

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND
RESOLUTION NO. 2016- 04

A Resolution concerning

CHARLES COUNTY DEVELOPMENT
RIGHTS AND RESPONSIBILITIES AGREEMENT

FOR THE PURPOSE OF discontinuing the policy of granting Development Rights and Responsibilities Agreements (“DRRAs”) in which the County is requested to issue school allocations in exchange for monetary payments without regard to the existence of allocations established by the School Capacity Allocation Committee and thus capacity of the affected schools to accommodate the students to be generated by the proposed development.

WHEREAS, Chapter 297 of the Code of Charles County, Maryland, Zoning Regulations, Article XVI, Adequate Public Facilities Requirements, requires developers to demonstrate that a proposed subdivision for development will not adversely affect the adequacy of public facilities, including schools, serving the area, project or development¹; and

WHEREAS, § 297-258B provides that no final plat for residential subdivision or development services permit for a residential site plan shall be approved until school capacity allocations have been granted by the County; and

WHEREAS, § 297-258B states that school capacity is deemed adequate upon the granting of a school capacity allocation, and it is the intent of Chapter 297 of the County Code that the capacity of public schools shall not be adversely affected by residential development; and

WHEREAS, under § 297-258C, the annual School Capacity Allocation Committee, composed of the County Commissioners of Charles County (“County Commissioners”) and the Board of Education for Charles County or their designated representatives, must meet to establish the number of school capacity allocations available at each school based on a series of factors, including among others, current and projected enrollment and current and planned school capacity; and

WHEREAS, under § 297-258D, when determining the amount of allocatable school capacity, a school capacity allocation may be made only if school capacity currently exists or is programmed to exist within a specified period; and

WHEREAS, § 297-258E states that school capacity allocations issued by the County may not exceed the amount of school capacity currently available in the schools; and

WHEREAS, § 297-264E provides that no mitigation shall be allowed for lack of school capacity; and

WHEREAS, Maryland law, MD. CODE ANN., LAND USE ART., § 7-301, *et seq.*, grants the County Commissioners the authority to enter into DRRAs with any party having legal or

¹ Hereafter, unless otherwise indicated, all citations will be to the Code of Charles County, Maryland.

equitable interest in real property. The central purpose of DRRAs is to vest development rights in a developer in exchange for the dedication and funding of public facilities on a more predictable schedule than might otherwise be obtained through traditional processes; and

WHEREAS, under MD. CODE ANN., LAND USE ART., § 7-302(a), the County Commissioners, as the local governing body of the County, have authority to (1) by local law to establish procedures and requirements for the consideration and execution of DRRAs, and (2) delegate all or part of the authority established under the local law to a public principal; and

WHEREAS, under MD. CODE ANN., LAND USE ART., § 7-302(b), a public principal designated by the County Commissioners has authority to negotiate, execute and enforce DRRAs; and

WHEREAS, the County Commissioners, as the governing body of the County, enacted Chapter 297, Article XXX establishing procedures and requirements governing the consideration of DRRAs and under § 297-497 reserved to themselves the authority to serve as the public principal and to negotiate, execute and enforce DRRAs; and

WHEREAS, Chapter 297, Article XXX does not address the awarding of school capacity allocations through a DRRA or whether the allocations may be issued in the absence of demonstrated capacity in the affected schools; and

WHEREAS, exercising their authority under MD. CODE ANN., LAND USE ART., § 7-302(b) to negotiate and execute DRRAs, the County Commissioners have entered into DRRAs with developers under which the County has agreed to provide school capacity allocations for proposed developments in certain quantities and at certain specified times in exchange for monetary payments without regard to whether the applicant has been issued school capacity allocations established by the School Capacity Allocation Committee and thus demonstrated the existence of capacity in the affected schools; and

WHEREAS, in March, 2013, the County Commissioners appointed the Adequate Public Facilities Committee to study and report on the Adequate Public Facilities Ordinance as it relates to school allocations, and determining new methods of funding school construction, to ensure the policy is achieving its goals and to present solutions to address the situation of certain schools being over capacity; and

WHEREAS, in February, 2014, the Adequate Public Facilities Committee delivered a report to the County Commissioners which contained a detailed analysis and a series of recommendations; and

WHEREAS, the County Commissioners requested the staff of the Department of Planning and Growth Management and the Department of Fiscal and Administrative Services to study the statutes, rules and policies of the State of Maryland and the County in connection with the funding of the capital costs of constructing school capacity to accommodate new development in the County and, if appropriate, to propose changes to law and policy for the purpose of ensuring that the County is able to fund these capital costs in a fair, effective and timely manner; and

WHEREAS, the County Commissioners requested the staff of the Department of Planning and Growth Management to study the County's laws, manuals and policies, including the approval of DRRAs, which govern the determination and allocation of school capacity and are fashioned to ensure that development proceeds where school capacity is reasonably available and, if appropriate, to propose changes for the purpose of ensuring that school capacity allocations are granted in a fair, effective and timely manner; and

WHEREAS, on October 20–21, 2015, the County Commissioner received a comprehensive briefing from the staff of the Department of Planning and Growth Management and the Department of Fiscal and Administrative Services resulting from the study of the statutes, rules and policies in connection with the capital costs of constructing school capacity to support new development and the DRRAs as they relate to the availability of school capacity and granting school allocations; and

WHEREAS, The County Commissioners passed Resolution 2015-24 to allow additional time to have discussion on to develop policies in connection with the capital costs of constructing school capacity to support new development and the DRRAs as they relate to the availability of school capacity and granting school allocations.

WHEREAS, serious and substantial questions exist as to whether the County's approval of a DRRA application under which the County would provide a school allocation in exchange for a monetary payment without regard to whether the applicant has been issued a school capacity allocation established by the School Capacity Allocation Committee is consistent with the policies and terms of the County's Adequate Public Facilities Requirements in Article XVI of Chapter 297 described above; and

WHEREAS, serious and substantial questions exist as to whether the County has legal authority to approve a pending or new DRRA application in which the applicant would be required to make a monetary payment in order to receive a school allocation; and

WHEREAS, as a matter of policy, the County Commissioners have concluded that residential development should not be approved through the execution of a DRRA unless sufficient school capacity will exist to accommodate the students to be generated by the proposed development; and

WHEREAS, the County Commissioner met in open and public session on January 5, 2016 to discuss whether they should continue to negotiate and execute DRRAs in which the County issues school allocations in exchange for monetary payments without regard to whether the applicant for the DRRA has demonstrated that the School Capacity Allocation Committee has established school capacity allocations sufficient to support the development; and

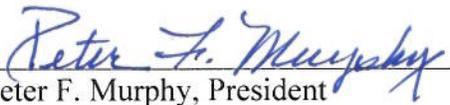
WHEREAS, the County Commissioners have decided to alter the County's policy and to decline to negotiate and execute DRRAs unless the applicant has been issued school capacity allocations established by the School Capacity Allocation Committee sufficient to support the proposed development.

NOW, THEREFORE, BE IT RESOLVED,

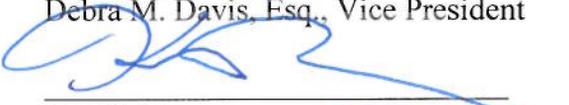
- (1) The County Commissioners, pursuant to their authority under MD. CODE ANN., LAND USE ART., § 7-302(b), shall not negotiate or execute a DRRA unless the applicant can demonstrate compliance with local laws, rules, regulations and policies governing the use, density or intensity of the real property, including the provisions of Chapter 297, Article XVI of the Code of Charles County, Maryland governing, among other things, the adequacy of schools;
- (2) The County Commissioners, pursuant to their authority under MD. CODE ANN., LAND USE ART., § 7-302(b), shall not negotiate or execute a DRRA in which school allocations are issued in exchange for a monetary payment;
- (3) DRRA applicants that propose an agreement consistent with 7-302(b), and that comply with ¶¶ 1 and 2 above, may proceed with their DRRA application and be processed in due course;
- (4) The Department of Planning and Growth Management shall refund the entire DRRA application fee to any applicant whose application seeks an award of school allocations in exchange for a monetary payment and was filed between July 2014, and November, 2015.
- (5) That this Resolution is effective January 5, 2016.

ADOPTED this 1st day of March, 2016.

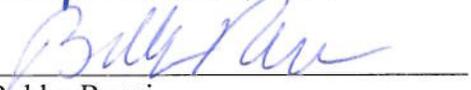
COUNTY COMMISSIONERS OF
CHARLES COUNTY, MARYLAND


Peter F. Murphy, President

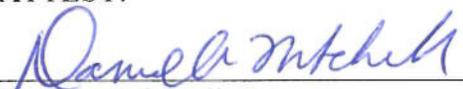

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ATTEST:


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Clerk to the Commissioners