

## **Section IV: Overall Evaluative Criteria**

### ***Introduction***

Evaluating the effectiveness of Montgomery County's adequate public facilities ordinance is complicated by a number of factors. These include the fact that the procedures for implementing the ordinance itself are relatively complicated; that the ordinance is just one of a set of regulatory mechanisms which shape, constrain, encourage or prevent certain land uses and certain land use designs in certain locations; and that some provisions in the ordinance are there to mitigate the impact of the APFO on other public policy objectives of Montgomery (such as affordable housing).

The goal of the adequate public facilities ordinance is partly described by what it does not control or attempt to control. The introduction to the adopted AGP states that "It must be stressed that the APFO and the AGP have nothing to do with the location, amount, type or mix of development. These issues are dealt with in the County's General Plan, master plans, and sector plans. The APFO and the AGP affect only the timing of development to assure that it is matched with the availability of public facilities." Section II of this report provides a more detailed overview of the AGP, as do Appendices 2 and 3.

To a great degree, this study must assume that the end-state or "buildout" as described by the General Plan and adopted master plans and sector plans, represents a balance of land use and public facilities. That is to say, when all of the development envisioned in the plans is built, and all of the public facilities recommended in the plans is provided, public facilities will be adequate. Although master plans and sector plans are prepared so that buildout is balanced, that balance may depend on projects that are eventually discovered to be infeasible or require more money or effort than anticipated. Examples of projects in master plans with an uncertain future are the North Bethesda people mover, the InterCounty Connector, and the Georgetown Branch light rail line between Silver Spring and Bethesda. In some plans, transportation balance is only achieved through improvements to the non-auto mode share. Small changes in transit ridership can require significant resources over a sustained period.

An implication of assuming that buildout is balanced is: measurements of the effectiveness of the adequate public facilities ordinance can focus on its success in providing public facilities in a timely manner. More specifically, success means that public facilities are provided before, or just as, they are needed by private development. Since government can control the pace of new development approvals, success must also mean that the overall pace of private development has not been unduly constrained by government's inability to provide the public facilities needed by planned development.

This section will review opportunities for evaluating the success of Montgomery County's APFO from a broad perspective. Section V will discuss how individual provisions related to transportation may be evaluated and Section VI will review specific provisions related to the testing of public schools adequacy.

### *Goals and Objectives*

Section III (on Page III-4) discusses the need to review Montgomery County's planning goals and objectives, as well as any other relevant policies, to determine if the APFO, or how it is administered by the Annual Growth Policy, is consistent with those goals and objectives.

The goals, objectives and strategies of the General Plan were updated and "refined" in December 1993. These clarify or elaborate on the same fundamental principles that have been a part of Montgomery County's "wedges and corridors" since the early 1960s.

To assess how the Annual Growth Policy might enhance or limit the County's ability to achieve its other goals, a "first cut" can be made by reviewing if the proposed goal is likely to be affecting positively or negatively by limits on the pace of growth. Over the past decade, the public policy goals that have been most closely linked to the administration of the APFO have been:

- *Affordable housing:* Questions have arisen about the extent to which constraints on the pace of growth may result in upward pressure on the average price of housing. Such concerns led to the inclusion of provisions that allow affordable housing to be approved despite moratoria on other residential development. There have been several studies of the effect of growth management generally on housing prices that should be reviewed, including a recent one co-authored by Gerritt Knapp from the University of Maryland and the Brookings Institution, among others. The general conclusion appears to be that there's a weak correlation between imposition of growth controls and increases in housing prices. Even though one typically finds growth controls and home price inflation in the same localities, it appears that both are reactions (one by the government, the other by the private sector) to a third event (accelerating growth in jobs, or immigration) rather than feeding off each other. Previous assessments of the "Special Ceiling Allocation for Affordable Housing," and possible opportunities for further evaluation of the treatment of affordable housing under the AGP follow later in this paper.
- *Economic development:* There is a long history of AGP provisions that seek to make the tradeoff between long-term economic gain and short-term violations of the strict application of level of service standards. These specific provisions will also be reviewed later on in this paper. This issue arises when there is a highly-desired project that is proposed for a policy area that is currently in moratorium, and there is consensus among policy makers that the project's economic benefits are such that approval is warranted. So-called "strategic economic development projects" can be approved without "violating" public facilities adequacy if the developer agrees to provide the infrastructure necessary to maintain adequacy, or if the public sector provides the infrastructure, or if they share the responsibility.

However, there is also a history of allowing certain projects to be approved upon payment of fee, and generally it is understood that the fee only partly compensates the County for the infrastructure needed to support the project. Thus far, most of the exemptions have been crafted so that they apply only to projects that meet very specific criteria. In other words, amendments are proposed on a case-by-case basis, and once the project which prompted the exemption is approved, there is little need for exemption again. An issue is whether a broader approach is better. Recently a more general approach was adopted as a two-year pilot. Perhaps this will prove itself a suitable replacement for the narrow exemption approach.

- *Compactness and proximity of development to transit:* The County has pursued the goals of encouraging development, when it occurs, to locate near transit stations and at transit-serviceable densities since before the first Metro station opened in the County. The AGP has contained provisions that seek to assist in that encouragement, such as less-stringent congestion standards near transit and mechanisms to allow development capacity to be concentrated near Metro. The County has not gone so far as to eliminate the APF requirement near Metro, and as a result there are instances where Metro station policy areas are in moratorium for new approvals. The issue may be stated as: should planned development near Metro always be approved when it is proposed? Or is there an appropriate roadway congestion standard near Metro that should not be breached, even if it means that planned growth goes elsewhere?

There are other corollary or related issues. One is: in an urban setting there are roadway improvements that have negative effects on the pedestrian environment, such as wide streets that are hard to cross. To what extent does the APFO encourage roadway improvements that are not otherwise desirable? Another issue: there is not always consensus that traffic congestion should be allowed to be worst near transit. There is a minority view, which may be the majority view among residents near transit stations, that congestion should be no worse, and possibly better, near transit stations than elsewhere.

- *Unintended Consequences:* A fourth area of investigation would review if the AGP or APFO has unintended consequences which make it difficult or impossible for other goals to be achieved. For example, roadway congestion standards in certain areas may not be achievable without unacceptable or unaffordable improvements. Requiring developers to make improvements prior to construction may have an effect on their ability to secure financing, or cause otherwise desirable projects to be too expensive to construct. A second wrinkle would be if AGP provisions assume that actions are possible which are, in fact, prohibited by some other County action. For example, the Special Ceiling Allocation may rely on density bonuses helping with the bottom line on high-rise residential projects, but the sector plan may have height limits that reduce or eliminate the density bonus. Finally, there may be unintended consequences that, upon review, are better left alone. For example: it may be true that smaller subdivisions have few if any opportunities for providing the infrastructure their development needs.

Possibly the best answer in this case is that they will have to wait until the public sector provides the infrastructure.

- *Relationship with Master Plans:* The AGP's role as an implementer of master plans is complicated by the fact that the AGP is amended much more frequently than master plans and by the fact that some master plans specifically address how the plan will be implemented through the AGP while others do not. It will be useful to review the varying ways the AGP has been reflected in master plans and also the effect of changes to the AGP on the staging of development in master plans. For example, the change to the TTLOS system and the availability of "pay-and-go" allowed the more rapid approval of development in the R&D Village policy area than the master plan could have envisioned, since the master plan was approved prior to those events. Questions might include: were there clear expectations in the master for the staging of development and transportation facilities beyond reliance on the AGP? Did the AGP changes result in impacts that were negative, positive, or a balance of competing objectives? Could there be a better "fit" between master plans and the AGP?

### ***A Maturing Suburb***

This issue involves finding measures to test whether Montgomery County, or portions of Montgomery County, are sufficiently mature, or built-out, such that continued application of the APFO is unwarranted or counter-productive. The APFO might be creating a barrier to new development, or to redevelopment, that is critical to retaining the vitality of the older urban areas of the County. Part of the background research for this analysis is complete: the Department has completed a recent analysis of the "what is left" to be built on the non-residential side; the Department plans to begin a parallel study for the buildout of planned residential development, also known as the zoned holding capacity. Accurate holding capacity numbers are an important first step; the second step is developing decision rules about when buildout is close enough that continued application of the APFO is no longer needed.

To some degree this issue overlaps with the unintended consequences issue above, since a prime source of unintended consequences may arise from situations where an APFO initially intended for a rapidly growing County is applied in areas that are largely developed.

Attention should also be paid to the many modifications that have been made to the AGP over the years – modification which have adjusted policies and procedures as practice revealed problems. Until 1995, the AGP was reviewed in full every year. Many of these reviews were quite substantial and based on previous experience. Many of the adopted procedures were revisited in later years to determine how well they were working.

The development and demographic dynamics of a maturing suburb should be reviewed to determine how the character of those changes is different from those in still-

growing communities. The Department has recognized that a maturing County requires a shift in emphasis and approach, but the practical implications of that realization are still being detected and the responses are still under development.

### *Trends in Levels of Service*

In attempting to assess whether an adequate public facilities ordinance is “working,” possibly the most immediate question that arises is: are public facilities adequate? Has the County been successful in maintaining desired levels of service for the public facilities covered by the ordinance? If not, are the levels of service better than they would have been if the ordinance were not in effect? In assessing the Annual Growth Policy, the levels of service we are interested in measuring are those of roadways and public schools.

### *Transportation Levels of Service*

Assessing the County's success in meeting its goals for providing adequate levels of transportation service is complicated. The answer would be easy if all roads in the County were uncongested, but that is not the case. Some roads are congested, while others are not. Some roads are congested in the peak direction, but are uncongested in the non-peak direction.

Options for assessing the effectiveness of the specific transportation provisions of the AGP are discussed in Section 5. This section focuses on more general questions:

1. *Is transportation capacity being delivered in a timely manner?* One measure of how well the AGP is working is to review the pace of delivery of transportation infrastructure and compare it to the pace of development. Since each increment of transportation infrastructure has already been assessed in terms of the “development capacity” or “staging ceiling” that it provides, this is a fairly easy measure to implement, particularly on a Countywide basis. On a subarea basis, there will be areas where moratoria have been in place for long periods of time, and other areas where infrastructure has been provided in a very timely manner.

It may also be useful to look at trends in the size of the “pipeline of approved development” – development that has passed APF tests but has not yet been constructed – to determine if the County is maintaining a sufficient stock of approved development to meet the demands of a healthy and growing economy. Comparing Montgomery County's pipeline to those in other communities with less stringent APF standards will likely show larger pipelines; in addition to having APF tests serve as a barrier to entering the pipeline, Montgomery County imposes time limits on APF approvals. For this and other reasons, it is reasonable to hypothesize that a greater share of the Montgomery County pipeline will be constructed than in other communities.

This may be difficult to test. In the past, we have not found that other communities track their pipeline of approved development as closely as Montgomery County; many have only rough estimates of the amount of approved but unbuilt development. These numbers may be meaningless for comparison purposes if approvals are relatively easy to get and may never be exercised fully.

Comparing the delivery of infrastructure with the amount of development over time can take a variety of forms, each illuminating the question from a slightly different angle. In addition to comparing the amount of development capacity created by transportation infrastructure with the amount of development capacity used by development, another option is to express the analysis in terms of cost effectiveness of infrastructure: where have investments in infrastructure “paid off?” This may be calculated as the cost of infrastructure per unit of development or the cost of infrastructure compared to increases in the tax base due to the construction of the approved development.

2. *Are congestion levels better in Montgomery County than elsewhere?* This question has two parts: what measure of congestion to use, and what locality to compare with Montgomery County. One method might be to use the Texas Transportation Institute's methodology – TTI ranks metropolitan areas nationally by congestion, delay, cost of time lost stuck in traffic, etc. However, in order to do that, TTI needed to develop a methodology that uses data that are easily available for all metro areas – that is, assumptions about tripmaking to generate volumes that are then divided by the total available lane-miles of roadway in the area. Park and Planning staff are now evaluating how the TTI methodology may be useful, possibly by comparing the results of a TTI-style analysis for the County against results for the metropolitan area as a whole.

The Metropolitan Washington Council of Governments maintains a traffic model that is very similar to the model Montgomery County uses to develop staging ceilings. This model may potentially be used to compare congestion levels in each of the major jurisdictions in the Washington metropolitan area. Comparisons may be made of average congestion, congestion weighted by vehicle miles of travel, or congestion on roadway links that appear to play a similar function in each locality. An example may be Leesburg Pike (Route 7) in Fairfax County and Rockville Pike (Route 355) in Montgomery County. Staff is reviewing whether this approach would yield helpful results; however, in general, being able to include historical and current data is better than just having current data, and observed data is better than model output.

Fairfax County, Virginia is potentially a very good candidate for comparison with Montgomery County since the two counties are of similar size, are in similar geographic positions within the same metropolitan area, and are subject to similar economic and demographic forces. However, the two counties have taken highly divergent approaches to growth. Fairfax County has traditionally sought to maximize the pace of growth, while Montgomery County has sought to limit and

control growth. These opposite philosophies are reflected in, and to some extent caused by, very different political environments. In addition to Virginia having a much stronger tradition of individual property rights than Maryland, Virginia is a “Dillon Rule” state with a legislature that has historically been much less likely to allow local governments to impose growth management regulations. In addition, Fairfax County derives a much larger portion of its revenue stream from real property taxes than does Montgomery County (which has a local income tax) and is therefore much more interested in growing its non-residential tax base.

Of course, the presence of Fairfax County (and, indeed, other localities in the metropolitan area that do not control growth to the same degree as Montgomery County does) may reduce both the positive and negative impacts of Montgomery County's growth management policies. It is often said that the growth that is not permitted in Montgomery County just goes elsewhere, possibly adding to the traffic that goes through Montgomery County. On the other hand, it may be that Montgomery County developers are less able to impose the higher prices that might have resulted from the County's supply restrictions because of the competition from developers in other nearby localities.

3. *Has Montgomery County weakened its congestion criteria over time?* Another way of measuring the effectiveness of the APFO is to review whether Montgomery County has made its congestion standards weaker over time, and if so, why that was done. Level of service standards may be changed to reflect new understanding about traffic flows – these changes may have had the effect of allowing additional development to occur, which in turn allows congestion to increase, but perhaps still within acceptable limits. Section V will examine the transportation criteria in greater detail.
4. *When is congestion “good?”* Traffic congestion is not in and of itself desirable, but it reflects the desirability of locations in the County. It is simplistic to place too much emphasis on traffic congestion as simply the price we pay for having a desirable County; it is also simplistic to ignore the fact that congestion is a byproduct of other successful practices, policies, or luck. Further, traffic congestion is a primary motivator for persons to use means of transportation other than the single-occupant vehicle. Traffic models can provide us with some insight into the role congestion plays in moving person-trips off the road.
5. *Accessibility measures:* “Accessibility” is a way of measuring how close, in travel time or in distance, various land uses are to each other. Researchers may include in accessibility calculations how close households are to jobs, schools, retail, recreation, and other activities. Accessibility may also be measured by mode of travel: auto accessibility might measure the number of major activities accessible by automobile in 20 minutes, 30 minutes or 45 minutes. Transit accessibility would do the same but would only count those activities accessible by the transit network within a specific period of time.

One of the factors used to set staging ceilings in Montgomery County's Annual Growth Policy is a "regional transit accessibility index," which is used to determine how much auto congestion is permitted. The RTA index, as it is called, is an indexed figure measuring the proximity by transit of jobs in the metropolitan area to households in that policy area, as well as the proximity of jobs in that policy area to households in the metropolitan area. Accessibility as a measure is not limited to transit access (other modes, notably auto, can be incorporated) and there is potential to use the Metropolitan Washington COG model as a way to compare Montgomery County with other localities or the region as a whole.

Accessibility's value as a measure of effectiveness arises from the fact that it gives credit for transportation efficiency due to urban form, design, and placement. That is, you can design communities so that jobs, schools, libraries, etc., are easily accessible and you can design communities where those activities are less accessible. It may not directly show that persons are making shorter or fewer trips, but it does show that they have the opportunity to satisfy many of their needs with shorter and possibly fewer trips.

Applying accessibility to the problem of measuring the effectiveness of and APFO is somewhat tricky since accessibility is concerned with land use mix, pattern and design and the APFO doesn't affect the type, design or location of development -- just the timing. The answer may be to compare accessibility scores over time, both in the past and in the future. It may also be possible to develop accessibility scores for subareas around the region, using the MWCOG model. Developed as inputs for the MWCOG model are detailed forecasts by land use and location for the entire area to 2025 (and possibly 2030 by this time). Changes in accessibility over the life of the forecast period for each major locality may be a measure of how well, relatively speaking, Montgomery County is providing accessibility to its citizens.

Of course, the argument may then be made that unless the analysis also incorporates forecast improvements to the transportation infrastructure into these calculations of forecast land use, this measure is not testing the effectiveness of the APFO but rather the effectiveness of the planned land use pattern on the existing transportation network. There may be ways around this. One would be to only look at the past, and incorporate transportation service changes into the calculation. Another would be to assume that certain future transportation improvements are made, but that would be a difficult assumption to support. Park and Planning staff are continuing to investigate the limitations to the methodology, and to determine how useful the information gained from an accessibility analysis would be. It is possible that in combination with other findings some useful conclusions can be drawn.



### *Adequacy of Public Schools*

Until recently, Montgomery County had not imposed a moratorium on new subdivisions due to inadequate school facilities. For the most part, Montgomery County's transportation tests have limited growth, while year after year all parts of the County passed the school test. This is both a reflection of the high priority the County has placed on funding school facilities and on the structure of the test itself.

Recently the County Council tightened the threshold between adequacy and inadequacy. Prior to the fall of 2001, enrollment had to exceed 110 percent of capacity before schools could be considered inadequate and then only if there were not capacity available in one or more adjacent clusters. The Council tightened the threshold to 100 percent of capacity, although they also simplified the definition of capacity that partially mitigated the effect of the change. More recently, there was discussion of further tightening the test so that enrollment would not be able to exceed 95 percent of capacity, but consideration of this rule change has not moved forward.

Section VI will review specific provisions of the school test and how they may be evaluated; this section will describe some of the general issues that have been raised and how they may be explored. The main issues are: how has new school capacity kept pace with growth? To what extent are recent and future changes in enrollment due to new residential development, and to what extent is it due to other factors? Are there arguments for a restructuring of the school test?

1. *How has the pace of new school capacity compared to growth? To what extent are recent and future changes in enrollment due to new residential development, and to what extent is it due to other factors?* One method of answering this would be to develop a timeline of additions to school capacity and compare them both to the pace of residential development and the pace of enrollment growth. To be useful, this analysis should display the information at various geographic levels, since averaging can mask capacity deficits at the individual school level. Other means to review this issue include: tracking when and for how long individual schools did not meet the 100 percent rule, tracking the number and location of trailers over time, and reviewing the history of boundary adjustments if and when these were done because of crowding issues.

During recent debates about the school test, there has been considerable discussion that demographic changes unrelated to new development have been a leading cause of school enrollment increases. Specifically, the enrollment changes due to families with children moving into housing units previously occupied by families without children (such as empty-nesters). It will be helpful to the discussion of this issue to review this trend, especially since Census 2000 long-form data has just become available.

It is already clear that many areas of the County are adding new housing units at a very modest pace, and more areas of the County will approach residential

buildout over time. Over the long-term, the County may wish to look not just at how the school test is applied, but also the consequences of failing the test. In the future it may no longer be appropriate to put a moratorium on new residential approvals if such approvals are not contributing measurably to the school enrollment growth.

2. *Are there arguments for restructuring the school test?* Restructuring the test could include changing the geographic boundaries that the test uses to measure adequacy. The current method of using high school cluster boundaries, and allowing capacity from adjacent clusters to offset capacity deficits, means that such deficits may be “averaged away.” The practice of using adjacent cluster capacity was imposed as a result of a court finding in the 1970s that because cluster boundaries can be changed, a moratorium should not be imposed if a boundary shift could solve the problem. However, boundary changes are not a small matter, and the land area covered by a cluster plus all adjacent clusters is quite large. Other localities use much smaller geographies and a review of such practices would be helpful. This question will also be greatly informed by the analyses for the first set of questions above.
3. *Cluster flexibility under the school adequacy test:* Should developers be able to pass the school test by making contributions of school facilities, or by making financial contributions to a fund to construct school facilities? This issue is addressed in more detail in Section VI.