

THE EFFECTIVE DATE OF THIS ORDINANCE IS JULY 20, 2011

ORDINANCE NO. 11-18-584

AN ORDINANCE TO AMEND THE ADEQUATE PUBLIC FACILITIES ORDINANCE
OF FREDERICK COUNTY, MARYLAND, TO PROVIDE FOR A SCHOOL
CONSTRUCTION FEE OPTION

Background

Under the authority granted in Article 66B, §10.01, the Board of County Commissioners of Frederick County, Maryland ("BOCC") has established an Adequate Public Facilities Ordinance ("APFO"), codified as Chapter 1-20 of the Frederick County Code.

Adequacy of public school facilities is required under the APFO. Currently, if the enrollment in one or more public schools serving the proposed development is or will be at or above 100% of state rated capacity, the developer has the option of building the necessary public school facilities or waiting for public school facilities to become adequate.

Under the authority of §1-20-23 of the APFO, the BOCC desires to revise the APFO to establish a new option for meeting the public school adequacy requirements. This option involves payment of School Construction Fees as specified in this Ordinance.

The initial fee amount proposed in the draft ordinance is based on the Public School Development Impact Fee, which is required under Chapter 1-22 of the Frederick County Code. Payment of a Public School Development Impact Fee is required for all new residential development in Frederick County and its municipalities to assure that new development contributes to the costs of public school facilities reasonably necessitated by new development.

The amount of the Public School Development Impact Fee established by the Board of County Commissioners covers a certain percentage of the net capital cost per student to the County (the "Local Share"). The balance of the net capital cost per student is expected to be contributed by the State of Maryland (the "State Share").

The initial "School Construction Fees" established in this Ordinance (§1-20-62(E)), when added to the current Public School Development Impact Fee equals one hundred fifteen percent (115%) of the sum of the Local Share and the State Share associated with each new residential housing unit type. The School Construction Fees will be determined based on the number of housing units and types submitted for APFO approval, and then paid on a per unit basis as each plat is recorded or, for multi-family units, at building permit application. Like the Public school Impact Fees, the School Construction Fees will be adjusted annually.

The Board of County Commissioners has determined that a Developer may choose to mitigate the impact of a proposed development on the Frederick County Public school system by paying the School Construction Fee in addition to the Public School Development Impact Fee. The Board has also determined that payment of the School Construction Fee will provide additional funds for public

school construction in Frederick County and allow construction of developments that are currently unable to meet the APFO public school adequacy requirements. This option will also allow collection of Public School Development Impact Fees that would not otherwise be received by Frederick County from projects that could not otherwise proceed.

The BOCC expects that the additional funds provided by the School Construction Fee (and the required Public School Development Impact Fees collected for these developments) will create jobs, employment opportunities, and tax revenue for Frederick County and its residents.

This Ordinance was initiated by the BOCC at a meeting on June 2, 2011, and was referred to the Frederick County municipalities for comment on June 10, 2011.

The Frederick County Planning Commission held a duly advertised public hearing on the proposed amendments to the APFO on June 29, 2011, and recommended denial of this Ordinance; and

The Board of County Commissioners held a duly advertised public hearing on this Ordinance on July 19, 2011, at which time the public had a reasonable opportunity to comment on the proposed revisions and amendments.

Pursuant to Section 1-20-23(A) of the APFO, the Board of County Commissioners finds the proposed revisions and amendments to the APFO, as set forth in this Ordinance, to be in the best interests of the citizens of Frederick County and consistent with the general intent of the APFO.

NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that:

Section 1-20-5 (B) of the APFO is amended to add the following definitions:

PUBLIC SCHOOL FACILITY EXPENDITURES. INCLUDE CAPITAL COSTS IN CONNECTION WITH THE CONSTRUCTION OF PUBLIC SCHOOL FACILITIES, INCLUDING PLANNING, DESIGN, ENGINEERING, LAND ACQUISITION, LEGAL, APPRAISAL AND OTHER COSTS RELATED TO FINANCING AND DEVELOPMENT, COSTS OF COMPLIANCE WITH PURCHASING PROCEDURES AND APPLICABLE ADMINISTRATIVE AND LEGAL REQUIREMENTS, AND ALL OTHER COSTS NECESSARY OR INCIDENTAL TO PROVISION OF PUBLIC SCHOOL FACILITIES.

SCHOOL CONSTRUCTION FEE. A MONETARY FEE, CALCULATED AS PROVIDED IN SECTION 1-20-62(E), WHICH THE DEVELOPER MAY ELECT TO PAY TO SATISFY ALL OR A PORTION OF THE SCHOOL ADEQUACY PROVISIONS OF SECTION 1-20-61 OF THIS CHAPTER.

Section 1-20-12 is amended as follows:

EXCEPT AS PROVIDED IN §1-20-62(K), AThe developer shall have the option to: (1) provide the public facility improvements necessary to support the proposed development and to ensure adequacy

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of public facilities set forth in this chapter; OR (2) EXERCISE THE SCHOOL CONSTRUCTION FEE OPTION DESCRIBED IN SECTION 1-20-62; OR (3) or wait for public facilities to become adequate by improvements made pursuant to the CIP or other sources. A county, state or municipal agency may participate in the improvements.

A new Section 1-20-62 is added to the APFO as follows:

1-20-62 SCHOOL CONSTRUCTION FEE OPTION.

(A) A DEVELOPER MAY ELECT TO SATISFY THE SCHOOL ADEQUACY STANDARDS OF SECTION 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 SECTION 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.

School Construction Fees			
Housing Unit Type	Failure at Elementary School Level	Failure at Middle School Level	Failure at High School Level
Single Family Detached	\$3,870	\$2,530	\$3,646
Townhouse/Duplex	\$4,053	\$1,996	\$2,584

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Other Residential	\$897	\$336	\$420
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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 UNIT SHALL BE THE FEES IN EFFECT AT THE TIME OF PLAT RECORDATION OR BUILDING PERMIT APPLICATION.

(G) ANNUAL ADJUSTMENT

(1) ON JULY 1, 2012, AND ON JULY 1 OF EACH YEAR THEREAFTER, THE SCHOOL CONSTRUCTION FEES SHOWN IN SUBSECTION (E) ABOVE SHALL BE AUTOMATICALLY ADJUSTED TO ACCOUNT FOR INFLATIONARY INCREASES IN THE COST OF PROVIDING PUBLIC SCHOOL FACILITIES UTILIZING THE MOST RECENT DATA FROM THE STATE OF MARYLAND SCHOOL CONSTRUCTION COST INDEX.

(2) IN LIEU OF THIS AUTOMATIC ADJUSTMENT, THE COUNTY COMMISSIONERS MAY, AT THEIR OPTION, BY RESOLUTION, DETERMINE THE APPROPRIATE ADJUSTMENT.

(3) NOTHING HEREIN SHALL PREVENT THE COUNTY COMMISSIONERS FROM ELECTING TO RETAIN THE EXISTING SCHOOL CONSTRUCTION FEE OR FROM ELECTING TO WAIVE THE ADJUSTMENT FOR ANY GIVEN FISCAL YEAR.

(4) THE FINANCE DIRECTOR SHALL MAKE THE AUTOMATIC ANNUAL ADJUSTMENT UNLESS THE COUNTY COMMISSIONERS HAVE DETERMINED AN ALTERNATE ADJUSTMENT.

(H) SCHOOL CONSTRUCTION FEE ACCOUNT.

(1) A SCHOOL CONSTRUCTION FEE ACCOUNT IS HEREBY ESTABLISHED.

(2) ALL SCHOOL CONSTRUCTION FEES THAT THE COUNTY COLLECTS SHALL BE DEPOSITED INTO THE SCHOOL CONSTRUCTION FEE ACCOUNT.

(3) THE SCHOOL CONSTRUCTION FEE ACCOUNT SHALL BE INTEREST BEARING.

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(4) ALL INTEREST EARNED ON MONIES DEPOSITED TO THIS ACCOUNT SHALL BE CREDITED TO AND SHALL BE CONSIDERED FUNDS OF THE ACCOUNT.

(5) THE COUNTY COMMISSIONERS SHALL ESTABLISH AND IMPLEMENT NECESSARY ACCOUNTING CONTROLS TO ENSURE THAT THE SCHOOL CONSTRUCTION FEE FUNDS ARE PROPERLY DEPOSITED, ACCOUNTED FOR, AND APPROPRIATED IN ACCORDANCE WITH THIS CHAPTER, AND ANY OTHER APPLICABLE LEGAL REQUIREMENTS.

(6) THE COUNTY COMMISSIONERS MAY APPROPRIATE FUNDS FROM THE SCHOOL CONSTRUCTION FEE ACCOUNT FOR:

(a) PUBLIC SCHOOL FACILITY EXPENDITURES AS DEFINED IN § 1-20-5(B), AND

(b) THE PAYMENT OF PRINCIPAL, INTEREST AND OTHER FINANCING COSTS ON CONTRACTS, BONDS, NOTES OR OTHER OBLIGATIONS ISSUED BY OR ON BEHALF OF THE COUNTY OR OTHER APPLICABLE LOCAL GOVERNMENTAL ENTITIES TO FINANCE PUBLIC SCHOOL FACILITY EXPENDITURES.

(7) THE FINANCE DIVISION SHALL DOCUMENT EACH APPROPRIATION FROM THE SCHOOL CONSTRUCTION FEE ACCOUNT.

(I) THE PAYMENT OF THE SCHOOL CONSTRUCTION FEE OR THE OBLIGATION TO PAY THE SCHOOL CONSTRUCTION FEE UNDER THE TERMS OF AN APFO LETTER OF UNDERSTANDING OR DRRA SHALL NOT SATISFY THE PUBLIC SCHOOL ADEQUACY REQUIREMENT FOR ANY OTHER DEVELOPMENT SERVED BY THE SAME SCHOOL OR SCHOOLS AS THE PROPOSED DEVELOPMENT.

(J) UPON PAYMENT OF ALL SCHOOL CONSTRUCTION FEES APPLICABLE TO THE PROPOSED DEVELOPMENT, THE DEVELOPMENT SHALL NOT BE SUBJECT TO FURTHER TESTING FOR SCHOOL ADEQUACY UNDER THE APFO FOR THE DURATION OF THE APFO APPROVAL PERIOD UNDER THE DRRA OR APFO LETTER OF UNDERSTANDING, UNLESS THE DENSITY OR INTENSITY OF THE DEVELOPMENT INCREASES.

(K) THE DEVELOPER SHALL NOT HAVE THE OPTION TO SATISFY THE SCHOOL ADEQUACY PROVISIONS OF THIS CHAPTER BY PAYMENT OF THE SCHOOL CONSTRUCTION FEE IF ANY SCHOOL SERVING OR PROPOSED TO SERVE THE PROPOSED DEVELOPMENT EXCEEDS 120% OF STATE RATED CAPACITY, AFTER TAKING THE FOLLOWING FACTORS INTO ACCOUNT:

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(1) THE CURRENT ENROLLMENT AS OF THE APFO TEST DATE; AND

(2) ACTUAL CAPACITY EXPECTED TO BE PROVIDED BY NEW SCHOOLS AND SCHOOL ADDITIONS SCHEDULED FOR CONSTRUCTION IN THE FIRST 2 YEARS OF THE CIP.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall apply to applications for subdivision, re-subdivision, site plan, PUD or PDR approval or re-approval that have not received APFO approval as of the effective date of this Ordinance.

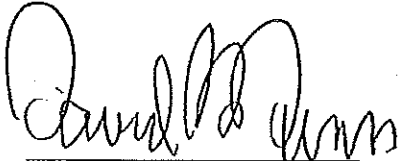
AND BE IT FURTHER ENACTED AND ORDAINED that the effective date of this Ordinance shall be July 20, 2011.

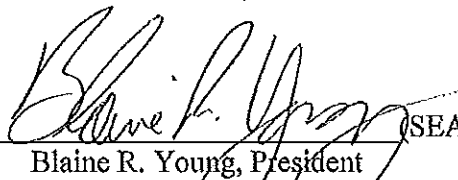
AND BE IT FURTHER ENACTED AND ORDAINED that the amendments adopted in this Ordinance shall remain in effect through July 20, 2016, and shall expire and be of no further force and effect at midnight on July 20, 2016.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 19th day of July, 2011.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND


David Dunn, Acting County Manager

BY:  (SEAL)
Blaine R. Young, President

KRM
7/20/11

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