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Growth Tax Falls Short of Promises

Delay Set Off Race for Permits In Montgomery

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A Montgomery County "growth tax" law designed to force builders to pay for new roads and schools to ease the impact of development has raised substantially less money than promised by its supporters.

County officials had predicted that the 2003 law, which created a tax to help pay for schools and increased an existing roads tax, would generate as much as $66 million over the past two years. Instead, the amount raised has totaled about $37 million.

Although the shortfall was caused in part by a slowdown in the housing market, more than a third — about $13.5 million — of the anticipated funds were not collected because the County Council allowed a four-month delay before the new taxes took effect. That lag set off a rush by builders to apply for permits before the March 1, 2004, deadline.

And many more builders than officials predicted used the opportunity to avoid the higher taxes. A Washington Post analysis of county permits shows that builders of about 1,700 homes, many of them in Clarksburg in northern Montgomery, were able to avoid the higher taxes, which in many cases would have doubled their levy to more than $16,000.

In February 2004, the month before the taxes took effect, the county received 1,007 applications for

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building permits — more than four times the number of building permit applications filed in the next-busiest month since March 2000.

Under the law, builders pay the taxes when they construct a new home.

"We knew that was going to happen," said Steven A. Silverman (D-At Large), the bill's chief architect, who said the law balances the needs to reduce congestion and educate new students with the need to sustain economic growth in a county with an annual budget of about $4 billion.

Silverman, who this year unsuccessfully sought the Democratic nomination for county executive, often pointed to the growth tax on the campaign trail as he described his efforts to manage growth and keep the economy healthy.

The council's 6 to 3 vote for the measure in October 2003, which also lifted a moratorium on growth in several parts of the county, came with strong support from the "End Gridlock" slate — Democrats Nancy Floreen (At Large), Michael Knapp (Upcounty), George L. Leventhal (At Large), Michael L. Subin (At Large) and Silverman.

Also voting in favor was Howard A. Denis (Potomac-Bethesda), the council's only Republican.

Subin and Silverman were defeated in the Sept. 12 primary; Denis has been criticized for the vote by his Democratic opponent Roger Berliner, whom he faces Nov. 7.

Silverman said the purpose of delaying the law's implementation was to give builders and developers, many of whom had projects in the works, time to adjust their plans. Builders and developers often spend years crafting plans and say they can suffer big losses when governments make a mid-course change in the rules.

"We still got more money out of this impact tax than we got out of the old system," Silverman said.

Data analyzed by The Post show that at least 223 permits filed between Nov. 1, 2003, and March 1, 2004, were for homes in Clarksburg Town Center. At least 342 were in Clarksburg Village and at least 397 were in Greenway Village, which includes an area known as Arora Hills. All are part of what eventually will be a 14,000-unit town rising in northern Montgomery.

Critics say county taxpayers might be unfairly saddled with fiscal problems because of the 2003 law.

"Public officials present to an unsuspecting public that they have a measure in place to take care of things, but in reality it is just lip service," said Amy Presley, a civic activist who was among those who last year discovered building irregularities at Clarksburg Town Center.

"In reality they aid those who want to get out of the requirement. I hope things will be different with the next council," she said.

Council member Marilyn Praisner (D-Eastern County), who voted against the bill, said this week that she has since urged revenue forecasters to offer more realistic projections. She also recently cautioned County Executive Douglas M. Duncan's administration and her council colleagues to avoid preparing a budget this winter based on overly optimistic estimates of growth taxes.

The housing market continues to soften, meaning growth tax collections are likely to continue to be lower than expected. "We need to be a little more cautious about what we can deliver," Praisner said.

Timothy Firestone, head of the county's finance department, said Duncan has also cautioned the council about relying heavily on a tax that is subject to the volatility of the housing market. In 2003, Duncan pushed the idea of lifting the growth moratorium but urged the council to more slowly implement the higher tax. He reluctantly signed the bill, with the increase included.

"We urged them to collect it and then put it into a reserve," Firestone said. "At some point we have to fix this problem, because otherwise we have to charge the general taxpayer for these costs."

The county could be facing a similar problem with a new, unrelated law that seeks to create "workforce housing" for middle-income people who are being increasingly priced out of the county. The new law would require developers to set aside a portion of new housing units for households with incomes from 80 to 120 percent of the area median income. A family of four with an income up to $106,000 could be eligible.

Builders opposed that measure, saying it would cut into profits without achieving its goal.

That bill, approved unanimously by the council July 11, does not take effect until Dec. 1. Developers, however, have been able to exempt future projects by submitting broad outlines of their plans to the county before Dec. 1, even if in areas designated for workforce housing. So far, seven developers have filed the necessary papers and won't have to build the workforce housing.

"This is certainly going to delay a significant amount of workforce housing for many years," said Rose Krasnow, head of development review at the Department of Park and Planning, who mentioned the rush at a council meeting. Under the new law, about 8 percent of units in new projects near Metro stops will be slated for workforce housing, if the applications come in after Nov. 30.

Jim Humphrey, a longtime housing activist in Bethesda, had urged the council before it passed the bill last summer to shorten the lead time.

"It was the same trick that had been played before. Every project in a Metro area that is even a twinkle in a developer's eye is going to be applied for," he said. "We won't have any workforce housing units created for at least two or three years."

Database editor Sarah Cohen contributed to this report.