

***Planning and Development Control at the County Level
in the United States:
Lessons from Montgomery County, Maryland, and
Fairfax County, Virginia***

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Executive Summary

This report provides an overview of planning and development control at the county level in the United States based on a case-study analysis of two counties in the Washington, DC metropolitan area: Montgomery County, Maryland, and Fairfax County, Virginia. The intent is not to provide an in-depth analysis of the differences between these two counties but instead to demonstrate general principles and procedures of county planning in the United States.

Although Montgomery and Fairfax counties differ substantially in their philosophical approach to planning, the institutions and procedures used to plan and manage urban growth in these two counties are largely similar, and are typical of other highly-populated counties in the United States. The Constitution of the United States provides that powers that are not specifically reserved by the federal government are accorded to the fifty states, or to the people. Thus, in the United States, local governments -- whether townships, cities or counties -- are established under state law and are therefore subject to control by their states.

In the early 1900s, Maryland and Virginia, like most other states, delegated authority to plan and manage land use to local levels of government, including cities and counties. In some states, like Maryland, the delegation of authority to plan and manage land use was granted as a part of general delegation of authority described as "home rule" powers. Local governments with home rule can adopt and enforce a broad array of ordinances for the purpose of increasing the welfare of local residents. In other states, like Virginia, the delegation of authority to plan and manage land use is strictly limited under a doctrine known as "Dillon's rule." Local governments in Dillon rule states can only adopt and enforce ordinances that are specifically authorized by the state government. This difference in the extent of local government authority enables Montgomery County, Maryland, to be more innovative in its approach to land use planning and management than Fairfax County, Virginia. But since Virginia has authorized local governments in Virginia to enact and enforce a relatively standard set of land use management tools, the general tools used to plan and manage land use in Montgomery County and Fairfax County are not that different from each other or from most other counties in the U.S.

Like most other counties, Montgomery and Fairfax counties have a board of elected officials responsible for all major policy decisions. The elected board is advised by a planning commission comprised of citizen volunteers appointed by the elected board. The planning commission is responsible for holding public hearings on, and making recommendations to elected officials on, the comprehensive plan, the zoning ordinance and other major planning documents. The commission also has power to review and make decisions on development proposals. Assistance with all aspects of the comprehensive plan review and other planning commission work is provided by a planning department staffed by paid employees of the county. (The elected board and planning commissions are not usually paid positions.) Employees in other county departments -- such as transportation, utilities, and property tax assessment -- work closely with the planning department staff.

The comprehensive plan is a broad and general statement about the future development of the county. Typical elements of a comprehensive plan include economic development, land use,

public infrastructure, natural resources, and housing. The comprehensive plan is often augmented with specific functional plans and local area plans. A variety of policy instruments are used to implement the plan. Common instruments include a zoning ordinance, subdivision regulations, a capital improvements plan, and a variety of housing programs and policies. Because Montgomery County has home rule powers, and because the state of Maryland is more active in promoting growth management, Montgomery County uses more policy instruments that impose more restrictions on development than in Fairfax County. These include Priority Funding Areas (explained herein) for containing urban growth, Transferable Development Rights for protecting rural land, and an Adequate Public Facility Ordinances to assure that facilities are in place for providing urban services to new development.

Coordination between local governments and between different levels of government is attempted in a variety of ways. By state law, Montgomery County must provide neighboring local governments and the Maryland Department of Planning with an opportunity to review changes to its comprehensive plan. There are no such requirements for counties in Virginia. To coordinate transportation plans and policies, both counties are members of the Washington Metropolitan Council of Governments. To coordinate on the protection of the Chesapeake Bay, the State of Virginia and the State of Maryland are members of the Chesapeake Bay Commission. However, nearly all regional councils and organizations serve an advisory, not controlling, role with regard to the participating local governments. Further, in Virginia, municipalities are largely independent of the counties in which they are located. That is, residents of a municipality in Virginia pay no taxes to the county in which they reside and receive no county services. This further impedes coordination between government service provision in that state.

Though next-door neighbors with largely similar structures for land use planning and management, Montgomery and Fairfax Counties (and the states in which they are located) have taken significantly different approaches to the growth management. Fairfax County, like the State of Virginia, favors an approach to land use and urban development that is highly deferential to market forces. That is, the role of government is viewed as primarily the definition and protection of property rights while the pace and local of urban development is left largely in the hands of private landowners and developers. The result has been extremely rapid growth in the post war period and a development pattern often characterized as urban sprawl (low density development in which housing, shopping and employment are spatially separated from each other, leading to automobile dependency and the associated environmental problems). Montgomery County, like the State of Maryland, has taken aggressive steps to control sprawl and, while also experiencing high rates of growth, has made greater efforts to protect rural lands, concentrate development near transit stations, and promote housing affordability.

Although Montgomery County is in a home rule state and Fairfax County is in a Dillon rule state, both have significant powers and responsibilities compared to counties in other states. Both have planning and zoning powers and the responsibility for providing the full range of public services. Yet these powers and responsibilities are limited in a number of respects. First, both counties are limited in their ability to plan and manage growth in incorporated municipalities. Second, neither county has full control of either the highway or transit planning process. Finally, both counties have limited ability to control the rate and character of urban growth. As jurisdictions in a larger and dynamic metropolitan area, both counties face pressures

from market forces to accommodate more populations and jobs. New stores and offices provide local governments with increased tax revenues but require relatively little in public expenditures for services, unlike new houses that require more public expenditures (especially for schools) than they provide in property tax revenue. Because jobs provide greater fiscal benefits to local governments than do households, both counties are more anxious to attract jobs than new housing. These competitive pressures have caused both counties to adopt policies that create jobs-housing imbalances, contributing to urban sprawl and to problems of housing affordability.

In sum, both Montgomery and Fairfax counties have, with a fairly similar set of planning tools and procedures, taken different approaches to managing urban growth. As a result, growth has been more rapid and dispersed in Fairfax than in Montgomery County. Still, both counties are limited in their ability to withstand the strong pressures for urban growth that exist in the Washington metropolitan areas. And, given the lack of requirements for regional coordination and the lack of guidance from a regional land use authority, both counties occasionally plan for growth in ways that are beneficial to local residents but detrimental to the region at large.

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1. Governmental structures, legislative powers and planning responsibilities in the US

1.1 Role of the Federal Government

The Constitution of the United States provides that powers that are not specifically reserved by the federal government are accorded to the fifty states, or to the people. Nowhere in its language does the Constitution provide any powers specifically to local units of government. Thus, in the United States, local governments -- whether townships, cities or counties -- were established under state law and are therefore subject to control by their states. Since the early 1900s, local governments in most states have been successful in convincing their state governments to grant them more powers, particularly related to land use planning.

1.2 Role of state governments

States have a lot of discretion in establishing laws, regulations and policies regarding functions within their borders. Therefore, it is not uncommon for laws governing similar types of functions to vary widely from state to state. For example, while most states impose a tax on personal income to support government operations, the amount or rate of this tax is higher in some states than others. Furthermore, nine states have chosen to impose no personal income tax at all.¹ Similar disparities exist in states' charters of local government structures, as well as local government functions related to planning.

1.3 Role of county governments

The powers of counties, in particular, vary from state to state. In some states, counties act as little more than agents of the state, their powers limited to managing state governmental functions at a regional level (such as roads, public welfare programs, and the courts). In other states (such as Maryland and Virginia) in addition to acting as agents of the state, counties also are empowered to serve as local government units for unincorporated areas within their boundaries.² Such counties exercise powers similar to those of municipalities, including land use and zoning powers. Both Montgomery County (MD) and Fairfax County (VA) function as units of local government for their citizens.

In some states, particularly in the northeastern U.S., states have empowered civil townships - - geographic and political subdivisions of counties- - with the power to plan and zone. In such states, county governments have little or no land use authority. Thus, in Pennsylvania, land use planning and zoning is conducted by over 2,567 separate towns and cities, leading to fragmented land regulation that constrains a regional strategy (Hylton, 2003). In contrast, in other states

¹ Seven states have no state income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming. Two others, New Hampshire and Tennessee, tax only dividend and interest income (Federation of Tax Administrators website, 2004).

² "Unincorporated area" refers to those geographic areas within a county that are not within the boundaries of a city or other municipality. Residents of a geographic area can create a new municipality (in order to have more self-governance) through the process of "incorporation". Incorporation can only occur when it is consistent with guidelines established in state law.

such as Maryland and Virginia the power to plan and zone is extended to county governments. Maryland, which borders Pennsylvania to the south, has 23 counties and 157 municipalities. However, in Maryland land use planning and zoning is performed primarily by counties and only a few municipalities.

1.4 Why there are differences across state lines, and even within states

In its examination of differences in planning and growth management in Montgomery and Fairfax Counties, this report will focus primarily on county government powers and constraints. In addition, this report will refer ways in which these counties engage in inter-jurisdictional partnerships and cooperation.

With regard to land use planning, the federal government plays only an indirect role. The federal government owns about one-third of the total U.S. land area, which it manages as national forest, national parks, or open lands. For the other two-thirds of the nation's land area, the federal government influences local land use through such federal legislation as the National Environmental Policy Act of 1970, the Clean Air Act of 1970 and the Act's amendments in 1990, the Clean Water Act of 1972 and the Endangered Species Act of 1973. Under other legislation, the federal government exercises indirect control through programs that encourage or require state and/or local land use planning for receipt of federal funds (such as the Coastal Zone Management Act of 1972 and the Flood Disaster Protection Act of 1973).

When local governments became interested in implementing zoning in the 1920s, the U.S. Department of Commerce developed and disseminated model state legislation in 1924 that states could use to enable local governments to zone. The Department of Commerce also disseminated a standard state planning enabling act in 1928 that states could use as a model if they wished. In summary, state governments have the power to engage in land use planning and regulation, a power that that have extended to their local government though enabling legislation.

2. County level planning

2.1 Powers of county-level governments in the US: home rule vs. Dillon's rule

In the application of their powers, states have utilized two distinct concepts in defining the powers of local governments: home rule and Dillon's Rule. *Home rule* grants local governments broad powers to manage and regulate those functions which the state does not explicitly reserve to itself. *Dillon's Rule*, named for the Iowa Supreme Court Justice whose 1886 ruling established the precedent, restricts the powers of local government to those specifically granted by the state in writing; those powers that are connected to specifically- granted powers; and those powers that are essential to governing -- in Judge Dillon's own words, "not simply convenient, but indispensable" (National Association of Counties, 2004).

Whether a state accords powers to its local governments under home rule or Dillon's Rule will necessarily impact local governments' ability to implement a broad array of policies and programs, including those related to land use and zoning. Today, most states, including Maryland and Virginia, do accord some degree of home rule to local governments, though to

varying degrees, and in some instances only to specific units of local government. For example, Montgomery County operates under a “home rule” charter, but the General Assembly retains legislative power on certain issues and requires that no local law can conflict with a public general law or the Constitution of Maryland.

For Fairfax County and other counties in Virginia, however, Dillon’s Rule is in effect, and this has specific implications for counties’ level of autonomy to set local tax rates and to develop guidelines and regulations for land use and development. While the Virginia General Assembly has passed legislation that enables localities to engage in land use planning and zoning within their jurisdictions, the state retains ultimate authority in areas in which powers have not expressly been granted to local governments. For example, a 2004 study by the Virginia Transportation Research Council for the Virginia Department of Transportation notes while the public power to regulate land use in Virginia is retained by local governments, including counties, in most instances responsibilities for planning, construction, and maintenance of road facilities rest with the state (Miller et al., 2004). As might be anticipated, this can create tensions between county and state government -- for example, when development is desired by the county in areas where the state has not provided adequate road facilities.

2.2 Typical planning responsibilities of counties in the US

County governments usually establish separate planning departments within the county structure, which are responsible for drafting the following:

- a) “comprehensive plans”, containing visions for how the county should develop over the next 20 years, along with goals, objectives and policy statements;
- b) “sub-area master plans”, which are more detailed guides for the physical development of specific areas within the county, consistent with the overall vision and goals expressed in the comprehensive;
- c) functional master plans, that contain recommendations for such countywide functions as transportation, parks and recreation, trails, public safety and historic resources;
- d) zoning ordinances and maps, that outline permitted land uses, height limits, densities and other requirements for development in different geographic areas of the county;
- e) subdivision regulations, that ensure that anytime a large parcel of land is subdivided for development, that the newly-created properties have sufficient street lighting, utilities, storm water control, etc.; and
- f) capital improvement programs, created every 5 or 6 years and updated annually, that show funding sources and priorities for capital projects such as roads, schools and other public buildings, and water and sewer systems.

The relationship between these different planning documents is shown in Figure 1. The comprehensive plan is the basis for all the other plans and regulations. In many states, state laws require that all planning regulations, such as zoning, be consistent with the comprehensive plan. So while generally considered advisory documents, in practice comprehensive plans can carry the force of law.

Figure 1, below, summarizes the relationship of federal, state, regional and local agencies in land use planning and zoning.

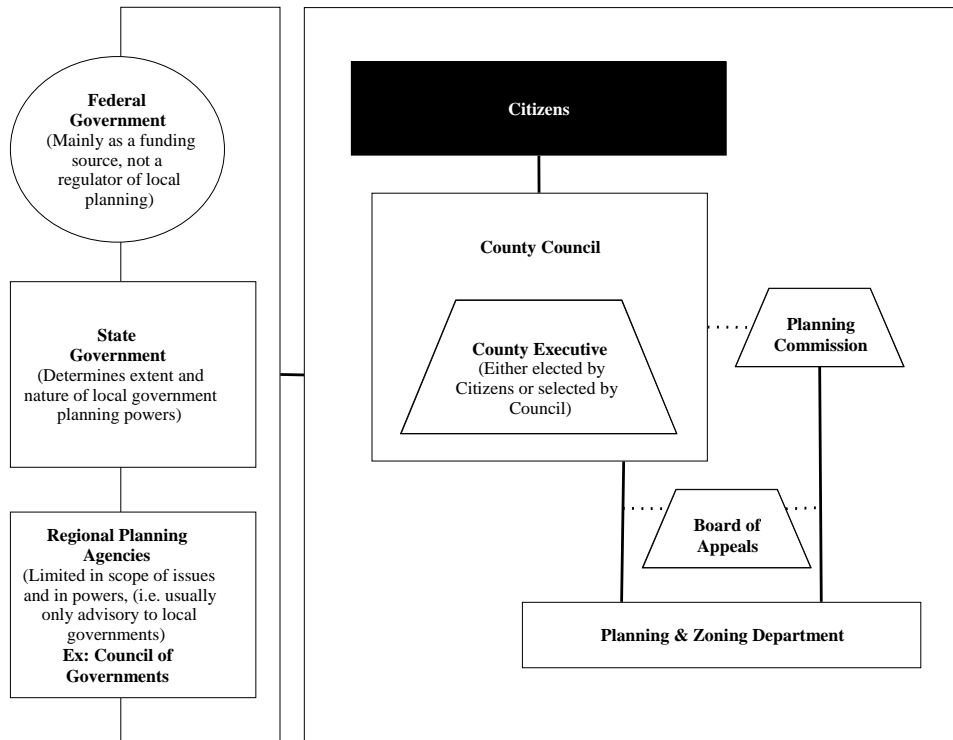


Figure 1: General Roles of Different Levels of Government in Land Use Planning and Zoning

2.3 Profiles of Montgomery County and Fairfax County

2.3.1 Differences in political culture in Maryland and Virginia

Besides differences in statutory contexts, there are several factors which help explain differences in the land use planning approaches taken in the two counties and the inconsistent pattern of coordination between Montgomery and Fairfax Counties. While the two jurisdictions are adjacent to each other, there are also separated by state boundaries, the Potomac River, and a significant cultural divide.

As Richard Tustian, former Planning Director for Montgomery County points out, Maryland is “a ribbon of land wrapped around the Chesapeake Bay”, a body of water which is North

America's most productive estuary (Tustian 2004). Concern over the health of the Bay has led to a number of land management programs designed to mitigate adverse environmental impacts from development. Maryland's capitol, Annapolis, lies adjacent to the Bay. While Virginia has a sizable coastline, the bulk of the state (including Richmond, the capitol), is inland. Virginia's nickname "Old Dominion," refers to that state's historical independence -- as exemplified by its having been a slave state that fought against the federal government in the U.S. Civil War. Maryland, on the other hand, fought on the side of the federal government in that conflict. So Maryland and Virginia have cultural differences that arise from history, geography, structure of government, and different attitudes towards the environment.

2.3.2 State-county distribution of authority in Maryland and in Virginia

States authorize the formation of local governments, and in doing so usually provide authorization for planning as well. Because the level of local government autonomy differs among states and, at times, within states, county planning responsibilities can differ widely from county to county. While many states require counties and other forms of local government to prepare comprehensive land use plans, some states merely outline general procedures and objectives, while others lay out highly specific planning requirements for local governments.

Both Virginia and Maryland delegate planning powers to local governments. Title 15.2, Chapter 22 of the Code of Virginia requires jurisdictions to appoint a planning commission to prepare and recommend a comprehensive plan for the physical development of the county, and review that plan at least once every five years for updates and changes, as well as to prepare and recommend amendments to the zoning and subdivision ordinances (planning tools that are described below). Maryland's counties are accorded similar powers to plan and zone through Article 66B, of the Annotated Code of Maryland. However, while Maryland requires a two-thirds vote of the local governing body to overrule a decision made by the planning commission, Virginia requires only a simple majority.

2.3.3 Brief profiles of the two counties

With a population of over 873,000 in 2000, Montgomery County is the most populous jurisdiction in Maryland. The county encompasses 323,000 acres and is bordered on the southwest by the District of Columbia, on the west by the Potomac River (across which is Fairfax County), and on the northeast by the Patuxent River. The county has grown from a primarily rural county in the 1950s to a robust urban county with a diversity of residential areas and commercial centers and a strong economy boasting a highly-educated workforce, many of whom are employed in the county's high-technology and biomedical industries. Montgomery County had the 8th highest median household income (of \$76,439) of U.S. counties in 2003 (U.S. Census Bureau Website, 2003).

Fairfax County, with a 2000 population of 984,366, is the most populous county in Virginia and has a population larger than that of seven U.S. states. Between 1970 and 1995 the county's population nearly doubled, increasing from 454,000 (14% of the Washington region) to 879,000 (21% of the region). Once largely a bedroom community for Washington, D.C., the county now has a large and growing employment base, one of the largest concentrations of retail stores on

the East Coast, and a powerful and diverse economy that includes extensive corporate office and research facilities. The County’s median household income of \$80,753 makes it the 5th highest income county in the U.S. The continuing rapid growth of population within its 24,960 acres presents the County with tremendous governance and planning challenges.

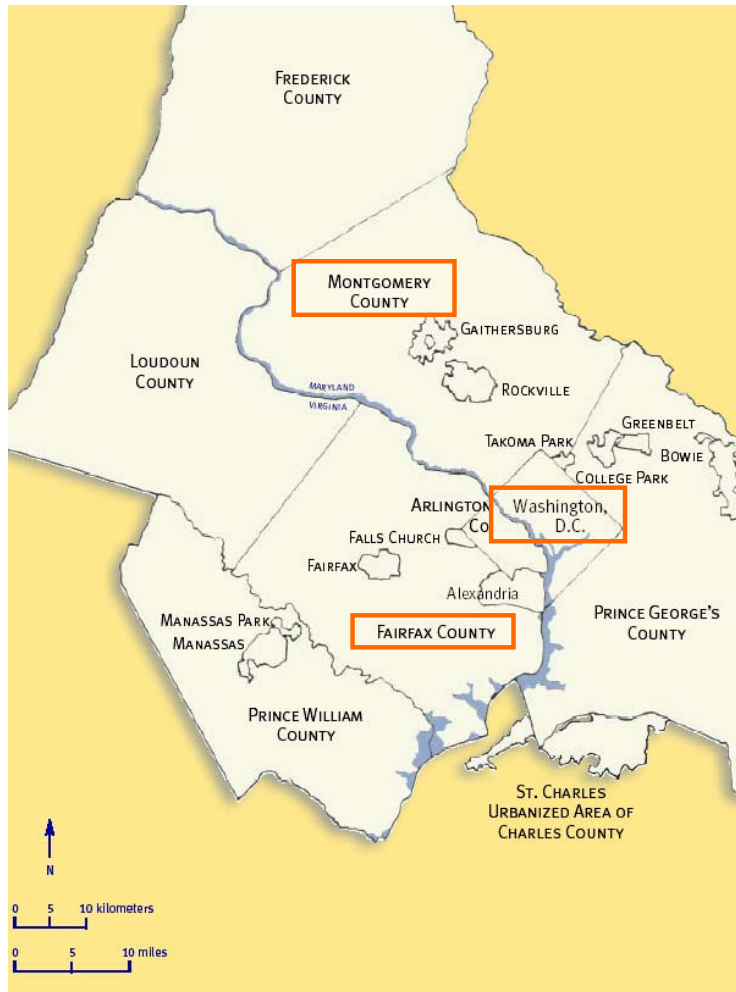


Figure 2: Map of Montgomery and Fairfax Counties in the Washington Metropolitan Area
 Source: HNTB 2004

Table 1, below, illustrates population growth in the two counties and compares their growth rates to the U.S. rate since 1960. The table indicates that while both counties have grown at a faster rate than the U.S., Fairfax County’s population growth rate has far exceeded that of Montgomery

County's. Figure 3 uses this data to illustrate the growth rates. Figure 4 compares the median household incomes of the two study counties and the U.S. as a whole.

Table 1. Population Montgomery County, MD and Fairfax County, VA: 1950-2000.

Jurisdiction	1960	1980	2000	% Change 1960-80	% Change 1960-2000
Montgomery Co.	340,928	579,053	873,341	69.8%	156.2%
Fairfax Co.	275,002	596,901	969,749	117.1%	252.6%
United States				26.3%	56.9%

Source: U.S. Census

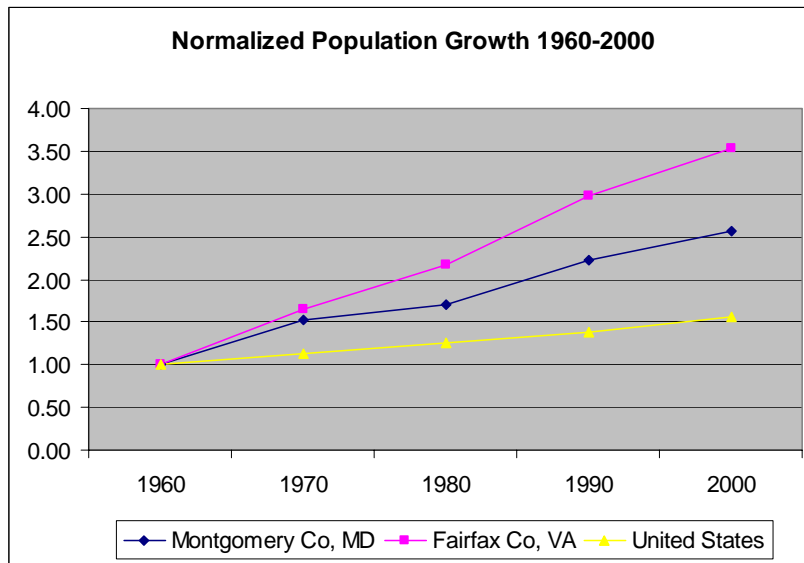


Figure 3: Normalized Population Growth in Montgomery County, Fairfax County, and the United States: 1960 to 2000

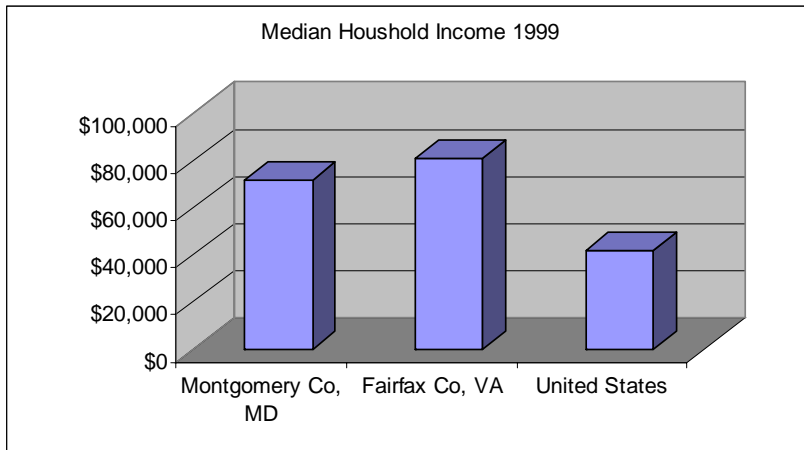


Figure 4: 1999 Median Household Income in Montgomery County, Fairfax County and the United States.

While both counties were largely rural, agricultural states in the mid-1900s, by 2002 nearly 24.0% of Montgomery County’s land area was in farms, while only 3.7% of Fairfax County land was still in farms. The more rapid growth of Fairfax County, and the more extensive loss of farmland to accommodate that growth, can be explained by what Harrington and von Hoffman (2004) assert are differences in the growth management politics of the two counties. According to the authors (p. 25-6):

In contrast to Montgomery County, whose large landowners supported both urban development and protection of parks and open spaces, Fairfax County’s large landowners, including the owners of dairy farms, accommodated and sometimes even carried out real estate development. In addition, local business leaders and workers in the building industries adamantly supported growth as a way of expanding revenues and jobs. The local support for real estate development in Fairfax County set the context for the public policies that encouraged growth. More directly, such support influenced zoning and regulatory decisions within the county that provided a political cover for state agency and court actions in favor of development.

In spite of the above-noted differences between Maryland and Virginia in general, and between Montgomery and Fairfax Counties in particular, in some planning-related respects the two counties are quite similar, as will be shown below.

2.3.4 Governance structures in the two counties

Montgomery County citizens elect a County Executive and 9 council members. Power is shared between the County Executive and the County Council. The County Council appoints a 5-member Planning Board (with the County Executive’s confirmation) that has a number of

responsibilities (see below). Citizens also elect an 8-member school board that oversees the county's public schools.

Fairfax County citizens elect a 10-member Board of Supervisors. Unlike Montgomery County, the County Executive is not elected by the voters but is appointed by the Board of Supervisors. Political power is concentrated in the Board of Supervisors. The Board also appoints a 12-member Planning Commission that has responsibilities similar to those of Montgomery County's Planning Board. However, the Fairfax Planning Commission does not have authority over county parks. Fairfax County voters elect a 12-member school board whose members serve four-year terms.

2.3.5 Planning Board responsibilities in the two counties

An Overview of Planning Commissions

Planning commissions or planning boards are citizen bodies authorized, either through state legislation or county charter, to make recommendations to the county council on broad policy issues (such as the comprehensive plan and the zoning ordinance) and to make actual decisions in certain types of development proposals. These commission members are appointed by the county's elected officials but have some autonomy. Usually if the county governing body is unsatisfied with a decision of the planning board a majority vote is needed to overturn a planning board decision.

Local governments began establishing planning commissions in the early 1900s as part of what is known as a "good government" movement in U.S. history. Fueled by citizen complaints about corruption in city governments, the movement's leaders called for the separation of politics from city administration. This separation of politics and administration was to be accomplished in part, for example, by having the city or county council appoint a five- or seven-member planning commission made up of trustworthy citizen volunteers, who would make recommendations on planning and zoning policies that were in the best interest of the city (county) as a whole. The clean government advocates believed that such commissioners could serve the public interest better if they did not have to run for office, so that they would not feel pressure to do favors for any developer or other business person who made a large cash contribution to their election. The members typically serve four-year terms.

Montgomery County Planning Board Responsibilities

Assisted by the planning department, the Montgomery County Planning Board drafts the comprehensive plan and local master plans for County council review and approval; advises the Council on text changes to the zoning ordinance; makes recommendations on applications for zoning map amendments; makes recommendations to the Board of Appeals on applications for special exception land uses and variances to the standards; administers the subdivision ordinance and the site plan process; and has extensive authority in planning, developing, maintaining and operating the county's park system.

Fairfax County Planning Responsibilities

In Fairfax County, the Planning Commission advises the Board of Supervisors on all matters related to the orderly growth and development of Fairfax County, including applications for

rezoning, special exceptions, conceptual/final development plans, proffered condition amendments (described below), and all associated amendments to such applications, as well as any amendments to the County's Comprehensive Plan. The Commission also reviews all public facility applications to ensure that they are compatible in location, character and extent to neighboring properties. Further, the Commission provides citizens with an opportunity to voice their support for, or concerns with, an application for development in and around their community.

2.4 The planning system in Montgomery County and in Fairfax County

2.4.1 How planning responsibilities are defined in the two counties

County planning departments are responsible for review of development proposals for conformity with the comprehensive plan, area master plans, and planning regulations (such as zoning and subdivision regulations), and for advising planning commissions and elected officials on whether to approve or reject development proposals. Planning departments also compile and analyze land use, housing, demographic and other forms of data to identify trends and areas of concerns in planning future development.

2.4.2 Guidelines and regulations for horizontal and vertical links

No State Plans; no Regional Plans

Neither Maryland nor Virginia has a state plan or state zoning, nor is the state divided into regions for which regional councils make plans (although there are a few agencies in each state that do a limited amount of planning for specific geographic areas or planning issues). Instead, planning and zoning are done by local governments in accordance with each state's planning enabling legislation.

Maryland. Title 5, § 5-402 of the Annotated Code of Maryland requires the state's Department of Planning to cooperate with and assist all units of government in the execution of their planning functions, in order to coordinate state planning activities with each other and with local plans. Entities whose planning activities the Department of Planning coordinates include:

- Local governments (including counties) in Maryland;
- Regional and private planning agencies in Maryland;
- Other departments and agencies of Maryland state government;
- Federal units of government; and
- Other individual states or regional groups of states.

As such, the Maryland Department of Planning is responsible for making sure that local plans are coordinated with state agency programs, and for enforcing planning laws. The establishment of "Priority Funding Areas" under Title 5 also enables the state planning agency to impact local planning. Based on certain state-established density and other criteria, counties may designate certain areas within their boundaries as Priority Funding Areas that the state then certifies if the criteria are met. Once certified, state capital growth projects are targeted only to these areas of the state. Areas outside of Priority Funding Areas are not eligible for state spending on roads,

water sewer, economic development projects or housing. If a county wishes to encourage development outside of such areas, the funding for necessary infrastructure must come from the county and/or or the developer. State funding for schools, however, is not limited to Priority Funding Areas.

Maryland's planning enabling legislation, Article 66B of the Maryland Code, states the following in section 3.07:

Before recommending the adoption of the [comprehensive] plan or any part, amendment, extension or addition, the planning commission shall hold at least one public hearing . . . Copies of the recommended plan and all amendments to the plan shall be referred to all adjoining jurisdictions, and to all State and local jurisdictions that have responsibility for financing or constructing public improvements necessary to implement the plan, at least 60 days prior to the public hearing.

Article 28A, which specifies planning and zoning authority for Montgomery and Prince George's Counties, gives broad authority to the counties to establish various mechanisms to ensure interjurisdictional coordination and cooperation. In addition, six multi-purpose regional agencies in Maryland have planning coordination responsibilities. However, as mentioned above, these six agencies do not cover the whole state and have limited functions. For example, one of the six agencies is the Baltimore Metropolitan Council, an organization of the elected leaders of Baltimore city and the five counties that are adjacent to the city. The council's planning primary focus is on transportation planning, although it also attempts to get collaboration on other issues of shared concern in the Baltimore metropolitan area. The council's recommendations are advisory to, not controlling of, the member governments.

In addition, there are a variety of strategies being used by local governments in Maryland to improve intergovernmental coordination in land use planning. A survey by the Maryland Department of Planning (1994) found over 50 examples, the majority of which were formal agreements between the same or different levels of government. In addition to having adjacent counties review their draft plans, other coordinating mechanisms used are: planning staff of a county providing technical assistance to a smaller unit of government within the county (Carroll County staff assisting several towns); a county and a city sharing the same planning commission (Wicomico County and the City of Salisbury); two adjacent counties coordinating the work of its planning boards (Montgomery and Prince George's Counties); counties and towns sharing the same consultant (Garrett County and seven of its municipalities); periodic joint meetings of city and county planning commissions in which members share their concerns about specific development projects that impact both jurisdictions (Washington County and the City of Hagerstown); and adjacent counties and cities adopting a planning memorandum of understanding (Anne Arundel, Carroll, Frederick, Howard, Montgomery and Prince George's counties and the City of Laurel).

Having agreements between jurisdictions does not always guarantee cooperation, however. One example is a watershed management agreement signed by Baltimore City, Baltimore County, and Carroll County in 1984 to protect the Liberty Reservoir watershed from pollution. The reservoir is a water source for the three jurisdictions, and its water quality is impacted by

pollution resulting from land development, particularly in Carroll County. Thus, the agreement was designed to limit growth in the watershed. However, in the late 1990s the rate of growth within Carroll County's portion of the Liberty watershed was more than triple the rate within Baltimore County's share. Also, Carroll County commissioners developed plans to upzone certain areas within the Liberty watershed (to allow more development) and announced they would consider pulling out of the 1984 agreement. A change in the composition of the Carroll County Board of Commissioners, as result of elections in 2002, created a Board that was more protective of the 1984 agreement. This example indicates how some interjurisdictional agreements can be weakened by elected officials with views contrary to those of the initial signatories.

Virginia. While Maryland can be described as taking an active role in promoting planning coordination at each level of government, Virginia perhaps may be said to take a more passive, decentralized role. Title 15.2, Chapter 22 of the Code of Virginia (§ 15.2-2202, "Duties of State Agencies") requires a state agency that constructs, operates or maintains a public facility in any local jurisdiction, *when requested*, to provide information and otherwise assist local governments in their preparation of the comprehensive plan.

While Chapter 22 does not require or enable any state agency to centralize planning coordination with other state agencies and with other levels of government, the legislation (§ 15.2-2219) does specifically *allow* local governments (including counties) to establish joint planning commissions, and *encourages* cooperation between counties and municipalities.

State and local relationships in planning and other matters are also strongly impacted by state laws that define the jurisdiction of local governments. In Maryland, for example, residents of municipalities are also residents of the county in which the municipality is located. Thus, a resident of a city in Montgomery County still pays taxes to Montgomery County and receives many Montgomery County services. In Virginia, however, municipalities are autonomous, primary political subdivisions, governmentally independent of the counties in which they are located. Thus, a resident of a municipality in Fairfax County does not pay taxes to Fairfax County and generally does not receive County services. This is not true of townships in Virginia, however, whose relationships with counties are more like municipal-county relationships in Maryland. This unique structure of local government independence creates additional obstacles to county-municipal cooperation in Virginia.

Interlocal relationships are also impacted by annexation laws.³ In Maryland, annexation is possible via a variety of means and is a common approach to extending the scope of municipal services (though not in Montgomery County). In Virginia, however, which has always had some of the most restrictive annexation laws in the nation, annexation has been prohibited since 1987. For some of the larger and older Virginia cities, which have lost population and tax base to urban sprawl, the inability to annex at the urban fringe has

³ "Annexation" is a formal process by which a municipality extends its boundaries so that a portion of a county's unincorporated area becomes part of the municipality's jurisdiction. The state establishes strict guidelines for how, and under what circumstances, this can occur. For example, in most states the annexed area must be adjacent to the municipality's border.

created substantial fiscal strains and place cities in a position of weakness when negotiating with neighboring counties (Richardson 2004).

2.4.3 Definition of suburban sprawl and its planning implications

Suburban sprawl is a term used to describe the pattern of most development in the U.S. since 1950. It is characterized by the following: a) low-density development (such as only one or two housing units per acre) and the loss of farmland and other open spaces to accommodate that development; b) separation of land uses, so that housing, shopping and employment are not close to each other; and c) dependence on automobiles for a large proportion of work and non-work trips, because the separation of land uses makes travel very difficult for people dependent on public transit or bike paths. Suburban sprawl worsens environmental and energy problems, mainly because of automobile dependency. For example, much of the water pollution of the Chesapeake Bay is caused by air pollution from cars, and from polluted storm water runoff from rooftops, driveways, roads and parking lots. It is also very expensive for local governments to service sprawl areas, as opposed to compact areas, due to the longer roads and utility connections (eg. water and sewer pipes) that are required to serve new development. Controlling sprawl and its problems requires planning and regulation at the regional level, but regional agencies are very weak in the U.S. Because sprawl has been the dominant land pattern for the past 50 years, it will take time for changes in consumer tastes and development industry investment decisions to stimulate more compact development patterns.

2.4.4 Major components of the plan

Montgomery County. Since the 1960s, Montgomery County has been at the forefront of innovative local planning. The County is the only jurisdiction in the Washington metropolitan area that has implemented its General Plan to be consistent with the “Wedges and Corridors” concept that was initially proposed in 1961 for the entire Northern Capital Region by the Policies Plan for the Year 2000. The “corridors” are major roads radiating out from Washington D.C. like the spokes of a wheel, while the “wedges” are the spaces between the corridors. According to the “Wedges and Corridors” concept, development was to be concentrated along the corridors while the wedges were to consist primarily of low density residential and rural type development.

The General Plan Refinement of 1993 contains goals, objectives and strategies in the areas of land use, housing, employment/economic development activity, transportation, environment, community identity and design, and regionalism. In addition, as a result of the Economic Growth, Resource Protection and Planning Act passed by the Maryland State Legislature in 1992 and subsequent amendments in 2002, Montgomery County (like all other counties in the state) must address the following eight visions in its comprehensive plan:

1. Development is concentrated in suitable areas.
2. Sensitive areas are protected.

3. In rural areas, growth is directed to existing population centers and resource areas are protected.
4. Stewardship of the Chesapeake Bay and the land is a universal ethic.
5. Conservation of resources, including a reduction in resource consumption, is practiced.
6. To assure achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.
7. Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.
8. Funding mechanisms are addressed to achieve these visions.

Fairfax County. In 1988, following extensive participation by various stakeholders, including task forces, citizens, county staff, the Planning Commission and the Board of Supervisors, Fairfax County adopted a set of goals to provide the strategic focus for the objectives and policies of the Plan. The Policy Plan contains goals, objectives, and policies that address eight functional elements: Land Use, Transportation, Housing, the Environment, Heritage Resources, Public Facilities, Human Services and Parks and Recreation. The Policy Plan contains two major components: (1) the countywide goals; and (2) countywide objectives and policies by each functional area—e.g., land use, environment, transportation, etc.

The land use element of the Policy Plan has served as the central document for guiding urban development in the county. The countywide objectives and policies for land use are organized in four categories: Land Use Pattern; Land Use Intensity; Pace of Development; and Land Use Compatibility. In addition, the County has adopted specific goals which provide direction and guidance in the areas of land use, transportation, revitalization, private sector facilities and employment. Some of the goals are the following.

Land Use—The county’s land use policies should maintain an attractive and pleasant quality of life for its residents; provide for orderly and coordinated development for both public and private uses while sustaining the economic and social well-being of the County; provide for an adequate level of public services and facilities, including a system of transportation facilities to sustain a high quality of life; and ensure sound environmental practices in the development and redevelopment of land resources.

Transportation—Land use must be balanced with the supporting transportation infrastructure, including the regional network, and credibility must be established within the public and private sectors that the transportation program will be implemented.

Open Space—Fairfax County should support the conservation of appropriate land areas in a natural state to preserve, protect and enhance stream valleys, meadows, woodlands, wetlands, farmland, and plant and animal life.

Revitalization—Fairfax County should encourage and facilitate the revitalization of older commercial and residential areas of the County where present conditions warrant.

Private Sector Facilities—Fairfax County should continue to encourage the development of appropriately scaled and clustered commercial and industrial facilities to meet the need for convenient access to needed goods and services and to employment opportunities.

Employment opportunities—Fairfax County should maintain its prosperous economic climate and varied employment opportunities.

To achieve these goals, the land use element of the comprehensive plan contains 16 specific objectives, each supported with detailed land use policies.

2.4.5 Long-term vision plans

Montgomery County. Montgomery County’s 1964 “Wedges and Corridors” land use plan, updated in 1993, continues to serve as the general framework for the county’s planning and growth. The County’s Comprehensive Plan, titled *General Plan Refinement of the Goals and Objectives for Montgomery County*, calls for containing sprawl by concentrating most new development in existing communities and in such satellite towns along Interstate 270 as Clarksburg, Gaithersburg, Rockville and Germantown.

Fairfax County. Under Virginia state law, the Fairfax County Comprehensive Plan is required to be used as a guide in decision-making about the built and natural environment by the County’s Board of Supervisors and other agencies, such as the Planning Commission and the Board of Zoning Appeals. The plan guides County staff and the public in the planning process, and consists of a Policy Plan, four Area Plan volumes, and a Plan Map. The Policy Plan contains general countywide policy on land use, transportation, housing, the environment, heritage resources, economic development and public facilities, including parks, recreation and trails. The four Area Plan volumes contain long-range planning recommendations organized by four geographic sub-areas. The Plan Map illustrates the recommended land uses contained in the four Plan Volumes (*Fairfax Planning Horizons*, 2004).

The purpose of the Fairfax County Plan is to maintain the existing quality of life and allow citizens to help define the county’s land use and open space pattern. The Plan’s goal is to provide well-planned and compatible land uses, transportation networks, public facilities and parks and also to protect the county’s environmental and heritage resources. The Plan itself is an advisory document; actual land use is regulated by the zoning ordinance which is part of the County Code. Changing the use of a parcel of land requires changing the plan for that parcel via a plan amendment; changing the zoning for that parcel requires a rezoning application.

The Fairfax County Plan has a 20-year horizon and, by Virginia State law, must be reviewed at least once every five years. However, because the County has experienced rapid growth over the past thirty years, the plan has been evaluated more frequently. According to a goal adopted by the County’s Board of Supervisors, the regular review, assessment and revision of the Comprehensive Plan occurs every four years--increasing the frequency of plan evaluation

mandated by the state code and insuring maximum citizen participation in the planning process. The plan can also be amended between periodic reviews. Proposed amendments are subjected to a periodic public review process that includes public hearings before the Planning Commission and the Board of Supervisors. The Board must vote to adopt an amendment in order to change the Plan.

2.4.6 Balancing physical development plans and social service plans

- Infrastructure/Public Facilities

Comment [SoA1]:

Each of the two counties plans for major infrastructure through a Capital Improvement Plan (a six-year plan in Montgomery County and a five-year plan in Fairfax) -- updated annually -- that outlines major expenditures for roads, schools and other facilities needed to service the current population and expected growth. However, not all infrastructure needs can be addressed though the capital improvement plan in a timely manner when growth outpaces the ability of the county to construct needed facilities. In this regard the two counties take different approaches to balancing physical development with infrastructure and essential support services. The differences in approaches reflect the fact that counties in Maryland have relatively more power to manage growth than do counties in Virginia.

Montgomery County. To accommodate future population growth, the 1969 *Montgomery County General Plan Update* contained three key recommendations (Maryland-National Park and Planning Commission 1993,9): (1) increasing the stock of affordable and clustered housing (for which goal the county implemented a nationally-pioneering Moderately Priced Dwelling Unit [MPDU]); (2) protecting farmland and rural open space (largely addressed through zoning, a “Transfer of Development Rights” program (see below), and other State and local programs) focused on green wedges; and (3) balancing development with provision of public infrastructure (addressed through adequate public facility requirements).

The latter of these three innovations (adequate public facilities (APF) requirements), along with the functional master plans (see above), the Capital Improvement Program, and a State-required, 10-year water and sewer plan, are the main ways that Montgomery County balances physical development with infrastructure (including water and power) and education. The MPDU program, along with other activities of the Montgomery County Housing Opportunities Commission, the Department of Housing and Community Affairs and the Montgomery Housing Partnership, are the tools the county uses to ensure a supply of purchase and rental housing for low- and moderate-income families.

Montgomery County’s Adequate Public Facilities (APF) requirements require that a new development project will only be approved if the County determines that the new development will not overburden existing roads, schools, water, sewer, police, fire and health services. The County establishes standards for acceptable school capacity and road capacities (with standards for acceptable road congestion being different for different areas). The County charges development “impact taxes” for both schools and transportation in order to generate funds to build the roads and schools needed to serve new development. The impact taxes are charged to the developer, but the developer will increase the price of the new house in order to pay the tax. For schools, the impact tax varies by type of new housing unit that is built. In December 2004

the base tax was \$8,000 for a single family detached home, with a \$1.00 surcharge for each square foot of floor area over 4,500 feet (up to 8,500 sq. ft.). The means that the maximum school impact tax for a single family home was \$12,000. For roads, the amount of the impact tax on a housing unit ranges from \$500 to \$5,500, depending on type of unit (e.g. an apartment in a high-rise project for elderly people versus a detached, single family home), and on how close the house is to a METRO (rail transit) station.

In Montgomery County, water and sewer services are judged to be adequate if the property being subdivided would be serviced by facilities being planned for completion within two years, as outlined in the County's 10-Year Water and Sewer Plan. The County assumes that police, fire and health facilities are adequate unless the relevant county agency identifies a shortcoming with a particular subdivision - - an outcome that has not occurred since the onset of the APF in 1973.

Fairfax County outlines how it will service new growth in its Policy Plan. The Public Facilities element of that plan provides specific guidance on the following:

- the appropriate general location of new facilities;
- appropriate specific locational criteria, such as site size, access, and screening for different facility types;
- service level standards for new facilities; and
- methods for determining the specific need and appropriate timing of facilities.

In Fairfax County, specific facilities addressed by the Public Facilities element include public schools; libraries; public safety services, including police, fire and rescue, sheriff, courts, and animal control; and utilities and services, including water supply, sanitary sewer, solid waste, drainage systems and storm water management facilities, county vehicle maintenance facilities, gas, electric, telephone and communication towers. Communication and other information technology infrastructure in particular are becoming increasingly important components of the County's economic infrastructure. These must not only ensure that there is a balance between the County's future land use intensity and facility quantity, but that new facilities are located to maximize accessibility while minimizing neighborhood impact.

Although the Public Facilities element specifies how growth is to be balanced with services, sometimes the rapidity of growth impedes the county's ability to fund necessary infrastructure and services in a timely manner. To handle such situations, unlike its Maryland neighbor Fairfax County is prohibited by state law from charging an impact tax on each new housing unit to pay for any other kind of infrastructure than roads. Instead, Fairfax County negotiates with developers who want the Board of Supervisors to change the zoning on their properties. The developers make "proffers", which are voluntary contributions or concessions that consist of one or more of the following: further restricted uses in the rezoning category; donations of real property for public uses such as parks or schools; provisions of public improvements such as roads or utilities; and/or a cash offer for any of the above. This process, by which exceptions to or changes in the zoning ordinance are made, is unique to Virginia.

As the Chesapeake Bay Foundation (2003) points out, proffers can provide significant benefits to the community but also have their drawbacks. While proffers can provide a means of generating land and infrastructure for public use, they also can shift the focus away from the land use issues in the re-zoning request. Proffers may also make it difficult for the County to change the zoning at a later date without the land owner's consent.

- Low income housing

In terms of housing, Montgomery and Fairfax County are among the least affordable jurisdictions in the Washington D.C. region. The comprehensive plans of the two jurisdictions recognize the enormous need for production of addition affordable housing.

In terms of affordable housing provision, Montgomery County was the first jurisdiction in the U.S. to pass a Moderately Priced Dwelling Unit (MPDU) law. Under such "mandatory inclusionary zoning" provisions, a specified, minimum percentage of housing units in a new residential development must be affordable to low-moderate income households. In most jurisdictions utilizing this strategy, the developer is allowed to build at higher densities than allowed by the base zoning, a feature that makes the program more politically feasible and protects the jurisdiction against "property rights" lawsuits by developers. It is a strategy that is now utilized in dozens of cities and counties in the U.S., including Fairfax County.

Mandatory inclusionary zoning programs include the following components.

- A threshold, minimum number of proposed units that triggers the inclusionary requirement. While in some ordinances the threshold is as low as eight, in Montgomery County the threshold is now 20 units in a new development and in Fairfax County it is 50 units.
- A definition of "affordable," usually expressed as house price that would be affordable to a household earning a certain proportion of the area's median income. For example, in Montgomery County the affordable unit set-asides are priced so that they can be purchased by households earning no more than 65 percent of the Washington area's median household income; in Fairfax County the target group is households earning no more than 70 percent of the area's median household income.
- A density bonus that increases with increasing set asides of affordable housing. In Fairfax County the density can be increased by a maximum of 20 percent above base zoning, while in Montgomery County the maximum increase is 22 percent.
- A minimum proportion of new units in the development that is set aside as "affordable". In both Fairfax and Montgomery Counties, a minimum of 12.5 percent of the units must be affordable.
- A minimum time period that must elapse before the units may be resold at market prices. In Montgomery County, for example, resale prices are controlled for a 30-year period; in Fairfax County the unit prices are controlled for 15 years.

Jurisdictions with mandatory inclusionary zoning usually include the following, additional provisions:

- “affordable” units be reasonably similar in appearance to market-rate units in the development;
- the County may purchase up to one-third of the affordable units to rent to very-low income households;
- developers may make payments to the jurisdiction instead of building the affordable units;
- priority for purchase and rental are for households currently renting and/or working in the jurisdiction.

By themselves, MPDU laws in Montgomery and Fairfax Counties are insufficient to provide affordable purchase and rental properties to low income people who work in those jurisdictions. As a result, additional strategies must be utilized in order to prevent increasing longer commutes for people who work in one of the two counties but must live in other jurisdictions where house and apartment prices are lower. Information on Montgomery County’s MPDU law is available at www.montgomerycountymd.gov/dhctmpl.asp?url=/Content/DHCA/housing/housing_P/mpdu.asp. Information on Fairfax County’s Affordable Dwelling Unit law is available at www.co.fairfax.va.us/gov/rha/adu/keyprovisions.pdf.

It is important to note that in order to implement its Affordable Dwelling Unit law, Fairfax County had to get special approval from the Virginia State Legislature, and active support by the homebuilding industry was crucial in getting that approval. On the other hand, Montgomery County was able to implement its MPDU program without special permission from the Maryland Legislature.

Each of the County’s comprehensive plans contains goals and policies to facilitate production of housing for low- and moderate-income residents. For example, Fairfax County has identified the following critical housing issues in its Policy Plan:

- Housing for sale or rent in Fairfax County has become increasingly unaffordable
- Declining federal support has made it more difficult to meet the housing needs of low- and moderate-income households;
- Ensuring neighborhood stability and conservation will be of increasing importance to the County;
- There is only a limited supply of housing for special populations, such as the physically and mentally disabled, the homeless, and the low-income elderly.

To address these issues, the county has adopted the following affordable housing goal:

Affordable Housing—Opportunities should be available to all who live or work in Fairfax County to purchase or rent safe, decent, affordable housing within their means. Affordable housing should be located as close as possible to employment opportunities without adversely affecting quality of life standards. It should be a vital element in high density and mixed-use development projects, should be encouraged in revitalization areas, and encouraged through more flexible zoning where ever possible.

In pursuit of this goal, Fairfax County has adopted specific objectives for affordable housing production (i.e. housing affordable to households making less than 70 percent of the Washington areas median income), such as to increase the supply of affordable housing units each year by an amount that is equal to at least 12 percent of the total housing production in the County the previous year. The Affordable Dwelling Unit Program, described above, is an important but not sufficient strategy for meeting these targets.

In terms of social services provision, each of the two counties sites regional social services centers to be within easy access of its service populations.

2.4.7 Linkages between vision plans and actual development plans and projects

Montgomery County's Comprehensive plan is intended to guide development for the next 20 years. It is updated every 10 years. The comprehensive plan is the basis for area-specific master plans and sector plans that establish the vision for future development in the county's 28 planning sub-areas. Each sub-area master plan becomes the basis for zoning maps and regulations that apply to that sub-area. There are also functional master plans that focus on specific systems that support and tie master plans together. Examples of the latter plans are for transportation, bikeways and trails; parks and recreation; environmental systems, watershed protection and stormwater management; and agricultural preservation. The Capital Improvement Program links current and projected development with infrastructure and services. Also, Maryland requires county governments to prepare 10-year water and sewer plans, updated every three years, under *Environment Article*, Title 9, Subtitle 5 of the state annotated code. These plans cover the provision of water supply systems; sewerage systems; and systems, facilities and procedures for dealing with solid waste. The plans are to provide for the orderly expansion and extension of those systems "in a manner consistent with all county and local comprehensive plans . . ."

Each Maryland county's water and sewer plan must take into account "all relevant planning, zoning, population, engineering and economic information and all State, regional, municipal and local plans", in order to describe "with all practical precision" those parts of the county that are, and are not, expected to be served by water, sewer and waste disposal systems in the upcoming ten-year period (§ 9-505). The law states that, to the extent that consolidation will promote the public health, safety and welfare, each county plan shall utilize all or part of the subsidiary plans of each town, municipal corporation, sanitary district, privately owned facility, or local, state or federal agency that has existing or planned development in that county.

By Maryland state law, all local zoning, subdivision regulations and other land use policies must be consistent with the 8 visions listed above and with the local government's comprehensive plan. One of the visions, "sensitive areas are protected", applies specifically to streams and their buffers, 100-yr. floodplains, steep slopes, and habitat of endangered species. Montgomery County's sub-area master plans must be consistent with the county comprehensive plan.

Montgomery County links new development to environmental protection by requiring Planning Board review of all development proposals. The Planning Board and staff use the document, *Guidelines for Environmental Management and Development in Montgomery County* (2002).

This document states the following: “It is expected that through the identification of existing natural resources and the application of these guidelines, it will be possible to obtain a balance between accommodating the level of development permitted through zoning and protecting the County’s existing natural resources.”

Montgomery County’s guidelines lay out a process for preparation of a Natural Resource Inventory for development sites, and describe techniques and standards for protecting natural resources and environmentally sensitive areas that could be adversely impacted by construction activities and new development. The considerations that are to be included in the environmental review include:

- maintenance of biologically viable and diverse streams and wetlands
- protection and restoration of stream quality
- reduction in flood potential
- protection of water supply reservoirs against sedimentation and eutrophication
- conservation of forests and trees
- protection of steep slopes
- preservation/protection of wildlife habitat, wildlife corridors, and exemplary communities, including rare, threatened and endangered species
- protection against development hazards on areas prone to flooding, soil instability, etc.
- provision of visual amenities and areas for recreation and outdoor education activities
- implementation of state and county riparian buffer programs

Similarly, in *Fairfax County* the three key instruments used to link vision plans to actual development plans and projects are the zoning ordinance, subdivision regulations and other land use policies, and the Capital Improvements Program (CIP).

The zoning ordinance is part of the Fairfax County Code and regulates the type, scale and intensity of development which may occur in the specific zoning districts (*Fairfax County Comprehensive Plan*). Local governments in Virginia need not adopt a zoning ordinance, but for local government that do—like Fairfax County—the zoning ordinance is perhaps the most powerful tool for controlling land use within the jurisdiction. Under the zoning ordinance land owners in Fairfax County may only use their land for uses permitted “by right.” Permission to use land for other uses must be obtained on a case-by-case basis—via a special exceptions process—which Fairfax County may or may not allow.

The purpose of a subdivision ordinance is to assure the orderly subdivision and development of land and to promote the public health, safety, convenience and welfare of citizens. One of the main purposes of the Virginia’s subdivision enabling legislation is to allow local governments to require a subdivider to lay out and construct streets and other improvements in accordance with the state and local standards, before the street maintenance is taken over by the Virginia Department of Transportation VDOT.

The Fairfax County Capital Improvement Program guides the development of public facilities over a 5-year period. It shows the arrangement of projects in a sequential order based on a

schedule of priorities and assigns an estimated cost and anticipated method of funding each project. The Capital Improvement Program provides the financial foundation necessary to implement plans. The County's uses the CIP to review the compatibility of proposed public facilities with the locational guidelines established in the Comprehensive Plan. Specifically, this process is used to determine if the general or approximate location, character and extent of a proposed facility are consistent with the Plan.

The environmental element of the Fairfax County's Policy Plan provides guidance for achieving a balance between protecting the environment and planning for the orderly development of the County. The Policy Plan recommends identification and protection of Environmental Quality Corridors and other ecologically valuable land and surface waters; conservation and restoration of tree cover; reduction of environmental pollution (air, water, noise and light); and avoidance or minimization of environmental hazards such as unstable soils, gas and petroleum pipelines, and flood hazards. However, the environmental review process in Fairfax County does not appear to be as rigorous as the review conducted in Montgomery County.

Figure 5, below, shows the centrality of the comprehensive plan to the various planning-related documents in a typical U.S. county.

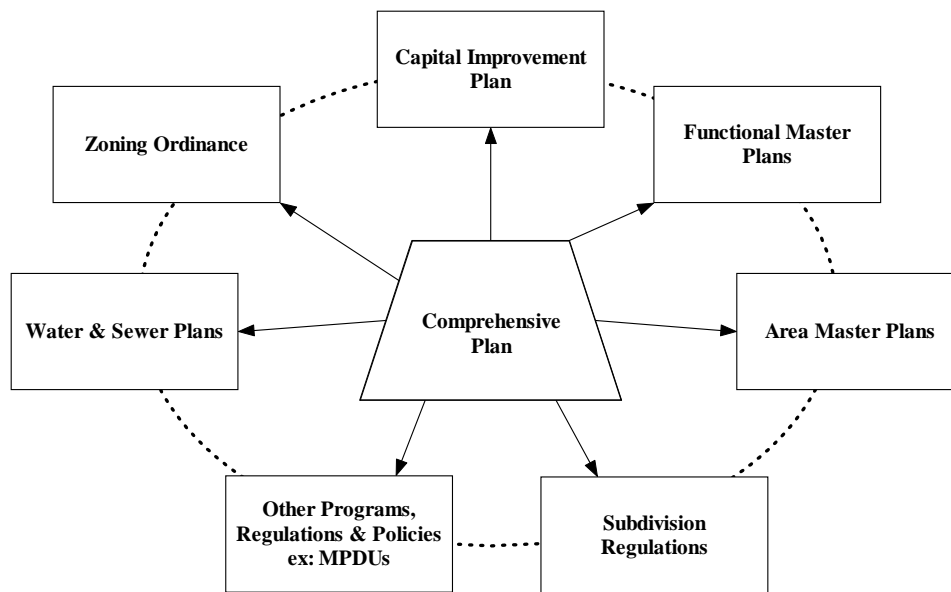


Figure 5. Planning-Related Documents in a Typical U.S. County

2.5 Source of financing

In the United States, state constitutions and statutes provide guidance as to the types of revenue counties may collect and expend, as well as the powers counties have to expend these funds.

Section 5 of Article 25A of the Annotated Code of Maryland enumerates the specific powers granted to “charter” counties, as described elsewhere in this report. As relates to revenues, these powers include the authority to assess, levy and collect local taxes, and to provide for the borrowing of moneys through the issuance of bonds and “other evidences of indebtedness.” However, Article 25A also stipulates that the aggregate amount of bonds and other similar outstanding debt outstanding cannot at any one time exceed a total of 6 percent of the assessable basis of real property of the county. (Short term bond issues—those having a maturity of 12 months or less—and bonds payable from special assessments or taxes are exempt from this requirement).

While Montgomery County is not required by statute to present or adopt a balanced budget each year, it is the stated fiscal policy of the County to do so. Nevertheless, this does not preclude the County from incurring short and long-term debt, through the issuance of revenue bonds and incurring general obligation debt.

The situation is different in Fairfax County. For fiscal year 2005, the county has a budget deficit of \$10,112,148. Fortunately in 1999, the Fairfax County Board of Supervisors had approved the establishment of a Revenue Stabilization Fund, which is included in the General Fund for reporting purposes, to provide a mechanism for maintaining a balanced budget without resorting to tax increases and expenditure reductions that aggravate the stresses imposed by the cyclical nature of the economy. The Board established the fund within the condition that it would not be used as a method of addressing the demand for new or expanded services, but would be only used as a financial tool in the event of an economic downturn, and then only under certain parameters. The Revenue Stabilization Fund has a targeted balance of 3.0 percent of General Fund disbursements and is separate and distinct from the County’s 2.0 percent Managed Reserve, which was initially established in fiscal year 1983. The aggregate of both reserves cannot exceed 5.0 percent. As of June 30, 2002, the Revenue Stabilization Fund and Managed Reserve balances were \$27,492,910 and \$46,457,565.⁴

Sources of Revenue

According to a 2001 survey by the National Association of Counties, the most significant source of revenue for counties nationwide is the property tax, which accounts for 30.6% of general revenue funds for counties (National Association of Counties, 2003).

State distribution of sales taxes are generally the second most significant source of revenue for counties nationwide, accounting for 14% of counties’ general funds. In Virginia, the rate of sales tax imposed on gross receipts from retail sales of tax is 5% (4 % state and 1% local tax). However, local sales taxes are not imposed in Maryland.

⁴ Data taken from the *FY 2002 Comprehensive Annual Financial Report, Fairfax County Virginia*.

While income taxes are not a significant source of revenue for most states—in fact, only half of states even allow counties to impose an income tax—Maryland is one of two states (the other being Indiana) in which income taxes account for a significant portion of county general revenues (National Association of Counties, 2003). In Virginia, county income taxes are not imposed.

Below are descriptions of significant sources of county general funds, as well as data on the importance of these revenue sources to the budgets of Montgomery and Fairfax Counties, and the level of control these governments have over the expenditure of their funds.⁵

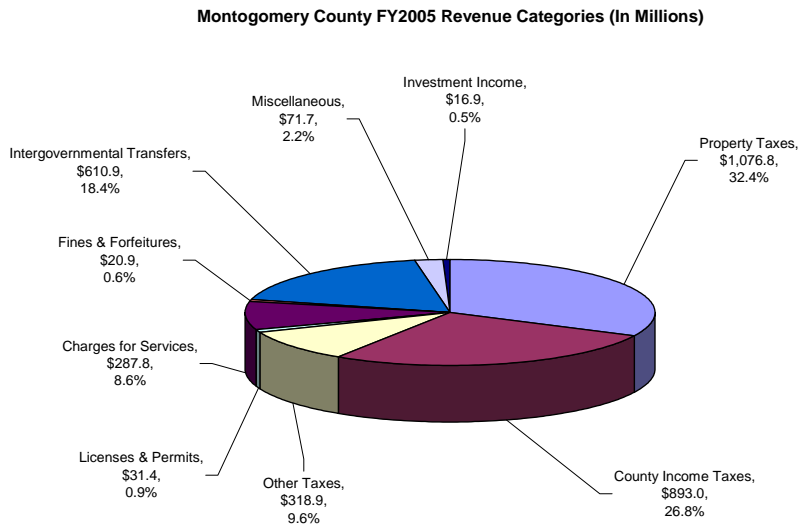


Figure 6: Sources of Revenue for Montgomery County in 2005

⁵ All budget information for Montgomery County is drawn from the “Montgomery County Approved FY2005 Operated Budget,” available online at <http://www.montgomerycountymd.gov/ombtml.asp?url=/content/omb/fy05/appr/index.asp>.

Fairfax County FY2005 Revenue Categories (In Millions)

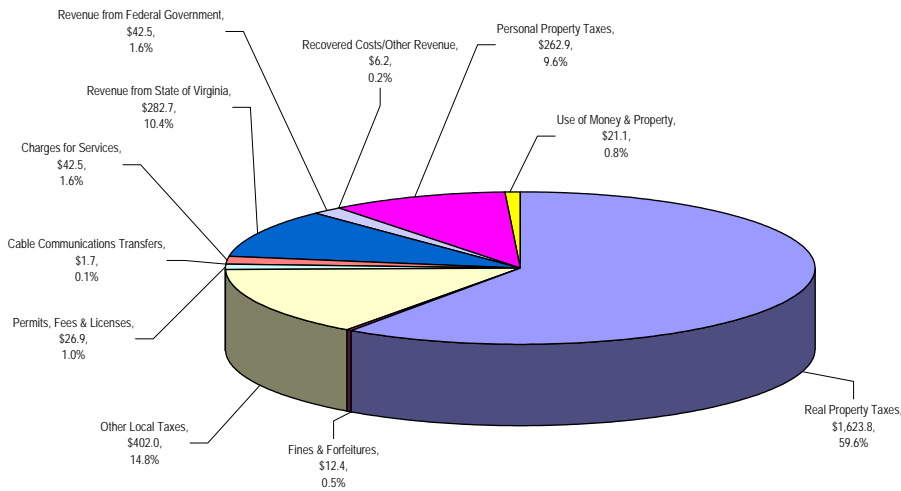


Figure 7: Sources of Revenue for Fairfax County in 2005

Property Tax

Property taxes are the primary source of revenue for most local governments in the U. S. This tax is assessed annually on all real property based on a specific percentage of a parcel’s assessed value, including land and buildings. While tax rates *within* a local jurisdiction are uniform, tax rates are set by each jurisdiction (although often upper limits are set by the state) and thus can vary from one local jurisdiction to another. Tax rates are often expressed in terms of “dollars per \$100 of assessed value.”

Fairfax County derives a much higher proportion (59.6% for FY2005) of its total revenues from the property tax than does Montgomery County (32.3% for FY2005).

Sales Taxes

Sales taxes are not imposed in Montgomery County. Fairfax County charges a 1% sales tax, that contributes to the “Other Local Taxes” of the County’s budget (a category that contributes 14.8% of Fairfax County’s budget).

Personal Income Tax

In Maryland, local jurisdictions are empowered to levy a local tax on the income of its individual residents (in addition to the state’s 4.75% tax rate). As with other taxes, these rates vary from county to county. Income taxes provide Montgomery County’s second largest source of revenue, \$893 million, or 26.8%, for FY 2005. Montgomery County’s income tax rate for FY 2004 is 3.2%. Fairfax County derives no income from personal income taxes.

Personal Property Taxes

Unlike Maryland, Virginia enables its local governments to charge a tax on personal property (including automobiles, boats and mobile homes). Fairfax County's personal property tax rate for FY 2005 is \$4.57 per \$100 of assessed valuation. This category of revenue comprises 9.6% of the County's budget.

Intergovernmental Transfers

Federal and state grants and reimbursements comprise another important source of income for most local jurisdictions. In 2005 Montgomery County will derive 17.5% of its revenues (\$610.9 million) from state and federal aid, while the proportion for Fairfax County will be 12.0% (\$325.2 million). These intergovernmental transfers are usually earmarked for specific types of programs – such as police, health and human services programs -- which while of undeniable benefit to the county often cannot be used for physical community development.

The most significant sources of federal revenue available to local jurisdictions that may be used specifically to support affordable housing and other types of development are the Community Development Block Grant (CDBG) and the HOME Investment Partnership Grant, both administered by the federal Department of Housing and Urban Development (HUD).

CDBG funds are used by local jurisdictions for activities that benefit low- and moderate-income persons, prevent or eliminate blight, and/or respond to serious and immediate threats to the health or welfare of the community. The annual federal appropriation for the CDBG program is split between states and local jurisdictions called "entitlement communities," defined generally as large central cities and other metropolitan cities with populations of at least 50,000, and qualified urban counties with populations of at least 200,000 (under which category both Montgomery and Fairfax fall).

HUD determines the amount of each grant by a formula which uses several measures of community needs, including the extent of poverty, population, housing overcrowding, age of housing and population growth lag in relationship to other metropolitan areas. For FY 2005 Montgomery County will receive approximately \$4.3 million in CDBG funds.

HOME is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households. Participating jurisdictions may use HOME funds to provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; build or rehabilitate housing for rent or ownership; and for other expenses related to the development of affordable housing.

HOME funds are awarded annually as formula grants to participating jurisdictions (all states and eligible local governments). The allocation formula considers the relative inadequacy of a local jurisdiction's housing supply, its incidence of poverty, its fiscal distress, and other factors.

Transfer Taxes

Transfer taxes are taxes imposed on the transfer of title of real property—that is, they are only assessed when ownership of the property is transferred between parties. This tax is based on the value of the property transferred, and may be assessed on either the buyer or the seller, or both.

Transfer taxes are generally levied on the transfer of all types of real property, including residential, commercial, and agricultural property. Though a majority of states (including Maryland and Virginia) and the District of Columbia impose this type of tax, 13 states do not. In many areas these taxes are used to fund programs designed to preserve open spaces in commercial or residential areas, and to fund housing programs for low-income residents. Virginia and Maryland levy two types of property transfer taxes: 1) realty transfer taxes; and 2) document recordation taxes or fees.

The *Realty Transfer Tax* is the most common transfer tax imposed by states, and is assessed on the sales price or gross receipts from the sale of real property. The tax rate is usually expressed as a percentage of the sales price, or as a dollar amount per \$1,000 of value. The current realty transfer tax rate set by the state of Maryland is .05% of the value of the property to be transferred (.025% for first-time home buyers). Counties are allowed to impose an additional percentage beyond the state mandated rate; Montgomery County imposes an additional 1.0% tax. In Virginia, while a state transfer (or “grantor”) tax is collected, state law does not authorize the collection of local transfer taxes (National Association of Realtors, 2004).

Document Recordation Taxes typically must be paid before the transfer of ownership can be properly recorded in the county records office. Like the realty transfer tax rate, the recordation tax rate is usually levied as a percentage of the sales or purchase price, and is expressed in terms of dollars per \$1,000 dollars of value or a percentage of the sales price.

In Montgomery County the recordation tax rate is set at \$6.90 per \$1,000 of sales price for FY2005 (the first \$50,000 of residential property value is exempt); in FY 2005 Montgomery County expects 4.4%, or \$154.1 million, of its total revenue from transfer and recordation taxes.

In Virginia, the state recordation tax rate is \$2.50 per \$1,000, and local governments are authorized to charge up to 1/3 of that amount—set at .833 per \$1,000—which Fairfax County does. The recordation tax is included in the “Other Local Taxes” category of Fairfax County’s budget.

“Other Taxes”

“Other taxes” imposed by Montgomery County include taxes on the sale of tobacco, fuel and energy, hotel/motel stays, telephone service and admissions/amusements. These taxes will comprise \$164.8 million, or 4.7 percent, of Montgomery County’s FY 2005 revenues. As indicated above, “Other Taxes” comprise 14.8% of total FY 2005 revenues for Fairfax County.

Fines, Fees, and Charges for Services

Counties also impose an array of fees for services which are of immediate and personal benefit to the user. Such charges include various individual and business licenses and permits, rents, and tuition fees. In addition, counties collect fines for various infractions of county regulations, the most commonly known perhaps being fines for traffic and parking violations.

For FY 2005, Montgomery County will derive 12.3%, of its revenues from the “fines, fees and charges for service” category, while Fairfax County will derive only 3.1% of its revenues from this category.

Summary of Revenue Sources for the Two Counties

In summary, Montgomery and Fairfax Counties have different revenue profiles. Property taxes comprise nearly 60% of the Fairfax County budget but only 30.9% of Montgomery County’s. Income taxes are not charged in Fairfax, while this funding source contributes over 25% of Montgomery County’s budget. Fairfax County depends on personal property taxes for nearly 10% of its revenue, while Montgomery County does not charge this kind of tax. Fairfax receives 12% of its revenue from federal and state government (with 87% of this intergovernmental revenue coming from the state), while Montgomery County depends on intergovernmental revenue for 17.5% of its income.

Expenditures

In both counties, public schools constitute the largest portion of expenditures – 48.9% in Montgomery County and 48.4% for Fairfax County in FY 2005. Figures 8 and 9, below, show the similarities in how the jurisdictions spend their available funding.

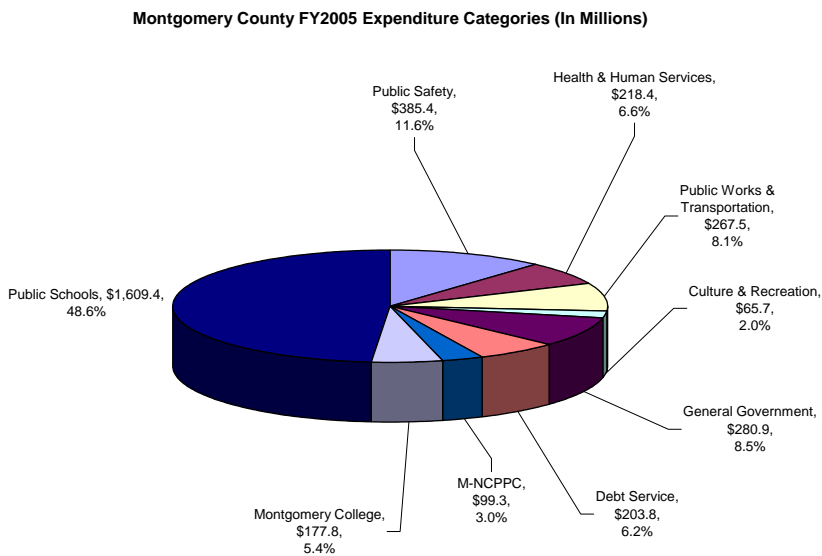


Figure 8: Sources of Expenditures for Montgomery County in 2005

Fairfax County FY2005 Expenditure Categories (In Millions)

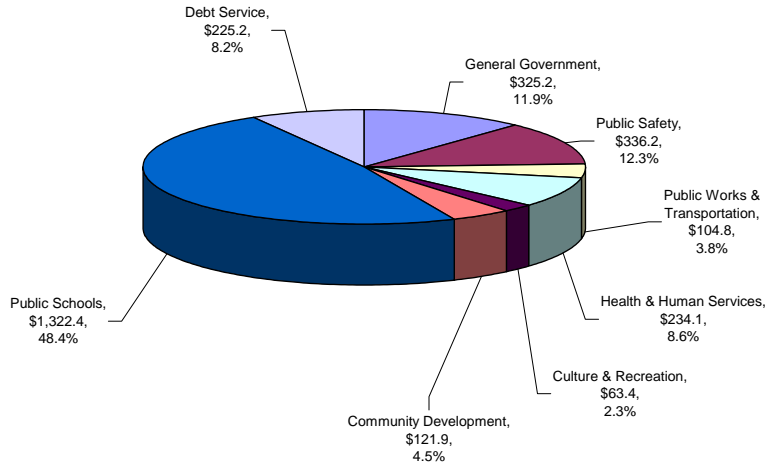


Figure 9: Sources of Expenditures for Fairfax County in 2005

Land Use Implications of Revenue Sources

Property taxes are a significant source of revenue for the two counties -- nearly 31% of revenues in Montgomery County and nearly 60% in Fairfax County. Because local elected officials like to avoid increases in property taxes (in order not to upset local voters), they prefer to encourage land uses that generate more revenue than those land uses require in public expenditures for services. For example, privately-owned office buildings and factories provide the county with significant property tax revenues, as well as pay salaries that can be taxed (if the county has a personal income tax). Such land uses do not require very much expenditure for county-funded facilities and services. On the other hand, apartment buildings for low- to moderate-income families require county expenditures for schools and social services, and require more in county expenditures than the county receives in property taxes from those buildings. This situation contributes to "fiscal zoning" -- zoning and other policies that favor commercial and job-generating development, while discouraging moderate-income housing. The result is longer work commutes for lower-income people, who must seek housing further and further away from there the large job centers are, such as in Montgomery and Fairfax Counties). Longer work commutes result in more pollution, both of the air and the water (as rainfall brings pollutants in air to streams, rivers and the Chesapeake Bay).

An example of this problem is the Clarksburg area master plan in Montgomery County. The plan calls for commercial, industrial and other job-generating development that will create 40,000 new jobs. However, the plan for the Clarksburg area only allows for 10,000 new homes. This means that lower-income workers who cannot afford housing in Clarksburg or other parts of Montgomery County, are moving to western Maryland or West Virginia where housing is less expensive. The Montgomery County Council President, when asked in August 2004 about this problem, stated: "We have a regional housing shortage because of hurdles put up by local governments." But he then added, "I get elected to represent the people of Montgomery County, not the region. I support broadening the tax base" (Whoriskey 2004).

In addition to being influenced by property tax concerns in planning for future development, local government leaders are also responsive to property owners who object to having more compact development near to them (for fear of more traffic congestion) and more affordable housing construction near them (for fear of more congestion and crime and the lowering of the re-sale values of their houses. This is known in the U.S. as the "Not-In-My-Backyard" ("NIMBY") syndrome. Taken together, fiscal zoning and NIMBY demonstrate the limitations of local land use planning in addressing sprawl and affordable housing problems.

2.6 Public consultation

2.6.1 Mechanisms/procedures employed to consult county residents on county land use plan use plans, specific projects and policies

In terms of public participation on planning decisions, state legislation in Maryland includes guidelines for public involvement in local plan creation and in zoning and subdivision. In general, citizens have the right to: notice of pending government action; public hearing, cross examination, creation of a record; a written determination of a decision; and appeal. The kind of "procedural due process" required varies with the nature of the government action. Lesser degrees of "procedural due process" are required in legislative proceedings such as comprehensive plan creation, sub-area master plans and zoning. Higher degrees of procedural due process are required for actions that are more specific to a given landowner's property (or a nearby landowner), such as zoning variances, special exceptions, subdivision and site plan approvals, and permit appeals.

In Montgomery County, citizens may express their views by speaking at public hearings, by mail, telephone, fax, or e-mail -- whether the decision to be made by the county involves recommendations on the vision plan, a sub-area master plan or zoning plan, a proposal for a new park, or a new subdivision or site plan proposal. The County's planning board meetings are open to the public, as required by State and County "sunshine laws" that require open sessions for all planning board meetings (with rare exceptions, for certain types of deliberations).

One of the major goals of the Fairfax County Comprehensive Plan is public participation. Several community participation methods exist in the County. They include plan monitoring, the plan amendment process, Magisterial District citizen groups, task forces, and Board-appointed committees and commissions. Short descriptions of these methods follow.

Plan Monitoring: The process for periodic review of the status of the Plan includes publishing a status report and holding public hearings to capture public sentiment about the achievement of Plan policy.

The Plan Amendment Process: The Plan is subject to amendment through the Plan Review process. Citizens, both as individuals and as members of task forces, can review proposed amendments, make recommendations of their own, and testify at public hearings.

Magisterial District Citizen Groups: Local planning groups monitor planning and zoning activity for their district. These groups often are involved in review of proposed Plan amendments, rezoning cases, and proposals for siting public facilities.

Special Study Task Forces: When the County undertakes a special planning study of a small area, the Board of Supervisors may appoint a special task force to participate in this project. Such a task force is composed of a cross section of the community, in order to reflect a broad spectrum of views. Public meetings conducted by the Task Force may be held to involve the community.

Board-appointed Committees and Commissions: The Board appoints citizens to be members of standing committees and commissions to advise them on a wide range of issues, including many that are related to countywide planning. These include the Wetlands Board, the Environmental Quality Advisory Council, and the History Commission to name just a few. The Board also periodically appoints a commission to address a specific task in a finite period of time. For example, the Board appointed the Goals Advisory Commission to review and revise the County's goals in the period of one year.

Fairfax County also holds public hearings during the review of the proposed County budget and for the Capital Improvement Program. County residents are also encouraged to attend public hearings to voice opinions on rezoning cases or plan amendments, vote on bond issues, follow local issues in the press and County staff reports, and propose plan amendments through the appropriate process. They are also encouraged to participate in public meetings and hearings of the Board of Supervisors, Planning Commission and other commissions and authorities, and to be active in neighborhood associations to monitor local planning and zoning activity.

Citizens are encouraged to report any alleged violations of the Fairfax County Zoning Ordinance directly to the Zoning Enforcement Branch either online or by telephone. The Zoning Enforcement Branch does not accept anonymous complaints.

2.6.2 Resolution of conflicts over land use rights; appeals procedures

Comment [SoA2]: Another combo section.

Montgomery County. For certain types of land use disputes, a property owner who believes that a land use policy or decision negatively impacts his/her property rights has the option of appealing a decision to the County Board of Appeals. Any decision of the Board of Appeals may be appealed to a state circuit court within 30 days of the published decision.

Fairfax County. As outlined in the *Fairfax County Zoning Ordinance*, any person who is aggrieved by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, can appeal the decision to the Fairfax County Board of Zoning Appeals

(BZA). The BZA also has the authority to hear and decide appeals resulting from interpretations of the Zoning Map where there is uncertainty as to the location of a zoning district boundary. The BZA does not have the authority to hear and decide appeals that relate to a “proffered” condition. Proffered condition appeals are heard by the Board of Supervisors as provided for in Par. 10 of Sect. 18-204 of the Zoning Ordinance.

There are public notice requirements for the public hearing and the public hearing, in order to provide the opportunity for the appellant, staff and any interested parties to be heard on the issue on appeal. Prior to the public hearing, the staff forwards a staff report to the BZA which includes the appellant's appeal application and grounds for appeal and the staff's response to the appeal. Following the public hearing, the BZA makes a decision, which is final, unless someone aggrieved by the decision of the BZA files a petition with the Circuit Court to review the decision of the BZA.

2.6.3 Limits on private land ownership in the two counties; compensation rules

In general, the Maryland State Legislature, along with the state's courts, have been more supportive of local government attempts to regulate owners' use of their property than have courts in Virginia. For example, unlike Maryland, Virginia has no state planning agency or growth management act. According to a recent report of the National Trust for Historic Preservation, (Mastran and Hanousek, 2001), for the most part land use regulations in Virginia have not encouraged the protection of historic resources, open space and farmland. The report notes that in fast growing Virginia counties, tools to manage growth are quite limited, and new techniques (such as Fairfax County's Affordable Dwelling Unit Law) must be approved through special state enabling legislation.

In late 1998, over two dozen Virginia cities and towns formed a Virginia Coalition of High Growth Communities to lobby for more local land use authority to manage residential growth. The Coalition has asked the State to grant them such powers as the ability to implement adequate public facilities ordinances and to establish a transfer of development rights (TDR) program (Smart Growth Network Website, 2004). None of these requests have been approved by the Virginia State Legislature, but both are prominent features of Montgomery County's growth management program. While Montgomery County can levy impact taxes for roads and schools, by state law Fairfax and other Virginia counties may only levy impact fees for roads (New Jersey Future Website, 2004).

Harrington and von Hoffman (2004) cite two examples of Virginia state courts and/or state government being more protective of private property rights than of Fairfax County's power to manage growth. The first example, occurring in the early 1970s, was when Fairfax County was exploring the possibility of staging or delaying growth by limiting sewage facilities. Fairfax County was unable to do so because local jurisdictions are not empowered by the Virginia legislature to ration hookups to sewer lines. This is in contrast to Montgomery County, which was able to impose a sewer moratorium in the early 1970s until additional sewage treatment capacity became available. The second example was in 1975, when a Virginia court ruled that Fairfax County could not use an adequate public facilities ordinance to delay growth or require development to proceed in phases.

State and local governments in Virginia and Maryland are subject to the 14th Amendment of the U.S. Constitution, which states in part: “. . . nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This amendment extends the requirements of the 5th Amendment to state governments, which allows government to take privately-owned property for a public use (such as a road or a public building) only as long as the owner is paid just compensation and given the opportunity for a hearing. Each state has the same type of requirements in their own state constitutions. “Just compensation” is defined as fair market value for the property taken by the government.

2.7 Interaction between neighboring counties and states on development matters of cross county concern

The degree of inter-county interaction on development matters of cross county concern varies with the type of planning issue. Many of the inter-jurisdictional concerns of the Metropolitan Washington region are addressed through the Metropolitan Washington Council of Governments (COG). COG was established in 1957 by local cities and counties to deal with regional concerns including growth, housing, environmental protection, public health, transportation and safety. Though COG provides staff and other technical support and assistance to the regional initiatives and consortia outlined below, several of these bodies exist as independent initiatives, in many cases authorized and/or mandated by federal legislation.

2.7.1 Transportation

The National Capital Region Transportation Planning Board (TPB) is the federally designated Metropolitan Planning Organization (MPO) for the Washington, DC region, and plays an important role as the regional forum for transportation planning. The TPB prepares plans and programs that the federal government must approve in order for federal-aid transportation funds to flow to the Washington region.

The TPB was created in 1965 by the region's local and state governments to respond to federal highway legislation that required the establishment of planning bodies, which later became known as Metropolitan Planning Organizations (MPOs), when it became clear that the construction of major transportation projects through and around urban areas needed to be coordinated with local and state jurisdictions. The TPB planning area covers the District of Columbia and surrounding jurisdictions, including Montgomery County in Maryland and Fairfax County in Virginia, and its membership includes representatives of local governments; state transportation agencies; the Maryland and Virginia General Assemblies; the Washington Metropolitan Area Transit Authority; and non-voting members from the Metropolitan Washington Airports Authority and federal agencies.

While the TPB does not exercise direct control over funding and does not implement projects, it does perform a range of activities that promote an integrated approach to transportation development. First, the federally mandated metropolitan planning process requires all MPOs across the country to produce two basic documents—a long-range plan, which in the Washington region is called the Financially Constrained Long-Range Transportation Plan (CLRP), and a

Transportation Improvement Program (TIP), which lists projects and programs that will be funded in the next six years. Since 2000, the CLRP has used a planning horizon of 25 years. In order to receive federal funding, transportation projects must be included in the CLRP and the TIP.

Federal law also requires the TPB to show that the region will have adequate funds to build the projects listed in these two main planning documents, and that these projects, taken collectively, contribute to air quality improvement goals for the region (a requirement of the federal Clean Air Act). The TPB must also comply with federal laws, regulations and policies stipulating that regional transportation plans must not disproportionately affect low-income or minority communities in an adverse way.

The TPB provides a regional transportation policy framework and a forum for coordination. While federal law and regulations drive much of the region's regular transportation planning activities, the TPB has also developed a policy framework—known as the Vision—that is intended to guide the region's transportation investments in the 21st century. Approved in 1998, the Vision is a long-range document laying out key goals and strategies that will help the region to develop the transportation system it needs to sustain economic development, environmental quality and a high quality of life. The agencies that implement transportation projects—the states, the District of Columbia, the regional transit authority and local governments—must show that the goals of their projects are consistent with the Vision.

In addition the TPB serves as a technical resource, providing information and analysis on a variety of topics, such as current travel patterns and conditions and the performance of highway and transit facilities throughout the region and travel forecasting to develop predictions about future travel conditions.

While the TRB provides a framework for collaboration between the two counties on transportation issues, according to Montgomery County's Chief of Countywide Planning Zyontz (2004), the two jurisdictions have very different view on how to reduce traffic congestion on the Interstate 494 beltway that runs through portions of both counties. Fairfax County's proposal is to use High Occupancy Vehicle lanes (special lanes reserved for automobiles carrying 2 or more riders), while Montgomery County favors tolls instead.

2.7.2 Water supply and wastewater treatment

Water Supply

With regard to water supply, Montgomery and Fairfax Counties have an unusual history featuring both cooperation and conflict. The Washington metropolitan region gets nearly 90% of its drinking water from the Potomac River and three major water supply agencies in metropolitan Washington provide about 95% of the region's water. Two of these entities are the Fairfax County Water Authority (FCWA), which supplies Fairfax County, and the Washington Suburban Sanitary Commission (WSSC), which supplies Montgomery County.

Maryland and Virginia have had a long dispute -- dating to the 1700s -- over which state controls the Potomac River, which borders Montgomery and Fairfax counties. In 1933, Maryland

initiated a permitting program for water withdrawals from the Potomac. Routinely, until 1996, Maryland had issued permits to Virginia entities without challenging any of the requests. However, in 1996 Maryland rejected a permit request by the FCWA to build a 725-foot water intake pipe to supply water to its service area. Maryland officials denied the permit, claiming (a) that FCWA had not adequately demonstrated the need for the new intake pipe and (b) that granting the permit would harm Maryland by encouraging more sprawl development. After several years of failing to achieve a satisfactory resolution of the dispute, in 2000 Virginia filed a complaint with the U.S. Supreme Court. In December 2003, the U.S. Supreme Court ruled that Virginia legally could build the intake structure.

On the other hand, there is more water supply cooperation between the two states during periods of drought. In 1940, Maryland, Virginia, West Virginia, Pennsylvania, and DC created the Interstate Commission on the Potomac River Basin (ICPR). In terms of water supply management, the compact creating the ICPR primarily gives the commission authority to collect and disseminate data, cooperate with the signatory bodies to promote uniform laws and regulations, provide liaison among agencies, and review and comment on agency plans. The commission has certain additional powers and responsibilities in the area of water quality.

While the ICPR has no regulatory powers of its own, it does play a significant role in analyzing water supply needs and making water supply forecasts. During times of drought, natural flows on the Potomac may not always be sufficient to allow water withdrawals by the utilities while still maintaining a minimum flow in the river for sustaining aquatic resources. The 1978 Low Flow Allocation Agreement (LFAA), signed by the states and by WSSC and FCWA, established a set of stages for low river flow that would prompt action by the signatories to monitor and eventually restrict water withdrawals, and a formula for allocating Potomac River water during times of shortage. In such low flow situations, the ICPR manages the water system as a whole. The ICPR has successfully rationed water use in low flow situations, and this cooperation is in contrast to the confrontational attitude that Fairfax County and the State of Maryland have taken with regard to non-emergency water supply.

There is also some coordination between Maryland and Virginia on water-related issues through their participation on other interstate commissions. For example, in 1965 the governors of several states, including MD and VA, established a Potomac River Basin Advisory Committee to coordinate views on matters affecting the Potomac River watershed. In 1983, the two states were among six signatories to a Chesapeake Bay Agreement, under which the signatory states agreed to take measures to reduce pollution into the Bay and control harmful urban sprawl. The governors of Maryland and Virginia are on the Chesapeake Bay Executive Council that administers the agreements. However, progress in achieving the goals of the Chesapeake Bay Agreement have disappointing thus far because the signatories have not been able or willing to take the steps needed to reduce the amount of pollution entering the Bay from agricultural and other “non-source” point pollution.

Waste Water Treatment

COG is the wastewater management agency for the Washington metropolitan region and is involved with regional policy issues related to provision of adequate wastewater treatment by the

31 wastewater treatment plants in the Metropolitan Washington area, sludge disposal, non-point source pollution control, and municipal water supplies.

COG addresses water quality issues in the Potomac River Basin through its Water Resources Technical Committee (WRTC). The WRTC is a group of wastewater (point source) and storm water (non-point source) municipal and county officials that meet bi-monthly to address environmental issues related to the COG region and the Chesapeake Bay. Typical activities of the committee include reviewing state and federal regulations and legislation providing comment on likely impacts on local governments within the region, and on the region as a whole.

In addition, three regional committees exist to address issues related to the Blues Plains Wastewater Treatment Plant in Washington, DC, the largest advanced wastewater treatment facility in the region. In 1964 the Potomac sewage interceptor pipe was completed, tying Northern Fairfax County and parts of Montgomery County to a large sewage treatment plant in the District of Columbia.

2.7.3 Security/crime

The Public Safety Policy Committee (PSPC), established through COG, is composed of elected officials and public safety directors and managers (such as police and fire chiefs) from the member jurisdictions. The Committee seeks to identify regional public safety issues and help member local governments and their residents to address critical public safety needs. Examples of program areas include crime control and anti-terrorism programs; emergency communications systems; police and fire statistical reports; training programs for police, fire, and corrections personnel; symposia on topics of special interest; and regional emergency plans and agreements.

In the wake of the terrorist attacks of 2001, the Washington area mobilized quickly to improve emergency preparedness, coordination, and response. In 2002 COG's Board of Directors approved a Regional Emergency Coordination Plan developed by the Special Task Force on Homeland Security and Emergency Response for the National Capital Area. Having successfully fulfilled its mission, the Task Force ceded responsibility and oversight of homeland security policy to the Public Safety Policy Committee and a supporting National Capital Region Emergency Preparedness Council (EPC). A COG committee also has authority over the Washington metropolitan Regional Incident Communications and Coordination System (RICCSSM), a 24-hour, seven days-a-week communications capability that allows rapid contact between regional officials during an emergency.

In addition, local governments have established the Metropolitan Medical Strike Team. The mission of the MMST is defined as a response to nuclear, biological, or chemical terrorism incidents. A working document describes the concept of operations and the process by which the MMST is notified, activated, and deployed.

The work of the committee over the years has yielded a number of additional regional coordination plans, including:

- The Police Mutual Aid Agreement provides police aid across jurisdictional lines in emergencies to increase the ability to preserve the safety and welfare of the entire area. It also specifically allows that narcotics investigators may be exchanged and may cross state lines for the enforcement of laws designed to control or prohibit the use or sale of narcotics, on a routine non-emergency basis.
- The Greater Metropolitan Area Police and Fire/Rescue Services Mutual Aid Operational Plan establishes cooperation among law enforcement and fire/rescue agencies in the regional/metropolitan area, to ensure the maintenance of good order, law enforcement and public safety within the region during an emergency situation which requires police and/or fire/rescue assistance beyond the capacity of a signatory jurisdiction or agency.
- The Mutual Aid Agreement for Fire and/or Rescue and/or Ambulance Service allows fire/rescue or ambulance services to cross jurisdictional lines in emergencies to increase the ability to preserve the safety and welfare of the entire area.
- The METRO Rapid Rail Transit Fire/Rescue Emergency Procedures Policy Agreement provides basic guidance and direction to fire/rescue personnel who may be called upon to respond to fire/rescue incidents occurring on the METRO rapid rail transit system operating in the Washington metropolitan area; and the Transportation Contingency Plan for the Metropolitan Washington Area provides for an area-wide response to a total stoppage of public transit service in the event the Washington Metropolitan Area Transit Authority is unable to provide such service.

2.7.4 Environmental protection

COG's Environment and Public Works Directors Committee (EPWDC) was established to provide policy advice and budget oversight for COG's regional programs in the areas of water quality management, monitoring and modeling, drinking water, non-point source control, wastewater management, solid waste/recycling, energy, alternative fuels, air quality and the Chesapeake Bay, and pollution prevention. The EPWDC is chaired by an elected official appointed by the COG Board of Directors; its members are environment and public works directors and their counterparts at water/wastewater utilities.

Specific areas of focus include the following.

Chesapeake Bay Watershed

Established by the COG Board of Directors in 1998, Chesapeake Bay Policy Committee (CBPC) tracks developments under the federal-state Chesapeake Bay Program for implications to local governments and recommends Bay-related policies to the Board. Elected officials and, in some cases, staff officials from COG's 19 member governments comprise the committee's membership. The CBPC normally meets on the third Friday in January, March, May, July, September and November.

Air Quality

The Metropolitan Washington Air Quality Committee (MWAQC) is the entity certified by the mayor of the District of Columbia and the governors of Maryland and Virginia to prepare an air quality plan for the Washington metropolitan area under Section 174 of the federal Clean Air Act Amendments of 1990. MWAQC members are elected officials of COG member jurisdictions plus members from three other counties; the air management and transportation directors of the District of Columbia, Maryland, and Virginia; members of the Maryland and Virginia General Assemblies; and the chair of the Transportation Planning Board.

In executing its responsibilities, MWAQC coordinates air quality planning activities among COG, other external committees, and the Transportation Planning Board; reviews policies; resolves policy differences; and adopts an air quality plan for transmittal to the District of Columbia, Maryland, and Virginia.

2.7.5 Energy

COG's Energy Policy Advisory Committee to address a wide range of regional energy concerns for local governments. The group collects, monitor, and analyzes pertinent energy data, and report to and advises local government members on energy trends and developments, with special emphasis on energy deregulation and the impact on this region. Other focal areas include the future energy supplies; energy pricing; energy conservation; energy contingency planning; and related issues. The advisory group is responsible for making recommendations for balancing long-range demand with long-range supply through conservation.

Further, in November 2000, key regional energy representatives met to review existing energy and emergency management coordination mechanisms that are currently in-place for the region. A major planning assumption of the energy annex is that the Tri-State Energy Coordination Agreement forms the basis for coordinating and consultation for all local units of general-purpose governments. As a result of September 2001, much of this planning and coordination has been incorporated into the region's regional emergency response planning process.

Other COG advisory committees deal with solid waste and recycling; urban forestry; airport noise abatement; the Anacostia River watershed and "green" infrastructure.

2.8 Important lessons

Urban growth and development is a consequence of many economic, political, geographic, social, and institutional factors. Montgomery and Fairfax Counties are no exceptions in this regard. Identifying the effects of specific factors on urban development patterns, however, is extremely difficult, and beyond the scope of this report. With that disclaimer, however, it is still possible to offer some conclusions about differences in the land planning and development histories of Montgomery and Fairfax Counties, and to conjecture on how these might reflect institutional differences.

As shown in data compiled by HNTB(2004), Fairfax County has approximately 100,000 more people and jobs than Montgomery County and about 100 fewer square miles. Yet the density of

developed areas in Montgomery County is about 20 percent higher than in Fairfax County. Median housing prices are roughly equal in the two counties though median incomes are higher in Fairfax County, making housing slightly more affordable in Fairfax than Montgomery County. The transit share of the commute trip to work is slightly higher in Montgomery than Fairfax County. As a result, commute times are higher in Montgomery County and vehicle miles traveled, time spent in congestion, and fuel consumption per capita are higher in Fairfax County.

Table 2: Comparative Statistics of Montgomery and Fairfax Counties

	Montgomery County	Fairfax County
Population	873,000	965,000
Households	325,000	351,000
Jobs	404,000	509,000
Jobs / Household Ration	1.25	1.45
Land Area (square miles)	495	395
Median Household Income	\$71,500	\$81,000
Density of Development (pop. per acre)	7.5	5.1
Average Commute Time	32.8 minutes	30.7 minutes
Fuel Consumed Per Capita	64	79
Vehicle Miles Per Capita Per Day	14.3	17.5
Transit Mode Share	13.5 %	11.2 %
Road Congestion Index	1.32	1.41

The differences in development trends between counties described above are consistent with the differences in institutional forms and political cultures discussed earlier. As a home rule government, Montgomery County has more latitude to adopt policies for managing urban growth. And it has. Those policies—adequate public facilities ordinances, priority funding areas, wedges and corridors—have produced a more compact urban development pattern, higher densities, and more transit ridership. Fairfax County, in a Dillon rule state, has imposed fewer growth controls and has less compact growth, lower densities, lower transit ridership and thus lower housing prices and shorter commute times. In addition, as Harrington and von Hoffman (2004) assert, the more rapid growth in Fairfax County than in Montgomery County since 1950 has been fueled by pro-growth forces that have included landowners, business leaders and state courts.

The differences between Montgomery and Fairfax Counties are significant and important, but the differences are perhaps not as significant and important as their similarities. Although Montgomery County is in a home rule state and Fairfax County is in a Dillon rule state, both have significant powers and responsibilities compared to counties in other states. Both have planning and zoning powers and the responsibility for providing the full range of public services. Yet these powers and responsibilities are limited in a number of respects. First, both counties are limited in their ability to plan and manage growth in incorporated municipalities. This is a greater problem in Fairfax County, where municipalities have greater autonomy but it is also a problem in Montgomery County. Second, neither county has full control of either the highway or transit planning process. Finally, both counties have limited ability to control the rate and character of urban growth. As jurisdictions in a larger and dynamic metropolitan area, both counties face pressures from market forces to accommodate more populations and jobs. Because jobs provide greater fiscal benefits than households to both counties, both are more anxious to attract jobs than households. These competitive pressures cause both to contribute to jobs-housing imbalance and to problems of housing affordability.

3. Unresolved issues

In general, the major unresolved issue in local land use planning in the Washington metropolitan area is the necessity for a regional solution to such serious problems as urban sprawl, traffic congestion, the decline in water quality of the Chesapeake Bay, and a shortage of affordable housing. With regard to the latter problem, for example, the Metropolitan Washington Council of Governments predicts a shortage of 82,000 housing units in the Washington region during the next decade (Whoriskey 2004). The lack of a regional approach is due to the fact that planning and zoning power is fragmented among local governments.

While regional planning agencies exist, their powers are limited and are usually advisory only to their local government participants or members. In addition, local government reliance on property taxes for a significant portion of their revenues has contributed to urban sprawl, a shortage of affordable housing and increased automobile dependency. That is because local governments often practice “fiscal zoning”, in which revenue-generating land uses like retail centers and office buildings are favored over low- and moderate-income housing. Workers’ housing is thereby located further and further from job centers and shopping. As the Montgomery County Council President stated in 2004, “we have a regional housing shortage because of hurdles put up by local governments” (Whoriskey 2004). Thus, while state

government delegation of land use planning and zoning to local governments allows for greater local control over land use, it also leads to a lack of regional coordination to solve important land use and environmental problems. The “Not-In-My-Backyard” syndrome (see section 2.5 under “Land Use Implications of Revenue Sources”), which flourishes under a fragmented land use governance system, could also be reduced in a land use planning/regulatory system in which regional organizations had more authority.

Both Montgomery and Fairfax County Plans identify regional coordination as major goals, but as Zyontz (2004) points out, such goals are more easily articulated than implemented. Some important functions of regional cooperation are conducted by councils of government and metropolitan planning organizations. But the scope of metropolitan planning organizations is limited to transportation planning, and the powers of councils of government are limited to those granted by the member governments. Such powers, therefore, are extremely limited.

These problems of regional coordination, of course, are not limited to Montgomery and Fairfax County or to the Washington metropolitan area. These problems are national in scope. As a result, some states have adopted sweeping land use reforms that fundamentally altered the powers and responsibilities of city, county, and state governments. Oregon and Washington states, for example, have greatly increased the role of state governments in reviewing local plans, assuring consistency among plans, and imposing requirements on state agencies that their plans are consistent with local land use plans. The state of Florida has required that development in local governments is approved only if local public services are provided concurrently. New Jersey has adopted a statewide plan with which local plans must be consistent. None of these statewide reforms have solved all the difficult problems of regional coordination, but each offers lessons for future land use reforms.

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