

**PRINCE GEORGE'S COUNTY COUNCIL
AGENDA ITEM SUMMARY**

Meeting Date: 4/21/98

Reference No.: CB-61-1998

Proposer: Estepp, Del Giudice

Draft No.: 1

Sponsors: Estepp, Del Giudice

Item Title: A Subdivision Amendment for the purpose of amending the provisions of Subtitle 24 and the transitional provisions of Section 4, Chapter 64, Laws of Prince George's County, Maryland, concerning Adequate School Facilities Tests

Drafter: Jackie Brown
PZED Committee Director

Resource Personnel: John Funk
M-NCPPC

LEGISLATIVE HISTORY:

Date Presented: __/__/__
Committee Referral: 4/21/98 PZED
Committee Action: 10/14/98 NR
Date Introduced: 4/21/98
Pub. Hearing Date: 6/9/98 1:30 PM

Executive Action: __/__/__ __
Effective Date: __/__/__

Council Action: 6/9/98 RECOMMIT
Council Votes: RVR:A, DB:A, SD:A, JE:A, IG:N, TH:A, WM:A, AS:A, MW:A
Pass/Fail: P

Remarks: _____

PLANNING, ZONING & ECONOMIC DEVELOPMENT

DATE: 10/14/98

Committee Vote: No recommendation, 3-1 (In favor: Council Members Del Giudice, Gourdine and Maloney. Opposed: Council Member Bailey)

Staff gave an overview of the Council Bills (CB-58-1998, CB-61-1998 and CB-66-1998) and explained the legislative history up to the date of the Committee worksession. These bills were introduced in April 1998; a Committee worksession was held on June 4, 1998 and a public hearing

was held on June 9, 1998. At the public hearing, the Council voted to recommit the three bills to the Planning, Zoning and Economic Development Committee for further discussion and an evaluation of fiscal notes.

The Office of Management and Budget (OMB) provided a memorandum dated October 14, 1998 summarizing what will be the impact of these laws on County revenue. Stanley Earley, OMB, explained to the Committee that predicting the impact is uncertain and the fiscal notes are based on several assumptions. These are: 1) About 1/3 of the units that are actually expected to be constructed are in areas with schools of 130% of capacity or higher student populations, about 1/3 between 105% and 130% and about 1/3 in areas under 105%; 2) About 3,000 homes are expected to be built in a year; 3) It takes about 6 years for the majority (56%) of homes to be built after platting; 4) The revenue variances for each Council Bill are based on a model year in which 3,000 homes would be built under CB-3-1997 and assume no changes in behavior because of the financial incentives or disincentives in the various bills.

Mr. Earley also explained that the bills generate revenue based on several interrelated factors: 1) student population by individual school; 2) the relationship between elementary, middle and high school attendance areas; 3) the capacity of each school; 4) the number of homes constructed in each neighborhood; 5) the type of homes constructed; 6) the School Surcharge on home construction; 7) the Capital Improvement Program; 8) the build out rate for new homes; 9) the age of plats and permits and 10) the home location/school location relationship among Prince George's County students.

Taking into account the above information, the following estimates have been made. Under CB-58-1998, the total net impact in the first year is minus \$1,817,000. This is based on one third (1,000) fewer units being built in the first year due to the 4-year wait requirement. This reduces School Surcharge revenue by \$2,497,000, however, this would be partially offset by a \$680,000 increase in Adequate Public Facilities (APF) revenue. Under CB-61-1998, the total net impact is minus \$819,000 assuming that 450 fewer units would be built in the first year due to the 4-year wait requirement. This reduces surcharge revenue by \$1,125,000 which would be partially offset by a \$306,000 increase in APF revenue.

CB-66-1998 requires projects within areas with over 130% capacity to be halted until a project is in the 2 to 6 year Capital Improvement Program (CIP) that eliminates the problem. OMB notes that based on the Board of Education data from the Memorandum of Understanding, the only schools in high construction areas that would be over 130% based on the first version of the 1999-2004 CIP would be Kettering Middle School and Waldon Woods Elementary School. This could result in 500 fewer units being constructed and reduce revenue by \$1,250,000 of surcharge money and \$890,000 of APF money for a total of \$2,140,000. OMB indicated that this figure is extremely sensitive to changes in district boundaries, school locations and demographic estimates. An example cited is that relief of the overcrowding at Kettering Middle School alone would reduce the revenue lost to about \$410,000.

Council Member Del Giudice, co-sponsor of CB-61-1998 and sponsor of CB-66-1998, commented that these two bills should be combined by removing the exemption (still applicable in CB-66-1998) for property which was the subject of a Preliminary Plat of Subdivision approved between January 1, 1991 and January 8, 1998 (the effective date of CB-3-1997). If combined, the resulting legislation would reduce the size of the pipeline (by one third) and allow denial of a Preliminary Plat or building permit due to the 130% test. Mr. Del Giudice also indicated that the combined revenue impact would be \$1.2 million based on the fiscal notes provided by OMB.

Staff explained that these bills could not be combined without resulting in a substantive amendment to one or the other; a substantive amendment would require a 30-day advertising period for an additional hearing on the legislation. Staff indicated that there was not sufficient time for the advertisement prior to the Council's last scheduled legislative session (October 28, 1998). Similarly, Council Member Gourdine's suggestion to amend CB-61-1998, page 2, line 1, by changing six (6) years to one (1) year was determined to be substantive because it would result in a shorter grandfather period which is more restrictive.

Hamer Campbell, representing the Suburban Maryland Building Industry Association, spoke in opposition to the bills and requested that the Committee hold the legislation or report an unfavorable recommendation. David Miranda, representing the Chamber of Commerce, also requested that the legislation be held in Committee. Norman Rivera, Law Offices of Knight, Manzi, Nussbaum and LaPlaca, addressed the Committee suggesting that the legislation be held until such time as *Commission 2000* can review the issues of school funding and reducing the pipeline in conjunction with a Growth Management Plan.

Donna Hathaway Beck spoke in support of CB-58-1998 and also indicated that the Committee of 100 had taken a position in support of the legislation. Mrs. Beck also expressed her concern with the term "programmed" utilized in CB-66-1998 and recommended that this be replaced with the term "funded." Rick Tyler, President of the District 8 Homeowner's Federation, also spoke in support of the legislation. Carmen Anderson, President, Prince George's Civic Federation, spoke in support of CB-58-1998.

A motion by Council Member Maloney for a favorable recommendation on CB-58-1998 failed on a 2-2 vote. Council Member Del Giudice commented that since the Committee was unable to report out a compromise bill by combining certain provisions contained in CB-58-1998, CB-61-1998 and CB-66-1998, the Committee should report these bills out with no recommendation. Mr. Del Giudice indicated that he may have amendments prepared, if determined to be nonsubstantive, which would indicate that CB-61-1998 and CB-66-1998 are intended to complement each other. The amendments would be presented at the Council's Legislative session during which these bills would be eligible for enactment.

PLANNING, ZONING & ECONOMIC DEVELOPMENT**DATE: 6/4/98**

No action taken.

CB-58-1998, CB-61-1998 and CB-66-1998 were discussed simultaneously by the Committee. Staff gave an overview of the legislation and explained that these three bills bypassed presentation; CB-58-1998 and CB-61-1998 were introduced on April 21, 1998 and CB-66-1998 was introduced on April 28, 1998. The bills were already advertised for a June 9, 1998 public hearing by the time of the Committee worksession and no substantive amendments could be recommended by the Committee.

M-NCPPC Planning Department staff presented colored maps of the County depicting the following: 1) elementary, middle and high schools by capacity levels, 105%-129%, and greater than 130% highlighting the school facilities test provided in CB-3-1997 (DR-6) and 2) elementary schools greater than 130% (less than 105% with Capital Improvement Program), 130% with Capital Improvement Program and 130% or greater (highlighting the school facilities test provided in CB-66-1998).

The staff also provided estimates of the proportion of the pipeline (40,000 dwelling units) subject to the Schools Adequate Public Facilities (APF) test under CB-58-1998 and CB-61-1998. It was explained that approximately 32,000 potential dwellings were exempt from the provisions of CB-3-1997, or 80% of the total residential pipeline. Under CB-58-1998, the only exemption that would remain is for properties located within an infrastructure finance district approved prior to the effective date of CB-3-1997, therefore more than 99 percent of the 40,000 dwelling residential pipeline would be subject to the Schools APF test at the time of building permit. CB-61-1998 would also remove most of the exemptions included in CB-3-1997 and would limit the validity of a School APF finding to six years after plat recordation. In order to obtain a building permit on a lot recorded more than six years prior to permit issuance, the proposed development would be subject to another Schools APF test. Of the 40,000 units in the pipeline, approximately 13,000 dwellings would be subject to the Schools APF test, or 20% of the building permit applications. This percentage would remain fairly constant since an APF test would not remain valid indefinitely requiring older, approved, undeveloped projects to undergo an additional test prior to obtaining building permits.

CB-66-1998 amends the Schools APF test adopted in CB-3-1997 to allow denial of a subdivision by the Planning Board in those cases where the affected school(s) is operating over 130% of capacity and there is no CIP project programmed for construction (in years 2 through 6) to relieve the overcrowding. Planning Department staff explained that their analysis of the impact of CB-66-1998 revealed that five elementary schools with projected 2002 capacities over 130% would be reduced to a level under 105% (allowing approval of a subdivision with the payment of a school facilities fee); one middle school would also be affected, reducing its projected capacity to under 105%, two elementary schools are projected to operate at levels exceeding 105% in 2002 even with CIP projects programmed for construction in the first six years of the CIP. Finally, eight elementary schools with capacities over 130% will not receive any relief from CIP projects programmed for construction in the next six years. As a result, proposed subdivisions associated with these ten affected elementary

schools would be denied.

The Planning Board opposes CB-58-1998 and supports CB-61-1998 and CB-66-1998. The Executive Branch opposes CB-58-1998 and CB-61-1998 and takes no position on CB-66-1998. The Office of Audits and Investigations has determined there may be some positive fiscal impact on the County as a result of enacting CB-58-1998 or CB-61-1998, related to fees that will be realized as a result of the removal of certain existing exemptions; it was also determined there should be no negative fiscal impact on the County as a result of enacting CB-66-1998.

The following individuals spoke in opposition to CB-58-1998, CB-61-1998 and CB-66-1998: Thomas Haller, representing the Chamber of Commerce; Andree Green, attorney representing the developer of St. James Village, and Paul Rodbell, Law Offices of Meyers, Billingsley, Rodbell Rosenbaum, P.A. Carmen Anderson, President, Prince George's Civic Federation, spoke in support of CB-58. Aurelio Nepa, Jr. spoke in support of CB-58-1998, CB-61-1998 and CB-66-1998.

BACKGROUND INFORMATION/FISCAL IMPACT

(Includes reason for proposal, as well as any unique statutory requirements)

On November 18, 1997, the County Council adopted CB-3-1997 (DR-6), an Act concerning Adequate School Facilities. The bill became law on January 9, 1998. The current law provides for an adequate school facilities test at the time of building permit for projects where the Preliminary Plat of Subdivision approval was before January 1, 1991.

The current law also provides for certain exemptions. These exemptions include any project for which a Detailed Site Plan or Specific Design Plan has been filed and accepted as of November 1, 1996, and recorded lots for which grading has begun pursuant to validly issued active grading permits issued on or before January 9, 1998. This legislation removes those exemptions.

This legislation will also limit the validity of a Schools APF finding to six years after plat recordation. In other words, in order to obtain a building permit on a lot recorded more than six years prior to permit issuance, the proposed development would be subject to another schools APF test.

Under this proposal, additional older, unbuilt lots (those with recordation before 1992) would later become subject to the Schools APF test. Under CB-3-1997 as currently approved, no additional pipeline lots would become subject to the test -- the lots exempted by CB-3-1997 are currently exempt forever, whether they are constructed this year or in 20 years.

CODE INDEX TOPICS: