



**Wireless Telecommunication Facility (WTF)
Subsidies
Borne by Resident Taxpayers**



PROJECT WTF

a public information series provided by
Montgomery County Resident Advocates

County WTF Expenses, Significantly Subsidized by Resident Taxpayers, are Documented in Montgomery County's Individual and Joint Filings to the FCC

[September 30, 2011](#) - *[T]he County subsidizes the cost of reviewing applications for tower siting facilities and augments the process with dedicated staff.*

[March 8, 2017](#) (referencing and attaching the [Report and Declaration of Andrew Afflerbach For the Smart Communities Siting Coalition](#)) – *It is more time-consuming to evaluate applications for facilities in the PROW (public right-of-way) than on private property.* Given the potential impact on safety, the scarcity of space, and the competing needs for the rights-of-way, the review process in the rights-of-way needs to be very extensive.*

[April 7, 2017](#) - *The fees for new structures are significantly less than the actual cost... In light of the increase in volume, increase in multiple applications – sometime number in the 100's – filed in a single day subject to the same shot clock, and potential “deemed granted” preemptive zoning impact, the County is reviewing this subsidy.***

[October 29, 2019](#) - *[L]ocalities have an obligation to their constituents to consider impacts [including the...] allocation of scarce local government resources. Bolstering this assertion, the filing cites the 2017 [Report and Declaration of Andrew Afflerbach For the Smart Communities Siting Coalition](#) (see quotation from March 8, 2017 filing).*

*The hourly compensation contract (No. 1035679) for Tower Coordinator services with CTC, Andrew Afflerbach's firm, has been extended to run through June 30, 2022. Obviously, if an application is more time consuming for CTC evaluate, there is likely a correlation that increases the contractor costs.

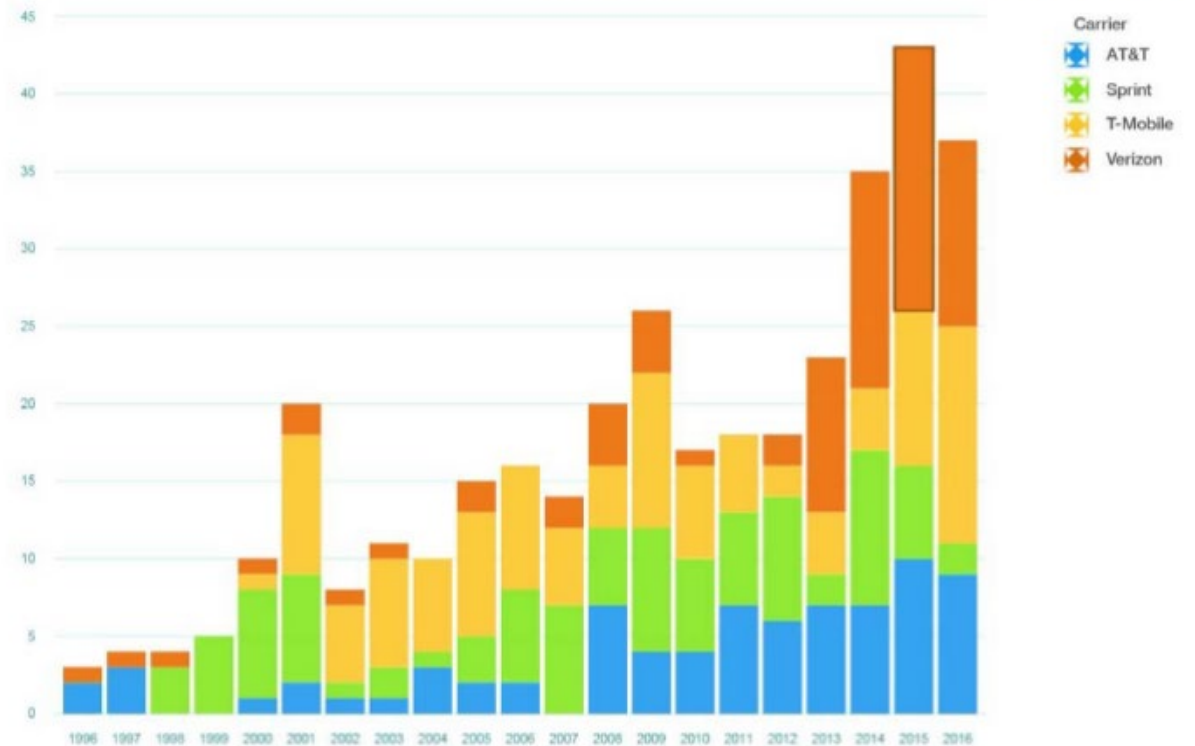
** ZTA 18-02 authorized replacement poles in the rights-of-way and in parking lots as “new structures” when applying Sec. 3.5.2.C. and [fees for new structures](#) are applied accordingly.

WTF Application Surges Require Additional Resources

[March 8, 2017](#) - TABLE 4, ... there are surges of applications by carriers in given years as carriers seek to upgrade or densify their respective networks. The surge may, however, require additional resources, **which will need to be recouped in either fees for applications, or in the time allotted for action on the applications.***

* Montgomery County [TFCG application fees](#) have never been increased since they were set by Executive Regulation in 2003, in COMCOR 02.58E. And the County needs to allot more time, not less, for many of the anticipated TFCG applications. For example, elsewhere in the above FCC filing, the County's expert explains that more time is needed to evaluate applications for facilities in the rights-of-way than for those on private property.

TABLE 4: MAJOR CARRIER APPLICATIONS APPROVED BY YEAR



Filings to the FCC Repeatedly Document WTF Applicants' Careless Errors and Omissions, Burdening County Resources and Resident Taxpayers

[July 21, 2009](#) - *The County believes that contractors sometimes knowingly submit incomplete applications. One reason for this may be that site acquisition contractors are compensated for their work upon accomplishing specific tasks. ... Another reason may be that contractors submit incomplete applications in an effort to speed up the overall processing time, assuming that any missing information can be provided later, if and when it is requested. In any event, there is no question that applications are often submitted without required supporting documentation... **In addition to omitting important information, applications often contain obvious errors, inaccurate or illegible plans and exhibits, or internally contradictory information.** Such applications cannot be processed until they are correct and complete.*

[April 7, 2017](#) - ***[T]he failure of carriers to submit complete applications may create significant delays, and drive up the overall costs to process applications.***

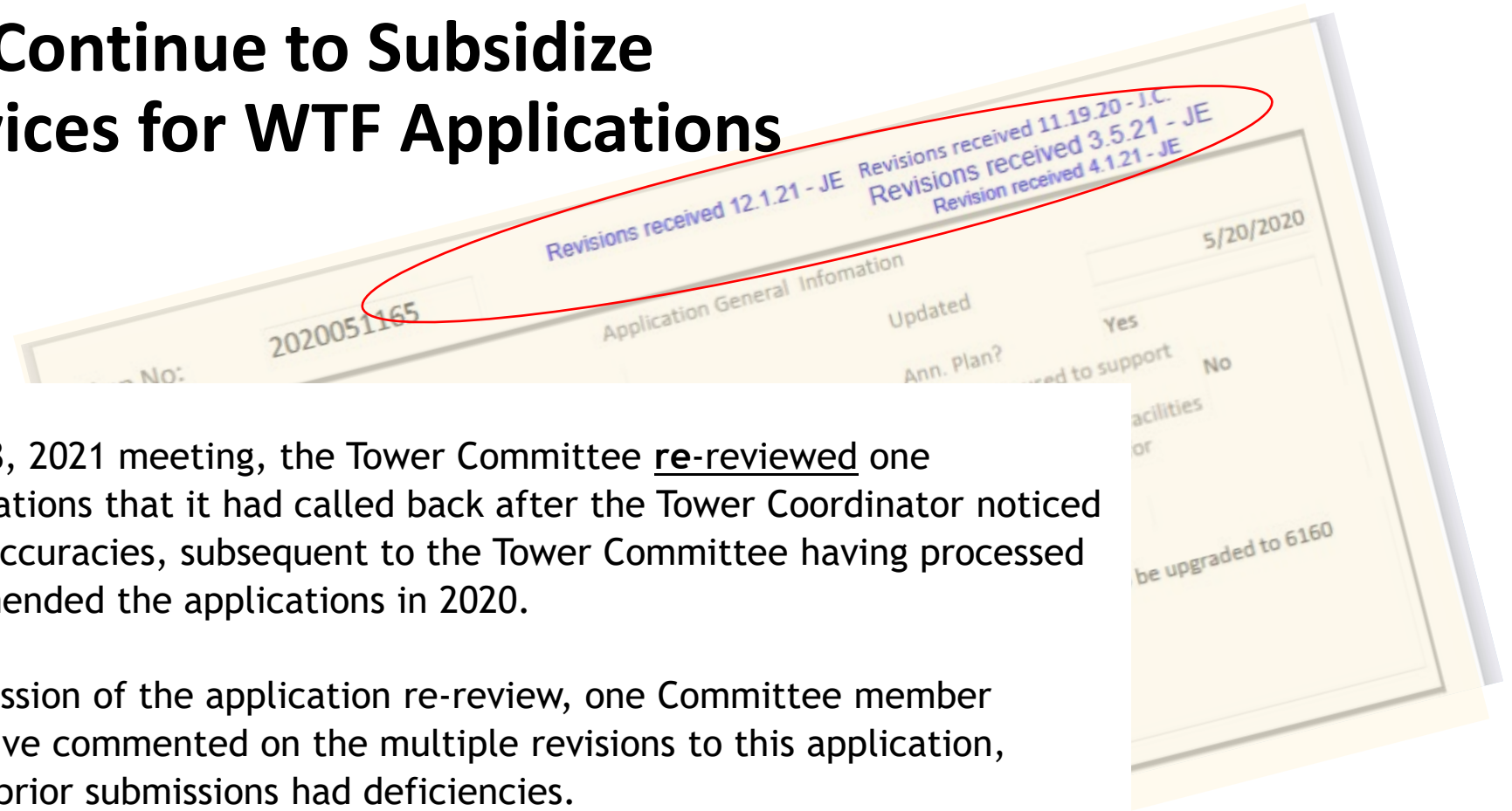
[October 29, 2019](#) - *... one of the most significant sources of delay in application processing – the frequent submittal of incomplete applications or applications improperly claiming Section 6409(a) status. Montgomery County, Maryland, for example, has received 142 Section 6409(a) applications to date in Fiscal Year 2019 – more than half of all wireless applications filed. Of these, 126 – **89% of the total – have required at least one request for information owing to inadequate submission of information.***

May 2010 – County Staff Apprised the Planning Board: WTF Industry Burdens Agencies and Resident Taxpayers

[May 6, 2010](#) - At minute 1:03:15, Mitsuko Herrera describes to the Planning Board how **the provider may initially file an application that is missing required elements**, such as (coverage) maps. At that point, she says that she has collected one fee, which, **as a matter of policy, covers 75% of the (initial contractor) engineering costs and doesn't cover any of the internal staff costs**. She explains that when the provider does return with materials, it may be several months later and **the application may be entirely revised, which burdens the engineers to conduct an entirely new review without charging the provider a new fee**.



Resident Taxpayers Continue to Subsidize Quality Control Services for WTF Applications



At its April 8, 2021 meeting, the Tower Committee re-reviewed one of 29 applications that it had called back after the Tower Coordinator noticed material inaccuracies, subsequent to the Tower Committee having processed and recommended the applications in 2020.

During discussion of the application re-review, one Committee member representative commented on the multiple revisions to this application, noting that prior submissions had deficiencies.

Chair Marjorie Williams indicated that a change in application fees is being considered, noting that about **80% of the applications are incorrect**. And she asked with consternation, ***Why should the County be the quality control for what the applicants are submitting?!***

Resident Taxpayers Annually Subsidize WTF Application Expenses

Current Cost Breakdown of Tower Committee Application Process*

% of Costs Subsidized by Resident Taxpayers

Tower Committee		Intakes, Completeness Reviews, and Database Management	Tower Committee Meetings Preparations	Tower Committee Meetings Participation	Post-Meetings Inter-Agency Coordination
Administrative Staff					
Marjorie Williams, TFCG Chair	Department of Technology Services, Office of Cable and Broadband Services	100%	100%	100%	100%
Heather Elliot	Department of Technology Services, Office of Cable and Broadband Services	100%	100%	100%	100%
Zeena Oduro	Department of Technology Services, Office of Cable and Broadband Services	100%	100%	100%	100%
Agency TFCG Member Representatives					
Max Stuckey	Department of Technology Services - Public Safety Radio		100%	100%	
Benjamin Berbert	M-NCPPC — Montgomery Planning		100%	100%	
Michelle Grace	M-NCPPC — Montgomery Parks		100%	100%	
Felicia Hyatt	Office of Management and Budget		100%	100%	
Boyd Lawrence	Montgomery County Public Schools		100%	100%	
Martin Rookard	WSSC		100%	100%	
Dan Sanayi	Department of Transportation		100%	100%	
Thomas Williamson	Department of General Services		100%	100%	
Patricia Wolford	Department of Permitting Services		100%	100%	
Daryl Brathwaite	Takoma Park		Takoma Park	Takoma Park	
Subject Matter Experts					
Javad Shayan	Department of Permitting Services		100%	100%	
Brian Kim	Department of Permitting Services		100%	100%	
Tower Coordinator & Engineering Staff					
Shawn Thompson	Tower Coordinator, Principal Engineer	< 100%	< 100%	< 100%	< 100%
Julie Elias	TFCG Program Coordinator, Staff Analyst	< 100%	< 100%	< 100%	< 100%
Andrew Afflerbach	Director of Engineering, P.E.	< 100%	< 100%	< 100%	< 100%

* Technology changes and recent FCC Orders have apparently increased the time and costs for processing many applications.

Ability to Compel Removal of Double Utility Poles is in Doubt — Enforcement Costs are Subsidized by Resident Taxpayers —

The [DPS Director related obstacles](#) to the enforcement of any zoning regulations that compel removal of double utility poles. The Maryland Public Service Commission (PSC) is vested with this authority over utility companies.

Yet, DPS assured vigorous enforcement strategies, which include the following components, which, for the most part, appear to not be recoverable costs from the utility pole owner or from the WTF industry attacher, and are thus are likely costs that are Resident Taxpayer subsidized:

- Field inspections
- Issue Utility Company Citations
- Serve Notice and Abatement Orders
- Pursue Enforcement in Court, asserting the *theory* that the old poles that are no longer a public utility use or under PSC authority.*

QUESTIONS TO ASK ARE:

1. If DPS has an effective strategy to compel the utility companies to remove errant double poles, then why do many roadways continue to be cluttered with them?
2. Can the fees for right-of-way permits be adjusted to ensure that Resident Taxpayers are not subsidizing errant double pole removal enforcement costs?
3. If DPS does not have an effective strategy to compel the utility companies to remove errant double poles, why is ZTA 19-07 being considered? After all, that legislation reduces the setbacks in the residential zones with the expected outcome of hundreds of new replacement poles; and for each utility pole replaced, a double pole would need to be removed.

*See the discussion during the October 1, 2018 PHED Committee Meeting, in the video beginning at min. 25.

The Tower Committee Greenlights Antenna Modification Applications with Unabated Double Poles

2018 - The Council was offered assurances by DPS and the Tower Committee that these agencies had improved their coordination with implemented process improvements. (See circle pages 30 – 31 of the [staff packet](#).)

2019 - Crown Castle applications requested modifications to numerous existing antenna sites in residential zones, some of which provided photographs that documented old unabated double utility poles. The errant double poles had apparently been awaiting removal since 2014, when replacement utility poles were installed at Crown Castle's behest for antenna attachments. Disregarding the unabated double poles, the Tower Committee greenlighted the 2019 modification applications.

2021 – On February 10, the PHED Committee voted to expand ZTA 19-07 to subsume part of a subsection of Section 3.5.14.C. and to reduce the setbacks in the residentially zoned areas governed by that subsection from 60 to 30 feet. The Council's legislative attorney advised the PHED Committee that this subsection regulates antennas on both existing and replacement utility poles in rights-of-way.

2021 – As of May 1, the double poles at sites reviewed and greenlighted by the Tower Committee in 2019 remain. **ZTA 19-07 promises to usher in hundreds of replacement poles along neighborhood streets and roads. Resident Taxpayers should not subsidize enforcement of the abatement of the double poles, the residual of antenna facility installations. Nor should these often-dangerous and always-unsightly double poles litter residential streets and roads and diminish the value of our neighborhoods.**



ELIMINATE — DON'T EXPAND — WTF INDUSTRY SUBSIDIES for OZAH WIRELESS TELECOMMUNICATION FACILITY REVIEWS

At the [February 10, 2021 PHED Committee meeting](#), PHED Committee Chair and ZTA 19-07 lead sponsor Councilmember Riemer characterized the current Conditional Use fees paid by the WTF applicants as too high. He speculated that the fees could run afoul of the fees limited by the FCC Small Cell Order, upheld by the Ninth Circuit. And he contended that the cost burdens upon the wireless industry applicants should be reduced.

However:

- Mitsuko Herrera, representing the County Executive's staff, reiterated information in the [staff packet](#):
The [Ninth Circuit] upheld the FCC's restrictions on the amount local governments may charge for the use of the right of way. Fees are permissible only if they are a "reasonable approximation of the state or local government's costs" of processing applications and managing the rights-of-way.
- She and OZAH Director Lynn Robeson Hannon also referenced the State law that requires County regulatory fees to be reasonable and related to the purpose of regulatory measure; otherwise, the fee is considered a tax.
- The OZAH Director also explained that of its \$650K budget, only approximately \$90K of its operating expenses are supported by Council-approved fees, which makes over 85% of OZAH's operating expenses subsidized by County taxpayers.

ELIMINATE — DON'T EXPAND — WTF INDUSTRY SUBSIDIES

Don't Shift Cell Pole Inspection Costs to Resident Taxpayers

Zoning Ord. Sec. 3.5.2.C. establishes a telecommunications tower in a Residential zone as a Conditional Use, including a new or replacement pole-type telecommunication facility in the right-of-way.

Zoning Ord. Sec. 7.3.1.L. states *DPS and the Board of Appeals must establish a regular inspection program for conditional uses.*

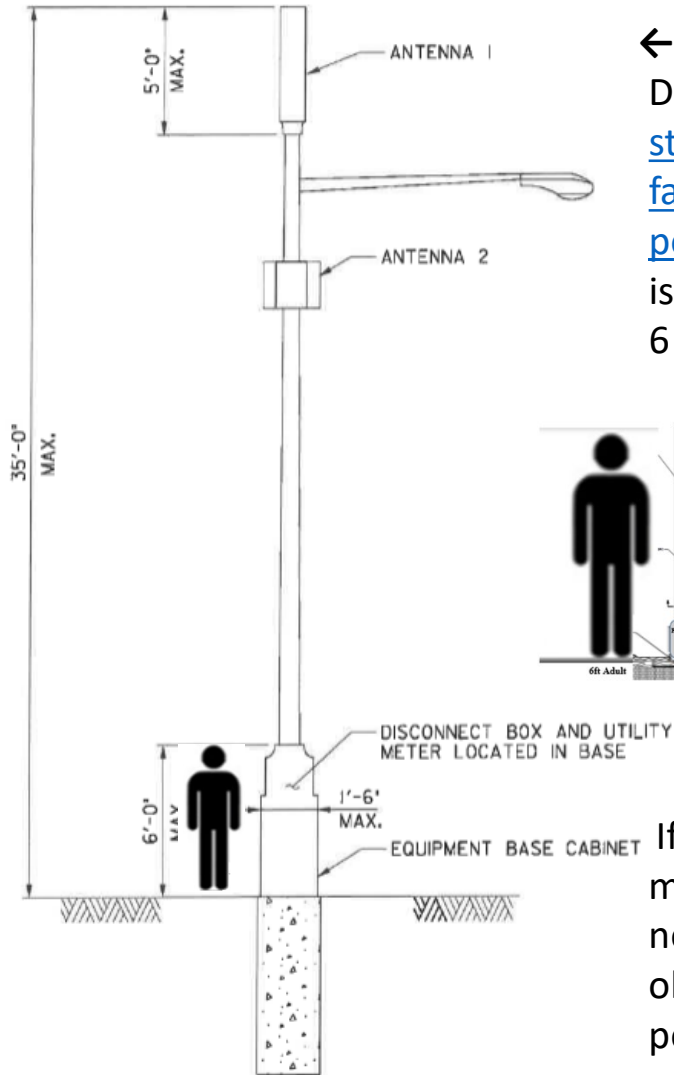
DPS Conditional Use regular inspections are covered by permittee fees; they are NOT taxpayer subsidized. **Omitting the projected hundreds of cell pole facilities in residential zones from regular inspections would diminish protective inspection services, increase community reliance upon complaint-based inspections, and expand Resident Taxpayer subsidies of inspections.**

ZTA 19-07 implicitly shifts inspection cost burdens to Resident Taxpayers. ZTA 19-07 eliminates regular inspections of wireless facilities by proposing:

- 1) A use status change to Limited Use from Conditional Use for the vast majority of right-of-way pole installations for WTFs in residential zones; and
- 2) Hearing Examiner reviews that bypass the provisions of Sec. 7.3.1. and therefore **omit the provision that requires a regular inspection program.**

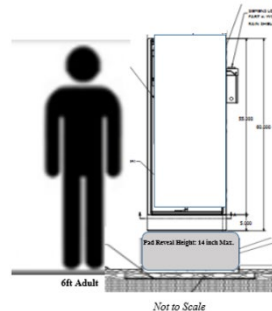


Cell Poles and WTF Equipment Threaten Student Walking Conditions, Vision Zero Bus Strategy, and Burden School Budgets



SMALL CELL POLE

← In 2019, Montgomery County's Department of Transportation issued [standards for replacement wireless antenna facilities installed on County streetlight poles](#). The telecommunications equipment is concealed within a thick base that can be 6 feet in height.



← Later in 2019, the County greenlighted numerous applications for ground-mounted wireless equipment cabinets in residential rights-of-way, which the applications indicated could be over 6 feet in height.

If passed, ZTA 19-07 would bring many more cell poles and equipment to neighborhood streets and road that could obscure visibility, particularly of children, persons with disabilities, and smaller adults.

Who rides the school bus?

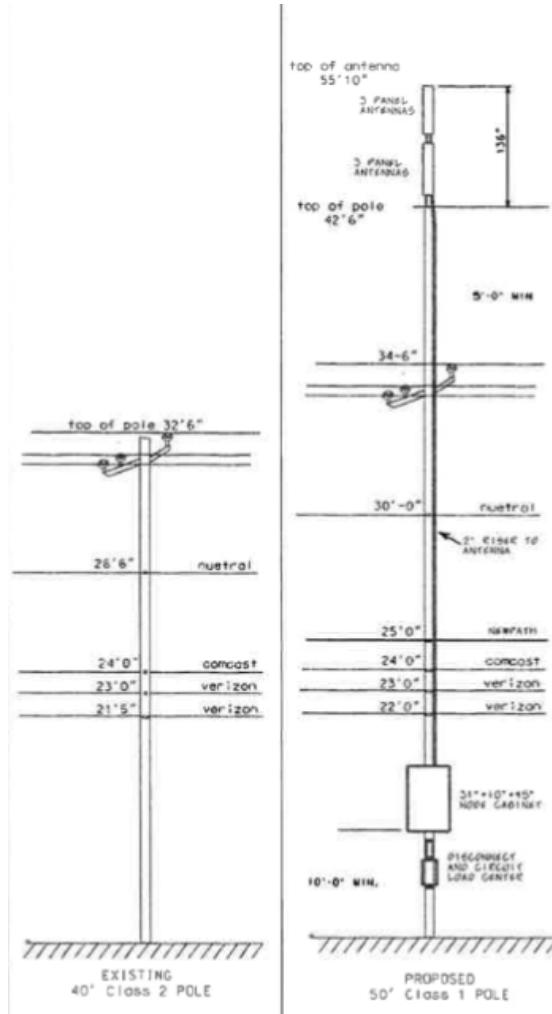
Montgomery County Public Schools (MCPS) provides bus service for, among other reasons,



students who face hazardous walking conditions regardless of distance from school as determined by the MCPS Department of Transportation.

Wireless telecommunication equipment will add to the hazards. Wireless telecommunication equipment on Residential rights-of-way will make students' walking conditions near schools unsafe. **These installations will make it necessary for Resident Taxpayers to fund MCPS Transportation Budget increases to protect students from new hazards.**

Cell pole deployments and expansions will reduce the tree canopy



Forest conservation and environmental standards get bypassed when utility poles are replaced with taller poles to accommodate WTFs.

Utility pole owners and facility operators' aggressive trimming will denude nearby trees in the rights-of-way and in homeowners' yards:

- Replacement poles and electric lines are increased in height to accommodate the wireless facilities
- Cell pole signal transmission often relies on *line-of-site* technology

With ZTA 19-07 proposing dramatic changes, including allowing each installation as a Limited Use at a setback of merely 30 feet along neighborhood streets and roads, hundreds of significantly taller utility poles may be added in neighborhoods, along residential yards. The adverse impacts of severe foliage removal could be overwhelming!

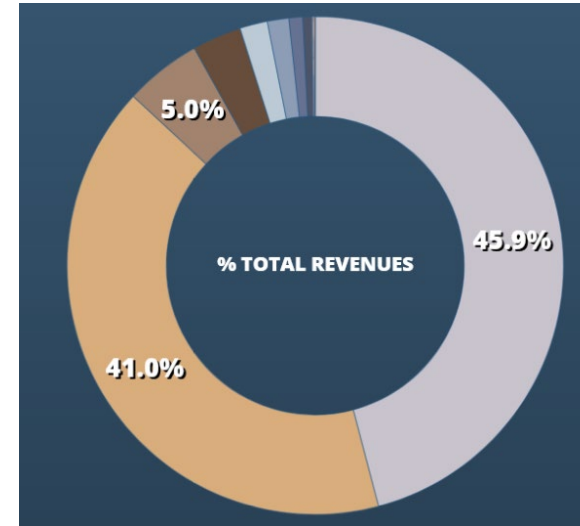
Who would compensate Resident Taxpayers for their losses?

Cell Poles Adversely Affect Residential Property Values and Dependent Property Tax Revenues that Fund Essential Services

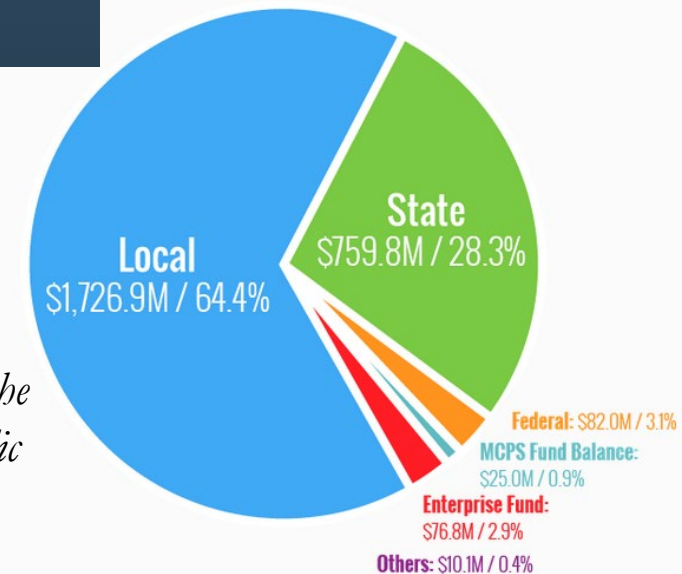
Montgomery County maintains that small cell poles in the rights-of-way can diminish neighboring residential property values. On multiple occasions, the County has individually and jointly filed comments with the FCC, asserting that small cell poles in the rights-of-way can diminish neighboring residential property values.

To support and substantiate this position, [the Expert Declaration of appraiser David E. Burgoyne](#) has repeatedly been submitted and referenced in the filings submitted to the FCC, including on October 29, 2019 (see Exhibit O).

Diminished residential property values lead to decreased opportunities for County property tax revenues and for the support of essential services that are dependent upon County property tax revenues, including Montgomery County Public Schools.



Property taxes comprise approximately 45% of the total County tax revenues.



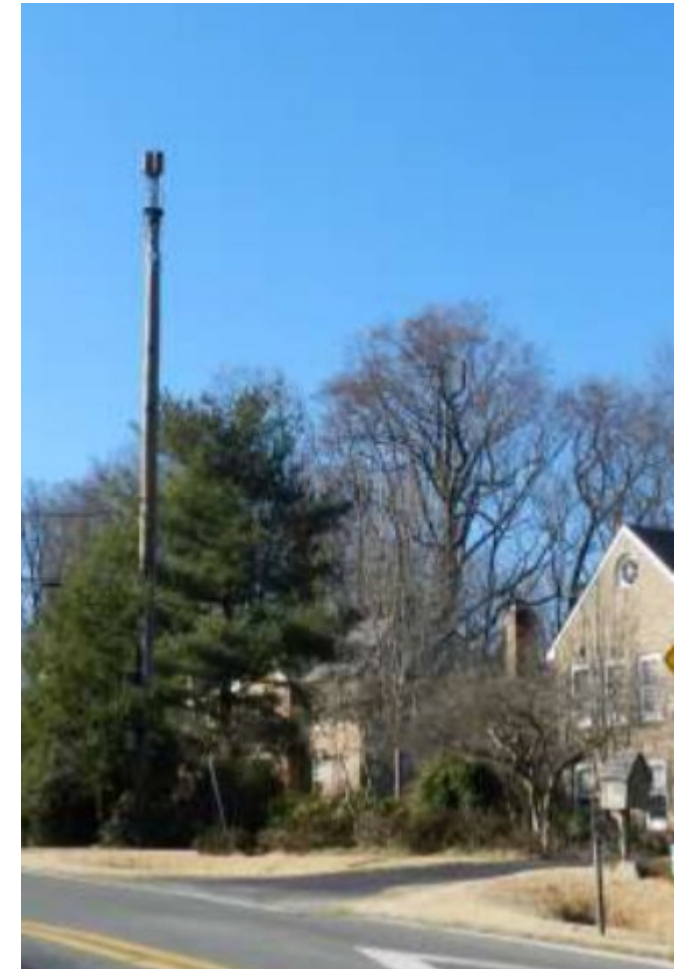
Approximately 65% of the Montgomery County Public Schools budget comes from County tax revenues.

Litigation is currently pending in the Ninth Circuit. Now is not the time to risk neighborhood compatibility, residential property values, and County tax revenues.

The recent FCC [6409 Clarification Order](#) in effect is currently being challenged by numerous local jurisdictions, including Montgomery County, in a consolidated appeal that is pending before the Ninth Circuit. The County's attorneys have advised that this [Order](#) severely constrains local governments' ability to regulate the concealment of cell poles or to restrict the ultimate size of their full buildouts.

The Order hampers the County's ability to apply the [Burgoyne Declaration \(Exhibit O\)](#) guidance, which, for example, discusses how a cell pole in the rights-of-way may be less injurious of neighboring property values when, among other things, it is well concealed and of limited size at full buildout. By contrast, the declaration provides examples of poles and equipment in residential rights-of-way that lack adequate compatibility concealments or are of extraordinary size or bulk, and finds these installations more likely to adversely effect residential property values.

Proceeding with ZTA 19-07 in the midst of the ongoing litigation is unwise. Doing so risks neighborhoods' compatibility, property values, and County tax revenues; and it is unfair to Resident Taxpayers.



7800 Brickyard Road, Potomac, Maryland

ELIMINATE

Wireless Telecommunication Facility Subsidies

Make WTF industry fees fully self-supporting,
without diminishing the quality of protective services for Resident Taxpayers.

And reject ZTA 19-07,
which portends severe adverse impacts on Resident Taxpayers.

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