

School Adequate Public Facilities Program and Funding Review Committee

**AGENDA
Meeting #10
July 31, 2013
6:00 pm**

- Review and Approval of the Meeting Minutes of July 17th
- Action on Draft Issue Paper #2 “Treatment of Minor Subdivisions”
- Action on Draft Issue Paper #4 “School Construction Funding – County Funding Sources”
- Introduce Issue Paper #3 “School Capacity Measurement”
- Introduce Issue Paper #5 “DRRA School Allocations”
- Introduce Issue Paper #6 “School Construction Program”

The next meeting is tentatively scheduled for August 14th at 6:00 PM in the County Government Conference Room.

**This agenda is tentative and is subject to adjustment at the discretion of the Committee.*

School Adequate Public Facilities Regulation

Issue 5 -- Minor Subdivisions. Minor subdivisions that would create more than 3 new lots must sit on the school allocation waiting list for an indeterminate number of years until capacity becomes available.

Summary of Findings

This issue was identified primarily from input received at the Public Outreach Meeting. Mr. Boarman stated that he has been on the waiting list since 2006. (See attached letter.) The Committee reviewed the practices of selected counties in Maryland and found that some allow more lots as an exemption to the APF requirements while others are more restrictive than Charles County. Further the Committee found that certain counties cap the number of years a project has to wait for adequate school capacity from 4 to 7 years.

As part of the alternatives evaluation, the Committee looked at the historic use of the amount of capacity being set aside for bulk school allocations. (See attached table and graph.) The trends show that the set aside has declined over time due to reduced excess capacity. The usage has also declined since 2006. This is primarily due to the decline in the inventory of lots of record that were grandfathered under the initiation of the School Allocation Program in 1999. Note that the method of counting the set-aside changed in July of 2008 when the program began setting aside amounts for each school. Cumulatively this would be a large number, so the total for the most limiting school level is used. Finally, in recent years there has been a surplus of dwelling unit allocations reserved for minor subdivisions and existing lots of record.

Alternatives Identification

1. Cap the number of years, say 5 to 6, a minor subdivision must sit on the waiting list before it may receive allocations.
2. Evaluate the allowance for minor subdivisions with more than 3 new lots to pull from the bulk set aside. As part of this alternative evaluate historic use of the amount of capacity being set aside for bulk school allocations.
3. Permit minor subdivisions that are deed restricted for intra-family transfer only to use bulk allocations.

Alternatives Evaluation

1. **Cap the number of years, say 5 to 6, a minor subdivision must sit on the waiting list before it may receive allocations.** From the selected APF programs, it was found that 3 Counties set a cap on the length of time any residential project must wait for adequate school capacity. The number of years range from 4 to 7. If a cap was set for just the minor subdivisions on the waiting list, the impact would be minimal since there are currently only

3 minor subdivisions waiting for school capacity. Two subdivisions have been waiting 7 years and one 2 years.

- 2. Evaluate the allowance for minor subdivisions with more than 3 new lots to pull from the bulk set aside.** As part of this evaluation, the historic use of the amount of capacity being set aside for bulk school allocations was considered. (See attached Bulk Allocation table and graph.) There has been a trend toward excess residential dwelling allocations reserved for minor subdivisions and lots of record. In 2012, there were 89 allocations not used. There were 14 minor subdivisions approved in 2012. For purposes of analysis, it is assumed that all minor subdivisions could receive bulk allocations. Assuming the worst case and they were all the maximum of 7 lots, then that would have used 42 additional bulk allocations from the 89 surplus.

From the Counties Survey it was determined that 3 of the 7 counties allow 5 lot minor subdivisions.

- 3. Permit minor subdivisions that are deed restricted for intra-family transfer only to use bulk allocations.** Intra-family transfer exemptions are used for Forest Conservation and Critical Area Requirements. In the past an exemption was given to intra-family subdivisions for road requirements and there was evidence of circumventing the intent of the law with straw deeds. If this technique is used, there needs to be a mechanism to track the deed restriction over time. One approach is to make the County party to the restriction as we do with age-restricted housing.

Howard County is the only county from the selected APF programs that exempts intra-family transfers. They allow one lot with certain restrictions.

Recommendations

The Committee finds ...

School Adequate Public Facilities Regulation

Issue: School Capacity Measurement. If all schools are capped at State Rated Capacity (SRC), over time, there could be an impact on the County's ability to obtain State funding once all the existing school allocations are used. This would occur only if mitigation for the lack of school capacity is not allowed.

Summary of Findings

This issue was identified primarily from input received at the Public Outreach Meeting. The Committee reviewed the APF Program elements of several counties in the State and found that the majority of the counties provide some flexibility over state rated capacity. Among those that use 100% of state rated capacity, some additional flexibility is generally allowed. For example, Anne Arundel allows projects to exceed SRC if there is capacity for any portion of a project and Frederick allows projects to exceed SRC if they make a "school construction payment" to mitigate for impacts on school capacity. In addition to the selected County APF Programs evaluated, it was found that Baltimore, Harford and Prince Georges allow a certain percent over SRC when applying the APF test. The Committee found that adding flexibility to the APF program will help assure that the County can meet the threshold projected student enrollments needed to qualify for State School Construction funding.

Alternatives Identification

1. Allow an additional percentage over SRC when determining adequacy of school facilities.
2. Use a county determined maximum capacity.
3. Measure SRC by region.
4. Take into consideration CIP projects approved by the IAC or at a specific level of approval.
5. Allow mitigation payments either through DRRAs or through mandatory school facility payments when SRC or a local measurement of capacity is exceeded.

Alternatives Evaluation

1. **Allow an additional percentage over SRC when determining adequacy of school facilities.** This approach commonly used by other counties would allow school enrollments to reach the threshold requirements of approximately 65 to 70% of projected enrollments of a new school to qualify for state funding. The downside as experienced in Charles County is that if mitigation is permitted, some schools may exceed the capacity allowances. The CIP must then keep pace with the rate of growth.
2. **Use a county determined maximum capacity.** Four of the seven county programs evaluated used some form of locally determined capacity. Some exceed SRC and some may be less for certain schools. This approach would use the maximum capacity a school could accommodate based on the physical space and the program limitations. In the case that the

locally determined capacity is greater than the SRC, it contributes to the necessary demand to qualify for state funding.

3. **Measure SRC by region.** Howard, St. Mary's and Montgomery Counties use a regional approach to measuring adequacy of school capacity. St. Mary's divides the County between the Northern and Southern region. Montgomery measures the capacity available in all the elementary schools that will feed into a specific high school district. To minimize the impact to one school, Howard limits individual elementary schools to no more than 300 allocations (or about 60 students over capacity) if the elementary region is over state rated capacity. Prior to 2008, Charles County considered the capacity of elementary and middle schools based on the students attending within a given high school zone. This resulted in an averaging of school capacity within a given high school zone. This approach allows individual schools to exceed capacity provided there is capacity in the region. Howard caps each school at 115 % of SRC to insure that an individual school will not be overburdened by residential growth.
4. **Take into consideration CIP projects approved by the IAC.** Most counties base their measurement of capacity on enrollment projections several years into the future. This allows the county to count the capacity created by CIP projects in the projected enrollments. The counties surveyed use from 2 to 6 years. This approach recognizes that students from planned development will not enroll in schools for several years after plans and plats are approved. In Charles, the CIP capacity is currently counted 9 months in advance of the school opening.
5. **Allow mitigation payments either through DRRAs or through mandatory school facility payments when SRC is exceeded.** Charles County effectively allows mitigation payments through Development Rights and Responsibilities Agreements (DRRA). At this time there is no cap on the number of students over SRC that may be approved for a specific school. Frederick and Montgomery Counties have preset school facility payments required to obtain allocation when schools are over capacity. Both Counties cap the ability to mitigate to not more than 120% over SRC or the locally established capacity.

Recommendations

The Committee finds ...

School Construction Funding

Issue: County funding sources. Whereas the combined revenues received from projects making mitigation payments through a DRRA and the School Construction Excise Tax approximates the costs per dwelling unit, there are a large number of projects with preliminary plan approval and school allocations including St. Charles that do not pay an additional cash contribution to cover the funding shortfall. Note that St. Charles makes contributions through school site donation and infrastructure improvements to serve those sites.

Summary of Findings

The Committee found that State funding sources do not keep pace with the identified construction needs in the County or Statewide. To meet this shortfall and to augment the excise tax revenues, the Committee evaluated alternative revenue sources used in other Maryland Counties. The sources included those sources from development related fees and other general fund revenue sources. Generally, it was found that most counties need to supplement the development generated revenues and State funding to implement their Capital Improvements Program (CIP). The Committee learned that not all costs associated with the start-up of a new school including furnishings, equipment and the initial costs for staffing were taken into consideration when planning and budgeting for new schools.

Alternatives Identification

Identify and implement alternative revenue sources to supplement the shortfall from State funding and development generated funding sources. Potential sources identified were income tax increases, real estate taxes, increased DRRA contributions, School Facilities payment or fee, impact fees, transfer taxes, utility taxes and/or increased excise tax.

Revenue Source Alternatives Evaluation

Income Tax Increase – Charles County is currently at an income tax rate of 3.03%. The current maximum for counties is 3.20%. If the County increased the income tax to 3.20%, it would generate approximately **\$6.0 million** per year.

Real Estate Tax Increase -- Charles County currently ranks second only to Baltimore City in property tax rates; therefore, this revenue source was not further evaluated.

Increased DRRA contributions – In 2013 the County will receive **\$4.5 million** from DRRA payments. This current figure is the most indicative of the current market and school allocation program restrictions. This figure does not include Heritage Green or Scotland Heights since they are currently renegotiating their agreements. According to the Department of Fiscal and Administrative Services (DFAS), these payments from DRRAs will provide adequate funding to initiate the funding of the St. Charles High School and a new elementary school assuming that the State continues to fund their share which will reimburse the County. Increasing DRRA

contributions for future projects or phases of projects may be feasible in some cases; however, since each project has unique financing arrangements, some projects may not be able to afford increased contributions and would opt out of the voluntary program. One justification for the increased contributions is to factor in the start-up costs associated with the opening of a new school not typically considered with the evaluation of DRRA proffers.

School Facilities Payment – Frederick and Montgomery Counties use this form of mitigation payment over and above the established impact fees when the development will impact schools that are considered over capacity. For example, Frederick County allows a mitigation payment for schools over 100% SRC, but less than 120% of SRC. The payments are generally based on a combination of per pupil school construction costs and pupil generation rates by housing types.

Using the assumption that virtually all projects will send students to a school over SRC, estimates of potential school facilities payments are based on the current 12 month building permit numbers. The estimates below use payments from Frederick and Montgomery for a SFD with an elementary school over capacity.

County	Payment (SFD –Elem.)	Building Permits (12 mos.)	Annual Revenue
Montgomery	\$6,493	796	\$5.2 M
Frederick	\$3,870	796	\$3.1 M

Based on the estimates above, a school facilities payment approach for schools over capacity could generate revenues comparable to the current level of DRRA payments. The payments would vary based on school level and housing type.

Impact Fee – Adding impact fees would take enabling legislation. The addition of an impact fee could serve to implement the School Facilities Payment described above.

Transfer tax – Though Charles has not, most counties have enacted a transfer tax under State authority. Charles may enact up to a 0.5% tax without State legislative authority and up to 1.5% with legislative authority. If Charles applies a 0.5% tax to real estate transfers, it would yield approximately \$2.5 million per year based on FY 2013 sales data.

Utility Taxes – Six counties have enacted utilities taxes. The State allows the Counties to tax telephone service and electricity usage. The projected revenues below are based on a per capita amount generated by other counties.

Tax	Rate	Potential Yield
Telephone	8% sales tax (Res. Only)	\$1.5 million
Electricity	\$0.0125 per Kwh	\$1.2 million

Increased Excise Tax – The Excise Tax for School Construction is based on formulas that would need to be renegotiated with the State Legislative Delegation. One justification for the increased contributions is to factor in the start-up costs associated with the opening of a new school not considered in the formula for establishing the excise tax. Again, this would require changes in the law. Some of the start-up costs discussed by the Committee such as computers and salaries are not costs that would typically qualify for long term financing through bonds. Some items such as furnishings and library books could be financed through long term bonds as described in the Excise Tax legislation; however, the effort and expense to change the law may not offset the justifiable increase in tax.

Recommendations

The Committee recommends _____

Supplemental Information (Issue Paper #4)

Utility Taxes – Six counties have enacted utilities taxes. The State allows the Counties to tax telephone service and energy usage. The projected revenues below are based on a per capita amount generated by other counties.

Tax	Rate	Potential Yield
Telephone (Residential only)	8% sales tax (AA Co.)	\$1.5 million
Telephone (non-residential, residential and wireless)	8% sales tax (PG Co.)	\$6.3 million
Electricity	1.25% per Kwh (St. Mary's)	\$1.2 million
Electricity	\$0.006489 per Kwh (PG Co.)	\$8.8 million

While Charles County's predominate energy usage is from electricity, it should be noted that 5 counties tax other energy sources such as natural gas, LP gas, and fuel oil.

School Adequate Public Facilities Regulation

Issue: DRRA School Allocations. The payment of contributions to mitigate student impacts does not necessarily insure that the CCPS will be able to build the commensurate school capacity in the appropriate locations by the time the students attend the schools.

Summary of Findings

It was determined that DRRA contributions are used for school capacity provided by the school(s) next in line in the CIP. The Department of FAS has verified that the flow of contributions has, since 2006, and will continue to allow the County to forward fund the planned schools provided the State will continue to make payments to the County for approved schools. The County will receive \$4.5 million in developer contributions in 2013. The schools planned in the CIP are not always in close proximity to the projects that are making the contributions being used for school capacity. Consequently, the use of DRRAs to provide school allocations may allow certain schools to be increasingly over SRC in the short term. The Committee learned that not all costs associated with the start-up of a new school including furnishings and equipment were taken into consideration when evaluating the DRRA proffers. Finally, the Committee determined that one of the impediments to timely school construction is the procuring of school sites.

Alternatives Identification

1. Evaluate the possibility of directing mitigation payments or infrastructure improvements to provide capacity in the affected region or school.
2. Help Increase the rate of school construction by increasing contributions per dwelling unit.
3. Encourage developer consortia to provide adequate resources to fully mitigate the deficiencies. This concept might include Developer reimbursements for excess capacity created.
4. Encourage school sites and facilities expansion in DRRAs as direct mitigation for the lack of school capacity.
5. Create residential density incentives, where appropriate, to add value to projects that can be used for school capacity mitigation. Granting density bonuses in the Waldorf Urban Redevelopment Corridor (WURC) for school sites is an example of how this could be implemented.
6. Encourage school mitigation discussion and strategy prior to the approval of the Preliminary Plan by the Planning Commission.
7. Provide school site needs regionally to encourage the proffering of sites.
8. Cap the degree to which projected student enrollments from DRRA allocations can exceed SRC for affected schools.

Alternatives Evaluation

Direct mitigation payments or infrastructure improvements to provide capacity in the affected region or school. This approach could be achieved by Commissioner Policy formalized in the APF manual and/or DRRA legislation. The policy shift would require that DRRAs be used for mitigating impacts from the proposed development. Infrastructure improvements or payments could be targeted to regions such as High School districts where the benefit would be more directed to the schools affected. However, the effectiveness of this strategy will only be achieved if there is enough contributions in that district. Spreading out funds regionally may result in difficulties in completing the necessary capacity enhancements without adequate funding levels for a given project.

Assist in the increasing the rate of school construction by increasing contributions per dwelling unit. In 2013 the County will receive **\$4.5 million** from DRRA payments. This current figure is the most indicative of the current market and school allocation program restrictions. This figure does not include Heritage Green or Scotland Heights since they are currently renegotiating their agreements. According to the Department of Fiscal and Administrative Services (DFAS), these payments will provide adequate funding to initiate the funding of the St. Charles High School and a new elementary school assuming that the State continues to fund their share which will reimburse the County. Increasing DRRA contributions for future projects or phases of projects may be feasible in some cases; however, since each project has unique financing arrangements, some projects may not be able to afford increased contributions and would opt out of the voluntary program. One justification for the increased contributions is to factor in the start-up costs associated with the opening of a new school not typically considered with the evaluation of DRRA proffers.

Encourage developer consortia to provide adequate resources to fully mitigate school capacity deficiencies. This concept might include developer reimbursements for excess capacity created. This approach could give enough resources to provide a significant improvement in capacity to offset the impact from the cumulative developments that would not be feasible for one developer. Success of this approach would rely on having BOE identified projects to add capacity and begin the discussion early in the development process.

Encourage school sites and facilities expansion through DRRAs as direct mitigation for the lack of school capacity. This approach needs to occur early in the development process. It has the best chance for success when used with large Planned Developments and incorporated into the zoning approval. It should be noted that if school sites are proffered with a DRRA the cost of the site should be removed from the CIP Budget so that it is not included in the bond issue for the proposed school.

Create residential density incentives, where appropriate, to add value to projects that can be used for school capacity mitigation. Granting density bonuses in the Waldorf Urban Redevelopment Corridor (WURC) for school sites is an example of how this could be implemented. If pursued, this technique would need to be evaluated in conjunction with the other density bonus programs currently being implemented by the County. For example, additional bonus densities for school mitigation may have a negative impact on the County's Transferable Development Rights (TDR) program and Affordable Housing Program. There is a question as to whether mixed use areas such as the WURC will generate enough students to warrant a school in that location.

Encourage school mitigation discussion and strategy prior to the approval of the Preliminary Plan by the Planning Commission. A preliminary test for school APF could be performed as part of the Preliminary Plan review and included in the report to Planning Commission. The report would include the developer's plan for addressing any deficiencies. Implementation could be achieved administratively through modifications to the subdivision approval process.

Provide school site needs regionally to encourage the proffering of sites. The CCPS would provide regional needs based on student growth projections. This information would be used to negotiate with developers at the preliminary plan stage or during the rezoning stage in the case of Planned Development Zones.

Cap the degree to which projected student enrollments from DRRA allocations can exceed SRC for affected schools. Frederick and Montgomery Counties cap the percentage over capacity that may be mitigated to 120%. The County Commissioners as a matter of policy could cap the level of school capacity that may be increased from DRRA school allocations. This approach would limit the negative impact on any one school from DRRA allocations. Currently, Charles has 3 elementary schools and no middle schools over 120 % of SRC. If projected enrollments are used the number of schools over the 120 % level would increase unless new school capacity is programmed.

Recommendations

The Committee recommends _____

School Construction Program

Issue 1: The County's school construction program has not been able to keep pace with the BOE's enrollment and capacity projections in certain areas of the County.

Summary of Findings

The Committee found that the current School Construction CIP has a new high school opening September 2014. The Projected Enrollment and Capacity analysis (Step Charts) indicates the need to open a new elementary school by 2018. The current CIP includes a new elementary school to satisfy the projected need on a county-wide basis. Based on the Enrollment and Capacity analysis, the county-wide need for a new Middle School will occur approximately in the years 2020-21. The Committee acknowledged that the county-wide need may not reflect the regional need for elementary and middle schools. Recognizing that it is not always feasible or desirable to bus students long distances to balance the capacity to need discrepancies, there may be a need to accelerate school construction ahead of the planned CIP. Once this need is established, then it will be necessary to determine the best way to meet the need. For example, is new school construction optimum or can additions serve the localized capacity needs?

Alternatives Evaluation

1. **Expedite school construction by forward funding schools in advance of meeting the needs criteria for state funding.** *(Also discussed in Issue Paper #1)* One approach is to seek State funding for every other school to accelerate the Board of Education's construction program. Fiscal Services Staff cautions that forward funding every other school may inadvertently relieve the State Government from funding responsibilities. It is recommended that County School Construction needs to use a strategy that maximizes State funding. Spreading County forward funding over two schools may better maximize State participation.
2. **Maximize existing school capacity by moving relocatables.** *(From Public Outreach Meeting)* Any alternatives regarding moving relocatable classrooms needs to be sensitive to the Cost/Benefit of the action. A 2005 Analysis by the BOE will be helpful in analyzing an alternative involving the moving of portable classrooms. Any analysis should include the determination of ownership of the classrooms since 61 units in the County system are State owned. It should be noted that State owned units have restrictions and protocols to follow before relocating. BOE staff generally finds that moving relocatables is not a cost effective way to add temporary capacity to a school.
3. **Address the County's renovation needs and add capacity to schools concurrently.** This approach was discussed in detail with Dr. Lever at the July 17th meeting. Dr. Lever discussed Charles County's emphasis on new school construction versus renovations or

replacements. There was discussion on the part of the Committee about how the County could address the renovation needs and add capacity at the same time. The Committee entertained the idea of a School System Wide Facility Assessment to evaluate schools, their building systems and educational requirements, and to prioritize the corrective projects and costs. This would be done by evaluating every school needing renovations for opportunities to add capacity. Adding capacity to a school as part of a renovation may be an opportunity for developer contributions to help with the expansion portion of the project.

- **Use Public-Private-Partnerships to expand the County’s capability to deliver schools faster.** As discussed by the Committee through a briefing paper at the June 26th meeting, these are partnerships between a company, usually a consortium, and the government regarding the funding, building, operation and maintenance of school facilities. Typically a private company would build or renovate schools and maintain them for the life of the repayment of the facility. Currently, the only jurisdiction in the U.S. doing this system-wide is Yonkers, NY, but it is more common in Europe, Canada and Australia. It should be noted that the current state legislation requires that operation and maintenance must be done by the public entity; therefore, new legislation would be needed to fit the model being used in other countries. This may be a long term solution to handle a need for school facilities that exceeds the County’s ability to deliver and when the County’s debt affordability is maximized.

Recommendations

The Committee recommends....

Issue 2: The Committee determined that one of the impediments to timely school construction is the procuring of school sites.

Summary of Findings

The Committee found that St. Charles has and will continue to provide school sites in a timely manner; however, those sites are not always close to the need found elsewhere in the County. Most developers do not have a large enough project to support school site dedication. A DRRA is a mechanism to allow developer dedications of land to support school construction. Some

counties, including Charles, have expanded school capacity on existing sites and rebuilt schools on existing sites limiting the need for the acquisition of new sites. Finally, it was determined that the BOE has no staff dedicated solely for the purpose of site acquisition.

Alternatives Evaluation

1. **Build new schools on the same site, where feasible.** This alternative would negate the need to find suitable school sites. It should minimize site development costs. It should also minimize the disruption caused by redistricting for a newly located school. This technique is only feasible when adequate land area exists on site or can be expanded to adjoining properties. Anne Arundel County has experience with this technique. In one case the new high school was built on the stadium and the new stadium was located on the site of the old school. This means that the ball games needed to be relocated during construction. Calvert County has also used this technique for Calvert High School. Frederick County is currently replacing Frederick High School. *(Also discussed in Issue Paper 1)*
2. **Encourage school sites and facilities expansion through DRRAs as direct mitigation for the lack of school capacity.** This approach needs to occur early in the development process. It has the best chance for success when used with large Planned Developments and incorporated into the zoning approval. It should be noted that if school sites are proffered with a DRRA the cost of the site should be removed from the CIP Budget so that it is not included in the bond issue for the proposed school. *(Also discussed in Issue Paper 5)*
3. **Dedicate BOE staff resources to the function of site acquisition.** A position or a portion of a position could be used to identify land suitable for acquisition and assist in procuring the site. The staff person could work with the County Dept. of PGM on potential developer proffered sites that might be suitable for school construction. The staff person would negotiate the best value and handle services such as appraisals, title searches and feasibility studies.

Recommendations

The Committee recommends....
