PLANNING COMMISSION

Wednesday, April 13, 2022
7:00 PM
Meeting No. 07-2022

AGENDA

Suzan Pitman, Chair
Andrea Nuñez
Sam Pearson
John Tyner, II

Jim Wasilak, Staff Liaison
Nicholas Dumais, Assistant City Attorney

Virtual meeting via WebEx
Watch LIVE on Comcast Cable Rockville Channel 11
and online at www.rockvillemd.gov
See page 3 for more information

1. Discussion

   A. Discussion on Proposed Recommendations to Implement Parkland Dedication Requirements, Including Fee-In-Lieu of Dedication and Impact Fees

2. Commission Items

   A. Staff Liaison Report

   B. Old Business

   C. New Business

   D. Minutes Approval
1. February 23, 2022 (Closed Session)

2. March 9, 2022

E. FYI/Correspondence

3. Adjourn
PLANNING COMMISSION ONLINE MEETING and PUBLIC HEARING PROCEDURES

I. Meeting Platform: WebEx

A. Applicant Access: Provided by Planning and Development Services/IT

B. Access for Oral Testimony and Comment: Provided by PDS/IT (see below)

II. Pre-Meeting Preparations/Requirements:

A. Written Testimony and Exhibits –
   Written testimony and exhibits may be submitted by email to Jim Wasilak, Staff Liaison to the Planning Commission, at jwasilak@rockvillemd.gov, or by mail to:

   Suzan Pitman, Chair
   Rockville Planning Commission
   111 Maryland Avenue
   Rockville, MD 20850

   and must be received no later than nine (9) days in advance of the hearing in order to be distributed with the Planning Commission briefing materials.

   Written testimony and exhibits received after this date until 4:00 pm on the day before the hearing will be provided to the Planning Commission by e-mail.

B. WebEx Orientation for Applicants

   Applicants must contact the planning case manager assigned to the Application no later than five (5) days in advance of the hearing in order to schedule WebEx orientation, which must be completed prior to the hearing.

C. Oral Testimony by Applicants and the Public

   i. Applicants – Applicants must provide to the planning case manager a list of presenters and witnesses who will testify on behalf of the Application. The list must be provided to the PDS Staff project manager no later than five (5) days prior to the date of the hearing.

   ii. Public Testimony/Comment on an Application – Any member of the public who wishes to comment on an application must submit their name and email address to the Staff Liaison to the Planning Commission Jim Wasilak (by email at jwasilak@rockvillemd.gov) no later than 9:00 am on the day of the hearing to be placed on the testimony list. Members of the public who
seek technical assistance from City staff must submit their name and email address to Jim Wasilak no later than two (2) days in advance of the hearing so that an orientation session may be scheduled.

If a member of the public is unable to meet the deadline to be placed on the testimony list, they can submit written testimony to the Staff Liaison to the Planning Commission by email to jwasilak@rockvillemd.gov.

III.  Conduct of Online Meeting and Public Hearing:

A. Rules of Procedure –
The Meeting and Public Hearing will be held in accord with the Planning Commission Rules of Procedure, including the order of testimony and applicable time limits on testimony. The Rules may be viewed here: https://www.rockvillemd.gov/DocumentCenter/View/2023/Planning-Commission---Rules-of-Procedure?bidId=

B. Oral Testimony –
During the hearing, the Chair will sequentially recognize each person on the testimony list and ask the host to allow the speaker to speak. Each speaker must wait to be specifically recognized by the Chair before speaking.

If during the hearing a party wishes to speak or a speaker wishes to request the opportunity to engage in cross-examination following specific testimony, the party must contact the Staff Liaison/Host by email at jwasilak@rockvillemd.gov or by text at (202) 839-0305 with the specific request. The Host/Staff Liaison will inform the Commission. The Chair will determine if the party may be heard.

C. Continuance of Hearing –
The Planning Commission, at its discretion, reserves the right to continue the hearing until another date.
HELPFUL INFORMATION FOR STAKEHOLDERS AND APPLICANTS

I. GENERAL ORDER OF SESSION FOR DEVELOPMENT APPLICATIONS
   1. Staff presentation
   2. City Board or Commission comment
   3. Applicant presentation (10 min.)
   4. Public comment (3 min, or 5 min for the representative of an association)
   5. Planning Commission Discussion and Deliberation
   6. Decision or recommendation by vote

   The Commission may ask questions of any party at any time during the proceedings.

II. PLANNING COMMISSION BROADCAST
   • Watch LIVE on Comcast Cable Rockville Channel 11 and online at: www.rockvillemd.gov
   • Replay on Comcast Cable Channel 11:
     o Wednesdays at 7:00 pm (if no live meeting)
     o Sundays at 7:00 pm
     o Mondays, Thursdays and Saturdays at 1:00 pm
     o Saturdays and Sundays at 12:00 am (midnight)
   • Video on Demand (within 48 hours of meeting) at: www.rockvillemd.gov/VideoOnDemand.

III. NEW DEVELOPMENT APPLICATIONS
   • For a complete list of all applications on file, visit: www.rockvillemd.gov/DevelopmentWatch.

VI. ADDITIONAL INFORMATION RESOURCES
   • Additional resources are available to anyone who would like more information about the planning and development review process on the City’s web site at: www.rockvillemd.gov/cpds.

Maryland law and the Planning Commission's Rules of Procedure regarding ex parte (extra-record) communications require all discussion, review, and consideration of the Commission's business take place only during the Commission's consideration of the item at a scheduled meeting. Telephone calls and meetings with Commission members in advance of the meeting are not permitted. Written communications will be directed to appropriate staff members for response and included in briefing materials for all members of the Commission.
SUBJECT: Discussion on Proposed Recommendations to Implement Parkland Dedication Requirements, Including Fee-In-Lieu of Dedication and Impact Fees

RECOMMENDATION (Include change in law or Policy if appropriate in this section):

Staff recommends that the Planning Commission discuss the proposed recommendations for regulations to require dedication of public parkland in connection with new development, and provide comments to the Mayor and Council as desired.
Planning Commission Staff Report

MEETING DATE: April 13, 2022

REPORT DATE: April 6, 2022

RESPONSIBLE STAFF: Jim Wasilak, AICP, Chief of Zoning
240.314.8211
jwasilak@rockvillemd.gov

SUBJECT: Presentation of Recommendations to Achieve Public Parkland via the Development Review Process

BACKGROUND:

Open space and recreation are highly valued in Rockville. The City has approximately 1,035 acres of parkland in 65 parks with a variety of amenities across the community. Recreation facilities range from small-scale neighborhood-based spaces for programming and meetings, to large ‘specialized’ facilities that serve the entire community and beyond.

Funds are allocated each year to maintain and upgrade the parks and recreation facilities in the city to ensure safe, clean, and attractive amenities for residents and visitors. The 2016 Community Survey results indicate that recreation facilities, athletic facilities, and the appearance of City parks are rated much higher than in other benchmark jurisdictions.
To ensure equitable access to park facilities citywide, the City set a goal to provide parkland within a 10-minute walk from any residence. The City’s PROS Plan also established a goal to maintain a ratio of 18 acres of parkland for every 1,000 residents. While some areas of the city are well served by parks within convenient walking distance, others are not. As a city with a population nearing 70,000 and 1,035 acres of parkland, the goal for acreage per 1,000 residents is not currently met.

The population is projected to grow to 82,000 by 2040, and this growth will put even more pressure on the existing parks and recreation facilities. The population growth calls for creation of new or expansion of existing parks and other recreation facilities to meet the demand that comes with additional users, especially in redeveloping and urbanizing areas along Rockville Pike and in Town Center.

The Mayor and Council authorized a study on parkland dedication and fee-in-lieu options in 2017. PDS and Recreation and Parks staff, in consultation with consultant Duncan & Associates, developed background and options to address the issues, resulting in the *Report on Parkland Acquisition Approaches for the City of Rockville* that was presented to the Mayor and Council in February 2018 (See Attachment A). The Mayor and Council held subsequent work sessions to discuss the issues and provide direction.

The attached report describes jurisdictions in this region and nationally that are using these mechanisms and outlines the pros and cons of both options. At work sessions in May 2018 and July 2019, the Mayor and Council discussed the options presented and provided direction to staff on their preferred approach to increasing the amount of public parkland in the city. They also addressed offsetting the cost to the City of providing park and recreation facilities to serve residents of new developments.

**Overview of Options**

The City does not currently have a permanent, dedicated funding source or other specific mechanism to acquire or require parkland from developers during the development review process. The goal of the parkland acquisition initiative is to create a consistent, standardized tool to use as new development occurs. The intent is to give the City an opportunity to strategically manage growing demands placed on the parks and recreation system, and to reasonably ensure that new capacity can be provided to assist in meeting those demands.

The 2018 report outlined two primary options for addressing the need to ensure that the City’s parks and recreation facilities are not overburdened with the stress of an increasing population from new development. The options presented were:

- Parkland dedication, or fee-in-lieu when dedication is not feasible; and
- An impact fee for parks and recreational facilities.
These approaches could ensure that the landowner, developer, and future residents who are creating the new demand for new parks and recreation facilities bear a portion of the costs of the City providing them.

**Parkland Dedication/Fee-in-lieu of Dedication**

The 2018 report recommended the parkland dedication/fee-in-lieu option as the primary mechanism for achieving additional parkland in new development. During the discussions, the Mayor and Council supported the staff recommendation of on-site parkland dedication at a rate of ten (10) percent of the project land area for development in the City’s Mixed-Use (MX) zones, twenty (20) percent of the project land area for development in the Residential Medium Density (RMD) zones, and single-family detached residential (R) zones. The requirement for dedication, or fee-in-lieu of dedication, would only apply to new development containing residential if there are more than 25 multifamily, 20 townhouse or attached units, or 15 single-family detached units are proposed. The dedication would not be required on previously-approved projects, such as Twinbrook Quarter.

The requirement for dedication of parkland, or fee-in-lieu of dedication, would also apply to non-residential developments that contain a minimum of 5,000 square feet of floor area. Suitability criteria would need to be developed to ensure that dedicated parkland could be integrated with the City’s park system, and that the land to be developed is desirable as public parkland from the City’s perspective.

The Recreation and Parks Department Director has stated that public parkland smaller than 0.3 acre is not desirable, which means that a developer would be required to achieve the minimum 3-acre parcel or project size for public park dedication. Staff’s recommendation is that the Director of Recreation and Parks would make the recommendation as to whether the proposed dedication is acceptable to the City, with the Mayor and Council being involved with this decision as well.

This decision as to what type of dedication and/or fee applied to the developer should be made as early in the development review process as possible so that applicants design their project to accommodate the parkland or not, as appropriate. At the pre-application stage, an applicant could be put on notice that the City will be looking for dedicated parkland in a particular project, based on the recommendations in the Comprehensive Plan, PROS Plan or Strategic Plan. In addition, the Recreation and Parks Advisory Board could also provide its recommendation on the applicant’s proposal to meet this requirement. Staff recommended, and the Mayor and Council concurred during the June 20 work session, that a minimum project size of three acres be required for dedication of public parkland to be considered.

Depending on the location and nature of the proposed parkland to be dedicated, the City might prefer payment of a fee-in-lieu of dedication in certain situations. For proposed development
projects that include residential units and that would otherwise be required to comply with the parkland dedication requirement, the report proposed a fee-in-lieu equal to 10% of the assessed value of the land within the project boundaries. Improvements to land are not included.

Parkland will be dedicated where new development occurs, which primarily means the Mixed-Use zones such as MXTD, MXCD and MXE zones, represented geographically by the Rockville Pike corridor, Town Center, and the Research Boulevard and Piccard Drive areas primarily. All these areas will require additional parkland as new residential redevelopment occurs. Otherwise, the Comprehensive Plan, the Parks, Recreation and Open Space Plan, or the Recreation and Parks Strategic Plan will provide guidance on the desirability of parkland dedication in other locations. Most of the developable parcels in other zoning districts are smaller than three acres, so these redevelopment projects would not dedicate parkland but would be subject to the fee-in-lieu instead.

The 2018 report noted that it is important to provide a basis for what the fee-in-lieu funds may be spent on and where fee-in-lieu funds could be expended. Revenue generated through fees paid in-lieu-of dedication will be used by the City for parkland acquisition, expansion or enhancement of existing parks, to serve the new residents of the development that was assessed the fee. Fees collected under this provision will be spent in the general vicinity of the site of the development application.

The City can use the Parks, Recreation and Open Space (PROS) Plan, Recreation and Parks Strategic Plan, and the Comprehensive Plan for guidance in deciding upon which facilities, programs, and locations to spend the fees that are collected. The Mayor and Council previously supported a tiered preference system, whereby the first preference is within one-half mile from the development site, the second preference is within the same planning area as the development site, and the third preference is within an adjacent planning area within one mile of the development site. This would allow the funds to contribute toward neighborhood parks, community centers or regional facilities if the criteria are met. However, given the analysis in the Strategic Plan regarding facility and programmatic needs, the Mayor and Council should consider establishing priorities based on these identified needs, in concert with the tiered preference system.

Fees collected by the City must be spent within seven (7) years from the date of receipt. This period may be extended by five (5) years if, at the end of the initial seven-year period, less than 50% of the residential units within the development project that generated the fee have been constructed. If the City does not expend the fee payment within seven (7) years of being paid, the applicant/developer (or successor) may request a refund for the portion of the fee that was not expended.
Impact Fees

Impact fees, which would be a fee charged to the developer on a per-residential unit and per-square-foot-of-commercial-floor-area basis payable at the time of building permit, must relate to the park and recreation needs generated by the new development. Also, the revenue must substantially benefit the new development. Impact fees should be used to defray capital expenses for land acquisition or facilities, but not for operating costs.

The Mayor and Council made the following recommendations at its prior meetings:

1. The City would apply the Parks impact fee for nonresidential projects, including retail/restaurant, office, industrial and other similar uses. The 2018 report recommended that a minimum of 5,000 square footage for nonresidential development be the threshold for applying the impact fees. This was supported by the Mayor and Council.

2. The impact fee levels should be set at 75% of the updated figures recommended by the fiscal consultant in order to reduce the financial impact on property developers.

3. The impact fees be indexed to the Capital Cost Index published in the Engineering News Record. The report noted that several Maryland counties index their impact fees to this standard.

4. The following were discussed as being exempt from impact fees and/or land dedication:
   - The Moderately Priced Dwelling Units (MPDUs) portion of the development;
   - Existing and pending Project Plans (Projects under review or that have already been approved); and
   - Developments with three or fewer residential units.

Although Maryland does not have a specific, required timeframe for spending the funds collected as impact fees, the revenue collected would likely need to be spent, or at least programmed, within about seven (7) years of being collected. The revenue may be used for capital expenses only, and for new capacity such as new or expanded parkland, or new or expanded recreational facilities in the city.

Additional Recommendations

The 2018 report also included the following recommendations, which were supported by the Mayor and Council. However, the current Mayor and Council has not provided direction on these items.

1. A combination of on-site dedication, fee-in-lieu of dedication, and off-site dedication may be acceptable to meet the dedication requirements. The Director of Recreation and Parks would make the determination of acceptability, with appeals from this decision made to the Approving Authority of the development application (i.e., Planning
Commission or Mayor and Council).

2. Credit for onsite amenities and private open space, to include indoor spaces devoted to public use, may be assigned to meet up to 50 percent of the dedication requirement. Qualifying amenities would be specified in the code.

3. Areas dedicated to parkland could be used to meet other development standards, such as forestry or stormwater management requirements, provided that the public parkland use is not impeded. The condition of the land to be dedicated to the City, and any planned improvements, would have to be acceptable to the City.

4. The Mayor and Council indicated that they could support a “hybrid” program which would utilize some combination of both impact fees and dedication/fee-in-lieu, as the situation dictates. Staff believes that this should be the Mayor and Council’s decision.

Requirements in Other Local Jurisdictions

City of Frederick
The City of Frederick, Maryland has established a park dedication or fee-in-lieu program for residential development similar to what is being considered for Rockville. Following is a current summary of Frederick’s program:

- The program requires the dedication of parkland in connection with new residential development, with distinctions are made between new residential development and infill development. The program is applicable to any development that increases the number of units beyond what is currently on the property.
- The Planning Commission and the Recreation and Parks Commission may recommend a waiver of the parkland dedication if it is determined that there is sufficient parkland in the vicinity.
- The parkland dedication requirement may be waived for townhouse and multi-family developments if it is determined that the private open space provided can reasonably serve the development.
- The parkland dedication requirement is 1,000 square feet for each new residential unit and 500 square feet for each accessory detached dwelling unit.
- For infill development, the requirement is 500 square feet per unit and 250 square feet for each accessory detached unit.
- For retirement communities, the dedication requirement is 500 square feet per dwelling, but may be satisfied through private open space so long as that space meets the relevant park standard.

Where a park is dedicated per this regulation, 75 percent of the dwelling units must be within a quarter mile of the park, and no unit can be more than one-half mile from the park.
If the Planning Commission determines that park dedication is unsuitable at that location, it may require dedication at another suitable location, pay a fee-in-lieu, or a combination of both. The fee amount is determined by the Board of Aldermen based on a recent appraisal of the property.

The funds from the fee-in-lieu may be used for:

- Acquisition of parkland.
- Paying the principal, interest or other costs of financing instruments intended for the acquisition of City parkland.

In the Downtown Commercial/Residential (DB), Carroll Creek Overlay, and Historic districts within the city, a park impact fee of $1,000.00 per new dwelling unit is assessed, the funds used to provide parkland improvements within the defined area.

The Planning Commission may approve off-site parkland dedication if it is located within a half mile of the site and cannot be interrupted by a primary arterial street or freeway. Such off-site parkland must be connected to the development site by a sidewalk or pathway system.

If the development does not generate enough area to provide a 3-acre park, either by itself or in combination with adjacent developments, the Planning Commission may approve a combination of a fee and dedication of land for private, rather than public use.

At the time of site plan approval, if parkland is not being dedicated then the fee-in-lieu or the park improvement fee must be paid. In the case of dedication, no more than 50 percent of the dwellings may be built until the dedication is accepted by the City and the park improvements have been completed.

**Prince Georges County**
Prince Georges County has a parkland dedication ordinance with fee-in-lieu. It is limited to new residential subdivisions and does not apply to site plan projects. The dedication requirement ranges from 5% to 15% of the site depending on the density of development.

**Montgomery County**
Montgomery County has an adopted Parks, Recreation and Open Space Plan that states that recommendations for parks and recreation must be provided in all urban plans and sector plans. New parkland is added to the County park system through dedication via the land development process, direct purchase using CIP funds, or occasional donation from property owners. Dedication is not a zoning requirement but may be achieved through the optional development method, which may entail density or other incentives provided as part of a development project.
City of Gaithersburg
The City of Gaithersburg requires a minimum green area, landscaping and amenity area for new development as a percentage of the site, but there is no specific parkland requirement or impact fee.

Mayor and Council Discussions

At the December 7, 2020 work session on this topic, the Mayor and Council provided the following feedback.

- Agreed that the City should consider implementing a parkland dedication and/or fee-in-lieu to provide for future parkland.
- Discussed how to identify priority sites for acquisition since the City has identified areas with deficiencies rather than specific sites for acquisition.
- Agreed that a suitability determination for potential parkland to be dedicated to the City would be made by the Director of Recreation and Parks, but that the Mayor and Council should be involved in acceptance of the parkland.
- Discussed options for ensuring that the established timeframe for using the fee-in-lieu funds collected is reasonable and considers property acquisition and procurement processes. Staff noted that the initial recommendation of a 7-year timeframe for using funds was not based on code and could be modified by the Mayor and Council within limits as the City must make sure that expended funds benefit the project where the funds came from. Another option to extend the time-period would be to collect fee-in-lieu at time of occupancy permit rather than building permit, as is typical.
- Agreed that applying the requirements citywide would maximize flexibility.
- Councilmember Pierzchala suggested that a definition of pending projects should be included if they are to be exempt. He also wondered if developers could be required to improve an existing park. He suggested that parkland separated by large rights-of-way from the development should not count to satisfying the parkland need. In addition, the requirements should not get in way of housing production. He also suggested that Champion projects encourage consolidation to provide more flexibility for developments that in turn would yield larger parkland properties.
- Mayor Newton expressed that perhaps one-size-fits-all is not appropriate across all mixed-use (MX) zones, and that the City could look at different percentages.
- Agreed that the City should undertake public outreach prior to coming back to the Mayor and Council and receiving direction to prepare a draft ordinance.

At the December 20, 2021 work session, the Mayor and Council discussed the following, with general agreement shown in italics:

- Whether the Mayor and Council wish to implement a parkland dedication and fee-in-lieu system, an impact fee regime, or a combination of both; Agreed on a combination of parkland dedication and impact fees that requires dedication in certain areas.
Basic parameters of parkland dedication, including the amount of parkland dedicated by zoning category.

- Should there be varying amounts required within each zoning category, such as MXTD (high density) vs. MXC (low density)? *Potentially*
- Minimum amount of land to be dedicated as public parkland. The discussion has been a minimum of .3 acres; *Agreed on .5 acres*
- Minimum thresholds of development that requires parkland dedication; *to be developed.*
- Development of suitability standards for land to be dedicated as parkland, to be determined initially by the Director of Recreation and Parks and approved by Mayor and Council; *yes*
- Criteria for where and how the fee-in-lieu funds will be spent – the three-tiered system with preferences from the Recreation and Parks guiding documents; *Yes*
- Maximum time period during which the fee-in-lieu funds must be spent, including when the time period begins (building permit issuance vs. occupancy permit). *Should be flexible to maximize time available.*

- Develop parameters for general fund contribution
- Provide incentives for consolidation of sites

**Staff Recommendations**

Staff of the Recreation and Parks, the City Attorney’s Office and Community Planning and Development Services departments have been working on a draft of the Zoning Text Amendment and related changes to City Code Chapter 14, Parks and Recreation. The basic framework of the program being formulated is as follows:

**Parkland Dedication**

- A new article would be added to the Zoning Ordinance regarding parkland dedication, or payment in lieu of dedication.
- The area of dedication is proposed to be at least ten percent of the subject development site, less any additional area dedicated to a public entity.
- Dedication would be achieved through approval of a project plan application by the Mayor and Council.
- Result could be a combination of land dedication and payment in lieu of dedication.
- Threshold levels of development proposed to be 20 dwelling units or 25,000 square feet of commercial or office space.
- Land to be dedicated may be located within a project development site or off-site, but must reasonably near and accessible to the proposed development, such as within one mile of the proposed development and not separated by major roadways.
- Land proposed to be dedicated must consist of usable space, with limitations on features that would make the property substantially unusable for active or passive recreation.
- Configuration of land to be dedicated must be consistent with the Comprehensive Plan.
Initial review and recommendation of proposed dedication to be accomplished by Director of Recreation and Parks; recommendation to be forwarded to Planning Commission and Mayor and Council along with the project plan.

Planning Commission to provide comments and recommendations to the Mayor and Council on the proposed dedication; Mayor and Council have sole discretion to accept dedication or fee in lieu of dedication.

Fee in lieu funds may be used for the acquisition or development of parks that will serve the proposed development.

Amount of payment in lieu of dedication equals ten percent of the fair market value of the development site, less the percentage of the site proposed for dedication as parkland.

In lieu funds must be used within 7 years of deposit; if not used, they will be refunded to current owners of the development project.

Conceptual park plan to be submitted by applicant along with the project plan application, to be reviewed by Recreation and Parks Director, who must submit comments for the Mayor and Council.

Land to be dedicated free of debris.

Dedication or fee in lieu payment to occur prior to building permit issuance.

Park Impact Fee

- Require that new residential development pay for its share of park acquisition, development and park improvements that increase capacity.
- Establish fee schedule
- Potential exemptions: new residential development or alterations to an existing development creating three or fewer dwelling units
- Impact fees collected prior to building permit issuance
- Credit to be given for land dedicated to the City as parkland
- Impact fees may be used for park acquisition, development and capital improvements that add capacity to the park system, including principal and interest and costs associated with bonds or notes or similar means used to finance park acquisition or improvements.

There are details that need to be resolved prior to presentation of draft ordinances to the Mayor and Council.

MAYOR AND COUNCIL HISTORY

The Mayor and Council have discussed this topic on February 12, 2018, May 18, 2018, and July 8, 2019. The Mayor and Council gave preliminary direction at those sessions. The Mayor and Council also held work sessions on this topic on December 7, 2020, and December 20, 2021.

PUBLIC OUTREACH:

Staff undertook a public notification and engagement program based on the Mayor and Council’s direction. These virtual public input sessions were held on December 2 and December
7, 2021 and were widely publicized. Below is a summary of the feedback received at the meetings. Written comments are also attached.

The public outreach meetings were attended by a total of 16 individuals, most if not all of whom were residents of Rockville. Most attendees were strongly in favor of the concept of a reliable way of achieving parkland in new development and applauded the Mayor and Council for considering it. Most speakers were in favor of dedication over fee-in-lieu or a parks impact fee as the best way to achieve the goal of additional parkland. Others recognized that the flexibility afforded by fee-in-lieu was a positive aspect, and some expressed support for both parkland dedication/fee-in-lieu and impact fees. Other concerns expressed include:

- Whether implementing a new requirement would dissuade developers who are providing needed housing in the City;
- Whether the minimum requirement for parkland dedication in the MX zones should be uniform or more related to the density and location of each;
- Concern that the additional costs would increase the cost of residential units in the City;
- Whether the requirements should apply to developments that are only commercial;
- Emphasis on acquisition should be for prime natural areas and areas for additional tree planting to gain the environmental benefits;
- Concerns expressed about ensuring park maintenance is adequate;
- City should explore conservation easements on land that could be used as parkland but would remain privately-owned;
- Support for extending the period during which the City must spend the in-lieu funds or risk losing them. Others thought there should be no end date.

**BOARDS AND COMMISSIONS:**
Staff will solicit input from appropriate boards and commissions, including the Planning Commission, Environment Commission and Recreation and Parks Board, during the zoning text amendment process and prior to bringing back a recommended ordinance for consideration.

**NEXT STEPS:**
The next steps are to finalize the Zoning Ordinance and City Code amendments that would be needed and present to the Mayor and Council for authorization to file, currently scheduled for April 25.

**Attachments**
Attachment 1.A.a: Report on Parkland Acquisition Approaches for the City of Rockville (PDF)
Report on Parkland Acquisition Approaches for the City of Rockville

Community Planning and Development Services
Recreation and Parks
City Manager’s Office

January 2018
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Attachment A - Map of Existing Parks and Recreational Facilities
Attachment B - Walkability Analysis / Access to Parks
Attachment C - Definitions (current) of Open Area and Public Use Space
I. Introduction

The parks and recreational facilities maintained and operated by the City of Rockville are often cited as a key factor in Rockville residents rating our quality of life so high. It has long been a priority of the City to provide a top-notch park and recreation system that offers enjoyable neighborhood parks, community facilities and other recreational amenities. The City’s current level of service in terms of parkland per 1,000 residents is roughly 16 acres. The map at Attachment A shows the City’s existing parks and recreational facilities.

While some areas of the city are well served by parks within walking distance of their neighborhoods, others are not. Also, with a growing population, there is continued pressure to create new park space, especially in redeveloping and urbanizing areas along Rockville Pike and in Town Center. The map at Attachment B describes how the City is covered in terms of walkability to parks.

The focus of this report (and work session with the Mayor and Council) is to discuss ways to go about ensuring that while new growth occurs, the City is able to plan for and provide new park space and recreational facilities. The overarching goal is to provide parks and recreational facilities, or to collect fees to create them, as new development occurs so that the new development does not overburden the existing park system, and the City continues to provide facilities that serve all residents. One of the many keys to this effort will be to create a mechanism that is fair and equitable as the City attempts to keep up with the on-going demands of a growing population.

The City currently does not specifically require parks to be provided as part of new development projects. Instead, we have standards requiring that “open area” and “public use space” be provided within new development projects. However, those standards are fairly flexible and permissive in terms of what constitutes an open area and public use space, and they do not specifically call for the creation of additional parkland. The City also has goals, policies and recommendations in the Comprehensive Master Plan and in the Parks, Recreation and Open Space Plan that speak to the need and desire to acquire parkland, but those recommendations have not been implemented through an ordinance requirement.

There are tools used in other jurisdictions that provide the means to ensure new parks and recreational facilities are provided as new development occurs. These tools will be explored further in this report.
II. How has the City acquired parks in the past?

There are a number of ways in which the City has acquired parkland over the years, including recently. These include the following.

- **Deeded to City as part of a development project** – As the King Farm, Fallsgrove, Rose Hill, and Tower Oaks development projects were planned and approved, the City was able to negotiate for park and open space to be dedicated to the City for public use. These include Mattie Stepanek Park, King Farm Park, Fallsgrove Park, Village Green, and the Rose Hill and Tower Oaks stream valleys.

- **Conveyed to the City by a Homeowners Association** – This involved the acquisition by the City of parcels A and B from the Chestnut Lodge Planned Development area, conveyed by their homeowners’ association earlier this year.

- **Purchased from Developer** – In conjunction with the acquisition of the two donated parcels from the Chestnut Lodge HOA, parcel I of Chestnut Lodge was purchased by the City from the private owner of the parcel.

- **Purchased from the County** – The City arranged to purchase land previously owned by the county at 175 Watts Branch Parkway where the Karma Academy once stood.

- **Land Swap with County** – The City has swapped property with the county in the past, including for a portion of Upper Watts Branch (a school site) in exchange for land adjacent to Wootton Parkway.

Revenue sources that have been used for acquisition include the City’s general fund appropriations, and state grants through the Program Open Space fund. This is a grant program funded through real estate transfer taxes, administered by the Maryland Department of Natural Resources, with funds being allocated annually to the counties for subsequent allocation. The City does not currently have a permanent, dedicated funding source, nor other specific mechanisms to acquire or require parkland in the city.

It should also be noted that there is a portion of the County property tax dedicated to advanced parkland acquisition. It is administered by the Maryland National Capital Park and Planning Commission. Although that tax is assessed on properties in the city as well as throughout the county, the City does not typically receive any of the revenue generated. The fund is used to support and expand the countywide parks system, which city residents also use. The tax rate is .001, or 1/10th of a penny per $100 of assessed value.

Although some of these tools have served us well from time to time, they are not ones that may be used on a consistent basis as new development occurs, especially with the redevelopment nature of our recent growth patterns. A consistent, standardized tool that can be employed regularly as new development occurs will give the City an opportunity to more carefully manage the demands placed upon our park and recreational facilities, and to reasonably ensure that new capacity is provided to meet those new demands.
III. Tools used by other jurisdictions

Many jurisdictions across the country, as well as a few locally, use either a parkland dedication requirement through their zoning ordinance, or an impact fee that is charged to new development for parks and recreation facilities. Below are several examples researched by staff. One common feature they all share is a robust park system for their local population.

Parkland Dedication examples

**Austin, TX** has a dedication ordinance required for residential subdivisions, site plans that include residential units, and hotels/motels. The required amount is based on a formula of parkland acreage per 1,000 resident population to be generated by the development (to maintain 9.4 acres of parkland per 1,000 population); the amount varies by density of the project. In their “urban core,” parkland dedication cannot exceed 15% of the gross site area. The requirement is reduced for affordable housing. Under certain conditions, the land can remain as private parkland, with a recorded recreation easement, for 100% of the requirement. Austin includes a fee-in-lieu provision where dedication of land is not feasible. The fee-in-lieu amount is based on the average purchase price to the City for acquiring an acre of parkland, along with the parkland level-of-service (which is based on the total citywide acreage of neighborhood parks and greenways relative to the city’s population).

Their Recreation and Parks director makes the initial determination as to whether to accept dedication or fee-in-lieu, with final approval by their Land Use Commission. They emphasize the purpose of the fee in-lieu is not to achieve equity in terms of where parkland is provided, but rather to have development maintain the same citywide parkland level-of-service. If development occurs in deficient areas, the dedication tool may contribute to equity. Otherwise, bond funds, grants, donations or some other source would be needed to address deficiency problems. However, when deciding where to spend their fee-in-lieu, they do use a parkland deficiency map as a guide, along with other criteria in their operating procedures. Their funds must be spent within five (5) years of collection.

**St. Paul, MN** requires 150 square feet of parkland per residential dwelling unit, up to a maximum of 4.5% of the buildable land area, or a fee-in-lieu of dedication at $1,200 per dwelling unit (up to 4.5% of county assessor’s value of the land). The requirement is reduced for affordable housing.

They are also one of the few jurisdictions that require parkland dedication for non-residential projects. St. Paul has documented that 90% of their demand for park space is from residential uses, and 10% from commercial/industrial. They require 28 square feet per 1,000 square feet of commercial gross floor area (GFA), 11 square feet per 1,000 square feet of industrial GFA, and 6 square feet per 1,000 square feet GFA for wholesale, warehousing and storage space. Non-residential projects that are less than 5,000 square feet are exempt.

They also have an option for private land to be maintained for public use instead of making a dedication. However, the area must be accessible to the public in a manner similar to public land, and a parkland development agreement must be executed. They specify that funds collected through fee-in-lieu shall be used within ½ mile of the project for which the funds were collected, or for the neighborhood or community park nearest to the project.
**Dunedin, FL** requires dedication, or a fee in-lieu, when five (5) or more residential units are constructed, via a site plan or subdivision. They require six (6) acres to be dedicated per 1,000 population to be generated (prorated for the project). The six (6) acres are split evenly between neighborhood and community park needs.

They allow credit up to 75% of the neighborhood park requirement to be private open space. Their fees collected in-lieu of dedication must be spent or obligated within 7 years of collection, and be spent in the “general vicinity” of the area where the fees were generated.

**Impact Fee examples**

**Pasadena, CA** has used their Residential Impact Fee since 1988 to help mitigate the impacts on the park system from new residential development. The fee is imposed on all new residential development, and they range from $15,000 to over $28,000 per unit depending on the number of bedrooms; affordable housing units are charged $800. The fee has been the primary funding mechanism for parkland acquisition, trails and capital improvements for parks in the city’s budget. It helped fund the first new city park in over 30 years, and brought about the city dog park in the city. They can also use the fund on any school ground park which is subject to a cooperative agreement between the city and the Pasadena Unified School District.

**Boulder, CO** has an impact fee for parks and recreation that ranges from $2,700 to $7,000 per unit, depending on the size of the dwelling unit. In **Sacramento, CA**, their park development impact fee is about $3,500 for multi-family units (but $1,600 if in an infill area), and $5,900 for single-family units ($2,700 if infill).

**Local/Regional examples**

**The City of Frederick, MD** actually has both an impact fee and a parkland dedication requirement. They require 500 square feet of parkland to be dedicated for each infill residential unit and for retirement communities, and 1,000 square feet for other non-infill residential units. They have a provision where private open space may suffice to serve multi-family and townhouse development, and dedication would not be required unless the comprehensive plan calls for a park in the area. They also have a provision where, if approved by the city, the city may deem areas in forest or proposed for afforestation (or reforestation in a forest conservation easement) to be suitable as public parkland.

Fee-in-lieu is determined by the Board of Aldermen and is based on the fair market value of the property with a recent appraisal. Funds may be used to acquire city parkland, or to pay the principal, interest or other costs of bonds, notes or other obligations issued or undertaken by or on behalf of the city to finance the acquisition of city parkland. Under certain conditions, private open space may comprise 20% of the total parkland required.

In addition to their required parkland dedication, the City of Frederick also charges a park and recreation impact fee of $868 per residential unit (but $586 if the development has a pool to be maintained by the homeowner’s association).
Prince Georges County has had a parkland dedication ordinance with fee-in-lieu since 1981. Theirs is limited to new residential subdivisions, so it doesn’t apply to site plan projects. Their dedication requirement ranges from 5% to 15% of the site depending on the density of the development project.

Fairfax County, VA has a strategic plan requiring 10% of their land mass to be held as county parks. In suburban areas, their goal is to provide at least 5 acres per 1,000 population. In urban areas, the goal is 1.5 acres per 1,000 population and 1 acre per 10,000 employees. Countywide, their goal is for a minimum of 13 acres per 1,000 population.

Montgomery County has an adopted Parks, Recreation and Open Space Plan that states that recommendations for parks and recreation must be provided in all urban plans and sector plans, with a hierarchy and typology of parks described. New parkland is added to the County park system through: dedication via the land development process, direct purchase using CIP funds, and the occasional donation of land by property owners. Dedication is not a zoning ordinance requirement, but can be achieved through their optional method of development, which provides additional density or other incentives for certain amenities provided as part of a development project. The White Flint Plan recommended several parks in the area, but according to the County, those will likely be privately owned and maintained. The plan also discusses the possibility of an amenity fund, but that has not yet been pursued.

The City of Gaithersburg requires a minimum green area, landscaping and amenity area for new development as a percentage of the site, but they don’t have a specific parkland requirement nor an impact fee.
IV. Guidance from the Comprehensive Master Plan and Parks, Recreation and Open Space Plan

When considering new land use or other tools required to advance goals of the City, it is always advisable to look to the Comprehensive Master Plan for guidance to ensure consistency with the City’s overall vision for the community. Fortunately, the 2002 Comprehensive Master Plan (the “Master Plan”), as well as other subsequent neighborhood plans and plan elements, provide guidance and support for possible new tools the City may want to consider.

Chapter 6 of the Master Plan addresses Recreation, Parks and Open space, and identifies parkland acquisition as a critical issue. It discusses the desire for parkland dedication and also for a payment-in-lieu fee of 5% of the total value of the land being developed. It goes on to say that this is “generally a last resort option; however, consideration should be given to adopting such a requirement to apply only in cases where dedication is not practical or feasible.” The chapter concludes with a set of recommendations, which includes the following:

“Require allocation of a minimum of 20% of development area for parkland. The requirement should provide appropriate payment-in-lieu only if the allocation of parkland is not feasible or desirable.” (p. 6-7)

The Rockville Pike Neighborhood Plan, adopted in 2016, builds upon the Master Plan goals by recommending that 10-acres of new parkland be created along the Rockville Pike corridor. The plan states as a goal to have parkland accessible within a 10-minute walk from any residence. It describes a minimum size of 3/10 of an acre for new parkland, and that 15% of a developable project’s site should be allocated to publicly-accessible open space (or fee-in-lieu).

The Parks, Recreation and Open Space (PROS) Plan was adopted by the Mayor and Council in 2009, and although it is not technically part of the Master Plan, it certainly provides guidance for park needs throughout the city. The plan recommends obtaining funding for land acquisition, and for a focus on areas of greatest need, especially East Rockville, Twinbrook, Town Center and Rockville Pike.
V. Two Options to Consider

Two options are presented for the Mayor and Council to consider as possible approaches for the acquisition or expansion of parks and recreation facilities, with details on both described in the following section. The two options are:

1. Parkland dedication, or fee-in-lieu when dedication is not feasible (a new option supported by the Comprehensive Master Plan)
2. Impact fee for parks and recreation facilities (a new option)

Both measures provide an approach to help meet the demand for new parks and recreation facilities as new development occurs, but without overburdening existing residents with the financial impact to expand the City’s park system due to increased demand caused by the new development. With this type of regulatory or “user fee” approach, the intent is that the landowner, developer and future residents who are creating the demand for new park facilities should bear at least a portion of the costs of providing new parks and recreation facilities. Historically, the City has often had to resort to using general fund reserves to pay for parkland, rather than having a ready park fund to tap.

Both approaches must also meet certain ‘tests,’ starting with being proportional in terms of the requirement relative to the demand generated by the new development. There must also be a relationship or a “nexus” between the dedication or use of the fees and the benefits received by the development. Finally, any fees that are generated must be spent in a timely manner so they benefit the new residents creating the demand.

Neither measure is intended to achieve equity in terms of providing park space or recreation facilities in certain areas of a city. They are not designed to make up for existing deficiencies in park space or recreation facilities. Rather they are intended to have new development reasonably pay for itself in terms of impacts they would have on the City’s parks and recreation facilities. The City must remain committed to taking the lead in the creation of new parkland and recreation facilities, and also work with applicants to meet our future demands.

Public Use Space and Open Area Zoning Text Amendment

Staff will also propose updates to our current open area and public use space requirements, regardless of which of the two options described in this report might be favored by the Mayor and Council. Staff will bring forward a zoning text amendment that proposes to combine those two current zoning ordinance standards into a “common open space” standard with a clearer definition of what should be included. The current definitions of “open area” and “public use space” are included in Attachment C. The standards for this new common open space requirement should be adjusted to work in concert with any new parkland dedication requirement or impact fee that the City decides to implement. The table on page 9 provides suggestions for what a common open space requirement might be. That new draft standard will be finalized and brought forward in a zoning text amendment for consideration as direction is provided on the options described in this report.
A. Option 1 - Parkland Dedication, with a Fee-in-Lieu-of dedication

Description – This approach would be implemented as a zoning ordinance standard, requiring onsite parkland dedication for public use, or payment of a fee-in-lieu of dedication. This approach would implement the Master Plan recommendation of allocating a certain percentage of a development area for parkland, or to allow a fee-in-lieu where it is not practical or feasible to dedicate. It would apply to all new applications for development and redevelopment that result in a net increase in residential dwelling units, as described below.

As this option was drafted, staff was mindful of having an approach that is reasonable and provides some flexibility in how it could be administered. For dedication, allowing options is important – the City could require onsite dedication as a starting point, but also allow offsite dedication, or a fee-in-lieu of dedication, or a combination of approaches. The City could also consider private open space to meet a portion of the dedication requirement, and allow onsite private amenities to be credited at least partly against the dedication requirement. Staff also proposes to allow applicants to use at least a portion of the proposed dedicated area to meet some of their forestry requirements.

Applicability – A parkland dedication requirement, or fee-in-lieu-of dedication, could apply to site plan applications and subdivision plats, with the following net increase in residential dwelling units on the project site (above the number of units that previously existed):

- 25 multi-family dwelling units
- 20 townhouse (single family attached) dwelling units
- 15 single-family detached dwelling units

Staff believes it is important to have a threshold below which this option would not apply. Development projects yielding a fewer number of units than indicated here would likely generate either very small parcels of proposed dedicated park areas which would not be desirable for the City to maintain, or would generate a modest fee-in-lieu amount that would be restricted in terms of how, where and when it could be spent. Also, the stress on the existing park system by relatively few units would likely be small.

For affordable or moderately-priced dwelling units, staff has not defined a credit or exemption since we are not proposing to apply it on a per-unit basis. The standard is based on land area, so a reduction or exemption may not apply. One exception would be if the entire development project consists of affordable units, then we could exempt the entire application (or require a lower percentage to be set aside or paid-in-lieu).

Dedication Requirement – Consistent with the Master Plan recommendation, an onsite parkland dedication requirement could be based on a percentage of the total site area. It would vary by zoning district, similar to the current open area and public use space requirements. As noted above, the current open area and public use space standards are also proposed to be amended and combined into one common open space standard, with a new definition which is described later in this report.
Possible Dedication and Open Space Requirements in Mixed Use Zones

<table>
<thead>
<tr>
<th>Zone</th>
<th>Suggested Parkland Dedication %</th>
<th>Suggested Common Open Space %</th>
<th>Current Requirements % Open Area</th>
<th>Public Use Space*</th>
</tr>
</thead>
<tbody>
<tr>
<td>MXTD</td>
<td>10%</td>
<td>10%</td>
<td>10% (15% if res.)</td>
<td>10%</td>
</tr>
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<td>MXCD</td>
<td>10%</td>
<td>10%</td>
<td>10% if &lt; 20k sq ft</td>
<td>5%</td>
</tr>
<tr>
<td>MXE</td>
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<td>10%</td>
<td>10% if &gt; 20k sq ft</td>
<td>5%</td>
</tr>
<tr>
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<td>10%</td>
<td>10% if &lt; 20k sq ft</td>
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<td>10%</td>
<td>10% if &gt; 20k sq ft</td>
<td>5%</td>
</tr>
</tbody>
</table>

*Public use space is within required open area.

An additional consideration regarding the standards suggested here is to allow an exemption from the Common Open Space requirement if an applicant proposes to set aside a greater amount of dedicated parkland than the minimum required percentage.

Medium Density Residential Zones

For proposed development in the Residential Medium Density Zones (RMD-25, RMD-15 and RMD-10), the City currently has a standard requiring 50% open area within the overall site (section 25.11.06). This section should be amended to include a parkland dedication requirement of 20%, which could be part of an overall 50% open area standard (which would also be updated to the new common open space requirement).

Single Dwelling Unit Residential Zones

For proposed development in the Single Dwelling Unit Zones (R-400, R-200, R-150, R-90, R-75, R-60 and R-40), the same parkland dedication standard of 20% would be required. But those cases would be reviewed through the subdivision process. Section 25.21.19 would need to be updated, which currently describes the City’s standards for Public Sites and Open Spaces as follows: “proposed park, playground, or other public use shown in the Plan..., the subdivider must dedicate or reserve, at the option of the Commission, adequate space for such purpose...”

When analyzing possible dedication standards to use for the mixed use and residential zones, staff considered different approaches to determine what a fair standard would be, including a calculation based on setting aside a specific amount of square footage per dwelling unit or per capita. However, staff continued to come back to the guideline recommended in the current Comprehensive Master Plan (which suggests 20% dedication of developed area). Nevertheless, the recommendation here is to consider a lower set-aside amount (10%). This standard is a reasonable one to begin with, and is also accompanied by flexibility in how it could be administered. It is roughly in line with (but lower than) the City’s current level of service for parkland, but is not as impactful as a per-unit or per-capita standard might be. Many jurisdictions that require parkland dedication do so on the basis of maintaining a level
of service expressed by the number of acres per resident population. However, trying to maintain our current level of service of 16.5 acres per 1,000 in population through a dedication requirement would be too onerous to require for new development projects.

Suitability standards/criteria for dedicated land - To determine whether proposed parkland is suitable for dedication, the criteria below could be used by the City in making its determination. The use of the term “suitability” is intended to result in parkland area that can meet the park and recreation needs of new residents in the development that is triggering the need.

- **Minimum size** – a proposed parkland dedication shall be no less than 3/10 of an acre in the MX-TD and MX-CD zones, and no less than ½ acre in all other zones. If the ordinance standard results in an amount less than these minimum allowable parkland dedication areas, then a fee-in-lieu-of dedication would be required.

- **Usability** – the proposed area must be useable as park space in terms of topography, drainage and configuration of the site. It shall not be configured as a narrow strip of land without substantial demonstration of its purpose and function to serve the general public.

- **Contiguous** – the proposed parkland to be dedicated shall be in a contiguous area to the extent feasible. Small, scattered, individual sites will likely not be accepted, unless it is demonstrated that they would serve the needs of residents of the proposed development.

- **Accessibility** – the proposed dedicated site must be accessible to the general public.

- **Connectivity to other parks** – where existing parks, open space, or trails are present on sites adjoining the proposed development project, the proposed parkland to be dedicated should be located so it is contiguous to such areas, and provide connections to adjoining parks and open areas where feasible.

- **Underserved areas** – when the neighborhood where the proposed development is occurring is at a deficit in terms of park space, then parkland dedication will be preferred over payment of a fee-in-lieu. Underserved and deficit areas would be based on guidance provided in the City’s Parks, Recreation and Open Space Plan as well as the Comprehensive Master Plan.

- **Sensitive and rare habitat protection** – proposed dedication areas that provide for the protection of habitat for sensitive and rare plant and animal species are desired.

- **Consistent with the City’s Comprehensive Master Plan** – proposed parkland dedications shall be consistent with and result in implementing the City’s Parks, Recreation and Open Space Plan and/or the Comprehensive Master Plan.

**Determination of parkland dedication or fee-in-lieu** – It is the City’s preference to have land dedicated onsite for a public park with the development projects that trigger this requirement. However, it will also be possible for an applicant to propose to pay a fee-in-lieu-of dedication in instances where dedication is not feasible on the site, or not desired by the City. If a proposed site does not meet the minimum size requirements, or is otherwise determined to be unsuitable by the City based on the criteria described above, then a fee-in-lieu-of dedication may be provided. However, the City is also providing an opportunity for an applicant to propose an off-site parkland dedication when onsite
dedication is determined not to be feasible. Finally, a combination of options (onsite dedication, fee-in-lieu, and off-site dedication) will also be considered and may be allowed.

The process for determining whether to accept a proposed dedication, to require a fee-in-lieu-of dedication, to allow an off-site dedication, or a combination of those options, is to have the director of the Recreation and Parks Department consider the applicant’s submittal, and following consultation with the City Manager, provide direction early in the development review process. The director will evaluate the proposed method of meeting this requirement based on the suitability standards described above, and will provide a determination in writing based on those standards.

This determination will occur early in the development review process in order to provide certainty and predictability for the applicant for their overall design of the project. The determination by the director of the Recreation and Parks department will be made during the pre-application stage of site plan review, or during the review of a preliminary plan for subdivision for single-family residential development. The Director of Recreation and Parks will notify the applicant in writing of this determination.

When City staff have completed their full review of an application, with a recommendation prepared for transmittal to the approving authority for action, the staff report will describe the determination made for parkland dedication, or payment of a fee-in-lieu, or a combination thereof.

**Appeal** - If the Director rejects a request by the developer to dedicate parkland, or to pay a fee-in-lieu-of dedication, the applicant may appeal the decision to the approving authority for the application. The approving authority will then make the final determination as to whether the dedication or fee-in-lieu-of dedication will be accepted, considering the suitability standards set forth above and the recommendation of the Director.

**Offsite Parkland Dedication** – The City may accept an offsite dedication of parkland upon approval of such proposal by the Director of Recreation and Parks, provided it is in the general vicinity of the development site and meets the suitability standards/criteria for dedicated land described above.

**Credit for onsite amenities and private open space** – The City may allow that privately-owned onsite amenities being provided with the development project could be credited against the public parkland dedication and fee-in-lieu requirement, but not to exceed 50% of the requirement. Onsite amenities that may be considered for such credit include publicly-accessible open areas, parks, playgrounds, trails and exercise areas. Credit may also be provided for indoor spaces dedicated to the provision of publicly-accessible art, and open areas or dedicated spaces open to the public such as museums, art galleries, science centers or facilities, cultural arts centers, or community rooms.

As with the approval of dedicated parkland, the Director of Recreation and Parks will make the determination as to whether credit for onsite amenities and private open space will be accepted, which will also be determined during the pre-application stage.
Land, facilities, and improvements approved under this provision must be accessible to the public in a manner similar to public parkland. The City and the owners of the development must execute a parkland development agreement insuring that specific land will be developed and maintained by the owners, and that the parkland use is a covenant that runs with the land.

This provision is consistent with other jurisdictions analyzed. St. Paul, MN, allows private land to be maintained for public use for up to 100% of the dedication requirement. Austin, TX, allows up to a 50% credit for onsite amenities provided by an applicant (for pools, exercise areas and publicly-accessible open space). Dunedin allows a credit for up to 75% of their neighborhood park requirement where private open space is being provided and will be privately maintained (but only for the neighborhood park requirement; but not the community park requirement). Frederick, MD has a provision where private open space may suffice to serve multi-family and townhouse development, and dedication would not be required unless the master plan calls for a park.

**Ability to meet certain development standards/requirements on proposed parkland dedication sites**

With the approval of the Director of Recreation and Parks, the City could allow the proposed parkland dedication area to be used to meet a portion of certain development standards, provided the primary use of the proposed parkland area for public recreation is not impeded. A maintenance agreement between the City and the applicant will be required, describing maintenance responsibilities and other obligations.

The following could be acceptable on the dedicated parkland:

- Areas in forest or proposed for afforestation or reforestation in a forest conservation easement.
- Environmental site design features and related improvements required as a result of the development project. This may include publicly accessible, useable portions of a stormwater management facility.

This provision would be consistent with other jurisdictions as well. Although Frederick does not allow stormwater ponds in dedicated areas, they do allow areas in forest or proposed for afforestation or reforestation in such areas. Austin allows up to 50% of a dedicated site to be in the floodplain, and the City of San Jose allows a 50% credit for stormwater detention facilities.

**Ownership, conveyance and improvement of dedicated land**

Ownership of dedicated parkland will be conveyed to the City, and will be City-maintained. Conveyance of parkland will occur through subdivision plat approval and recordation prior to obtaining building permits for the project, and will be accompanied with a fee simple deed conveying ownership to the City.

If amenities or improvements to the park are being provided by the developer, those shall be completed in a manner consistent with City standards, and accepted by the City prior to issuance of occupancy permits. Otherwise the applicant will provide improvement guarantees for grading and seeding of the parkland to be dedicated. The dedicated land will be conveyed in a condition that is graded, seeded and otherwise prepared as agreed upon, and free from debris and other construction material.
Proposed Amendments Impacting Approved Parkland Dedication Areas – If an amendment to an approved site plan or subdivision is proposed that would impact an approved parkland dedication area (public or private), or would impact the required fee-in-lieu, then a recommendation from the Director of Recreation and Parks is required as part of the application. Compliance with the dedication or fee-in-lieu standards is still required.
Fee-in-lieu-of dedication

**Description** – When dedication of parkland (either onsite or off-site) is deemed by the City to not be feasible due to the suitability standards described, payment of a fee-in-lieu-of dedication would be required. Fee-in-lieu funds would be spent in the general vicinity of the development from which the fees were paid. The funds can be pooled with other in-lieu payments, or other City or park funds, for the acquisition of land for new parks or expansion of existing ones. However, they cannot go toward operations, recreational programs or maintenance of parkland or facilities. The funds should also not be used specifically to remedy existing park deficiencies, unless this also aligns with the needs created by the new development.

**Amount Required** – The amount of a required fee-in-lieu payment would be based on the assessed value of the land at the time of pre-application. The source for determining the assessed value of the land will be the State of Maryland’s Department of Assessments and Taxation (SDAT) most recent records published online.

For proposed development projects that include residential units, and would otherwise be required to comply with the parkland dedication requirement, the fee-in-lieu is equal to 10% of the assessed value of the land within the project boundaries; improvements to land are not included.

As described, a combination of onsite and/or offsite parkland dedication and fee-in-lieu is acceptable. If an applicant dedicates a portion of the required parkland and satisfies the balance of the requirement with fee-in-lieu, the amount of land dedicated will be deducted from the required fee-in-lieu payment that was otherwise required.

**Administering the Fee** – The fee must be paid prior to issuance of the first building permit for the development project, but at the discretion of the City, partial payments may be made that are proportional based on the number of units being developed within the phases of a multi-phase project.

**Expenditure of fees collected** - Revenue generated through fees paid in-lieu-of dedication will be used by the City for parkland acquisition, expansion or enhancement of existing parks, to serve the new residents of the development that was assessed the fee. Fees collected under this provision will be spent in the general vicinity of the site of the development application. The City will use the Parks, Recreation and Open Space Plan and the Comprehensive Master Plan for guidance in deciding on locations to spend fees collected.

The funds generated by fee-in-lieu will not be used for maintenance and operations, and will be used only for the following purpose:

- To acquire parkland for a public use; or
- For capital expenses for new, expanded or enhanced public parks and/or recreation facilities
The fees collected will need to be accounted for separately from other funds, including being segregated from the City’s general fund money. The funds would be appropriated in the budget that is approved by the Mayor and Council, and most likely in the form of a Capital Improvement Project.

Fees collected by the City must be spent within seven (7) years from the date of receipt. This period may be extended by five (5) years if, at the end of the initial seven-year period, less than 50% of the residential units within the development project that generated the fee have been constructed.

**Refund** - If the City does not expend the fee payment within seven (7) years of being paid, the applicant/developer (or successor) may request a refund for the portion of the fee that was not expended. The refund request must be made in writing and filed with the Finance Department no later than 180 days after the expiration of the deadline to expend the funds. The Finance Department will refund the unspent fees to the applicant.
B. Option 2 - Impact Fee for Parks and Recreational Facilities

The other option staff is putting forth for consideration is that of an impact fee that could be charged to new development applications during the permitting process. An impact fee is a commonly accepted financing mechanism used by local jurisdictions to offset the cost of expansion of infrastructure or government facilities that would be required to be built as a result of new development. It’s a way of assuring new development pays its “fair share” for providing services. It is based on maintaining the current level of service by assessing new development the proportional cost of expanding that service or facility. For parks and recreational facilities, it is typically charged for new residential development, but may also be required with new non-residential construction.

As described in a 2009 impact fee study conducted for the City, in order for an impact fee to be valid, it typically must satisfy two conditions: “rational nexus” and “rough proportionality.” First, there must be a need for the additional facilities or expansion of infrastructure as a result of the new development. Second, there must be a fair and equitable connection between the fee charged to the new development and the benefit it receives. A municipality may only charge an impact fee for capital projects that will benefit the new development, and for services provided by the jurisdiction.

A Maryland Attorney General’s opinion issued in 2004 addresses this concept as well. In response to a request from Taneytown, MD, the opinion supports the power of Maryland municipalities to enact reasonable impact fees as a regulatory tool. But there must be a sufficient nexus between the fee assessed and the proportional cost of providing the benefits supported by that fee to the affected property owners. It should be used to defray the costs of infrastructure and capital expenses, but not for operating costs. The Attorney General’s office stated:

“Under the rational nexus test, an impact fee is permissible as a regulatory measure, so long as (1) the fee relates to the needs attributable to new development, and (2) the revenue collected is earmarked for the substantial benefit of the development charged.”

2008/09 City of Rockville Impact Fee study

In 2008, the City contracted with the consulting firm Municipal Financial Services Group (MFSG) of Annapolis to evaluate, calculate and recommend possible impact fees for the City to consider. The areas studied and ultimately recommended were: public safety, recreation and parks, stormwater and general government. Other service areas were studied but not recommended. However, as the study was concluded in 2009 during the “Great Recession,” none of the recommended fees were enacted. There were also concerns about the timing of spending revenue that is generated, and where it could be used.

The calculation of the fees was based on the incremental cost of replacing the current recreational and park facilities owned and operated by the City. The actual value of the land for parks was excluded from the calculation.

Facilities counted within the inventory at the time included: the swim center, the senior center, F. Scott Fitzgerald Theater, Glenview Mansion, all the community and neighborhood centers, the King Farm Farmstead, the Beall Dawson House, and other facilities, for a total of 183,319 square feet of facility space. The estimated average cost to build a new facility was $250 per square foot, plus another $50
per square foot to outfit the facility. At a total cost of $300 per square foot, times 183,319 square feet total, the full cost to replace all facilities was estimated at about $55 million. This cost was then allocated between residential and non-residential uses in the city, and then further broken down for an average cost per resident and per employee.

The following table describes the 2009 recommendation for impact fees for parks and recreational facilities that could be charged for different uses, along with a potential revenue generation forecast through fiscal year 2030.

**Recreation/Parks Recommended Impact Fees (2009 study):**

<table>
<thead>
<tr>
<th>Residential (per unit)</th>
<th>Fee</th>
<th>Potential Revenue – FY09 to FY30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single family detached</td>
<td>$1,711</td>
<td>$95,800</td>
</tr>
<tr>
<td>Single family attached</td>
<td>$1,524</td>
<td>$253,000</td>
</tr>
<tr>
<td>Multi-family / other</td>
<td>$1,230</td>
<td>$7,567,400</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-residential (per 1000 sq ft)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail / Restaurant</td>
<td>$582</td>
<td>$468,800</td>
</tr>
<tr>
<td>Office</td>
<td>$931</td>
<td>$5,224,900</td>
</tr>
<tr>
<td>Industrial</td>
<td>$517</td>
<td>$42,700</td>
</tr>
<tr>
<td>Other</td>
<td>$466</td>
<td>$453,200</td>
</tr>
</tbody>
</table>

The study recommended spending the fees collected within six to eight years, and they could be used for expansion of recreational facilities operated by the City.
Updated Impact Fees

The City re-engaged with the firm MFSG to update the base assumptions and other data used in the 2009 study, so that a revised, current impact fee may be considered. They have included the land cost within the calculation as well (at about $840,000 of assessed value per acre), and have updated the cost of improved facility area at $400 per square feet. Below are the updated impact fee rates to consider, with those provided by the consultants, and fee levels recommended by staff (along with average fees from a 2015 national survey).

Updated Recreation/Parks Impact Fees:

<table>
<thead>
<tr>
<th>Residential (per unit)</th>
<th>National Average (2015)*</th>
<th>Updated Fees from consultant study</th>
<th>Recommended Fees by Staff (75% of the consultant fee)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single family detached</td>
<td>$2,812</td>
<td>$2,290</td>
<td>$1,718</td>
</tr>
<tr>
<td>Single family attached</td>
<td>$1,950</td>
<td>$1,463</td>
<td>$1,178</td>
</tr>
<tr>
<td>Multi-family / other</td>
<td>$2,099</td>
<td>$1,570</td>
<td>$1,178</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-residential (per 1000 sq ft)</th>
<th>National Average (2015)*</th>
<th>Updated Fees from consultant study</th>
<th>Recommended Fees by Staff (75% of the consultant fee)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail / Restaurant</td>
<td>$815</td>
<td>$700</td>
<td>$525</td>
</tr>
<tr>
<td>Office</td>
<td>$881</td>
<td>$1,120</td>
<td>$840</td>
</tr>
<tr>
<td>Industrial</td>
<td>$562</td>
<td>$620</td>
<td>$465</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>$560</td>
<td>$420</td>
</tr>
</tbody>
</table>


Staff believes an impact fee for parks and recreation facilities should be one of the options seriously considered as this discussion continues.

Staff also recommends that the impact fees be adjusted downward slightly from the fee levels determined through the updated consultant work. The rates recommended by staff in the table above are at 75% of the levels determined by the consultants to be defensible and justifiable based on the methodology used. It is customary for jurisdictions enacting new impact fees to not charge the full amount allowable, since this introduces a new financial impact to the economics of development projects. However, this is a policy decision that would ultimately be decided by the Mayor and Council.

Staff also recommends that units required under the City’s Moderately Priced Dwelling Unit (MPDU) program be fully exempt from paying impact fees. Since it a long-standing City goal to promote the creation of additional affordable and moderately-priced housing options, exempting such units from this new charge would be consistent with that goal.

If the impact fee option is ultimately adopted, staff recommends that development applications that are currently in the review process should be exempt from the fee. This would include complete, accepted applications for projects plans, site plans and building permits.

An impact fee would be administered at the building permit stage of the review process, where the fee would be paid prior to issuance of a building permit. As such, it would have the effect of being phased in for a large, multi-phase development project, since the fee would only apply to those phases about to
be constructed. Staff also recommends exempting any development application where three (3) or fewer additional (net) residential dwelling units are being created on the subject site. If this is applied to new non-residential development as well, then there should also be a minimum square footage at which it is triggered (perhaps at 5,000 square feet and above).

Although Maryland does not have a specific, required timeframe for spending the funds, the revenue collected would likely need to be spent, or at least programmed, within about seven (7) years of being collected. The revenue may be used for capital expenses only, and for new capacity such as new or expanded parkland, or new or expanded recreational facilities in the City.

There are jurisdictions which also include annual adjustments to impact fees. For instance, in Maryland, Anne Arundel, Talbot and Queen Anne’s counties adjust their fees each year based on the Construction Cost Index published in the Engineering New Record. In those jurisdictions, fees are automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent twenty-city annual national average data from the Engineering News Record Construction Cost Index. The City currently makes a similar adjustment using the Builder’s Cost Index to the in-lieu fee in the Publicly-Accessible Art in Private Development ordinance.
## Parkland Dedication / Fee-In-Lieu Examples

<table>
<thead>
<tr>
<th>Ex. #</th>
<th>Acres</th>
<th>Dwelling Units</th>
<th>Assessed Value (land)</th>
<th>Zone</th>
<th>Parkland Dedication (at 10%) in Acres</th>
<th>Parkland Dedication (at 10%) in Sq. Ft.</th>
<th>Common Open Space (10%) in Sq. Ft.</th>
<th>Total Open Area in Sq. Ft.</th>
<th>Fee-In-Lieu at 10% of Assessed Value</th>
<th>Residential Impact Fee $1,178/unit (multifamily)</th>
<th>Non-Res Sq. Ft.</th>
<th>Non-Res Use Type</th>
<th>Non-Res Rate per 1,000 sq ft</th>
<th>Non-Res Impact Fee</th>
<th>Total Impact Fee (Res and Non-Res)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3.5</td>
<td>360</td>
<td>$8,400,000</td>
<td>MXTD</td>
<td>0.35</td>
<td>15,246</td>
<td>15,246</td>
<td>30,492</td>
<td>$840,000</td>
<td>$360,468</td>
<td>100,000</td>
<td>Retail</td>
<td>$525</td>
<td>$52,500</td>
<td>$412,968</td>
</tr>
<tr>
<td>2</td>
<td>5.0</td>
<td>400</td>
<td>$6,000,000</td>
<td>MXTD</td>
<td>0.50</td>
<td>21,780</td>
<td>21,780</td>
<td>43,560</td>
<td>$600,000</td>
<td>$400,520</td>
<td>60,000</td>
<td>Retail</td>
<td>$525</td>
<td>$3,150</td>
<td>$403,670</td>
</tr>
<tr>
<td>3</td>
<td>4.0</td>
<td>200</td>
<td>$2,700,000</td>
<td>MXTD</td>
<td>0.40</td>
<td>17,424</td>
<td>17,424</td>
<td>34,848</td>
<td>$270,000</td>
<td>$200,260</td>
<td>50,000</td>
<td>Office</td>
<td>$840</td>
<td>$4,200</td>
<td>$204,460</td>
</tr>
<tr>
<td>4</td>
<td>3.5</td>
<td>275</td>
<td>$1,700,000</td>
<td>MXE</td>
<td>0.35</td>
<td>15,246</td>
<td>15,246</td>
<td>30,492</td>
<td>$170,000</td>
<td>$283,456</td>
<td>15,000</td>
<td>Retail</td>
<td>$525</td>
<td>$7,875</td>
<td>$291,331</td>
</tr>
<tr>
<td>5</td>
<td>3.2</td>
<td>650</td>
<td>$12,400,000</td>
<td>MXTD</td>
<td>0.32</td>
<td>13,939</td>
<td>13,939</td>
<td>27,878</td>
<td>$1,240,000</td>
<td>$650,845</td>
<td>50,000</td>
<td>Retail</td>
<td>$525</td>
<td>$26,250</td>
<td>$677,095</td>
</tr>
<tr>
<td>6</td>
<td>2.3</td>
<td>275</td>
<td>$2,500,000</td>
<td>MXTD</td>
<td>0.23</td>
<td>9,801</td>
<td>9,801</td>
<td>19,602</td>
<td>$250,000</td>
<td>$275,358</td>
<td>10,000</td>
<td>Retail</td>
<td>$525</td>
<td>$5,250</td>
<td>$280,608</td>
</tr>
<tr>
<td>7</td>
<td>10.0</td>
<td>1000</td>
<td>$20,000,000</td>
<td>MXCD</td>
<td>1.00</td>
<td>43,560</td>
<td>43,560</td>
<td>87,120</td>
<td>$2,000,000</td>
<td>$1,001,300</td>
<td>200,000</td>
<td>Retail (3/4)</td>
<td>$525</td>
<td>$840</td>
<td>$120,750</td>
</tr>
</tbody>
</table>

Notes:
1. For MX-TD & MX-CD, the minimum area to be dedicated (for the dedication scenario) is 3/10th of an acre (13,068 sq. ft.); therefore the minimum development site where dedication is required is 3 acres.
2. For all other zones, the minimum area to be dedicated is 1/2 an acre (21,780 sq. ft.); therefore the minimum development site where dedication is required is 5 acres.
3. Project examples 1, 2, 3, 5 and 7 would dedicate land onsite (under the dedication scenario), since the proposed dedicated area exceeds the minimum required size.
4. Project examples 4 and 6 would pay fee in lieu of dedication, since the dedicated area would be less than the minimum size allowed.
5. For the impact fee examples, the rates are those recommended by staff, and MPDUs are exempt from the calculation (15% of the units in the MX-TD & MX-CD zones are MPDUs, and 12.5% of the units are MPDUs in all other zones).
VII. Pros and Cons of the Two Options

Pros of Parkland Dedication and Fee-In-Lieu:

- It’s an accepted standard in the typical zoning powers of a municipality
- Has a direct, clear relationship to the application to which it is being applied
- With dedication, the land is made available at the location where the development being built is creating the need
- It is in support of Master Plan goals to create additional parkland (20% per the plan)

Cons of Parkland Dedication and Fee-In-Lieu:

- Appears to be more effective as a suburban standard, where new subdivisions are created or large development projects are built. Rockville is experiencing mostly smaller, infill, mixed use projects.
- Will mostly result in fee-in-lieu payments, since the average size of our site plans is 2.5 acres and the same cons that are listed in the Cons of Impact Fee would be applicable.
- Fee-in-lieu must be spent in the general vicinity of the development project, so it is limited in terms of how, where and when it must be used; and must be tracked and accounted for separately
- It’s an additional regulatory demand on top of already fairly restrictive standards
- Dedication of land would require an applicant to go through the subdivision platting process, which doesn’t always happen on a site plan application (especially redevelopment activities)

Pros of Impact Fee:

- Would potentially apply to more residential units than a parkland dedication standard
- We can vary the fee by residential unit type, and apply it to non-residential permits, too
- Average size of site plans is too small to be affected by parkland dedication, so most projects would pay fee-in-lieu anyway.
- We have a methodology already (by MFSG) along with the regulatory authority to do it

Cons of Impact Fee:

- Requires creation of a separate fund, to ensure it is spent in a timely manner
- Requires active CIP planning to program funds, and the discipline to spend in a timely manner and to combine it with other city revenue where necessary for project implementation
- Places the burden on the City to purchase land where necessary (dedication requirement places more of this burden on the developer)
- City must have funds available to construct park amenities (with impact fees and other revenue as needed)