt with the feasibility of public use space dedication to the City, as an alternative to, or supplement of, the fee in lieu calculation. There was general concern relative to privately held public use space being (1) openly accessible to the general public at large, and (2) adequately maintained in a manner consistent with City owned facilities.

The second recommendation from the Board was to ensure that any fee in lieu revenue received would be utilized or "earmarked" specifically for parkland acquisition and improvements to existing City park facilities. There was a consensus that fee in lieu revenue should not be allocated into the City's general fund.

The third recommendation focused on language from Subsection 25.17.01 d. 1. (a) of the ZO. More specifically, the Board was concerned with future fee in lieu revenue being used in areas outside the general vicinity of a given project. The Board agreed that if fee in lieu funds were received for a particular project, that those funds should only be appropriated to public use space (acquisition or improvement) in the vicinity of the subject site.

Fiscal Impact

The fee in lieu of public use space requirement has the potential to become a significant, but variable (and potentially nonrecurring) source of revenue. Since the fee in lieu of public use space requirement is new, and does not exist as a current source of revenue for the City, it must be established as a new fund, or allocated to an existing one.

It is anticipated that any revenue generated from fee in lieu of public use space requirement will be utilized to supplement the existing parkland acquisition fund in the CIP. Even though the fee in lieu of public use space requirement is a new zoning provision consistent with the recently adopted Zoning Ordinance, the anticipated funds received will not be taken in as a standard "zoning fee" source of revenue.

Next Steps

Conduct public hearing and approve resolution as may be modified, establishing the fee in lieu of public use space requirement policy.

Attachments



Fiscal & Policy Note -- HB711.pdf

Department Head: Susan Swift, Director of Community Planning and Development
Approval Date: Services

Assistant City Manager: Jenny Kimball, Assistant City Manager
Approval Date:

City Manager: Scott Ullery, City Manager
Approval Date:

Fee in Lieu of Public Use Space Requirements: Policy Options

**Prepared by: Department of
Community Planning &
Development Services**



Background

- **25.17.01 d. – Fee in Lieu of Public Use Space Requirements**
- **25.17.01 d. 2. – “Any approved fee in lieu of public use space requirement shall be paid in an amount set by resolution of the Mayor and Council.”**

25.17.01 d. – Fee in Lieu of Public Use Space Requirements

- **When can the payment of a fee in lieu be approved?**
 - 25.17.01 d. 1. (a): “The City could use the fee to provide and/or improve another more usable public space in the vicinity of the project.”
 - 25.17.01 d. 1. (b): “The site cannot realistically provide the required area for public use and meet all of the other City development standard requirements.”

Regionally Comparative Jurisdictions’ Methodologies

- **Montgomery County Council recently adopted Zoning Text Amendment (ZTA) No. 07-10**
 - *A portion of 59-D-2.3.1 (from ZTA No. 07-10) reads as follows:*
 - “The Planning Board may approve a payment instead of any required public use space, public facilities, or amenities on site if the payment complies with the following conditions:
 - (a) Any payment accepted for public use space must be sufficient to secure an equivalent amount of improved public use space off-site... The Planning Board must issue regulations to implement this section...”
- **Montgomery County Planning Department staffers are in the process of formulating policy options for the subject section.**

Regionally Comparative Jurisdictions' Methodologies Continued

- **Prince George's County Zoning Code: Section 24-135 (a) – Fee in Lieu and Recreational Facilities**
 - *A portion of Section 24-135 (a) reads as follows:*
 - **“(a) Fee in Lieu. The Planning Board may require the payment of a fee in lieu of dedication equal to five percent (5%) of the total new market value of the land as stated on the final assessment notice issued by the State Department of Assessment and Taxation...”**
- Current issue over existing calculative methodology in relation to it generating an **insufficient** amount of revenue
- In an effort to change the existing fee calculation, the Maryland-National Capital Park and Planning Commission Prince George's and Montgomery County Delegation proposed a legislative remedy to the General Assembly and successfully lobbied to have their proposal enacted as **enabling legislation** in the form of **House Bill 711**

Regionally Comparative Jurisdictions' Methodologies Continued

- **House Bill 711** repealed, amended then reenacted, Article 28, Section 7-116(a) of the Maryland Annotated Code
- The subject amendment eliminated the current fee in lieu calculation and replaced it with a revised calculation
- Revised fee in lieu calculation language: “...based on the current market value of the land after the land is approved for development...”

Staff Recommended Fee Calculation

- Total SDAT property value (land/improvements combined) and the per square foot actual cost estimate of creating public use space
 1. Require 20% of the total SDAT property value (land/improvements combined) and the per square foot actual cost estimate of creating public use space

Evaluating Property Value

- Two approaches:
 1. Market value of the land *after* it is approved for development (M-NCPPC amended approach)
 2. Total assessed value (land and improvements combined) per SDAT

Identifying “Actual Cost”

- **Recent City park projects** – both projects provide public use space amenities like, but not limited to, garden plots, gazebos, picnic areas, pathways, passive areas, wooded areas, landscaping, etc.
 1. Fallsgrove Park, Project number 420-900-1B61 (7 acres, or 304,920 sq. ft.)
 - Total: $\$692,485/304,920$ sq. ft. = \$2.27 per sq. ft. actual cost
 1. Mattie J. T. Stepanek Park, Project number 420-900-3A60 (26.29 acres, or 11,451,92 sq. ft.)
 - Total: $\$4,270,508/11,451,92$ sq. ft. = \$3.72 per sq. ft. actual cost
- Average of the two: **\$3 per sq. ft.**

Example

- **Unidentified site on Rockville Pike:**
 - 291,205 square feet; current total value per SDAT, \$19,586,700
 - $\$19,586,700$ total land value per SDAT x 20% + required public use space of 58,241 sq. ft. x \$3 per sq. ft. actual cost estimate = \$4,092,063 fee

Advantages

- **Either property value approach would arguably produce the revenue needed to supplement the existing funds dedicated to acquiring the necessary amount of public use space off-site (based upon the cost of market rate property acquisition and the cost of constructing public use space)**
- **A regionally comparable jurisdiction (M-NCPPC) has recently amended their existing calculation to be based off market value**

Disadvantages

- **Development community may claim the market value calculation places an inordinate economic burden on development/redevelopment projects**
- **If used, the market value determination may require a developer initiated property appraisal if market value is based off the property value after the land is approved for development**

Questions?

