

Establishing Local Open Space Waiver Fees

Report to the Baltimore County Planning Board

Introduction

This report responds to County Council Resolution 44-13 (Attachment A), which asks the Planning Board to study the current open space waiver fee system, including the relevant provisions of the *Local Open Space Manual*, and to recommend “to the County Council a *comprehensive, transparent* formula for the manner of establishing Local Open Space waiver fees [emphasis added].” The following is a summary of the staff’s analysis of the methodology used to create the current fee structure, an examination of the factors that could provide a basis for an alternative fee, and the presentation of an optional formula that would fulfill the requirements of comprehensiveness and transparency. However, while comprehensiveness and transparency are important, so too is the goal of maintaining sufficient funding for land acquisition and open space development (including renovations). This report will present historical data on collected fees to help frame the trade-offs between the current fee structure and a potential alternative approach.

The LOS Program

A. Definition and Basic Requirements

The developers of all major residential and mixed-use subdivisions are required to provide a minimum of 1,000 square feet of Local Open Space (LOS) per dwelling unit on the development site. Requirements for LOS are contained in Sec. 32-6-108 of the Baltimore County Code (Attachment B), and the *Local Open Space Manual*, which is prepared and updated by the departments of Planning and Recreation and Parks, as mandated by Sec. 32-4-404 of the County Code.

Local Open Space (LOS) is defined in the Baltimore County Zoning Regulations, Sec. 101 (Bill No. 106-1963), as:

Land provided in residential subdivisions as necessary and desirable for the local recreational needs of residents of such subdivision for such recreation types of spaces as play lots, local play areas, small parks, stream valley parks, natural woods, areas of unusual natural scenic beauty, recreational walkways and pathways and special street center islands, but the term "local open space tract" shall not include the larger open space park and playfield areas of the type which serve larger than local needs and which are incorporated in the master plan.

B. Waiver and Fee in Lieu of LOS

The Department of Recreation and Parks may grant a waiver of part or all of the requirement to provide LOS on the development site, subject to a finding. When a waiver is granted, the developer is obligated to pay a fee in lieu of open space. The LOS fee is to be credited to a separate and distinct revenue account within the Recreation and Parks Department's capital budget.

Establishing/Updating Fees. Sec. 32-6-108 states that the administrative officer in consultation with the Department of Recreation and Parks, the Office of Budget, and the Department of Permits, Approvals and Inspections, shall establish the fees payable. The fees are subject to approval by the County Council through a resolution. The initial fee schedule for development in DR and RC zones was adopted in February 2000, through Council Resolution 13-00. These fees were amended in 2004, 2006, and 2013.

Code Guidance & Possible Interpretations. The County Code provides the following guidance as to how the LOS fees should be set. It states that “the County Administrative Officer shall consider, at a minimum, establishing the fees based on the zoning classification of the land and the uses of the land and their public purposes;” and that the fees “shall be reasonably proportionate to offset the increased cost to the county for acquiring recreational land.”

The criterion of “uses of the land” refers to the type and number of housing units to be built. The expected uses of the land would be residential, since only residential development is subject to the LOS requirement. The phrase, “their public purposes,” refers to the cost to the county of acquiring land for public open space. The following is considered in setting the fee:

1. An approximation of the value of the land that would otherwise be reserved as open space, based in part on the parcel’s zoning class and potential use, especially the yield in dwelling units per acre.
2. The estimated cost to the county of purchasing land to meet the additional need for recreational open space generated by new development when the requirement to provide LOS on site is waived.

I. Current Fees

Table 1 shows past and current fee rates for each density residential (DR) and resource conservation (RC) zone by the year adopted. The rate is expressed in dollars per square foot of open space. The fee amount is determined by calculating the area that is required to be reserved on a development site for open space (1,000 square feet per dwelling unit), and multiplying the portion that is to be waived by the rate shown in the table that corresponds to the zoning of the property. Each rate is supposed to reflect the generalized value of land in the zone.

How the Basic Fees Were Updated. The fees were updated most recently in 2013. A professional appraiser employed by the county conducted a study and prepared recommendations for new fees, which were subsequently adopted by the County Council. He compiled and analyzed recent sample data on the cost of unimproved land parcels by zone.

The data sources included: appraisal reports, settled land sales, and active, expired, and withdrawn land listings. The values were first analyzed on a per-acre basis and then reduced to a price per square foot. For some zones the samples of sales were too limited to estimate reasonable rates through direct comparison. In those cases, data were interpolated by comparing the values for classifications with limited samples to values for similar classifications with sufficient samples.

The appraiser then consulted other staff appraisers to review the values, and adjusted the rates on the basis of their professional knowledge. Finally, he reviewed a list of the county's open space purchases made over the previous several years, and although this sample was also relatively small,

he found that the prices seemed to support the unit values established for the particular zoning classes.

Table 1
LOS Fees - Rates Per Square Foot
By Zoning Class & Year Adopted

Zone	Year			
	2000	2003	2006	2013
DR 1	\$1.23	\$1.85	\$4.68	\$1.38
DR 2	\$2.37	\$2.40	\$5.49	\$2.30
DR 3.5	\$1.38	\$2.15	\$5.22	\$3.44
DR 5.5	\$1.36	\$1.90	\$6.07	\$3.79
DR 10.5*	\$1.59	\$2.80	\$6.87	\$4.36
DR 16*	\$1.59	\$3.50	\$9.76	\$5.74
RC 2	\$0.35	\$0.50	\$1.81	\$0.22
RC 3	\$0.20	\$0.85	\$3.47	\$0.69
RC 4	\$0.55	\$0.60	\$2.90	\$0.53
RC 5	\$0.83	\$1.65	\$3.43	\$1.10
RC 6	N/A	\$0.75	\$1.45	\$0.55
RC 7	N/A	\$1.75	\$2.17	\$0.22
RC 8	N/A	N/A	\$0.51	\$0.23
RC 20	\$0.12	\$0.20	\$1.81	\$0.28
RC 50	\$0.12	\$0.15	\$0.15	\$0.15

The 2013 fees for these zones are much lower than the corresponding fees established in 2006 due to the real estate market being over-valued in 2006 because of the "bubble" that contributed to the 2008 economic crisis. The 2013 fees reflect the moderating effect of the subsequent recession on real estate values. Although the method used to establish the previous fee schedules is not documented, it is assumed to have been similar to the method used for the 2013 update.

*Exceptions are highlighted under "Special Provisions," below.

Problems

For a clearer understanding of the fee structure it is helpful to convert the basis of the fees from per-square-foot to per-thousand-square-feet, the amount of LOS that developers are required to reserve on site for each dwelling unit to be built.

This amount is effectively the fee to be paid per dwelling unit. Table 2 shows the current LOS waiver fees for DR and RC zones on a per-thousand-square-foot basis.

The fees are supposed to reflect relative land value by zone. But according to the appraiser who prepared the latest set of fees for these zones, zoning alone is not a sound basis for valuing land. Zoning is a factor in determining property values, but probably the least important, according to the appraiser. The primary criterion for valuing real property is what can be done with it, and zoning is not the main determinant of that. A property could look valuable on paper, based on the zoning, but have limited real value due to conditions unique to the site.

Any two properties with the same zoning designation can have widely differing development potential, and hence, widely differing value. The appraisal of a single property takes account of a combination of factors including the property's size, location, surroundings, and physical characteristics, as well as the zoning. All of these factors can significantly affect the property's value. Site conditions, such as topography, streams, and the presence and extent of wetlands, are particularly important in determining how many dwelling units can be developed on a site.

Table 2

**Current Fee Per 1,000 Sq. Ft.
By Zoning Class**

DR 1	\$1,380
DR 2	\$2,300
DR 3.5	\$3,440
DR 5.5	\$3,790
DR 10.5	\$4,360
DR 16	\$5,740
RC 2	\$220
RC 3	\$690
RC 4	\$530
RC 5	\$1,100
RC 6	\$550
RC 7	\$220
RC 8	\$230
RC 20	\$280
RC 50	\$150

The amount of LOS that the county requires developers to reserve on site is the same for each dwelling unit to be built, regardless of zoning class. But the waiver fees vary and are widely divergent in some cases. By requiring the same amount of LOS for each dwelling unit, if provided by the developer on site, while assessing divergent fees if the provision of LOS on site is waived, the county effectively encourages waivers in some zones while discouraging them in others, and imposes disproportionate burdens on developers based solely on the zoning of their development tracts.

II. Comparison with Approaches by Other Jurisdictions

Staff surveyed the policy approaches of a sample of political jurisdictions that require the reservation of open space and/or the payment of fees for open space by developers. The survey illustrates several alternative policy approaches that are currently in use. It was conducted through a combination of internet research and phone interviews. The jurisdictions in the sample were selected on the basis of the availability of information. They are not necessarily closely similar to Baltimore County. The survey is summarized in Table 6, which includes Baltimore County.

The survey revealed two principal categories of fees: 1) a fee per dwelling unit, and 2) a fee per unit of land that would otherwise be provided as open space, based on some estimation of the value of land. Among the 13 jurisdictions in the sample, five set fees on a per-dwelling unit basis, and eight set fees per unit of land based on assumptions about land value.

Fee per dwelling unit. Four jurisdictions in the survey assess a single, flat fee per dwelling unit for open space. The fees range from \$900 to \$1,500. Three of those jurisdictions Anne Arundel, Howard, and Carroll counties are located in the Baltimore Region. For Carroll Co., the fee noted in the table is the portion of the county's impact fee earmarked for parks. Theoretically, land can be set aside in lieu of paying this fee, but that has never happened. All three counties assess impact fees/excise taxes which amount to thousands of dollars per dwelling.¹

A fifth jurisdiction, Amherst, NY, charges a fee per dwelling unit with fees varying by dwelling type and lot size. As shown in Table 7, Amherst assesses an open space fee for all classes of development, and an additional recreation fee for residential development. The reasoning is that all development generates a need for open space, but only residential development generates a need for recreational facilities. Amherst's variable fees for residential development assume that larger households generate more demand for open space and recreation, and that certain dwelling types and lot sizes generate larger households. Baltimore County's approach is effectively the reverse for

¹ County Development Impact Fees and Building Excise Taxes in Maryland, Amounts and Revenues, Department of Legislative Services, Office of Policy Analysis, Annapolis, MD, January 2012.

DR and RC zones: the zoning classes that typically generate dwelling units for the smallest households, DR 10.5 and DR 16, are assessed the highest fees.

Table 6 - Survey of Policies of Jurisdictions Within and Outside of Maryland

<i>Jurisdiction</i>	<i>Fee per dwelling unit</i>	<i>Fee based on amount of land that would otherwise be reserved as open space</i>		<i>Method of Determining fee or fair market value of subject property</i>	<i>Comment</i>
		<i>Fee amount times land area</i>	<i>% of fair market value of subject property times land area</i>		
Anne Arundel County, MD	\$1,000				Mostly for minor subdivisions
Baltimore County, MD		\$0.00-\$11.48 per sq. ft.		Appraisal analysis	Varies primarily by zoning class
Carroll County, MD	\$533				Part of impact fee earmarked for parks
Belair, MD		\$50,000 per acre		Based on per-acre cost of recreational open space	Determined by Rec & Parks Dept
Howard County, MD	\$1,500				Per unit or lot, whichever is higher
Amherst, NY	\$195-\$730 depending on unit type and lot size				Fees vary by dwelling type: lowest for senior housing and other attached dwellings; highest for detached dwellings on larger lots.
Aurora, CO			100%	Appraisal	Open space area calculated on the basis of population density by dwelling type
Avon, CT			10%	Appraisal	
Belmont, NC			100%	Assessed value adjusted for inflation	Open space area calculated on the basis of population density by dwelling type
Burien, WA			150%	Assessed value	
Dublin, OH		\$45,000 per acre		Appraisal analysis	Based on average residential land values for jurisdiction; revised every two years.
Twtnshp of Derry, PA	\$900				Enacted 1999; intended to be adjusted based on Consumer Price Index
Miami-Dade Co., FL		Fee per acre: \$269,750; \$154,471; \$130631			Fee varies by Park Benefit District, Open space area calculated on the basis of population density by dwelling type

Fees based on estimation of land value. Two jurisdictions apply a single, flat fee per acre. The fees are \$45,000 and \$50,000. One is based on the average residential land values in the jurisdiction, while the other is based on the cost of recreational open space to the jurisdiction.

Table 7

Amherst, NY - Fees for Recreation and Open Space			
Use	Open Space	Recreation	Open Space Plus Recreation
Detached dwellings per unit			
Lot area 11,500 sq. ft. or larger	\$230	\$500	\$730
Lot area from 8,450 sq. ft. to 11,499 sq. ft.	\$195	\$350	\$545
Lot less than 8,450 sq. ft.	\$130	\$250	\$380
CR3A lots	\$130	\$350	\$480
Mobile homes	\$195	\$350	\$545
Attached dwellings per unit			
Senior citizen	\$130	\$65	\$195
Other	\$130	\$200	\$330
Industrial			
RD,ST,OB	\$0.13 per sq. ft. *		
GI	\$0.195 per sq. ft. *		
Commercial	\$0.156 per sq. ft. *		
Community facilities	\$0.104 per sq. ft. *		

NOTE: * The open space element of the fee is based on the gross floor area of each building on a lot. No recreation element of the fee is charged since these developments do not generate any demand for recreational facilities.

Two other jurisdictions vary their fee per unit of land. One, Baltimore County, varies its fee-per-square foot by zoning classification, as discussed above. The other, Miami-Dade Co., varies its fee per acre by park benefit district, with fees ranging from \$130,631 to \$269,750, or \$3.00 and \$6.19 per square foot. For four jurisdictions the fee is a percentage of the fair market value of the specific property on which open space would otherwise be reserved, with fair market value determined by either appraisals or an assessment.

Aurora, CO, provides for several, optional means of determining the fair market value of the development site, primarily based on appraisals. The developer may contract for an appraisal at his/her expense, or submit a recent appraisal. The developer's appraisal is reviewed by staff, who may question its parameters or assumptions. If agreement cannot be reached, the city may conduct another appraisal at the city's expense. If a third appraisal is needed, the cost is shared by the city and the developer. In cases where it is not feasible to conduct an appraisal, Aurora may permit the developer to use other documentation of land costs as the basis for the fee, including a contract of sale, a lease agreement, or appraisals of property recently acquired by the city for use as open space.

In several jurisdictions the fees are supposed to be adjusted for inflation at regular intervals, but most are not being updated. Agency staff of some jurisdictions interviewed by phone did not know the original basis for the amount of the fee. Three jurisdictions incorporate population density by dwelling type into their fees, either directly, as is the case for Amherst, or indirectly through the calculation of the open space land area to be reserved.

III. Potential Basis for a New Fee Structure

This section considers two alternative frameworks for the establishment of fees. One framework is the value of the property to be developed for which an LOS waiver is sought. It is discussed in subsection A. Within this framework are two different approaches; one focused on the value of each development parcel individually; the other based on a classification system in which different properties may be grouped by common characteristics which are presumed to correlate with property value. The current fee structure for DR and RC zones takes this latter approach. It categorizes properties by zoning designation, based on the assumption that zoning is a strong indicator of relative property value. Geographic location is another potential basis for categorizing land by relative value. Staff used several indicators to test this approach.

Instead of focusing on the value of the property for which waivers are sought, the second framework focusses on the county's cost to provide alternative open space when waivers are granted. This framework is explored in subsection B.

A. Value of Development Parcels

Market Value of the Parcel to be Developed

A commonly accepted indicator of the fair market value of a single parcel of real property is the amount paid for the land in a recent sale. An appraisal is often used to establish the fair market value of a property when the purchase is being financed by a third party. An assessment is used to establish or update the estimated value of a property for tax purposes.

The appraisal and assessment processes are similar for unimproved property. A trained professional examines data on the recent sales of comparable parcels, considers factors that might make the property in question similar to or different from the comparables with respect to factors such as zoning and the location and condition of the property, and assigns a value to the property. The major challenges are comparability, and the availability of sufficient data. Property values can vary widely over time. Where there are few recent sales, assessments and appraisals may be less reliable.

Sale prices and appraisal reports were among the data that were aggregated to help determine Baltimore County's current fees. A recent sale, current assessment, or appraisal/multiple appraisals could be used as the basis for estimating the fair market value of a single parcel, providing the basis for the waiver fee for that parcel, as it is for some of the jurisdictions surveyed.

The purchase of land for private development is often contingent on development approvals. Thus in some cases there might not be a settled land sale on which to base a fee at the time that the fee needs to be determined. An alternative to an actual contract of sale is the assessed value of the property. This indicator of land value tends to change gradually, and may not fully reflect the extent of appreciation or depreciation when the property has not been sold for many years. Belmont, NC uses assessments, but adjusts them for inflation to address this problem. Between assessments and appraisals, the latter are considered the more reliable indicators of land value, but the cost of one or more appraisals would have to be borne by the county or the developer, and the need to obtain an appraisal could delay development.

Relative Land Value by Geographic Location

Since property values vary from one part of the county to another, it is reasonable to expect that geographic areas could be identified in which land values are distinctly higher or lower than those in other areas of the county. Such geographic areas could provide a reasonable basis for a variable fee schedule. Staff developed maps to analyze several indicators of relative property value: the assessed value of residential, commercial, and agricultural properties; home values; and household incomes. The resulting patterns were found to vary depending on the indicator used; the source (census versus assessment data); the thresholds selected; the geography (census tract vs. zip code); and whether the value was a mean or median.

For residential properties, residential assessments, home values, and household incomes were generally lower in the older, inner-beltway areas to the southeast and southwest, and higher in the northern and central areas of the county. Map 1 shows relative home values by census tract. Home value is the owner's estimate of how much the property (house and lot, mobile home and lot, or condominium unit) would sell for if it were for sale. Some of the variability in values may reflect the predominance of different types of housing in different areas, different sizes of lots, or simply differences in perceptions of the home values by their owners. Home value, as defined, can be distinguished from the value of unimproved residentially-zoned land, which was the basis for the current fee structure. Both can serve as indicators of the relative land value.

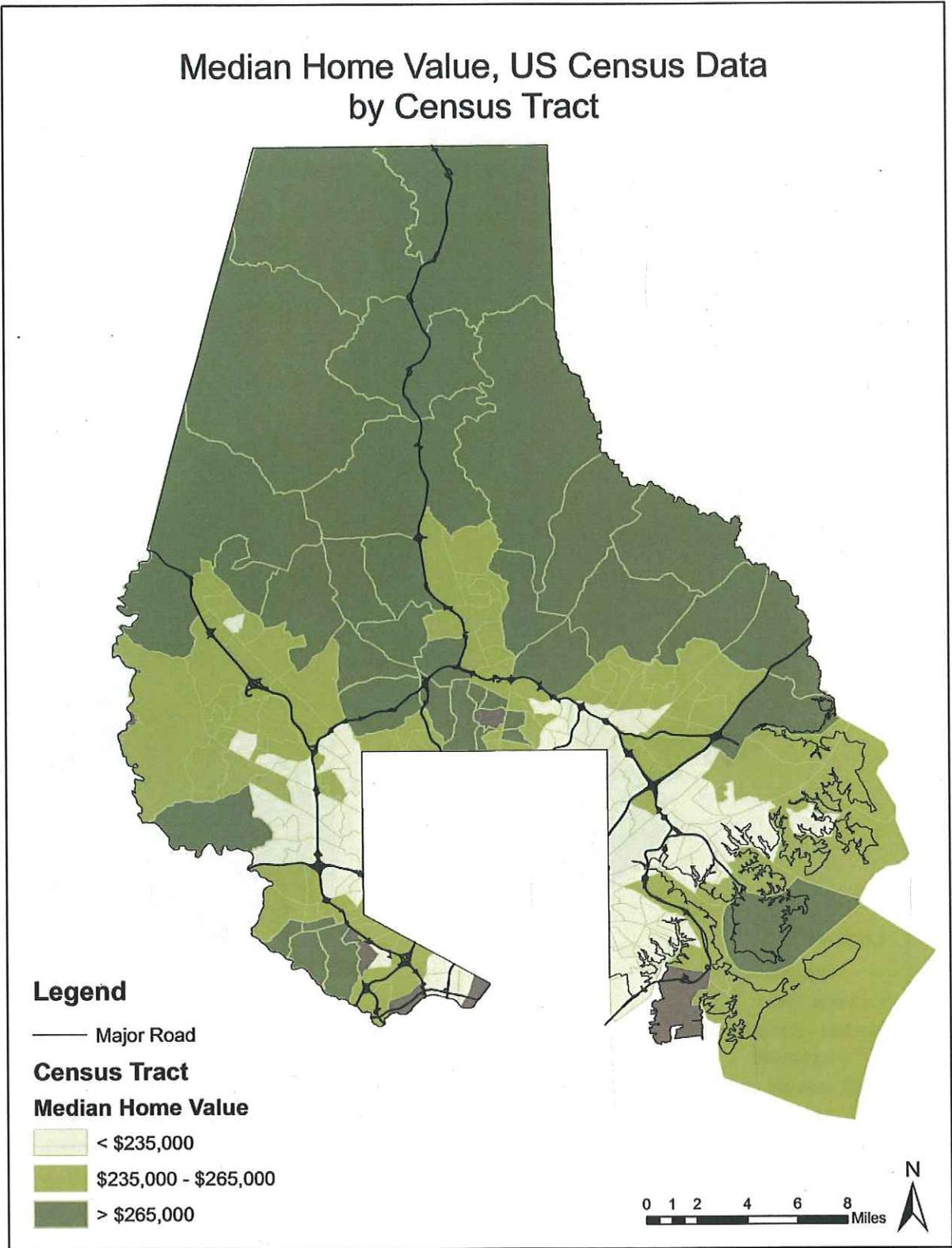
While home values are comparatively low for census tracts on the southeast side of the county, they are generally higher in tracts that include waterfront property than in nearby tracts that do not. Buyers pay premium prices for properties with water frontage, but not necessarily for properties a block or two away from the water. It is likely that waterfront properties are skewing the home values of all properties in the census tracts in which waterfront properties are located.

A comparison of Maps 1 and 2 shows that, median home values, and median assessed values are similar when compared at the census tract level. Where there are differences, in almost all cases the assessed values are lower than the home values. For commercial properties (Map 3), the higher and lower values are reversed for some census tracts, when compared with the values in Maps 1 and 2. Comparative values are higher for some tracts inside the beltway and along

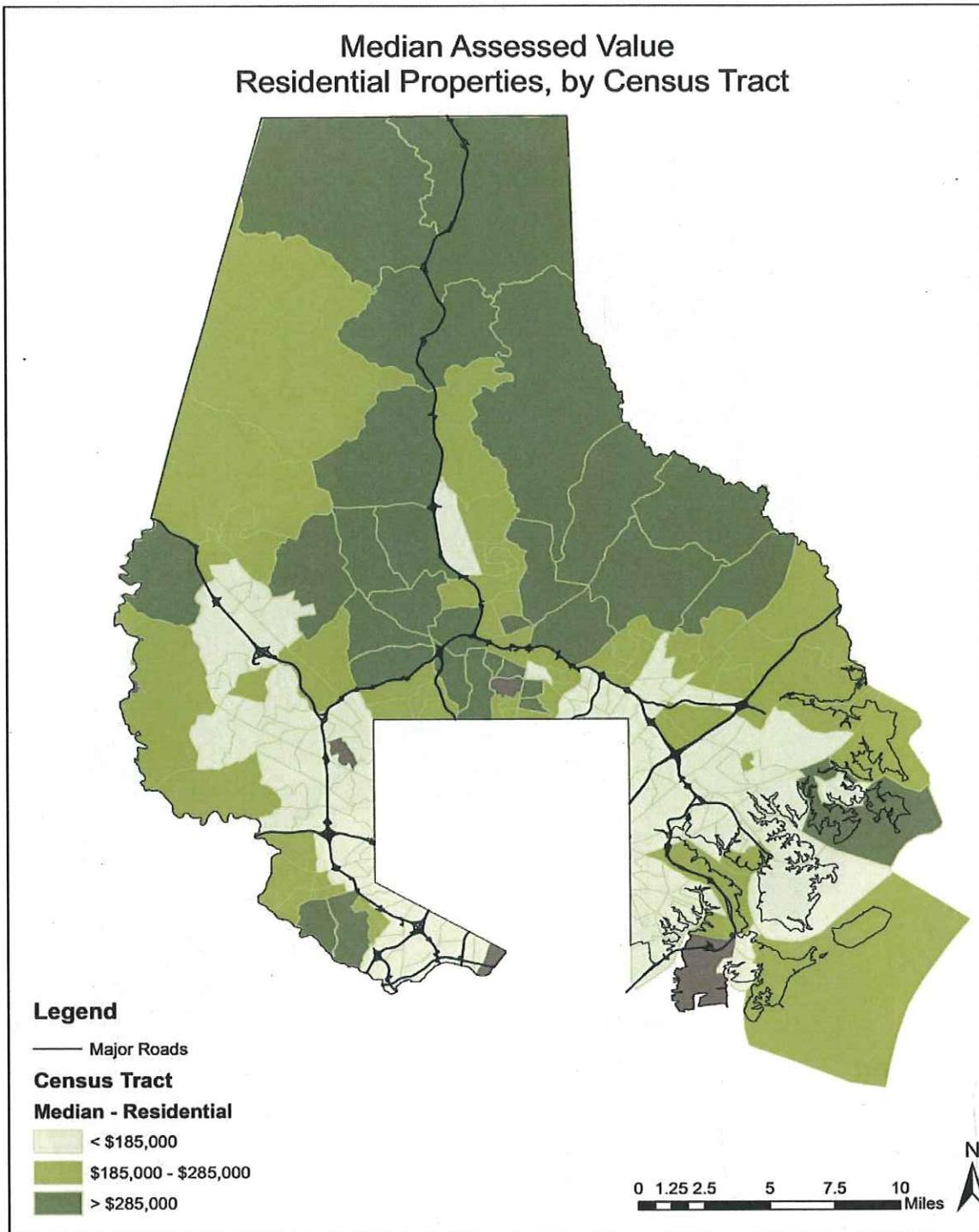
commercial corridors, and lower for much of the rural area. The I-83 corridor shows generally higher values on all of the maps. Rental apartments are categorized for assessment purposes as commercial, and Baltimore County purchases commercial as well as residential properties for use as open space.

Map 1

Median Home Value, US Census Data by Census Tract

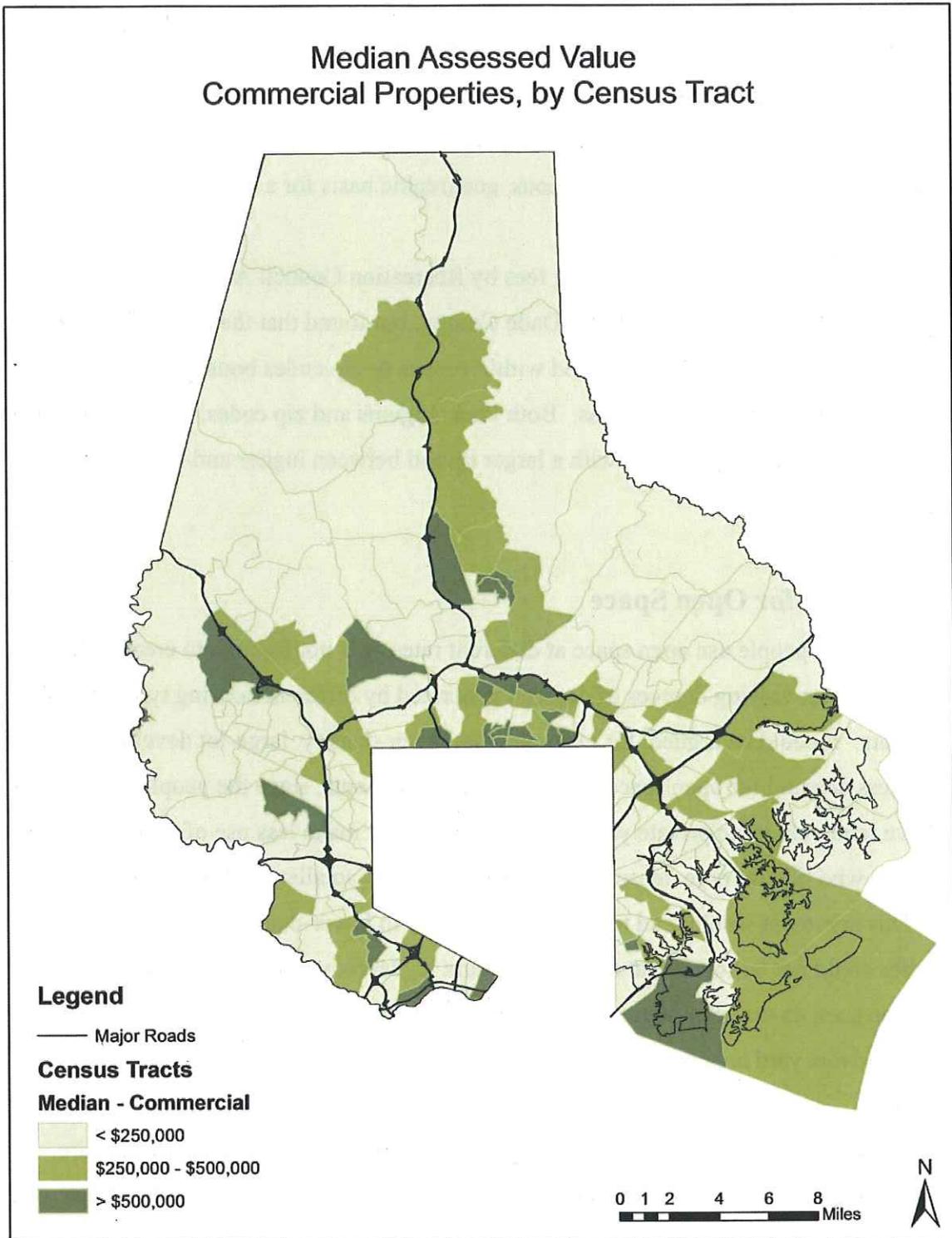


Map 2



Map 3

Median Assessed Value Commercial Properties, by Census Tract



Property values may tend to be lower *on average* in some census tracts and zip codes, but individual property values often vary considerably *within* any given census tract or zip code due to unique characteristics such as waterfront. Location presents the same type of problem as zoning class when considered as a basis for setting fees. General patterns of variation in land value are evident across the county, but these patterns are not consistent across different data bases. They do not indicate a single, obvious, geographic basis for a variable fee schedule.

Staff considered the possibility of setting fees by Recreation Council Area or Park Region, similar to the approach taken by Miami-Dade County, but found that the council area boundaries were not able to contain nor be contained within census or zip codes boundaries, making it difficult to analyze data for these areas. Both Park Regions and zip codes, because of their large size, are likely to encompass areas with a larger spread between higher and lower land value indicators.

B. Demand for Open Space

While individual people use open space at different rates, it is not feasible to create a fee structure based on varying degrees of demand generated by different housing types, lot sizes, or other factors. It could be argued, for example, that lower-density, large-lot developments generate less demand for open space than denser developments, since the people who live in them have relatively large private yards, and may therefore make less use of shared open space than people who live in more densely-developed areas with smaller yards or no private yard space. This argument would tend to support lower fees in lower-density zones or developments, but studies could not be found that support or refute it. Moreover, in order to base a *variable* fee structure on such an assertion there would need to be data on the effects of various *thresholds* of density or private yard area on open space use.

Conversely one could argue that single family dwellings, or dwellings on larger lots, are generally occupied by larger households with more children than multifamily dwellings, or dwellings on smaller lots, and that they therefore generate more demand for recreational open space. This is the underlying reasoning of Amherst, NY's fee schedule (Table 7) which provides for higher fees in lower-density zones and for detached dwellings. US Census data show that

single-family dwellings (attached and detached) house an average of 2.70 people, compared to 1.56 people for multifamily dwellings², and a study based on US Census data found that, on average, 100 newly-constructed, owner-occupied single family dwellings house 64 children, while 100 newly-constructed apartments house only 31 children³. But it has not been clearly demonstrated that these differences in household size or children per household actually affect the relative use of open space by the residents, nor is there a demonstrated relationship between lot size and open space use.

Many variables could affect the extent to which people use common open space, such as the size of private yard space, dwelling type or tenure, household size, residents' ages, proximity of homes to open space, and access to an automobile. Each of these variables alone or in combination with other variables could potentially affect the use of open space. Substantial amounts of empirical data and highly complex algorithms would be required to design a meaningful fee structure based on these types of factors, if it were feasible to do so at all. In the absence of such data and analysis, it is not possible to draw meaningful conclusions that would support an alternative fee structure based on these factors.

C. Offsetting the Cost of Open Space

To conform to State of Maryland open space guidelines, local jurisdictions must not only aim to meet overall goals for the amount of open space acquired, but also to ensure that the open space is usable and useful. Only one third of a jurisdiction's open space acreage that is not developed is creditable toward state of Maryland goals. Baltimore County spends LOS funds on both land acquisition and open space development (including renovations), which is consistent with the LOS Manual. Also, both the state and the county seek to provide open space and recreational facilities in the locations where they are most needed, and to ensure that they reflect the diverse

² Source: U.S. Census Bureau, American Community Survey, 2008-2012, Table name: TENURE BY HOUSEHOLD SIZE BY UNITS IN STRUCTURE

³ Tabulations based on the American Housing Survey, National Multifamily Housing Council; cited in "Overcoming Opposition to Multifamily Rental Housing," Mark Obrinsky and Debra Stein, 2007, Joint Center for Housing Studies of Harvard University.

needs and preferences of residents, which can range from ball fields to boat slips, and playgrounds to walking paths.

While the county follows a plan, it must buy parkland when appropriate parcels become available at reasonable cost, and it must purchase and develop open space as the budget permits. Thus, expenditures on the acquisition of open space vary from year to year, sometimes considerably. The county purchases open space that fills a particular need, regardless of the property's zoning classification. Purchases include properties with commercial and industrial zoning classifications, as well as residentially-zoned properties. Determining the county's cost of open space, much less an amount "reasonably proportionate to offset the increased cost" of LOS waivers, as suggested in the County Code, is challenging.

Baltimore County spent \$21million to acquire the 21 open space properties listed in Table 8. These properties represent the 482 acres of open space land purchased by the county during the period 2004-2013, the most recent decade for which data were available. The table shows the cost of these properties per thousand square feet, which is the amount of LOS land required to be reserved on a residential development site per unit.

Table 8 shows the wide variability in cost among this sample of properties, including those with the same zoning. Predictably, the business- and industrially-zoned parcels cost significantly more than the residential proper-ties.

Table 8
Cost of Open Space Purchased by Baltimore County
2004-2013

Fiscal Year	Zoning	Cost/1,000 Square Feet
FY 2006	BL-AS	\$51,653
FY 2008	BM-CT	\$28,696
FY 2009	BR	\$14,348
FY 2007	DR 1	\$1,030
FY 2009	DR 1	\$922
FY 2007	DR 3.5	\$3,280
FY 2009	DR 3.5	\$6,191
FY 2010	DR 3.5	\$4,983
FY 2004	<u>DR 5.5</u>	<u>\$2,309</u>
FY 2005	<u>DR 5.5</u>	<u>\$7,253</u>
FY 2008	<u>DR 5.5</u>	<u>\$1,607</u>
FY 2009	MLR	\$13,774
FY 2007	RC 2	\$593
FY 2004	RC 2	\$221
FY 2008	RC 20	\$355
FY 2009	<u>RC 20</u>	<u>\$8,035</u>
FY 2010	RC 4	\$530
FY 2010	RC 6	\$1,102
FY 2007	RC 7	\$913
FY 2010	RC 7	\$574
FY 2013	RC 7	\$429
	<u>Average</u>	<u>\$7,086</u>
	<u>Median</u>	<u>\$1,607</u>

But among the properties zoned DR 5.5, for example, costs ranged from \$1,607 to \$7,253 per thousand square feet (highlighted).

Note also that the single most expensive property purchased, at \$8,032 per thousand square feet, was zoned RC 20. Properties with RC 20 zoning are currently assessed the fourth lowest waiver fee by Baltimore County (see Table 2). Yet this property was more expensive per thousand square feet than the average cost of all of the properties purchased during the period: \$7,086 (bottom of Table 8).

IV. Flat Fee Alternative

Based on the preceding analysis, staff developed an alternative of a flat fee, or rate, per dwelling unit. It would address many of the problems identified with the current fee structure as well as

- Mirror the county's established policy on *reserving* LOS, which is that LOS is to be reserved at a rate per dwelling unit
- Align Baltimore County's open space fee policies with the corresponding policies of three neighboring jurisdictions in the Baltimore Metropolitan Region
- Eliminate the extreme disparities in the current fees
- Simplify the policy and make it more transparent

A. Assess a fee of \$1,600 per dwelling unit

As Table 8, Cost of Open Space Purchased, shows, there is a great deal of variability in the price of open space purchased by Baltimore County over the last decade. In these situations, the median is used as it is the "middle" value in a list of numbers. It is used in statistics to adjust for skewed distributions, and is seen as a better measure of "central tendency" than the mean value. The median cost to the county of purchasing open space over the past decade is \$1,600 and this would be an appropriate basis for a waiver fee.

This fee is rather comparable to that of Anne Arundel and Howard Counties, although it must be noted that these jurisdictions also assess either impact fees or excise taxes that are paid by developers in addition to the open space fees to offset the cost of schools, roads or other

facilities, and that amount to significantly larger outlays by developers than the proposed open space fee for Baltimore County.

Fees Assessed by Other Jurisdictions - Shown As Per-Unit Fee or Fee Per 1,000 Square Feet

Per Unit Fee		Per Acre Fee Converted to Fee Per 1,000 Square Feet*	
Anne Arundel Co	\$1,000	Belair, MD	\$1,148
Carroll Co., MD	\$533	Dublin, OH	\$1,033
Howard Co., MD	\$1,500	Miami-Dade Co.	\$6,197
Amherst, NY	\$195-\$730	(3 fees - apply to different geographic areas)	\$3,546
Derry, PA	\$900		\$2,999

*The jurisdiction's fee per acre divided by 43,560 sq. ft. to get fee per square foot; quotient multiplied by 1,000 sq. ft., the area required to be reserved as LOS by Baltimore County

B. Update the fee based on the Real Estate Index

The County Council has mandated that the fee be updated every two years. It would be very simple to use the Real Estate Index to update the flat fees.

Recommendation

County Council Resolution 44-13 recognizes that the rationale for the current open space waiver fee structure is difficult to understand; it is based upon data and processes used only by professional appraisers and attempts to standardize rates through use of zoning classifications, which have varying land values across the county. As explained in this report, staff investigated a number of different approaches to achieve a comprehensive and transparent methodology that was easily understandable by the public. After extensive review of the options, it made sense to base waiver fees on the acquisition costs of land rather than the zoning of the development site or the presumed cost of land associated with the zoning class. Thus, staff identified a flat fee of \$1,600 per dwelling unit based on the median historic cost of purchasing the same amount of parkland as the amount of LOS land to be waived.

However, when compared to the existing system, it became evident that the alternative of \$1,600 per dwelling unit would result in lower equivalent fees in the DR zones. See Table 9. And as Table 10 shows, the \$1,600 per unit is substantially below the median value of the average approved fees over the last decade for which data was available.

Thus, while the flat fee of \$1,600 per dwelling unit makes sense on a number of levels, it would result in a lesser amount of funding collected to purchase local open space and develop

Table 9

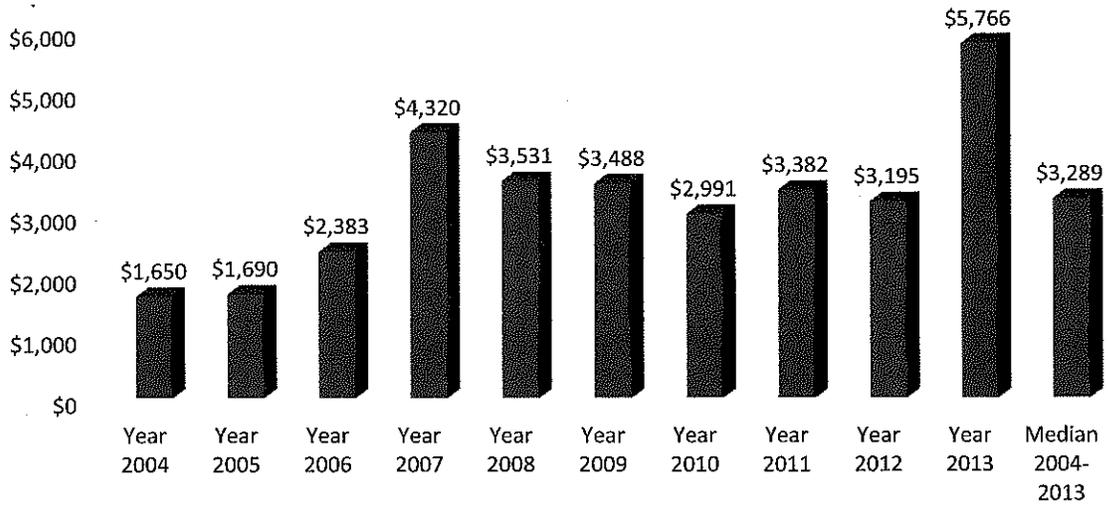
Current Baltimore County Fees - Effective Fee Per Dwelling Unit

	Fee Per 1,000 Square Feet (Fee Per Dwelling Unit)
DR 1	\$1,380
DR 2	\$2,300
DR 3.5	\$3,440
DR 5.5	\$3,790
DR 10.5	\$4,360
DR 16	\$5,740
RC 2	\$220
RC 3	\$690
RC 4	\$530
RC 5	\$1,100
RC 6	\$550
RC 7	\$220
RC 8	\$230
RC 20	\$280
RC 50	\$150
Median	\$690
Average	\$1,665

recreational uses. In the absence of a methodology that is both logically transparent and would result in equivalent amounts of funding for future local open space, staff recommends retaining the existing fee structure and renewing all exemptions, including, but not necessarily limited to CT or CCC districts, RAE zones, elderly housing facilities, dormitories, and domiciliary and nursing care facilities.

Table 10

**Average Approved Fee Per Thousand Square Feet
By Year - 2004-2013
Median Value - 2004-2013**



Attachment A

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2013, Legislative Day No. 10
Resolution No. 44-13

Councilmembers Quirk, Marks, Almond & Olszewski

By the County Council, May 23, 2013

A RESOLUTION of the County Council requesting the Planning Board to develop a comprehensive formula for the manner of establishing local Open Space waiver fees.

WHEREAS, the County's adequate public facilities law requires a residential developer to provide a certain amount of open space for each dwelling unit that is constructed; and

WHEREAS, the law permits the Department of Recreation and Parks to allow a developer to pay a fee to the Local Open Space Revenue Account in lieu of providing open space; and

WHEREAS, the fees are established by the Administrative Officer, in consultation with other County departments, based only upon the minimum requirement that the zoning classification of land, its use, and its public purpose be considered; and

WHEREAS, the Council adopted the initial schedule of fees in 2000, and amended the schedule in 2004 and 2006; and

WHEREAS, the Administration has recently recommended a new schedule of fees; and

WHEREAS, the Council is currently addressing the issues of the use of open space waiver fees and their periodic review (Bill 31-13); and

WHEREAS, the Council believes that the current law provides insufficient criteria for establishing open space waiver fees and that a comprehensive formula should be devised in

order to provide a rational basis for the periodic review and establishment of these fees; and

WHEREAS, in devising a formula, the Planning Board is requested to (1) identify the open space needs of the County with the goal of using waiver fees to meet those needs, (2) recommend a method to encourage the payment of waiver fees in cases involving small lot subdivisions, and (3) recommend any needed modification to the procedure that permits a waiver of standards or fees by the Director of Recreation and Park; now, therefore be it

RESOLVED by the County Council of Baltimore County, Maryland, that the Planning Board is requested to study the current open space waiver fee system, including the relevant provisions of the Open Space Manual, and to recommend to the County Council a comprehensive, transparent formula for the manner of establishing local Open Space waiver fees; and be it further

RESOLVED, that the Planning Board shall report its findings and recommendations to the County Council by October 1, 2013.

Attachment B
Baltimore County Code: Section on Recreation Space

§ 32-6-108. RECREATIONAL SPACE.

(a) *Definitions.*

- (1) In this section, the following words have the meanings indicated.
- (2)
 - (i) “Active open space” means areas with less than a 4% grade variance which are open, dry, and unencumbered that are suitable for interactive play or for gatherings of 10 or more individuals.
 - (ii) “Active open space” includes, for multi-family buildings, as defined in the Baltimore County Zoning Regulations:
 1. Pools;
 2. Tennis courts; and
 3. On-site community playgrounds.
 - (iii) “Active open space” does not include environmentally constrained areas.
- (3) “Environmentally constrained area” includes areas that:
 - (i) May not be developed because of critical area buffers, forest and stream buffers, forest conservation easements, wildlife habitats, floodplains, and wetlands; and
 - (ii) Contain stormwater management facilities.
- (4)
 - (i) “Passive open space” means gently sloped open or sparsely wooded areas with less than a 10% grade variance suitable for non-interactive recreational uses including walking, picnicking, or sitting.
 - (ii) “Passive open space” does not include environmentally constrained areas.

(b) *Scope.*

- (1) This section applies only to residential development.
- (2) This section does not apply to:
 - (i) The renovation or reuse for residential dwelling purposes of an existing structure or site within the Oella National Register District or the Ellicott Mills National Register District; or
 - (ii) Minor subdivisions.

(c) *Minimum requirement.*

- (1) Except as provided in subsections (d), (e) and (f) of this section, an applicant shall provide a minimum of 1000 square feet of suitable open space per dwelling unit.

- (2) The first 650 square feet of open space shall be:
 - (i) Dedicated for active open space in no less than 20,000 square foot parcels; and
 - (ii) Provided on the site of the development.
- (3) (i) The remaining 350 square feet of suitable open space may be dedicated for active open space, passive open space, or both.
 - (ii) The Department of Recreation and Parks may allow an applicant to pay a fee to the local open space revenue account instead of dedicating the remaining 350 square feet, if the department determines that there is no suitable land to meet the remaining open space requirements.
- (d) *Fee — In general.* Unless the development is adjacent to a county or state park, if the residential development contains 20 or fewer dwelling units, an applicant may pay a fee to the local open space revenue account instead of dedicating the first 650 square feet as required in subsection (c)(2) of this section.
- (e) *Same — Certain districts and zones.*
 - (1) The Department of Recreation and Parks may allow an applicant to pay a fee to the local open space revenue account instead of dedicating the first 650 square feet as required in subsection (c)(2) of this section if:
 - (i) The development is:
 - 1. Located in a CT or CCC district or a RAE zone;
 - 2. An elderly housing facility, as defined in the Baltimore County Zoning Regulations; or
 - 3. Dormitories for the housing of not less than 50 students attending an accredited higher education institution; and
 - (ii) The Department of Recreation and Parks determines that there is no suitable land to meet the open space requirements.
 - (2) (i) In a CT or CCC district and a RAE zone, an applicant shall meet the amenity open space requirements in the Baltimore County Zoning Regulations.
 - (ii) The amenity open space provided by the applicant shall be deducted from the open space requirements provided for in subsection (c) of this section.
- (f) *Same — Tracts of five acres or less.*
 - (1) (i) This subsection applies to development tracts of five acres or less that are located within the urban rural demarcation line and are zoned D.R. 10.5 or D.R. 16.
 - (ii) This subsection does not apply to a redevelopment of improved property, if the structures on the property are proposed to be razed and a new development constructed in their place.

(2) The Department of Recreation and Parks may allow an applicant to pay a fee to the local open space revenue account instead of dedicating the minimum amount of open space required in subsection (c)(1) of this section if the Director finds that the objective of providing for recreational opportunities in the county is better served by such payment.

(3) To obtain a waiver under this subsection, an applicant shall pay to the county a fee of 200% of the fee that would ordinarily be imposed under subsection (1) of this section.

(4) (i) The county shall direct 10% of the total fee paid under this subsection to Neighborspace of Baltimore County, Inc.

(ii) The remainder of the fee paid under this subsection shall be utilized in the recreation and parks sectors impacted by the proposed development.

(g) *Waiver of standards.*

(1) The standards or requirements for local open space contained in this section or in the local open space manual may be waived by the Director of Recreation and Parks for good cause shown, if he determines that there is no suitable land to meet the open space requirements, or for any environmental considerations he deems appropriate.

(2) The Director shall assess a fee for the waiver in an amount not less than the fee established in accordance with subsection (1) below. The fee shall be used in the same councilmanic district as the property for which the waiver was granted.

(3) The Director may also accept equipment or materials suitable for recreational use on county property.

(4) The Director shall allocate 20 percent of any cash fee collected under this section to Neighborspace of Baltimore County, Inc.

(h) *Honeygo Overlay District.* If this section and the open space requirements in the Honeygo Overlay District as defined in the Baltimore County Zoning Regulations conflict, this section applies unless the open space requirements in § 259.9.E. of the Baltimore County Zoning Regulations are more stringent.

(i) *Maintenance of dedicated open space.*

(1) The applicant or the applicant's successors and assigns shall maintain open space dedications until the open space is accepted by the county under Article 3, Title 9, Subtitle 1 of the Code.

(2) The county may condition its acceptance of the dedicated open space upon the continuing obligation of the applicant or the applicant's successors and assigns to maintain the dedicated open space.

(j) *Local open space manual — Compliance.* An applicant shall comply with the requirements of the local open space manual.

(k) *Same — Provision for credit.* The local open space manual may provide for the crediting of recreational improvements taken by an applicant that are located on the dedicated active open

space that is required under subsection (c)(2) of this section against open space that is required under subsection (c)(3) of this section.

(l) *Fees.*

(1) (i) The County Administrative Officer shall establish the fees payable under this section after consultation with the Department of Recreation and Parks, the Office of Budget and Finance, and the Department of Permits, Approvals and Inspections.

(ii) The County Administrative Officer shall review the fees established under this section at least once every two years.

(2) The fees shall be reasonably proportionate to offset the increased cost to the county for acquiring recreational land.

(3) When establishing the fees, the County Administrative Officer shall consider, at a minimum, establishing the fees based on the zoning classification of the land and the uses of the land and their public purposes.

(4) (i) The County Administrative Officer shall provide for a reduced fee for a planned unit development located within the Towson Commercial Revitalization District in an area for which a community plan was prepared by the Department of Planning and approved by the Planning Board and the County Council.

(ii) The amount of the fee shall be equal to the fee established for the C.T. zoning classification.

(5) (i) The fees shall be adopted by the County Council by resolution.

(ii) The fee schedule shall be posted on the county's internet website, and include a description of the documentation used in calculating the fees.

(6) The fees established under this section shall be paid before the recordation of the record plat.

(1988 Code, § 26-498) (Bill No. 110-99, § 3, 3-1-2000; Bill No. 112-02, § 2, 7-1-2004; Bill No. 75-03, § 31, 7-1-2004; Bill No. 7-04, § 1, 4-11-2004; Bill No. 14-05, 2, 3, 3-21-2005; Bill No. 108-05, § 1, 10-30-2005; Bill No. 45-07, § 1, 8-4-2007; Bill No. 9-08, § 1, 3-31-2008; Bill No. 122-10, §§ 12, 30, 1-16-2011; Bill No. 55-11, §§ 1, 2, 10-16-2011; Bill No. 31-13, § 1, 6-3-2013)

Editor's note:

Bill No. 45-07 created a new subsection (g), and renumbered the existing subsection (g) through (k) to be (h) through (l). The Bill did not, however, amend the existing cross-reference in subsection (f)(3) to subsection (k). As a result, this cross-reference has been corrected to subsection (l).