

# CITY OF ROCKVILLE

## ADEQUATE PUBLIC FACILITIES STUDY COMMITTEE

### AGENDA

June 2, 2011

7:00 P.M.; Mayor and Council Chambers

City Hall

<u>Time</u>	<u>Topic</u>
<b>7:00 pm</b>	<b>Meeting Convenes</b>
<b>7:02 pm</b>	<b>Agenda Review and Modifications</b> (including: Leiderman Testimony   Zaletsky Testimony from May 26 meeting)
<b>7:05 pm</b>	<b>Public Forum</b> – The public is invited to present comments to the Committee on the Adequate Public Facilities Ordinance and Standards
<b>9:30 pm</b>	<b>Adjourn</b>

Note: Times shown are approximate

Testimony to the APFO Advisory Committee, May 26, 2011, by Jack Leiderman

Good evening, my name is Jack Leiderman, and I live in Rockville in the same neighborhood as Beall Elementary School. I very much appreciate the opportunity you have given me to speak from the perspective of one of the appellants in the *Anselmo* court case.

You recently received a short memo from the City Attorney about the court case. She highlighted two pertinent issues in the case, the first being the calculation of school demand, and the second being how school capacity is “reserved.” I will initially focus on those two issues, going into more depth than does the City Attorney’s memo. I will then refer to a couple of additional issues in the case and conclude with a comment about the general issue of adequate public facilities. My remarks will take about fifteen minutes, and if there’s any time left I’ll be happy to take questions.

For me, it all started one Friday afternoon in July 2008 when I received this little blue postcard in the mail from the City of Rockville. This card was notification for neighbors that the Planning Commission was meeting on July 23 to review an application for Beall’s Grant II, an apartment building planned for a couple blocks away. The card is postmarked July 17, six days prior to the public hearing, and I received it the following day, the Friday afternoon before the Wednesday hearing.

Despite the short notice, many residents in the neighborhood attended and spoke at the hearing. A number of issues were raised in testimony to the Planning Commission, the most pertinent for our discussion tonight being the issue of overcrowding at Beall Elementary School and whether the requirements of the City’s APFO were met. The report from the City’s Planning staff asserted that the project “meets the APFO in all aspects,” an assertion which was later proven to be grossly incorrect.

The enrollment projections from MCPS, relied upon by City staff, indicated that enrollment at Beall Elementary was declining and that the lower enrollment

would soon open up a window in capacity allowing the new development. The parents at the public hearing knew from their own experience that enrollment at Beall was in fact skyrocketing. When presented with this contradiction, Commissioner Johnson commented that the MCPS numbers were the only numbers that staff presented to the Planning Commission, so they'd have to go with that. That night the Planning Commission, without looking any further into the questions raised, approved the use permit. Well, it turns out that those MCPS calculations were made the previous October (2007) and then were routinely published in June of 2008 as part of the school system's Capital Improvement Plan. Had the City Staff simply made a phone call over to Beall Elementary in June or July, they would have known what the parents knew, that enrollment at Beall was not declining, but was skyrocketing. So that's a perfect example of why the APFO requires, and why it is crucial, that the City make its own independent and current analysis of school demand, and not rely on outdated projections from MCPS.

A related issue is the calculation of how many students are expected to be generated by a proposed development. Here, too, numbers are thrown around that do not square with reality. The developer of Beall's Grant II showed a public relations video to the West End Citizens Association in the fall of 2008, with a cute little kid holding up the fingers on one hand to make the point that that the 109-unit development would generate only four or five students at Beall Elementary. But here's a letter to the editor of the Gazette back then, from someone in favor of the project; she states that she hopes to move into Beall's Grant II because, quote "I have young children and...I want them to attend the local schools." And I remember thinking, OK, that's two or maybe three kids from one unit, only 108 more units to go.

The idea that children don't live in apartments may have been true at one time but these days is as anachronistic as a manual typewriter. Last year during hearings on the Master Growth Element, a parent testified that a recently-completed mixed-use apartment development in Rockville was projected to

generate zero students at the local elementary school but on the first day of class twenty-five students showed up from the complex. So we need some realistic data here, with respect to demand generated by new apartment development. Anyway, that's why the City needs to do its own due diligence with respect to the accuracy of data it receives from outside sources, and why the APFO rightly puts that responsibility squarely on the City.

The second issue highlighted by the City Attorney's memo is the one about the APFO's requirement to reserve school capacity for unbuilt projects in the pipeline. Let's break this discussion down between the usual projects with normal, shorter-term completion dates, versus those with longer-term horizons, for example projects that have been mentioned here that have a twenty-five year horizon. Longer term projects might require a different approach than the current mandate to reserve space; we'll get to that shortly.

But first, what we were dealing with in the *Anselmo* case was that the City did not reserve school capacity for projects in the pipeline. These projects were all projected to be built within the same six-year time frame, a time frame in which the school system would not be adding any additional capacity. MCPS projected that the children from the pipeline projects wouldn't arrive until years four, five, and six. City staff argued that it would be OK to squeeze in additional development in the interim years two and three, including but certainly not limited to Beall's Grant II.

The City argued against reserving spaces for pipeline development, saying that it was like a hotel, why would you hold rooms open all year long for people with reservations for Labor Day weekend? But this so-called analogy fails in several ways. First, in a hotel, the April, May, June, July and August guests have all checked out and gone home by the end of summer, leaving room for the folks with the Labor Day reservations. But what would happen if the guests never check out? The apartment development you squeeze in, generating students starting at Year Two, is a permanent development and will continue to generate students in perpetuity. There will then be insufficient space for students from the

approved but unbuilt developments. It would be like the summer hotel guests never checked out of the hotel and now here comes the Labor Day crowd. At the end of the six years you have all the students from all of the developments, and no place to put them.

And secondly, even regarding the supposed extra capacity for years two and three, what if a developer goes ahead of schedule and builds in Year Two instead of the expected Year Five? A developer that has a use permit does not have to wait to go forward with the project, and is not bound by any MCPS projections as to estimated completion dates. Unlike a hotel guest that must wait until Labor Day to use a Labor Day reservation, a developer can build at any time following project approval. So for several reasons the APFO requires the City to reserve capacity at the time of project approval. This requirement makes perfect sense especially when dealing with development in the normal short-term time frame, when there are no plans to expand school capacity.

Now let's address development projects with a longer-term horizon, where the school system could have sufficient opportunity to add school capacity over time to keep pace with new development. We want growth and we want adequate infrastructure, and we want these two to be coordinated, not in conflict. First, regarding the couple of projects in the City with a 25-year timeline, these few large projects were grandfathered in at the inception of the APFO as a political compromise. Those project approvals are anachronisms, statistical outliers, relics which are red herrings in this discussion, and which really shouldn't be the model that drives future policy.

On the other hand, if it's something like the Rockville Pike Plan you're thinking about, and the City wants to envision large-scale development projects with phased-in segments projected for completion dates ten to twenty years out, beyond the timelines of the MCPS planning process, then that might be a different circumstance. But let's not conflate the two situations, the normal six year timelines vs. projects that are to be built a generation into the future. As we solve this equation, let's not throw out the baby with the bathwater. When you

have a normal shorter-term time frame, for example the six year frame that MCPS uses, and there are no plans for expanding school capacity during that short-term, reserving school capacity at the time of project approval is totally appropriate as the mechanism to keep from overwhelming the schools by the end of the six year period.

Here's an idea for those long-term projects. What if we were to require those projects to get their findings of adequate public facilities not at the time of initial project approval but rather down the line at the time of issuance of the building permit? With this alternative mechanism, no developer ready to build would have to wait in line behind some other developer who is not ready but is tying up idle reserved capacity for years at a time. If the finding of adequate public facilities happens at the building permit stage, no one with a shovel-ready project would be kept from building if there is current available capacity. First come, first served. But whether you choose to reserve capacity at the time of project approval, or have your finding of adequacy at the stage of the building permit, you have to have one mechanism or the other in place to keep from overwhelming the schools. To say that developers should never be required to show that adequate public facilities exist is just not a credible position.

Parenthetically, I would suggest that putting the requirement at the building permit stage could be done either just for projects with long term completion dates, or if we want consistency, it could be for all development projects, short or long-term, and could include the grandfathered projects, too, while we're at it.

Let's move on to a couple of other issues raised by this case. There is apparently still some confusion about why the APFO requires (and the Court affirmed) that with the two-year test window, both years must remain below the threshold in order to allow a development to proceed. Simply put, this ensures that any given year with particularly low enrollment is part of a trend and therefore is based in reality, not a reflection of a peculiar anomaly that only exists

in a single school year. Again, this goes to the importance of acting on the basis of valid data that is an accurate reflection of reality.

I'd like to address another unfounded assertion that was put forth by our opponents in this case, and continues to be bandied about, that Rockville as a municipality has no business, through its APFO, mucking around with the schools or the state roads, which are obviously controlled by either the county or the state, respectively. Well, the Court shot that argument down rather decisively, saying that these are "traditional areas of local concern" and as such are well within the purview of localities, and the Court cited numerous precedents in case law in support of our APFO doing just this. Remember, we as a municipality obviously cannot dictate the operation of county schools or state roads. But what we can do is to influence, to the degree possible, the demand that we as a City place on the local schools and roads that we depend on for our quality of life. An analogy I could make would be that we might not control the global ecosystem but we should try to minimize any adverse impact we might be having on our environment, beginning locally.

Now let me comment briefly about our experience of the judicial process. At the initial round, our case was heard by a local judge. At the conclusion of the oral arguments, the judge asked no questions of counsel from either side. He pulled out a piece of paper and read a pre-prepared statement, a short pro forma decision that simply deferred to the local government. On appeal to the Maryland Court of Special Appeals in Annapolis, it was a different story. A three-judge panel of appeals court judges listened to both sides' oral arguments and engaged the attorneys in a lively back-and-forth, with all three judges participating vigorously in the discussion. Several months later, the Appeals Court issued its ruling. The Court decision painstakingly addressed each issue raised in the written briefs and oral arguments. The Court agreed with us on each and every issue, and rejected each and every argument made by the developer and the City. The Court cited longstanding legal precedent in our favor. The case achieved the status of a "reported" case which now may be cited as precedent in

other cases. I say this to you not to brag, but to warn you against making the mistake of minimizing this decision as simply a difference of opinion among lawyers, or that this case was decided on some insignificant technicality of language, or was decided impulsively by some renegade judge. Both the developer and the City took this Court decision seriously enough that they did not make any attempt to appeal the decision further.

In conclusion, I would observe that right now the development community is focusing their time, energy, and resources into fighting the City's APFO. If they succeed in weakening the APFO, that will do nothing to solve the problem of school overcrowding. But if the City remains steadfast and developers know that the APFO is here to stay, they'll have plenty of reason to turn their resources and considerable political clout towards the county school system, advocating for expanded school capacity. And that will solve the problem, and everybody wins.

Thank you for listening, and I'm happy to entertain any questions.

From: kevinzaletsky@hotmail.com  
To: planning.commission@rockvillemd.gov; bnewton@rockvillemd.gov  
CC: masterplan@rockvillemd.gov  
Subject: Municipal Growth Element  
Date: Sun, 11 Jul 2010 21:08:17 -0400

To the members of the Planning Commission:

The following is submitted for your consideration and inclusion in the public record:

I live in the Richard Montgomery School Cluster, and like a rapidly growing number of residents in my neighborhood, I am gravely concerned about the severe overcrowding of our public schools and the apparent reluctance of our city to address or even to acknowledge any responsibility for this issue. I watched both the June 9th and June 23rd Planning Commission meetings regarding the Municipal Growth Element (MGE) with great interest and was shocked when I read the City's draft of the MGE.

I was particularly disturbed to read the language in the MGE suggesting that population growth in Rockville is not linked to the demand on schools. Specifically, the MGE states, "...there is not a tight link between the growth in Rockville's population and the need for school facilities within Rockville." [Municipal Growth Element Draft pg. 19]. The MGE offers three somewhat tenuous justifications for this assertion. The first two deal with students who leave the city or come from outside the city to attend school (which must, to some degree, cancel each other out), and the third cites the fact that some students within Rockville attend private schools. These factors, even when taken together, are no doubt a small fraction of Rockville's student population and are also very much quantifiable and predictable. To use these factors as a justification to completely avoid discussing the obvious link between growth of the city and school impact is intellectually dishonest. It should be noted that not one piece of statistical evidence is offered in the MGE to support these assertions.

Along the same line of argument, in the June 23rd Planning Commission meeting, the city staff and MCPS contended that new development has a minimal impact on school demand. Not only does this argument defy common sense, but it is not supported by MCPS's own data. To illustrate my point, I will use the example of Beall Elementary from my own neighborhood. The student enrollments at Beall Elementary School from MCPS's most recent projections in October 2009 for the next six years are as follows:

2010-2011	658
2011-2012	656
2012-2013	674
2013-2014	680
2014-2015	654
2015-2016	647

It is easy to calculate that the mean enrollment change for Beall Elementary from year to year is **11.8 students**. This includes all the variations expected to be generated by fluctuations in existing housing and other demographic changes. City staff suggested that existing housing and demographic changes--not development--account for the bulk of the change in enrollment numbers from year to year.

In previous email correspondences with MCPS demographer Bruce Crispell, he provided the student generation rates from approved but unbuilt pipeline projects serviced by Beall Elementary as follows:

Chestnut Lodge	10
Duball	20
KSI	15
Beall's Grant II	10

For a total of **55 students** expected to be generated by known new development. For the sake of argument, I will assume that these student generation rates are accurate, although, as aptly noted by the Planning Commission during the hearings, it is likely that they are grossly underestimated. This number also does not include the several other projects in the pipeline that have not yet been approved.

It becomes mathematically indisputable that new development is the most significant factor in enrollment growth. If added in one year, those 55 students account for more than 4 times the mean yearly enrollment change. Even when spread out equally over the six years (9.2 students per year), these 55 students would still account for close to 75% of the mean enrollment increase each year. The ground truth of this issue was succinctly stated in the June 9th meeting by community PTA and Cluster Coordinators who empirically demonstrated the impact unfettered growth is having on our public schools. Fortunately for Rockville, new development is the one factor in this equation that the city does exercise some control over--that is, if they chose to do so instead of allocating time and taxpayer resources to neuter our Adequate Public Facilities Ordinance.

There is no question that school overcrowding in Rockville is a dire concern and prominent public issue. To suggest that this is simply a perpetual condition that we must learn to live with is a disservice to our citizens and children and an abrogation of public responsibility. It is difficult to understand why, in a policy document that is singularly devoted to discussing the impacts of growth on our city, the bulk of the section on schools is spent attempting to obscure and minimize the effects of growth on school demand instead of highlighting the gravity of our current and future enrollment numbers.

This is a very dangerous and irresponsible tact for a document that is supposed to be guiding our public policy.

I would urge the Planning Commission to take a serious, common sense look at the MGE and to create a section on schools that reflects not only the reality of the school situation, but the sentiment and concerns of our citizens.

Thank you for your consideration and attention to this matter.

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