Title: Council Bill No. 16-05
Revisions to APFO School Construction Fees
and Annual Adjustments

Request: Informational Presentation
Council President Bud Otis, on behalf of County
Executive Jan Gardner, introduced a Bill to revise the
School Construction Fees and provide for an annual
adjustment of those fees under §1-20, Adequate
Public Facilities, of the Frederick County Code

Staff: Steve Horn, Director
Planning & Permitting Division
Jim Gugel, Director
Planning Department

Recommendation: See Staff Report

Exhibits: Council Bill No. 16-05
TO: Frederick County Planning Commission (FCPC)

FROM: Steve Horn, Director, Planning and Permitting Division
       Jim Gugel, Director, Department of Planning

DATE: February 2, 2016

SUBJECT: County Council Bill No. 16-05: Revisions to Adequate Public Facilities Ordinance (APFO) School Construction Fees and Annual Adjustments

ISSUE
Informational presentation on Bill No. 16-05, introduced by Council President Bud Otis at the request of County Executive Jan Gardner, amending Section §1-20, Adequate Public Facilities, of the Frederick County Code. The Bill proposes revisions to payments of school construction fees, commonly referred to as school mitigation fees, and provides for an annual adjustment of these fees.

BACKGROUND
In July of 2011, the (then) Board of County Commissioners adopted an Ordinance creating an option allowing developers to proceed with a new development that failed to meet the school APFO standard after payment of a school mitigation fee. The new fee, when added to the existing school impact fee, was designed to equal 115% of the sum of the local share plus the state share of school construction.

After study by an independent financial consultant, the Council amended the school construction fees in September of 2014, and new school mitigation fees became effective on November 1, 2014.

Since that time, school construction costs have risen dramatically. Current Capital Improvement Plan (CIP) projects are estimated to have increased in the range of 20% - 30%. The Interagency Committee on School Construction (IAC) has increased the allowable cost per square foot by 21% and the site work cost by 7% to keep up with the increased construction costs.

When school construction costs increase, the net capital cost per student (used to calculate impact fees) also increases. When impact fees are adjusted, as they were by the prior Board of County Commissioners, the school mitigation fees should be adjusted concurrently.

After adopting the school mitigation fee option in 2011, the previous Board of County Commissioners approved 46 residential developments where the developer chose to use the school mitigation fee in order to proceed with development, despite failing the school adequacy provision in the APFO. All 46 developments will be built in areas which are or will...
experience school overcrowding; otherwise, choosing to pay the fee would not have been an option. Some areas of the county are projected to experience school overcrowding in excess of 200% of state rated capacity by final build out. Adjusting the impact fees and the school construction fees to keep pace with the actual cost of construction is a critical component in securing the necessary revenue to keep school construction projects on schedule.

Furthermore, fourteen (14) of the 46 developments have codified their approvals to use the mitigation fee option in a Development Rights and Responsibilities Agreement, or DRRA, thus locking in their ability to use mitigation fees for up to 30 years in the future – regardless of the degree of school overcrowding. There is a critical demand to keep fees updated with current costs in order to raise enough revenue to provide timely school capacity. When impact fees are adjusted, school construction fees need to be adjusted as well and there should be an automatic adjustment to keep pace with the school construction cost increases.

As a result of the use of the mitigation fee, Staff has calculated that the county will be approximately $150 million dollars short in revenue to add the school capacity needed for the number of students projected to come from the approved, but not yet built, developments.

Based on this information, the County Executive requested that staff update the impact fee analysis. The new study was to be based on the updated (current) construction estimates which were received from the Board of Education in the fall of 2015. The analysis was also to continue using the methodologies approved by the Board of County Commissioners in 2014.

Analysis:

The key factors in determining the school construction fees are as follows:
- Public school students per housing unit – based on information received from the Frederick County planning staff via Frederick County Public Schools (on an “equated” basis);
- Net Capital Cost per Student – based on 115% of the average total cost of a new seat. This may include new schools, additions to existing schools, or replacement schools minus the demolition costs; and
- Calculated Cost – a formula based on multiplying the public school students per housing unit and the net capital cost per student. (For example, the elementary/single family detached, would multiply 0.206 with $66,274 to arrive at $13,652).

The School Construction Fee is then calculated based on the incremental expansion method from the Calculated Cost. When the school construction fee is added to the impact fee, the total equals 115% of the sum of the Local and State share.
This has resulted in an increase in the fee amounts. This is attributable to several factors. The first is the net capital cost per student has increased approximately 39%. The second factor is the State participation amount. The State is now contributing more per square foot. While the County cost has only increased 20% (reflected in the impact fee calculation), the State cost has increased approximately 83% on average, contributing to the 39% overall increase. This shift in cost allocation has increased the school construction beyond the 39% solely related to overall cost increase.

**Annual Adjustment** – The annual adjustment was removed from the County Code in 2012. Staff is requesting that this provision be added. This would allow rates to adjust based on trends and will help offset changes that may occur between recalculation of the school construction fee. The annual adjustment will be based on the State of Maryland School Construction Cost Index. No change in the formula is required.

Bill No. 16-03 was introduced before the County Council on Tuesday, January 19, 2016. A workshop before the County Council is scheduled on Tuesday, February 9, 2016, and the public hearing is scheduled on Tuesday, February 16, 2016.

**ANALYSIS/RECOMMENDATION**
Staff has no objection to Bill No. 16-05, as proposed.
AN ACT to:
Revise the School Construction Fees and provide for an annual adjustment of these fees under Chapter 1-20 (Adequate Public Facilities) of the Frederick County Code.
The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter 1-20 (Adequate Public Facilities) of the Frederick County Code to revise the required payments for School Construction Fees and to provide for an annual adjustment of the School Construction Fees.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

Harold F. (Bud) Otis, President
County Council of Frederick County, Maryland
§ 1-20-62 SCHOOL CONSTRUCTION FEE OPTION.

(A) A developer may elect to satisfy the school adequacy standards of § 1-20-61 by the payment to Frederick County of school construction fees as described in subsection (E) below.

(B) School construction fees shall be paid in addition to, and not in lieu of, public school development impact fees under Chapter 1-22 of the Frederick County Code.

(C) The developer may elect to satisfy the school adequacy standards of § 1-20-61 by any combination of: (1) constructing the required public school facilities; or (2) waiting for the public school facilities to become adequate; or (3) paying the school construction fee.

(D) If the developer elects the school construction fee option, the APFO Letter of Understanding, and any development rights and responsibilities agreement ("DRRA"), for the development shall incorporate provisions for payment of the school construction fees.

(E) School construction fees due to the county shall be determined by using the chart below. The school construction fees shall be calculated by multiplying the appropriate school construction fee component(s) (based on the proposed development's failure to meet public school adequacy at the elementary, middle or high school level) by the number of residential units of each type.

<table>
<thead>
<tr>
<th>Housing Unit Type</th>
<th>Failure at Elementary School Level</th>
<th>Failure at Middle School Level</th>
<th>Failure at High School Level</th>
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(F) School construction fees shall be paid at the time of recording of subdivision plats for each unit, except for multi-family units, which shall be paid not later than the time of building permit application. The school construction fees to be applied to each residential

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**[Single boldface brackets]** - Deleted from existing law by original bill.
**Bill No. 16-05**
unit shall be the fees in effect at the time of plat recordation or building permit application.

(G) [Reserved] ANNUAL ADJUSTMENT.

On July 1, 2017, and on July 1 of each year thereafter in which the school construction fees are in effect, the amount of the school construction fees, per dwelling unit and school level, shall be adjusted as follows:

(A) On or before January 15, 2017, and on or before January 15 of each year thereafter, the County Executive shall provide to the County Council a report which proposes an annual adjustment to the school construction fees, based on the most recent data from the State of Maryland School Construction Cost Index.

(B) The proposed annual adjustment shall automatically take effect on the following July 1, unless the County Council enacts a bill to change the public school construction fees by the May 1 following receipt of the report.

(C) Unless the County Council bill to change the public school construction fees takes effect before the following June 30, then the proposed annual adjustment shall automatically take effect on the July 1 following receipt of the report.

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