

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

Meeting Date: 11/18/97

Reference No.: CB-3-1997

Proposer: Bailey

Draft No.: 6

Sponsors: Bailey, Wilson, Russell, Scott, Gourdine

Item Title: A Subdivision Amendment for the purpose of establishing
an adequate public facilities test for schools at the time
of preliminary plat of subdivision

Drafter: Ralph E. Grutzmacher
Legislative Officer

Resource Personnel:

LEGISLATIVE HISTORY:

Date Presented: 1/7/97

Executive Action: 12/9/97 S

Committee Referral:(1) 1/7/97 PZED

Effective Date: 1/9/98

Committee Action:(1) 3/27/97 HELD

Committee Action:(2) 4/15/97 HELD

Committee Action:(3) 5/2/97 HELD

Committee Action:(4) 5/7/97 FAV (A)

Committee Referral:(2) 7/1/97 C.O.W.

Committee Action:(1) 7/22/97 FAV (A)

Committee Referral:(3) 9/2/97 C.O.W.

Committee Action:(1) 9/18/97 FAV (A)

Date Introduced: 5/13/97

Pub. Hearing Date: (1) 7/1/97 1:30 P.M

Pub. Hearing Date: (2) 9/2/97 1:30 P.M.

Pub. Hearing Date: (3) 11/18/97 1:30 P.M.

Council Action: (1) 7/1/97 RECOMMIT

Council Votes: DB:A, SD:A, JE:A, IG:A, AMc:-, WM:A, RVR:A, AS:A, MW:A

Pass/Fail: P

Council Action: (2) 9/2/97 RECOMMIT

Council Votes: DB:A, SD:A, JE:A, IG:A, WM:A, RVR:A, AS:A, MW:A

Pass/Fail: P

Council Action: (3) 11/18/97 ENACTED

Council Votes: DB:A, SD:A, JE:A, IG:N, TH:A, WM:A, RVR:-, AS:A, MW:A

Pass/Fail: P

Remarks: (See CR-4-1998 for implementation regulations)

9/30/97: Draft 4 of CB-3-1997 was substituted for Draft 3; and DR-4 was subsequently amended; all the amendments are considered to be substantive and, therefore, requires an additional public hearing.

COMMITTEE-OF-THE-WHOLE REPORT

DATE: 9/18/97

Committee Vote: Favorable as amended 6-2 (In favor: Council Members Bailey, Del Giudice, Estep, Gourdin, Scott & Wilson; Opposed: Council Members Maloney and Russell)

Council Member Bailey gave an overview of the history of this legislation indicating that during the public hearing held on September 2, 1997, CB-3 (DR-3) was recommitted to the Committee of the Whole (COW) for further discussion and possible amendments.

Council Member Estep proposed a Draft 4 (DR-4) of the bill. Mr. Estep indicated that this draft is a result of citizen input regarding concerns about the adequate school facilities test as proposed in Draft 3 of the bill. Mr. Estep commented on the highlights of Draft 4 as follows: provides for an initial adequacy test at time of Preliminary Plat of Subdivision, maintains one hundred five percent (105%) trigger for application of test, designates Planning Board as responsible agency to determine pupil yield factors and enrollment projection, allows for consideration of all projects in an area instead of just project-by-project analysis, removes capital improvement program as factor in determining subdivision approval, provides for a final adequacy test at the time of building permit to make projects in pipeline where grading has not begun subject to the Act, exempts senior communities from the bill's provisions and requires the Office of Management and Budget, the Department of Environmental Resources and M-NCPPC to issue regulations for the Act's implementation.

At Council Member Estep's request, Stanley Earley, Office of Management and Budget, presented

preliminary figures on revenue projections associated with the Draft-4 proposals.

Draft 4 establishes a two-part test; the first is applied at the time of Preliminary Plat of Subdivision and the second is applied at building permit application. DR-4 proposes an amendment to line 3, page 2 of DR-2 to substitute the wording "at the time of a Preliminary Plat of Subdivision, the Planning Board shall apply an initial adequacy of school facilities test" for the wording "Before any Preliminary Plat may be approved, the Planning Board shall find adequacy." On line 11, page 3, the following language is proposed in DR-4 after the word "type": "as determined by the Planning Board upon historical information." The wording "by the Board of Education" remains at the end of that sentence.

Draft 4 also proposes amendments to Section (a)(1)(C) (previously Section (e)(1)(A)(III) in DR-2) of the bill beginning on line 16, page 2 of Dr-4 to read as follows: " The projected five-year enrollment as determined by the Planning Board, in cooperation with the Board of Education and any other County or State agency deemed appropriate, for each affected school shall be added to the number of students generated by the proposed subdivision, as determined in subsection (I) above plus the number of students generated by approved Preliminary Plats since the most recent annual enrollment projections."

Additional language is proposed to Section (a)(1)(D) (previously Section (e)(1)(A)(IV) in DR-3) beginning on line 23, page 2 of DR-4 as follows: and an adequate school facilities fee shall be calculated by multiplying the number of students generated by the proposed subdivision above the one hundred five percent (105%) rated capacity in accordance with the following schedule: (I) \$9,000 per elementary school student; (II) \$12,000 per middle school student; (III) \$10,000 per high school student.

Subsection (C), beginning on line 26, page 2 of DR-3, is deleted in Draft 4 and the following language is proposed beginning on line 29, page 2 of DR-4: "At the time building permit applications are submitted, the Planning Board shall apply a final adequate school facilities test in accordance with Subsections (A), (B) and (C) below."

A new Section 3., as well as an additional Section 4., are proposed in DR-4. Beginning on line 9, page 4, Section 3. reads: "BE IT FURTHER ENACTED that, prior to the effective date of this Act, the Office of Management and Budget, the Department of Environmental Resources and the Planning Board, in consultation with the Superintendent of Schools, shall prepare and submit to the Council, its amendment and/or approval, regulations for the implementation of this Act. The regulations shall include methodology for determining pupil yield factors, projected enrollment, affected schools, and any other information necessary to the application and implementation of this Act."

As initially proposed to the COW, Section 4., beginning on line 15, page 4, read as follows: BE IT FURTHER ENACTED that this Act shall not apply to any subdivision for which a final plat has been approved and grading has begun pursuant to an issued grading permit as of the effective date of this Act." Council Member Del Giudice proposed amendments to this section substituting the word

"lot" for the word "subdivision" and to specify that grading has begun "on that lot" pursuant to a grading permit "issued on or before the date of adoption" of this Act. The committee voted favorably (7-0-1) on these amendments. Mr. Del Giudice also suggested that staff consult with the Department of Environmental Resources regarding a more precise term of art for the word "grading."

During the worksession, Council Member Russell proposed an amendment which would include a one hundred thirty percent (130%) cap for the school facilities test. The motion by Mr. Russell and seconded by Council Member Maloney failed on a 4-4 vote by the Committee.

Joyce Nichols, Principal Counsel, suggested several technical amendments to the bill. Council Member Del Giudice moved a favorable recommendation and the Committee voted favorably on CB-3, DR-4 with amendments.

7/29/97: Draft 3 of CB-3-1997 was substituted for Draft 2; the amendments are considered to be substantive and, therefore, requires an additional public hearing.

COMMITTEE-OF-THE-WHOLE REPORT

DATE: 7/22/97

Committee Vote: Favorable as amended 5-2-1 (In favor: Council Members Bailey, Del Giudice, Estep, Scott & Wilson; Opposed: Council Members Gourdin & Russell; and Abstained: Council Member Maloney).

Staff gave an overview of the history of this legislation indicating that CB-3 (DR-2) was favorably reported out of PZED on May 7, 1997; a public hearing was held on July 1, 1997 and the Council voted to recommit the bill to the Committee of the Whole (COW).

Council Member DelGiudice proposed a Draft 3 (DR-3) of the bill. Mr. DelGiudice indicated that this draft is intended to be a compromise on which the County Executive, Board of Education and County Council could agree. DR-3 proposes an amendment on line 6, page 2, which substitutes the wording "one hundred percent (100%)" as provided in DR-2. DR-3 also eliminates the one hundred twenty percent (120%) cap and amends Section (e)(1)(C), beginning at line 27, page 2 to include the following: "one hundred five percent (105%) of the rated capacity of any affected school(s) and a capital project is programmed for new construction or additions in years two through six of the adopted County Capital Improvement Program which would bring the affected school within one hundred five percent (105%) of the rated capacity, the applicant may pay an adequate public facilities fee..." On lines 2 and 4, page 3 of DR-3, the words "one hundred five percent (105%)" replaced the words "one hundred percent (100%)" on lines 29 and 30, page 2 and lines 1 and 2, page 3 of DR-2.

DR-3 also proposes an additional section (e)(2) beginning on line 12, page 3. This section provides exemptions to the adequate public facilities test for schools for certain subdivisions as outlined in subsections (A), (B) and (C).

An amendment to Section 2. of CB-3 proposed a sunset provision as follows: "BE IT FURTHER ENACTED that the provisions of this Act shall expire, and the Act will be of no further force and effect, on January 1, 2002." A new Section 3. was also proposed to DR-3 which reads, "BE IT FURTHER ENACTED that the Superintendent of the Board of Education is requested to submit with the Board's Annual Capital Improvement Program ("CIP") a Neighborhood School Analysis based on a cluster plan which analyzes the projected enrollment and capacity assuming all CIP projects are constructed. The Neighborhood School Analysis should be submitted no later than December 1 of each year."

During the worksession discussion, amendments were proffered to change the word "each" to the word "any" on line 27, page 2 and adding a "(s)" at the end of the word "school" on the same line. Additional amendments to DR-3 were also made on line 28, page 2 to substitute the word "programmed" for the word "proposed" and to add the word "adopted" before "County" at the end of the line.

Council Member DelGiudice moved a favorable recommendation with the above amendments as well as the elimination of the sunset provision contained in Section 2. The COW voted favorably (5-2-1) on CB-3-1997, DR-3 with amendments.

7/1/97: CB-3-1997 (DR-2) was recommitted to C.O.W.

PLANNING, ZONING & ECON. DEV. COMMITTEE REPORT

DATE: 5/7/97

Committee Vote: Favorable as amended, 4-1 (In favor: Council Members Del Giudice, Maloney, Russell and Wilson; Opposed: Council Member MacKinnon).

Council Member Del Giudice gave an overview of two additional drafts to CB-3, referred to as DR-3 (DelGiudice) and DR-4 (DelGiudice) in the committee worksession. DR-3 proposes language in Section 24-122.01(e) which allows the Planning Board to find school facilities adequacy as follows: "Where the number of students measured under Subsection (1)(A) exceeds one hundred percent (100%) but is less than one hundred twenty percent (120%) of the rated capacity of each affected school and the applicant pays an adequate public facilities fee equal to the cost of a permanent seat for each student generated by the subdivision above the one hundred percent (100%) rated capacity. The adequate public facilities fee shall be determined by multiplying the number of students generated by the proposed subdivision above the one hundred percent (100%) rated capacity in accordance with the following schedule (I) \$9,000 per elementary school student; (II) \$12,000 per middle school student; (III) \$10,000 per high school student. The amount required by an adequate public facilities test for schools shall be reduced by the amount of the school facilities surcharge, and shall be paid prior to the issuance of any building permit. If at the time of Final Plat, the number of units in the proposed subdivision has decreased, the adequate public facilities fee shall be adjusted

accordingly upon building permit application." DR-4 proposes all of the same language as stated in DR-3 with the exception of the following language which was deleted: "but is less than one hundred twenty percent (120%)."

Chris Izzo, M-NCPPC Public Facilities Section, gave a presentation on 5-year projected enrollment capacity (under 100%, between 100% and 120% and over 120%) for the entire County and distributed information on pupil yield factors for different dwelling unit types according to subregions of the County.

P. Michael Errico, representing the County Executive's Office, commented on DR-3 of the bill. He suggested that the legislation allow flexibility in calculating the number of students over 100% rated capacity since the numbers being used to make the determination are for a five-year projection. In addition, he recommended that the legislation allow flexibility for applying the adequate public facilities fee. The fee collected should be applied to a district or region and define impact area by region to be able to mitigate the problem.

Stanley Earley, Office of Management and Budget, presented estimates of revenue projections for each draft. He indicated that the pipeline for revenues from the legislation is three years from the date the bill becomes effective. Mr. Earley also commented that fees collected for school facilities surcharge can be utilized more flexibly in that they would be applied to capital funds for schools, whereas adequate public facilities fees would need to be applied to separate "pools" for specified areas of the County.

Joe Meinert, representing the City of Bowie, spoke in support of DR-4 (DelGiudice) of the bill. Mark Woodard, representing the Board of Education, spoke in support of CB-3. He indicated that the Board prefers the draft which allows denial of a subdivision if any affected school is over 100% capacity (DR-2). When reviewing this legislation, drafts-3 and 4 were not available, so the Board did not specifically comment on these drafts, however, Mr. Woodard indicated that the Board would support the draft that would require a higher adequate public facilities fee than the \$5,000 per seat requirement in the original draft of the bill (DR-1).

Bob Zinsmeister, representing the Chamber of Commerce, spoke in opposition to the bill due to concerns associated with applying the adequate public facilities test for schools in a fair manner. He suggested that the language allowing up to 120% capacity be maintained as provided in DR-3 (DelGiudice).

Samuel Dean, representing Lake Arbor Civic Association, spoke in support of the bill, specifically DR-3 (DelGiudice). Bill Shipp spoke (as a resident of the County) in opposition to the draft that would allow denial of the subdivision indicating that the 100% capacity test is too rigid. He also indicated support for the adequate public facilities fee being applied to the district affected by the subdivision. Mr. Shipp also indicated opposition to the 120% capacity cap as contained in DR-4 (DelGiudice).

Council Member DelGiudice suggested an amendment to DR-3 of the bill which would specify a cap on the number of units per subdivision that could be affected by this legislation in order that smaller developments and/or developments in revitalization areas could still move forward without being affected by a school capacity adequacy issue. Council Member Maloney suggested that Council Member DelGiudice submit additional information regarding this amendment; Council Member Russell also suggested that the Council revisit the recommendation of an amendment for smaller subdivisions and revitalization areas.

Council Member Maloney suggested the amendments to DR-3 as follows: "Any adequate public facilities fees for schools imposed herein shall be offset against any school facility surcharge upon the same project. Whenever an adequate public facilities fee for schools is charged, the full amount of the said fee shall be credited to the school area for whose benefits the said fee is charged."

DR-3 (DelGiudice) as this draft was referred to in Committee was reported out favorably with amendments.

PLANNING, ZONING & ECON. DEV. COMMITTEE REPORT

DATE: 4/15/97

Staff explained that this legislation establishes an adequate public facilities test for schools in the Subdivision Regulations, Subtitle 24. In addition to the original draft of this bill, two draft-2's were presented; DR-2 allows the Planning Board to permit mitigation of any inadequacy by a developer contribution of \$5,000 per seat, which represents the average capital cost of the addition of one classroom seat, for each student generated by the proposed subdivision above one hundred percent (100%) of the rated capacity of the affected school. DR-2 (dated 4/15/97) does not permit mitigation and allows denial of the preliminary plat by the Planning Board.

Bill Chappell, Board of Education, Pupil Accounting and School Boundaries, indicated that the Superintendent submitted written comments in support of the bill. Jimi Jones, representing the Planning Board, spoke in opposition to the bill due to difficulties associated with court-ordered busing. John Funk, also representing the Planning Board, presented updated 5-year projected student enrollment information for the year 2001.

The Board of Realtors opposes the bill. Hamer Campbell (representing the SMBIA) and Bob Zinsmeister (representing the Chamber of Commerce) spoke in opposition to the bill. Their concerns are associated with both a school facilities surcharge and an adequate public facilities fee being applied and the ability to equitably impose an adequacy test. Olga Norris, representing the County Executive's office, requested that the Committee defer action on the bill so that the Council staff and County Executive's staff could meet to discuss and work out issues associated with this legislation.

Paul Rodbell spoke in opposition to the bill and commented that capacity for schools should be determined on a Countywide basis.

The bill was held in committee.

BACKGROUND INFORMATION/FISCAL IMPACT

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

An adequate public facilities test is currently conducted at the time of subdivision for transportation, police, and fire and rescue facilities. This legislation incorporates an APF test for schools into the subdivision regulations, Subtitle 24.

CODE INDEX TOPICS:**Subdivisions*****Requirements: Planning, Design, and Public Facilities***

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