

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 16, 2008

SUBJECT: Consideration of Development of Adequate Public Facilities Regulations

ATTACHMENTS: Handout of Power Point Presentation

SUMMARY OF REQUEST:

The 2020 CCP recommends that the County take a leadership role in school facilities and to incorporate into the Land Development Code (LDC) mechanisms that link public school capacity and long range plans to the land development permitting process (Henderson County 2020 CCP, PS-01 & PS-02). The Board of Commissioners has considered developing regulations for Adequate Public Facilities (APF) to address the issue of balancing residential growth with public school capacity.

The Board expressed concern regarding possible action by the State Legislature that would limit a local government's ability to adopt Adequate Public Facilities Ordinances (APFO) that contained fee provisions. Current law allows Adequate Public Facility regulations and the General Assembly has taken no action to modify or limit that authority.

A majority of the work to develop APF regulations can be done by County Staff although this would represent a major project for the planning staff. A consultant's expertise and experience would still be needed to assist the County in the development of these regulations but at a reduced cost of approximately \$40,000 verses \$80,000 for the consultant to complete the entire project.

Staff was requested to present an update on the status of such regulations. Staff will give a brief overview of the possible regulations and how the County might proceed should it be the desire of the Board. If the Board desires to proceed, building support and understanding from other entities (municipalities and County School System) will be necessary. The next step is a ½ day workshop, conducted by the consultant, to discuss the details of an APFO, answer questions of Commissioners, and to decide if the Board wishes to commit to allocating the resources to develop these regulations.

BOARD ACTION REQUESTED:

Staff recommends that the Board of Commissioners provide direction as to if the County should proceed. If the Board is inclined to move forward with its consideration of adopting Adequate Public Facilities Regulations scheduling a ½ day workshop for the Board would be appropriate.

Suggested Motion:

I move the Board proceed by directing staff to setup a workshop with the consultant and other necessary entities and bring forth a suggested workshop date at the next meeting.

ADEQUATE PUBLIC FACILITIES REGULATIONS

Balancing Residential Growth
in Henderson County
with School Capacity

July 7, 2008

What is an APFO?

- An APFO is a form of land use regulation that controls the timing of property development and population growth with the purpose of ensuring that the public facilities needed to serve new residents are constructed and made available contemporaneously with the impact of the new development
- Said another way, the purpose of an APFO is to ensure that, to the maximum extent practicable, approval of new residential development will become effective only when it can reasonably be expected that adequate public facilities will be available to accommodate such new development.
- An APFO is a planning tool that attempts to coordinate the local CIP and growth.
- An APFO can be applied to public facilities such as schools, jails, transportation, utilities, parks and recreation, etc...For purposes of this report, we will be discussing an APFO as it relates to school capacity.

What can an APFO do?

- Help prevent school overcrowding.
- Help channel growth into geographic areas that are more capable of handling new development.
- More certainty in the financial forecast and budgeting process
- May limit or temper periods of excessively high growth
- Can contribute to better capital planning

What can an APFO not do?

- An APFO is not a mechanism to stop residential growth.
- An APFO in itself is not a mechanism to provide the major source of construction funding for school construction.
- An APFO will not replace school funding requirements, but may aid in accelerating school construction.

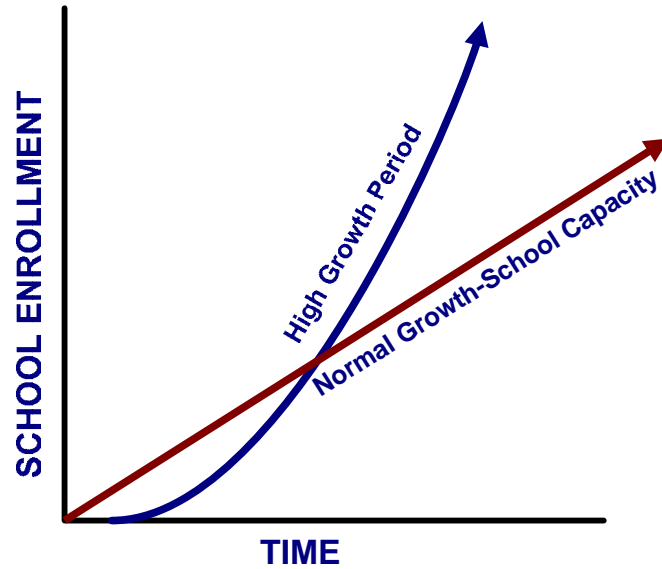
What Counties have an APFO?

- APFO's are increasingly common in North Carolina
- Currituck County - Has had APFO since 1994. Currituck is a small county with a population of 19,632 and no municipalities.
- Cabarrus County - Has had an APFO since 1998. Cabarrus County has not denied any subdivision lots for lack of capacity but allowed the developers to make a contribution towards capacity.
- Orange County - Orange County, their three municipalities and the School Board have been working on an APFO for over two years which was recently adopted. Orange County's growth rate has been less than 2% a year.
- Union County adopted an APFO in September, 2006. High growth county but they have 14 municipalities. Ordinance currently under review in lawsuit.
- Lincoln County has adopted an APFO.
- APFO's are more common in states that have enabling legislation. In Florida for example, state law requires concurrency ordinances while in Maryland, state law expressly authorizes such an ordinance.

How does an APFO work?

- Proposed residential developments must get an adequacy permit before they can develop.
- The adequacy permit is determined by comparing the existing and expected capacity of the schools in the area with the number of approved lots.
- When a residential development is denied an adequacy permit, it is placed in a queue until additional school capacity is available.
- Alternatively, the County could allow the developer to proceed by mitigating the impact of the proposed development by voluntarily making a contribution for each home. These pre-established contributions would be used to accelerate construction of items in the CIP.
- The County must provide additional school capacity in accordance with the adopted CIP.

An APFO applies to development when growth exceeds planned school capacity



Who are the stakeholders?

- Citizens of Henderson County
- Henderson County Government
- Henderson County Public Schools (for school based APFO)
- Municipalities
- Home Builders
- Developers

Whose participation is critical to the development of an APFO?

■ Schools Based APFO

- Facilities provider –

- HC Public Schools

- Financing Entity -

- Henderson County

- Land Use Regulators –

- Henderson County and municipalities.

Municipalities account for significant % of all building permits issued in Henderson County.

What are the issues associated with an APFO?

- How do we achieve the necessary consent and coordination among the critical participants?
- How do we define adequacy?
- Who issues the adequacy permit?
- What level of growth must be accommodated?
- How do we develop the required commitment to the CIP?

What are the issues associated with an APFO?

- How do we define the service districts within which there must be sufficient capacity to support additional development?
- Should we allow for voluntary payments by developers to mitigate the impact of their development?
- Should the APFO include exemptions for:
 - Minor subdivisions,
 - Hardships, or
 - Other special circumstances?
- How do we ensure that the APFO is legally defensible?

How do we proceed?

- A consultant is required to proceed with the development of an APFO
- The consultant provides:
 - Guidance
 - Experience
 - Legal knowledge

Project cost?

- County Staff can complete a large percentage of work with consultant guidance.
- With County Staff as a resource, consultant fee would be approximately \$40,000.

Next step?

- Direction to Staff if the Board wishes to proceed with the development of an APFO.
- If the Board's direction is to proceed, Staff suggests a ½ day workshop.