

**ADEQUATE PUBLIC FACILITIES
ADVISORY COMMITTEE**

ACTION MINUTES

MEETING OF June 9, 2011

The meeting was convened at 7:04 p.m. In attendance – Julie Carr, Jason Anthony, Dennis Cain, Soo Lee-Cho (arr. 7:15), Charles Littlefield and Roald Schrack. Eric Siegel, Tom Gibney and Sean Hart were absent.

Charles Littlefield moved, seconded by the chair, to amend the agenda to add an item at 7:45 p.m. to discuss adding a worksession to the agenda. The motion passed 5-0-1 with Dennis Cain abstaining.

The committee further considered the minutes for the April 28 meeting. Dennis Cain proposed additional language characterizing the City's defense of their interpretation of the APFS in the Beall's Grant II court case as set forth in the memo from the City Attorney.

Discussion ensued regarding how to characterize the City Attorney's memo on the impact tax issue. It was noted that the Mayor and Council has directed the City Attorney not to provide legal advice to the appointed committees, although if there are questions that arise a response can be generated provided, with the caveat that it would not include legal advice. Soo Lee-Cho offered the resources of her law firm to do some research on this matter. Jason Anthony noted that the most outstanding legal issue is the ability to levy an impact tax. This may have to be a recommendation to the Planning Commission to have the City explore this option. Jason Anthony offered alternative language for the Committee to consider. The committee agreed to have the April 28 minutes amended as follows: With regard to the Beall's Grant court case, the City Attorney provided the Committee with a memorandum that explained how the City had applied the schools APFS and that the Court rejected the City's methodology. The Committee then further discussed the merits of the Court decision. The Committee also discussed the reasoning behind having to do the schools test in the first and second year. This would also be reflected in the minutes for June 9.

The committee then considered the draft of the May 26 minutes. Dennis Cain suggested revising Susan Prince's testimony to more accurately reflect what she said. The staff will bring the recording to the next meeting. Charles Littlefield noted that he had abstained from the vote to approve the May 12 minutes, which was not reflected. Dennis Cain noted that the minutes did not reflect the discussion by Nancy Paul about families moving to the other side of Redland Boulevard to attend schools in the Richard Montgomery cluster. Julie Carr noted that Tom Gibney was going to Check with Nancy Paul to see if

APFO Committee Meeting Minutes

June 9, 2011

she had any edits to their testimony. The chair moved, seconded by Jason Anthony, to defer action on these minutes. The motion passed 6-0.

The committee then reviewed the draft minutes of the June 2 meeting. The committee wanted to clarify their discussion at that meeting of the fact that no developers had been invited to a regular meeting of the Committee. The Committee discussed whether the two Committee members who are part of the development community constitutes representing the development community. Charles Littlefield moved, seconded by the chair, to make an edit to the minutes by adding the word “more” to the first sentence in paragraph 7, so that it would read “...he would be interested in hearing more from the development and business community...” The motion passed by a vote of 5-0-1 with Dennis Cain abstaining. Charles Littlefield noted that the Committee had asked about an update on the data requested from Montgomery County Public Schools. Jason Anthony then moved, seconded by Soo Lee-Cho, to approve the minutes as amended. . The motion passed, 5-0-1, with Dennis Cain abstaining.

The committee began discussion of who among the development community might be invited to speak. Jason Anthony would prefer those with a broader interest rather than ones with a special interest such as a specific affordable housing project. Soo Lee-Cho notes that there are some out there who might be willing to come, but they didn't want to do so at the public forum. Their preference is to have a direct dialog with the committee. JBG might be one developer, as they have extensive holdings in the City. Several committee members noted that the primary function of the APFO is to protect the existing residents. The discussion went on to consider whether or not, based on Jack Liederman's comments, the developers would eventually go to the County to solve the school issues.

Jason Anthony indicated his belief that any future amendments to the APFS require a super-majority vote by the Mayor and Council. The three issues considered for amendment or exemption are affordable housing, portable classrooms, and the Silverwood annexation. There are still issues between the City and County regarding the different school standards.

This led to a discussion on how school policies might be altered or some other ways to address the base growth rate of school kids. There needs to be an understanding of what an APFS is for – it is not intended to stop growth of the base, but rather to try and balance the facilities needed to serve the growth of the base. The committee may need to consider some recommendations on how to keep the problem from getting worse, since it appears that the student generation rate seems to be continuing to rise from the base development. It may still come back to some kind of impact tax to gain some leverage with the County.

Charles Littlefield asked whether the City could legally build its own charter school. It was noted that it takes about \$25 million to build a school, plus operating expenses. On the subject of reserved capacity, it was noted that there are about 2,000 units approved in

APFO Committee Meeting Minutes

June 9, 2011

the Crown Farm development in the Science City area that have to be counted under the court's directive. These would affect the Gaithersburg HS cluster.

Soo Lee-Cho said that we need to try and make sure that whatever we do doesn't backslide the city into the same situation we're in now. It was noted that the school generation rate numbers come from the 2008 Census Update from M-NCPPC, and may not reflect today's reality.

The committee also discussed whether other items, such as a green space requirement, should be added to the APFS. The committee asked staff for some additional data on green space requirements in the city, to be discussed at the next meeting.

Jason Anthony believes that the committee should make a report to the Planning Commission on July 13. It may have to be an interim report, offered orally.

Speakers for upcoming meetings were reviewed. Laura Berthiaume and Metro will come on June 16. Representatives from M-NCPPC will be at the June 30 meeting. The additional student generation data from MCPS should also be presented at that meeting.

The committee agreed that an extra meeting, when all 9 members can attend, may need to be scheduled apart from the normal Thursday night in order to finalize the findings and items to be addressed.

The chair noted that there appears to be several areas of concurrence, based on the discussions to date. They are:

The schools are overcrowded due to changes in the base population and backlog of school construction. Even if the Hungerford school site is rehabilitated and opened soon, the school will be nearly full after absorbing the excess capacity of the other schools in the cluster.

School overcrowding will continue regardless of whether or not new development proceeds, due to the growth in the base population. The solution is building new schools, but the city has limited opportunities to make this happen. In order to create additional space, the County may need to pursue new funding sources.

Beyond the school capacity issue, the APFO and standards should be forward-thinking. Rockville should prepare now for the day when the city can handle new development with having a negative impact on schools, traffic, fire/emergency services, and water and sewer. Part of this discussion should include how to deal with projects grandfathered into the APFO.

Soo Lee-Cho moved, seconded by Jason Anthony, to invite Rollin Stanley, M-NCPPC Planning Director, to the June 30 meeting. The motion passed, 4-1-1, with Dennis Cain voting no and Charles Littlefield abstaining.

APFO Committee Meeting Minutes
June 9, 2011

Jason Anthony moved, seconded by Soo Lee-Cho, to invite development community representatives to speak to the committee after July 13, allowing lead time to check availability. The motion passed 5-0-1 with Dennis Cain abstaining.

The meeting was adjourned at 9:55 p.m.