EXECUTIVE SUMMARY
MAYOR AND BOARD OF ALDERMEN

Submitted By: Joe Adkins, AICP, Deputy Director for Planning

Date: 2/4/2019

Presented By: Joe Adkins
Gabrielle Collard

Other Staff Present:
Zack Kershner, Director of Public Works
Rachel S. Depo, Assistant City Attorney

Meeting Dates
Workshop: 10/3/2018
2/13/2019

Agenda Item: Discussion of the City’s Adequate Public Facilities Ordinance — Schools

Background Information:

On March 22, 2007 the City adopted Ordinance G-07-6, known as the Adequate Public Facilities Ordinance, which went into effect on April 15, 2007 (59th Administration). The APFO contained tests for Schools, Water, Sewer and Roads.

There have been revisions to the APFO since that time, including Ordinance G-07-19, approved on September 6, 2007 for the purpose of making several clarifications, most notably addressing lots of record or those lots not subject to a preliminary or final subdivision plat but possibly created prior to any subdivision regulations being adopted by the City.

In 2011 the Board of Aldermen passed Ordinance G-11-29, amending the Adequate Public Facilities Ordinance to allow for the option of payment of school construction fees under certain conditions, and Resolution 11-23 to determine the amount of the school construction fees. Ordinance G-11-29 mirrored the County regulations in allowing developers to pay a fee if one or all of the schools impacted by development were between 100-120 percent of capacity. The City’s fees mirror the County’s fees, ranging from $594 to $4,981 depending on the housing unit and school.

At the time of passage of this legislation, it was decided the City would hold the school construction fees and then decide how best to allocate the monies collected in order to maximize the relief to schools that serve City students.
County’s Actions

Two major actions were taken by Frederick County. First, the County Council elected not to amend the section of the law dealing with the sunset provision. The County’s School Construction Fee expired on July 20, 2016.

From the date of July 20, 2016, new developments that did not have a previous APFO approval or a DRRA that allowed them to use the School Construction Fee could not take advantage of the School Construction Fee option.

The second major change was a County ordinance establishing a reevaluation of Frederick County’s School Construction Fee every year until 2026. The formula is based on the State of Maryland's School Construction Cost Index from the prior year. The fee cannot increase by more than 6% in any given year. This ordinance took effect on January 1, 2019.

Purpose

Chapter 4 of the Frederick City Code is generally known as the Adequate Public Facilities Ordinance, or APFO. In October 2018, staff initiated a discussion of the APFO as the first in a series of workshops focusing generally on the application of the ordinance as well as on the individual components of the APFO. This workshop will focus on Section 4-12 which pertains to the testing of impacted schools. Future workshop discussions will address proposed amendments to technical aspects of the APFO; however, the purpose of this workshop is to focus on broader policy.

Staff has not identified any specific policy questions for the Board to discuss related to this facility and as such, this summary provides a detailed description of how testing is conducted and the alternative methods of mitigation.

1) Testing

Testing for schools is conducted for any residential project or for the residential component of a mixed use project when the number of new dwelling units exceeds five. There are specific exemptions for projects that received approval prior to the adoption of the APFO in 2007 as well as an exemption for projects that qualify as “housing for older persons” that meet the criteria of Section 4-12(a)(1)(F), which includes a prohibition of residents under the age of 18. With a recent application, this provision conflicted with the criteria of the Department of Housing and Urban Development (HUD) in financing projects for senior housing and as such, this is an area of amendment that Staff would like to consider further to ensure that much needed affordable housing for seniors is facilitated.

With the acceptance of a development application that is not exempt, Planning Staff prepares the background and project information and submits a request to Frederick County Public Schools (FCPS) staff to conduct the test. The test takes into consideration the official enrollment figures plus background enrollment plus pupils generated from the proposed development. Pupil generation rates are set by FCPS. Pupil yield is by housing type and is prorated over the number of years of the test. When the calculations are complete, the results are returned to Planning Staff and the Director of Public Works’ (the
“director”) designee, the Deputy Director for Planning, makes the determination of adequacy. In order to be adequate, all elementary, middle, and high schools serving the project must be adequate or, alternatively, adequate capacity must be scheduled for construction within the first two (2) years of the county CIP, where “adequate” means the projected enrollment is less than or equal to one hundred (100) percent of State Rated Capacity (SRC). Each school only needs to pass the test once for the residential development project to be eligible to proceed.

2) Mitigation

If one or more of the schools serving the development is inadequate, there are several mitigation options:

- Per Section 4-12(b)(4), if one or more of the schools being tested fails, the test is conducted each year on or after October 15th once the September 30th enrollment data has been released. A project that fails the October 15th schools test for three (3) years is permitted to obtain a CAPF-SCH, regardless of adequacy. As such, one of the developer’s options is to wait.

- Per Section 4-12(e), the developer may submit a mitigation plan which addresses how the inadequate school(s) will be made adequate by the developer. The mitigation plan must be first reviewed and approved by the Board of Education and FCPS. After receiving these approvals, if the director finds that the implementation of the mitigation plan would result in adequate school capacity, the director recommends to the Planning Commission that the mitigation plan be accepted and the Commission considers it along with the development application for approval. If the Commission approves the mitigation plan, the director issues a provisional certificate for schools (CAPF-SCH). The Mayor and Board will then review a mitigation agreement which addresses, for each phase or section of development, the terms and conditions under which the necessary public facility improvements will be constructed, financed and delivered as well as any necessary financial guarantees.

- Per Section 4-17.1, after the director denies a CAPF-SCH based on a finding of inadequacy, the developer has the option to pay the school construction fee. This option is only available if the failing school(s) does not exceed 120% of SRC after taking into account the current enrollment as of the APFO test date and the actual capacity expected to be provided by new schools and school additions scheduled for construction in the first two years of the County’s CIP for school construction. A developer choosing this option enters into a school construction fee agreement and the CAPF-SCH is issued.

The school construction fee was established by Ordinance 11-29 and Resolution 11-23 and establishes a fee for each school level by housing type. The fee is paid at the time of subdivision plat recordation with the exception of multifamily units which are located on one lot and alternatively, must be paid on or before the date a building permit application is submitted for the construction. The fees are deposited into a designated account which is interest bearing. The City may appropriate funds from the account at its discretion for school construction projects,
including renovations or new construction, for public schools serving or intended to serve residents of the City.

Committee Recommendations if Applicable: N/A

Fiscal Impact: N/A

Recommendation: Staff has no technical issues with the procedures that are in place to conduct the test for APFO for Schools. However, there are policies that the Board of Aldermen may want to consider.

- 3 Year Wait Provision
- School Construction Fee
  - Increase fees to mirror the County
  - Reevaluate the fee in some other manner
  - Let the fee stand at the current rate
- School Construction Fee Provision to mirror Frederick County and not allow any new developments to take advantage of this option
- Testing Senior Housing for schools

Supporting Documentation:
Resolution 11-23

Director: ____________________________ Date: ________________
A RESOLUTION concerning

Adequate Public Facilities -- School Construction Fees

WHEREAS, on December 1, 2011, the Board of Aldermen adopted Ordinance No. G-11-29 (the "Ordinance"), which amended the Adequate Public Facilities Ordinance (Chapter 4 of The Code of the City of Frederick, 1966 (as amended)); and

WHEREAS, the purpose of the Ordinance was to allow developers to meet the public school adequacy requirements of the Adequate Public Facilities Ordinance by paying certain school construction fees; and

WHEREAS, the Ordinance provides that the Board of Aldermen will establish by resolution the school construction fee components for each housing type and school level.

NOW THEREFORE BE IT RESOLVED THAT any school construction fees payable in accordance with Section 4-17.1 of the Ordinance shall be calculated in accordance with Section 14-17.1(d) and using the following fee components:

<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>
</tr>
</thead>
<tbody>
<tr>
<td>SINGLE FAMILY DETACHED</td>
<td>$3,870.00</td>
<td>$2,530.00</td>
<td>$3,646.00</td>
</tr>
<tr>
<td>TOWNHOUSE/DUPELEX</td>
<td>$4,053.00</td>
<td>$1,996.00</td>
<td>$2,584.00</td>
</tr>
<tr>
<td>OTHER RESIDENTIAL</td>
<td>$897.00</td>
<td>$336.00</td>
<td>$420.00</td>
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</tbody>
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AND BE IT FURTHER RESOLVED THAT school construction fees for any particular developer or development project shall not be waived, reduced, or otherwise modified except by ordinance duly adopted by the Board of Aldermen.

AND BE IT FURTHER RESOLVED THAT the fee components established by this Resolution shall remain in effect unless or until amended by resolution or ordinance duly adopted by the Board of Aldermen.
ADOPTED AND APPROVED THIS 1st DAY OF December, 2011

WITNESS

Martha S. Mowers

Randy McClement, Mayor

Reviewed and approved for legal sufficiency

Audra A. Nichols
Legal Department