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County moves forward on school mitigation fee

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The Frederick County Commissioners want to see how a proposed school mitigation fee would work over a five-year trial period.

The commissioners agreed Thursday to send the fee through a public hearing process, but want to add a five-year sunset provision to the new ordinance.

The new ordinance would allow developers the opportunity to pay a fee if they want to build in areas with overcrowded schools. Under the current Adequate Public Facilities Ordinance, developers must either wait until schools are no longer overcrowded or build an addition or new school before building more houses.

"If we do not take this approach, (the situation that) we could be in is with an APFO that blocks growth," County Commissioner Paul Smith said.

"You've got one house that would not meet the APFO, there's nothing you can do, you can't have one house, you can't have three -- it would totally stop growth at that time until you could come up with enough money for a whole school."

The proposal has drawn concern from local parents and groups, including the League of Women Voters.

"The league is opposed to the school construction fee, also known as the mitigation fee, because we believe it will have the effect of eliminating progress made in the past 20 years in addressing school adequacy problems," said Bonnie Bailey-Baker, co-president of the league.

The commissioners made several decisions on Thursday about the details of the ordinance in a 4-0 vote, with Commissioner David Gray absent.

For instance, developers would not have the option to pay the fee if the school will be so overcrowded that it exceeds 120 percent of the state-rated capacity.

They also decided that the fee should be paid when a plat was recorded -- not during the later stage of when a building permit is issued. Commissioners President Blaine Young said that will ensure the county has the fee revenue about three years earlier, enabling them to begin projects before the new students arrive in classrooms. And the fee would be charged on every house in the new development, not just those that would exceed school capacity.

All of those changes will make it more costly for the developers, which originally proposed the mitigation fee through the Frederick County Builders Association Land Use Council and the Chamber of Commerce.

Those groups have accepted the changes, even though they aren't what they would prefer.

Young said the impact fee will generate money for school projects, put the construction industry back to work, and create more retail buying power in Frederick County as people move into the new homes.

"We have to stop treating the building community and the housing industry as our enemy," Young said. "It's one of the largest industries in our country."

The fee, which would be about \$10,000 for a single-family house where all three levels of the schools are overcrowded, will be paid on top of a school impact fee. Both fees would be set annually based on an existing formula.

The school impact fee, about \$14,000 for the same house, is already at the maximum level allowed by state law.

"If anyone else has a better plan how to generate much-needed school construction dollars, please bring it forward," Young said.

But some parents are questioning whether adding new school construction funds at the same time as more students will result in a net gain for Frederick County schools.

Two local parents, Janice Spiegel and MC Keegan-Ayer, submitted four pages of questions to the county on May 17 they believe should be addressed before the ordinance goes any further. Young said he would make sure the questions were answered, but as of Thursday they hadn't gotten any answers.

Spiegel has been active on countywide problems of school overcrowding for years, and both she and Keegan-Ayer signed up to remain involved in a lawsuit that would have applied the APFO countywide, including in municipalities. That lawsuit was dropped when the commissioners decided not to apply APFO countywide, and municipalities agreed to review their own APFOs.

Spiegel said her two children have never been in a school that wasn't overcrowded.

"The whole system is broken," Spiegel said. "At this point, without having definitive answers to those problems, I don't see how the school mitigation proposal can help fix the underlying problem of school overcrowding in Frederick County."

She and Keegan-Ayer haven't come out with a position on the mitigation proposal -- she is still waiting for more information.

Young said on Friday that he would make sure the questions were answered before the first public hearing on the issue, adding that there were four pages of questions and that's why it was taking more time to answer them.

Still, Spiegel remains concerned that the commissioners hammered out the details of the ordinance without getting the answers.

One of her questions, for example, asks whether money would be earmarked to the schools that would exceed capacity because of the development. Another question asks whether the school system and county would re-prioritize its capital improvements plan as developments are built.

"We have a lot of outstanding questions, and they should in my opinion be very easy to answer," Spiegel said. "If those answers are not easily available, then that, to me, would be a red flag."

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