Section VI: Assessing the Effectiveness of Specific Provisions: Public Schools

Introduction

The basic provisions of the school adequacy test were reviewed in Section IV. These are the provisions which state that adequacy is breached when enrollment exceeds 100 percent of capacity, that capacity is a standard multiplier applied to all classrooms, that the geographic basis for analysis is the high school cluster, and that capacity in an adjacent cluster is counted if enrollment exceeds capacity in the cluster being tested. Section IV recommends assessing reviewing the contributors to enrollment growth, the County's record in providing new school capacity compared to growth in demand for that capacity, and reviewing options for changing the geographic basis of analysis.

As noted, the County Council reviewed the school adequacy test in some detail in October 2001. Among the major Council decisions were changing the adequacy definition to 100 percent and the definition of capacity to a standard multiplier. This study does not envision revisiting those decisions immediately, although a consequence of the other planned reviews will likely be that the 100 percent rule, in particular, will be addressed again. In October 2001 the Council also made a number of more specific policy decisions about how the school adequacy test will be implemented. This section will describe those provisions and make recommendations on how to address the main unresolved issue of developer contributions.

In the adopted FY 2002 Annual Growth Policy, the County Council specifically directed the Planning Board, with the aid of the Board of Education, to "develop an option for the Council to consider that would allow a residential development to be approved in a cluster where school facilities are inadequate if compensatory steps can be taken."

Provisions of the School Adequacy Test

Unlike the tests for transportation adequacy, there are very few exemptions of the AGP school adequacy test. There is no *de minimis* provision (subdivisions as small as one unit are subject to a school moratorium) and developers meet the school adequacy test by providing or contributing toward the school facilities needed by their subdivision. There is no Special Ceiling Allocation for Affordable Housing for areas in moratorium because of inadequate schools, although senior housing is exempt because it generates no new students.

There are a few provisions in the school test that do not have a parallel in the transportation test. The first involves high school clusters that wholly or partially cover a municipality. In the transportation test, unincorporated County land is not included in the same policy area as incorporated land. This is not the case for schools, however. There are several high school clusters that include both incorporated and unincorporated land, such as the Gaithersburg cluster and the Richard Montgomery cluster. The AGP's school

adequacy test permits the Planning Board to approve a residential subdivision in a cluster that fails the school adequacy test "unless the respective municipality restricts the approval of similar subdivisions in its area of the cluster because of inadequate school capacity."

The AGP provision related to development district participants is not intended to convey to district participants the opportunity to be approved in an area that fails the school adequacy test. Rather it is a way to require contributions toward school facilities by subdivisions that were grandfathered when the new 100 percent rule was imposed.

The issue of whether private development should be able to provide school facilities to be able to pass a school adequacy test that it would otherwise fail has been debated regularly over the past decade. The two opposing arguments are:

- *In favor:* Private development could be a valuable source of additional funding for public school facilities. In many other localities, moratoria are imposed for the expressed purpose of exacting contributions from developers for school facilities. Also, it is bad policy to impose moratoria for which the only solution for a developer is to wait for the public sector to lift the moratorium.

- *In opposition:* In many cases the school capacity needed by a development project cannot be added incrementally to a school. In some instances a school may have sufficient capacity of its core facilities to support additional classrooms, but in many other cases it will not. Developers are not going to want to provide an entire school if their development is creating demand for a few classrooms.

The County Council has reviewed a number of options for developer provision of school facilities. The most recent detailed option was developed by Council staff in the mid-1990s but was not accepted. Since then the AGP work program has continually included direction to study this issue but the opposing arguments remained and there was little sense of urgency since the entire County passed the school adequacy test every year. The new, more stringent test has significantly added to the urgency, however.

The review of APFOs around the country will help inform this issue considerably, as will research into the relative contribution to enrollment growth of students from new development. These might help address the main issue of how to structure a developer contribution that does not compromise school adequacy.

The "Lumpiness" Factor[1]

The issue of private contributions toward school facilities has more in common with the issue of contributions toward transportation facilities than is usually recognized. Transportation facilities are also "lumpy," a technical term meaning that additions to the

[1] The tendency for public facilities to be supplied in large "lumps" but demand for public facilities to increase incrementally was a central theme in the very early growth policy studies of the 1970s and early 1980s.

facility network must be of sufficient size to be useful. For transportation, sometimes a development project requires a small amount of additional roadway capacity and there is a planned improvement that matches this need nicely; that is, it provides just the right amount of needed capacity and is also relatively small and easy to accomplish. An example might be an additional lane where the right-of-way is already dedicated and the land is flat. At other times the next needed improvement is enormous, complicated, or difficult to implement, such an interchange or an entirely new road. With schools, if a development would generate the need for one more classroom, and the school has the core capacity to support the additional classroom, then the challenge is relatively minor. But if most schools are already at capacity, and the next improvement is a new school, then developer contributions are likely to be a small down payment on a future school. In other words, public facilities are typically provided in large quantities and it is often difficult or impossible to break them down into small increments affordable to individual members of the private sector.

The tendency of public facilities to be lumpy makes it easier to work with very large or very small development projects. With very large development projects, the added demands on public facilities come in "lumps" as large as the public facilities do. With very small development projects, the marginal increase in demand for public facilities is small enough to be absorbable, at least in the short term and if there are not too many small projects.

The major challenge of appropriate developer contributions has been the mid-sized project that is too small to construct infrastructure on its own but too large for the impacts on public facilities to be absorbed. This has been addressed in two different ways in the past: by developing ways for developers to band together to provide infrastructure, and by allowing them to pay a fee or tax toward infrastructure.

Prior to the passage of enabling legislation for development districts, developers sometimes partnered on transportation infrastructure projects with agreements among themselves known as "road clubs." Although road clubs were in some senses less complicated than development districts (since the public sector's involvement was minimal), they were still cumbersome in some ways: they were legally complicated but also because they were essentially a partnership of competing developers, each of whom would have his own preferred schedule, his own financial issues to address, etc. Development districts are also complicated, and the first one, in Germantown, took several years to arrange. Two other development districts have been authorized in Clarksburg and at least one more may follow.

An assessment of how well the development district mechanism is working would be useful for the discussion of private developer contributions toward school facilities. Use of development districts, or a similar mechanism, might be a workable alternative, but would necessarily be limited in application since they are complicated to set up.

The second method of developer contributions is requiring the payment of a fee or tax, usually based either on the development's pro rata share of the cost of a new facility,

or a proxy, such as square footage or number of housing units. For the Germantown, Clarksburg, and eastern Montgomery County impact tax, the County's method to assess private development's share has been to:

- Determine the total cost of transportation facilities needed to support buildout of the zoning envelope;
- Divide that total cost in half (reflecting a policy decision that new development's share of the cost of new public facilities should be half);
- Determine the amount of residential and non-residential development, by type, remaining to be constructed under the zoning envelope; and
- Allocate, based on trip generation, half the total cost of facilities to development, on a per-unit or per-square-foot basis.

Montgomery County has implemented a fourth impact tax area and the rates of that tax are not formula-driven but rather were the result of a legislative determination of an appropriate balance between maximizing revenues while keeping rates within the bounds of affordability. That is the same method used to develop the Development Approval Payment and the Expedited Development Approval Excise Tax (which was required of developers using the Alternative Review Procedure for Expedited Development Approval).

The central facet of this question – how to structure a system for developer contributions toward school facilities – will involve an assessment of how school facilities are similar and different from transportation facilities, and how the mechanisms for developer contributions toward transportation facilities have been working. This modest review of the issue suggests that they are more similar than different and that the mechanisms used for transportation facilities, while imperfect, may well be applicable.