

CITY OF ROCKVILLE

ADEQUATE PUBLIC FACILITIES ADVISORY COMMITTEE

AGENDA

April 28, 2011

7:00 P.M.; Black-Eyed Susan Conference Room

City Hall

<u>Time</u>	<u>Topic</u>
7:00 pm	Meeting Convenes
7:02 pm	Agenda Review and Modification
7:05 pm	Discussion/Approval of the April 14, 2011 Meeting Minutes
7:15 pm	Discussion of the Rockville Citizen's Survey – Louise Atkins, Council Support Specialist
8:00 pm	Discussion of the court decision on Beall's Grant and the issue of imposing an impact tax or fee in the City. The City Attorney will provide comment memos for both of these items.
9:30 pm	Adjourn

Note: Times shown are approximate



City of Rockville

MEMORANDUM

April 27, 2010

TO: Adequate Public Facilities Advisory Committee
FROM: Debra Yerg Daniel, City Attorney *DYD*
SUBJECT: Impact Tax/Fee for Schools

This Memorandum is in response to the Committee's inquiry regarding whether the City may impose a dedicated impact tax/fee for schools.

The issue of impact fees was explored by the City in 2005. At that time, it was noted that the Maryland Attorney General's Office had issued an opinion (on November 18, 2004) validating municipal authority to impose impact fees.

In that opinion, the Attorney General's Office noted that "[a]bsent authorization by the General Assembly, a municipal corporation may not impose a development impact fee for any purpose, if the law creating the fee is primarily a revenue measure and the impact fee is therefore a tax." It went on to say "[u]nder existing statutory authority, a municipality may impose an impact fee as part of a regulatory measure. However, in that case, there must be an adequate nexus between the charge imposed and the cost of the services to the property assessed, and the revenue must be appropriately earmarked so as to substantially benefit that property."

The Attorney General's Office identified Article 23A, §2(b)(33) as the relevant enabling authority, which it quoted, in pertinent part, as follows:

In addition to, but not in substitution of, the powers which have been, or may hereafter be, granted to it, [a municipal] legislative body also shall have the following express ordinance-making powers:

(33) Subject to the limitations imposed under Article 24 of the Code, the Tax-General Article, and the Tax-Property Article, to establish and collect reasonable fees and charges:

...

(ii) Associated with the exercise of any governmental or proprietary function authorized by law to be exercised by a municipal corporation.

(Emphasis added.) The issue is whether the school system is a "governmental or proprietary function authorized by law" to be exercised by the City.



City of Rockville

MEMORANDUM

April 27, 2011

TO: Adequate Public Facilities Advisory Committee

FROM: Debra Yerg Daniel, City Attorney *DMD*

SUBJECT: Summary of the Court of Special Appeals' decision in *Anselmo, et al. v. Mayor and City Council of Rockville, et al.*

This Memorandum is to provide the Adequate Public Facilities Advisory Committee with a summary of the *Anselmo* case including a summary of the arguments made before the Court of Special Appeals and a summary of the Court's decision.

I. Introduction

This case involved an application by MHP Town Center, Inc. to build a 109 unit apartment complex on land located at the intersection of 254 North Washington Street and 13 Beall Avenue. The City's Planning Commission approved the application on April 29, 2008. That decision was upheld by the Circuit Court for Montgomery County, Maryland, and was then timely appealed to the Court of Special Appeals.¹

The main substantive issue in the Court of Special Appeals involved the interpretation and application of the City's test for adequacy of schools as set forth in the City's Adequate Public Facilities Standards ("APFS") which sets the

¹ It is my understanding that the Committee has been provided a copy of the Court's decision in *Anselmo*. A more detailed recitation of the facts may be found in the Court's decision.

adequate level of service (“LOS”) for schools at 110 percent of program capacity at all school levels within 2 years.²

The City maintained, on appeal, that the APFS envisioned that the City rely on student figures provided by the Montgomery County Public Schools (“MCPS”) in determining whether a proposed development meets the City’s school capacity test. Thus, if adding the number of projected students to be generated by a proposed development to MCPS’ projected student enrollment number for a particular school, two years out, resulted in a number that was less than 110 percent of program capacity, the City would find that that development met the City’s APF test for schools.

The Appellants’ position was that the City could rely on the figures provided by MCPS to determine school capacity, but that the City could not rely on those same figures for determining school demand.

The disagreement over the interpretation and application of the APFS centered around two provisions in the APFS—one involving how school demand must be calculated and one involving the definition of “reserved” capacity.

II. Calculation of School Demand

The language which sets forth what goes into the calculation of school demand is found on page 7 of the City’s APFS. Specifically, it states that

School demand is based on actual student census in the most recent complete academic year, adjusted for the following: demographic changes, changes in district boundaries and other changes anticipated by planners with Montgomery County Public Schools; additional demand from approved development; additional demand from the specific development being considered for approval.

(Emphasis added.) The Appellants interpreted this provision to require the City to do an independent analysis of demand rather than rely on the figures provided by MCPS.

Appellants agreed that the City could rely on MCPS’ enrollment figures for certain adjustments to the actual student census—namely, demographic changes, changes in district boundaries, and other changes anticipated by planners with MCPS—but Appellants maintained that the City is required to independently calculate additional demand from approved but unbuilt development. Appellants

² As a secondary matter, the Appellants also argued that the Planning Commission had not made the proper findings in approving the application. In its *Anselmo* decision, the Court of Special Appeals agreed with the Appellants and also reversed the Planning Commission’s decision on the basis that it lacked the required findings.

further maintained that this would be a simple calculation. It would just require that the City call MCPS to get the breakdown of what number of students MCPS added in for these developments, subtract them out of MCPS' calculations and add back in the total number of students generated by the approved but unbuilt developments. In addition, Appellants maintained that student capacity had to exist for both one year out and two years out in accordance with the language in the APFS.

The City argued 1) that MCPS already took into account approved but unbuilt development in its calculations of demand and 2) that the plain language of the City's APFS did not require an independent calculation by the City.

III. "Reserved" capacity

Appellants and the City also disagreed as to how student capacity was "reserved" under the APFS. The APFS states that for the schools test, approval of a development "reserves the capacity" and that "at building permit stage capacity is moved from the reserved to the used category."

Appellants maintained that this language meant that the total number of students projected to be generated by approved but unbuilt developments should be accounted for by the City as part of the City's independent calculation of school demand—that is, the total number of projected students for every approved but unbuilt development should be counted—student for student—and added into enrollment projections for every year up until each project was built.

The City pointed out that under this interpretation there is no distinction between "reserved" capacity and "used" capacity since, in both instances, the projected students would be treated as if they were already in school.

The City maintained that the term "reserved" as used in the APFS meant "assigned" or "allocated"—and that, based on this definition, the fact that the MCPS took into account the number of students anticipated to be generated by those approved but unbuilt developments in calculating MCPS' annual enrollment figures—those spaces were, in fact, "reserved" as required by the APFS.

IV. Court of Special Appeals' Decision

The Court agreed with Appellants' interpretation. It found that the City's APFO and APFS required that the City do an independent analysis of student demand and required "reservation" of the number of all students generated by approved but unbuilt development, student-for-student, for both one year out and two years out.

Based on this decision, the proposed 109-unit development did not meet the City's APFS test for schools since adding in the number of the students

generated by approved and unbuilt development as well as the number of students generated by the proposed development itself increased the LOS beyond 110 percent of program capacity for Beall Elementary School.