

# Planning Commission, Planning Board and Board of Appeals Education Course

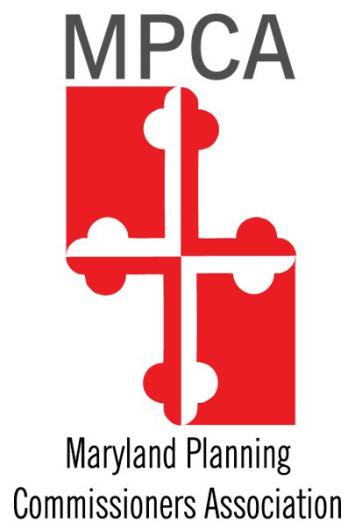
Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.

## Module Three: Planning 201: Growth Management Tools



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## Welcome!

I am pleased to welcome you to the online Planning Commission, Planning Board and Board of Appeals Education Course, which was developed by the Maryland Department of Planning so that members of planning boards or commissions and boards of appeal can fulfill their education requirements under Section 1-206 of the Land Use Article, Annotated Code of Maryland. This requirement first came about through passage of Smart and Sustainable Growth Act of 2009, which implemented the requirement that, within six (6) months of appointment, members of local planning boards or commissions and boards of appeal complete an education course concerning certain aspects of land use planning.

This education requirement applies to the non-charter counties and municipalities that exercise planning and zoning authority, and to charter counties, including Montgomery and Prince George's counties. The law provides that the course must include education on (i) the role of the comprehensive plan, (ii) proper standards for special exceptions and variances, as applicable, and (iii) the jurisdiction's zoning, planned development, subdivision and other land use ordinances and regulations.

This course was developed with input from 2007's Task Force on the Future of Growth and Development, and your partners in planning policy and implementation including the Maryland Association of Counties (MaCo), Maryland Municipal League (MML), Maryland Planning Commissioner's Association (MPCA) and others. This joint effort has resulted in the course you are about to take, and we hope you find it informative, useful and beneficial in your important role as a planning official.

Our goal is to provide good information to help you make even better informed planning decisions for your city, town or county. I welcome and encourage your feedback on this course, and if you have any suggestions after completing it, please feel free to pass them along.

Enjoy the course!

Sincerely,



Rebecca L. Flora, AICP, LEED ND/BD+C  
Secretary, Maryland Department of Planning

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## **Module Three: Planning 201: Growth Management Tools**

### **Growth Management Tools**

- Adequate public facilities
- Land Preservation, Open Space, and Recreation
- Water and sewer infrastructure and master plans, and water resource elements
- Capital improvement programs
- Developer's rights and responsibilities agreements
- Annexation laws and agreements

## Adequate Public Facilities

### What are Adequate Public Facilities?

The phrase “adequate public facilities” has an appealing ring to residents, public officials, and developers in many fast-growing suburban areas where schools are chronically overcrowded, long delays occur at congested intersections, not enough ball fields are available for recreational leagues, and water rationing becomes necessary during dry summer months.

### What are APFOs?

Adequate Public Facilities Ordinances (APFOs) are an effort to phase the provision of public facilities consistent with a locally adopted comprehensive plan. An APFO ties development approvals under zoning and subdivision ordinances to specifically defined public facility standards. They are designed to slow the pace of development, or in extreme cases to delay development approvals in an area until adequate service levels are in place or reasonably assured.

### What do they do?

In plain English, an APFO says that if the roads are too congested, if the school classrooms are too crowded, if the water system cannot provide enough water, if the sewer pipes or treatment plant are full, or if there are not enough playing fields for recreational use, then development cannot be approved until the problem is corrected. The application of an APFO must be associated with a funding source to remedy whatever the constraint on development might be.

Almost any county or city will find that its citizens feel that more services and facilities are desirable, and public officials are always pressing against the affordability barrier to meet those needs. An APFO is not the only tool available to local government to tie development approvals to infrastructure. In the context of various means of responding to the problem, APFOs are more structured than specifically enacted development moratoriums, which place a “hold” on new development when serious deficiencies exist.

On the other hand, impact fees, which are often confused with APFOs, provide a means to raise additional funds for capital projects, but do not guarantee that sufficient funds will be available to meet a particular need, and will have no effect on the pace of development.

### Growth Management Tools

Adequate Public Facilities Ordinances can be important growth management tools for rapidly growing counties and municipalities. APFOs are also an important and valuable tool for implementing the 12 Visions that are included in every local comprehensive plan and are established in State law as Maryland's development policy.

In 2000 the Maryland General Assembly incorporated the goal of adequate public facilities (though not a requirement that local governments adopt an APFO) into the Visions. APFOs are particularly relevant to the Vision which calls for concentrating growth in existing and planned growth centers, areas adjacent to these centers and areas designated as future growth centers. The premise of an APFO is that growth should be directed to suitable areas where facilities are adequate.

There is a particularly strong State interest in this issue, because considerable amounts of State funds are directed to constructing schools, sewer and water facilities, roads and parks. Since the passage of the Smart Growth initiatives in 1997, funding for growth-related projects is prohibited outside of areas identified by local governments as their highest priority areas (Priority Funding Areas) for new growth.

### Why it should matter?

In 1999 a subcommittee of the Economic Growth, Resource Protection, and Planning Commission issued a report on meeting public facility needs in growth areas. The introduction to that report stated:

“Costly demands and inefficient growth patterns, combined with public reluctance to increase taxes, severely hamper State and local government's ability to provide adequate facilities. Governments have responded with

efforts to control or tax new growth, hoping both to reduce the growth in infrastructure need and to fund that which already exists.

To do this, many communities have adopted adequate public facility ordinances. These require that sufficient schools, roads and other facilities be available before housing or other development can be built. Many times, however, the areas of a jurisdiction designated for growth are the very areas with existing overcrowding of public facilities, while excess capacity is located in more rural locations.

The overcrowding of public infrastructure acts as a flashpoint for citizen opposition to new and infill development in all areas. When schools, roads and other public facilities serving an area designated to receive new growth are already overcrowded and congested, public reaction to new residential and commercial developments, even those consistent with Smart Growth, is frequently negative.

In the face of well-founded public concerns about the ability of over-burdened local infrastructure to absorb additional users, government officials may either attach additional financial costs to a new development or discourage its construction altogether.

If not permitted in a designated growth area, the demand which the new housing or commercial development is intended to meet will be met elsewhere, outside a designated growth area or even outside the State."

### **Appropriate use of APFOs**

Adequate public facilities efforts become necessary when a local government's coordination of development and public facility construction results in lack of facilities or improvements timed to coincide with development approvals. Fast-growing suburban jurisdictions, in particular, find themselves suddenly in situations where intersections are congested, school classrooms are overcrowded, inadequate water supply is available during summer drought periods, or sewer pumping stations are overflowing during peak periods. Adequate public facilities ordinances are frequently put in place as stopgap measures after problems have already manifested, but, when designed and enacted in a timely manner, they can provide a valuable means of ensuring wise and efficient investment in capital facilities.

The premise that adequate public facilities should be available for new growth seems obvious. But the experience in Maryland (as well as other States) has been that implementing an effective, consistent, and fair set of regulations is not as easy as it might seem. For instance:

- Can the standards you adopt for adequacy be justified?
- Would failure to meet those standards cause serious public harm or a threat to public health, safety and welfare?

Remember that adoption of an APFO is an exercise of the police power and must be broadly based on protecting public welfare. The place to decide that your community should grow fast or slow is in the comprehensive plan. The APFO is a tool, along with zoning and subdivision regulations, to implement that plan and it must be accompanied by a mechanism to bring facilities up to an adequate level.

- Does your jurisdiction's growth management program provide a coherent context for an APFO program?
- Do you have a clear idea of what facilities are needed to accommodate planned growth?
- Is there a facilities plan or capital improvement program that indicates a commitment to investing in the needed facilities?
- Can agreement be reached in your community as to what is an adequate level of service for various public facilities?

Standards in an APFO must be applied fairly and be established through a public review process.

- Can your APFO be integrated into a growth management program to provide a consistent result? For instance, roads in rural areas tend to have more capacity for growth because the volume of traffic using them is so much less.

An APFO based on road capacity could have the unintentional effect of pushing growth out of planned growth areas into rural / agricultural areas.

The purpose of an APFO is to assure adequate capacity within growth areas consistent with a comprehensive plan. Standards and measures should be designed to accomplish that purpose.

- Can you provide sufficient staff resources and data to monitor growth trends and facility capacity?

## Advantages of APFOs

An APFO can be an important addition to a local government's regulatory tool box that will help to ensure a high quality of public facilities and services. An ordinance can help to maintain the fiscal integrity of a government by helping to reduce the demands of excessive borrowing to finance new facilities that are demanded by unexpected growth.

Fiscal stability and high bond ratings are important factors to businesses considering new locations. An APFO can be an extremely valuable planning tool when applied in combination with other planning tools, and in the context of a broader, comprehensive growth management program that includes:

- A policy for concentrating growth into designated growth areas;
- A policy for conserving rural areas for agricultural use and natural resource protection;
- A policy for directing resources to revitalize existing communities.

A properly designed program will facilitate economic growth and serve to streamline regulatory mechanisms.

- A coherent APFO in combination with a thorough growth management program will provide clear guidance to developers on when and where development will be allowed, avoiding unexpected delays.
- An APFO must be accompanied by a plan and a commitment to provide the facilities to support growth in a reasonable manner.

An APFO is not a substitute for a coherent growth management policy based upon an adopted comprehensive plan.

- The comprehensive planning process is the appropriate place for a community to regulate the amount of growth it will accommodate over the span of the planning period.

Facility adequacy can be affected by factors other than growth subjected to the APFO.

- Growth outside of the jurisdiction that adopted the APFO can affect the capacity of systems, particularly for roads and schools.
- In water and sewer systems, environmental standards can change and affect capacity.

Nutrient caps and Total Maximum Daily Loads (TMDLs) can affect approvals even though these are not normally expressed as standards in an adopted APFO.

APFO standards can vary from jurisdiction to jurisdiction sometimes drawing growth away from areas in which it is otherwise planned.

- Standards must be written with an understanding of community goals and how they relate to standards in neighboring jurisdictions.
- An APFO should be written to provide local flexibility to deal with issues that arise that are not related to the projects subject to an APFO test.

## Legal Framework of APFOs

Whether considering or rejecting the idea of implementing an APFO, it is important to consider the legal background and framework.

In 1978, the Maryland General Assembly passed former Article 66B, §10.01, specifically enabling municipalities and non-charter counties to adopt adequate public facilities ordinances. Even prior to that date, Maryland courts upheld the ability of local jurisdictions to adopt ordinances that condition development approval on a finding that infrastructure exists to sustain a project's anticipated impacts.

In *Malmar Associates v. Prince George's County*, 272 A.2d 6 (1971), the Court of Appeals sustained an ordinance requiring an applicant to show that adequate educational facilities were in place. In the early cases, authority to enact an adequate facilities ordinance was usually implied, based upon the general authority to promote public health, safety and welfare that underlies zoning, planning, and subdivision regulations. In 1992, the scope of §10.01 was expanded to enable all local jurisdictions in Maryland, including charter counties, to enact a variety of growth management tools.

Adequate public facilities ordinances can be either a response to a crisis in existing capacity or the financial overburden on services required for new development, or part of a comprehensive review of the long - range demand for services and facilities. In either situation, the requirements must be reasonably and rationally related to a valid governmental interest.

Approval of development under an APFO can be made contingent on the local government's ability to provide services, or on a developer's agreement to furnish or finance the needed improvements. The standard in Maryland requires that adequate facilities be reasonably probable of fruition in the foreseeable future. (*Montgomery County v. Greater Colesville Citizen's Association*, 70 Md. App. 374, 521 A.2d 770 (1987)) APFOs should set quantifiable levels of service for public facilities and services, since these standards provide a basis for the evaluation of the proposed projects in relation to existing or planned facilities.

Lack of identifiable standards can lead to invalidation of the regulations or conditions as applied, as in the case of *Rosenberg v. Maryland-National Capital Park and Planning Commission*, 269 Md. 520, 307 A.2d 704 (1973). In that case approval of a subdivision had been denied based on inadequate educational facilities. The regulation in question required adequate schools "within a reasonable distance." However, the Court of Appeals found that this standard was so general that the Planning Commission was required to consider the school capacity within a mile and one-half of the proposed development, not just the capacity of the nearest elementary school.

One unresolved legal issue is the ability of a local jurisdiction to disapprove development based upon the inadequacy of facilities outside the control of the local government. One legal treatise suggests that agreements with facility providers may be necessary to ensure consistency with overall community growth objectives. (Rathkopf, *The Law of Planning and Zoning*, §13.06 (4th edition))

## Where are APFOs used in Maryland?<sup>1</sup>

The following list of municipalities and counties with APFOs is provided courtesy of the Maryland Municipal League (MML). Counties (13)

- Anne Arundel, Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, St. Mary's, Washington

Municipalities (23)

- Aberdeen, Bel Air, Boonesboro, Brunswick, Cumberland, Frederick, Hagerstown, Hampstead, Indian Head, Keedysville, La Plata, Manchester, Mt. Airy, Ridgely, Rockville, Smithsburg, Sykesville, Taneytown, Thurmont, Union Bridge, Walkersville, Westminster, Williamsport

## APFO Reporting

A new law requires local jurisdictions to submit a report to MDP every two years if an Adequate Public

Facility Ordinance (APFO) results in a restriction in a Priority Funding Area (PFA). The first such report will be submitted by July 1, 2010. MDP, subsequently, is required to submit a report by January 1st every two years on the statewide impacts of APFOs.

Local jurisdiction reports on PFAs and APFOs must include information about the location of the restriction; infrastructure affected by the restriction; the proposed resolution of the restriction, if available; estimated date for resolving the restriction, if available; date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction. A local jurisdiction's first report is due July 1, 2010.

MDP's report on the statewide impact of APFOs has to identify: (1) geographic areas and facilities within PFAs that do not meet local adequate public facility standards; and (2) scheduled or proposed improvements to facilities in local capital improvement programs. MDP's first report is due by January 1,

2011.

This has been a brief introduction. For more information on designing the right APFO for your jurisdiction, please refer to MDP Models and Guidelines publication #24 Adequate Public Facilities Ordinances.

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<sup>1</sup> Maryland Municipal League, 2006

## Land Preservation, Open Space and Recreation

### Why preserve lands?

Smart Growth has two main goals: concentrating development in growth areas, and preserving agricultural and natural resource land. Just as planners have many tools for creating good places, so too they have many tools for preserving agricultural and natural resource land. The reasons for doing so are many:

- Providing food and fiber for the citizens of Maryland;
- Protecting the resource on which resource-based businesses depend;
- Safeguarding our water supply;
- Protecting the habitat of rare, threatened, and endangered species;
- Reducing sediment and polluted runoff into Chesapeake Bay and other state waters;
- Providing recreational opportunities for the citizens of Maryland;
- Creating an environment that attracts residents, businesses, and visitors; and
- Cleaning the air.

As time goes on, the preservation of agricultural and natural resource land becomes important for even more reasons, among them carbon sequestration and the growing interest in safe and humanely raised local food.

### Land Conservation Tools

All of the tools in this primer are used successfully in one or more Maryland counties, and many counties successfully use more than one of the following:

- Restrictive zoning;
- Mandatory clustering (combined with protective zoning);
- County easement programs;
- Revolving funds, Critical Farms;
- Installment purchase agreements;
- Adequate Public Facilities Ordinances;
- Revenue sources;
- Other easement programs and financial incentives; and
- Easement donations, tax benefits.

## Types of Tools

When considering preservation tools, the two main types are land use management tools and easement acquisition tools. Other tools that support preservation are dedicated revenue sources, leveraging tools, and various incentive or assistance programs for preservation.

### Land Use Management Tools

Land use management tools include favorable planning and regulatory processes that protect land and resources; creation of desirable communities inside PFAs and control of development impacts on the working landscape. Examples might include:

- Protective zoning to limit on-site development;
- Subdivision/ development rules to limit the impacts of development in rural areas;
- Transfer of development rights from rural to urban zones; and
- Adequate Public Facilities process –an orderly, efficient process for development where you want it.

Protective zoning is used to limit on-site development (e.g., 1 lot or fewer per 25 acres, or equivalent). Examples in Maryland include:

- Baltimore County: parcels 2-100 acres receive 2 lots, then 1:50 (County also has a 1:25 environmental zone).
- Calvert: 1:20, with mandatory clustering on maximum 20% of land. (Note: Clustering as a land preservation tool works better when accompanied by protective zoning such as Calvert's.)
- Caroline: Four lots from original parcel as of December 1, 1972.
- Three units per parcel, plus 1:50, plus one for the remainder, from original parcel as of August 18, 1976. Mandatory cluster for lots after the first three.
- Montgomery: 1:25.
- Worcester: A maximum 5 lots out of what was a single parcel of land as of July 25, 1967.
- In Cecil County, the Southern Ag Reserve is zoned 1:20 (the Northern Ag reserve is just 1:10).

Subdivision/development rules can be used to limit the impacts of development in rural areas. Benefits of this include:

- Instead of siting the houses first and leaving open whatever land is left, delineate the most important resource land first and place the houses on what is left.
- Cluster the houses on as little land as possible (though clustering works better when the base zoning allows relatively few houses, say 1 per 25 acres).
- Require new subdivisions to plant buffers of 100+ feet between the new development and the edge of the adjacent farm.

Transfer of Development Rights (TDR) transfer of development rights from rural to urban zones have been successful not only in Maryland, but in other states as well.

- A Transfer of Development Rights (TDR) program is a procedure, prescribed by local ordinance, whereby the owner of a parcel in a “sending area”—i.e., rural or environmentally sensitive land that is planned for preservation—may convey development rights to the owner of a parcel in a “receiving” district—i.e., where development is desired and planned for—so that the development rights are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing.
- TDR programs are very useful because they preserve land using private rather than public funds.
- However, one drawback of a TDR program is that landowners do not always want to sell their development rights at a price developer are willing to pay...and vice-versa.
- A good report that summarizes and evaluates many TDR programs in Maryland was written by H. Grant Dehart and Rob Etgen. Report: The Feasibility of Successful TDR Programs for Maryland’s Eastern Shore. The Maryland Center for Agro-Ecology, Inc.: January 2007. It can be downloaded from: <https://planning.maryland.gov/Documents/Offsite/2007-Feasibility-TDR-Programs-on-MD-E-Shore.pdf> Pages 11 through 15 can be used for a checklist by jurisdictions creating or evaluating a local TDR program.

Adequate Public Facilities Ordinance (APFO)—an orderly, efficient process for putting development where you want it:

- An APFO is a growth management tool that attempts to link the timing of a new development to the availability of facilities needed to service it.
- The APFO is designed to provide an orderly allocation of public resources and an orderly development pattern in growth areas, in fulfillment of the County’s comprehensive plan.
- An APFO is NOT a tool to limit development in rural areas.

There are questions to consider when creating an APFO:

- Can you decide what facilities need to be upgraded to accommodate development? Most APFOs in Maryland include road capacity, schools, water supply, and sewer service. Other facilities and services that are sometimes considered include parks and recreation facilities, fire and police protection, and emergency medical services.
- What is an adequate level of service for the various public facilities? A lack of quantifiable, identifiable standards can lead to invalidation of the APFO.
- Would failure to meet the standards pose a threat to public health, safety, and welfare?
- Remember: adoption of an APFO is an exercise of the police power and must be broadly based on protecting public health, safety, and welfare.

Does the County have a capital improvements plan or program that indicates a commitment to investing in the needed facilities?

What is the maximum time period, if any, of the denial period for new development that fails to meet the APFO test?

## **Easement Acquisition Tools**

State, county, and Federal funds can be used to purchase permanent preservation (also called conservation) easements. Permanent preservation protects working landscapes from zoning and government policy by placing restrictions and requirements in land records that are in effect in perpetuity.

### **Types of conservation easements**

- Purchase of development rights (PDRs): State (MALPF/ Rural Legacy), County, Federal programs;
- Federal CREP (Conservation Reserve Enhancement Program) easements for sensitive areas;
- Local land trusts;
- National/ regional conservation organizations;
- Local clustering regulations—combined with protective zoning—that permanently preserve the open space remaining from the subdivision process;
- Transfer of development rights (TDRs); and
- Easement donations to MET (Maryland Environmental Trust) and land trusts.

## **Revenue/ Leveraging Tools**

These tools utilize public and private dollars to fund easement acquisition and the administration of easement and related land use management programs. These include real estate and agricultural land transfer taxes, capital revenue sources, bond funds, impact fees and impact and excise taxes.

Installment purchase agreements require less up-front funding than traditional easement purchases, while TDRs use private rather than public funds to buy easements.

Revolving [loan] funds are another option. The county loans money to a land trust to buy land for preservation. The land trust later reimburses the County, perhaps after selling the land with preservation easements attached. Then the county again has funds to lend for another preservation transaction.

## **Other Incentive/ Assistance Programs**

Other incentives can encourage rural landowners to preserve their land by stressing the variety of benefits, help them practice good stewardship and facilitate the critical mass of agricultural land that is necessary to facilitate rural business economies. These may include:

- Property tax credits for preservation;
- Income tax credits for easement donation and for easement sales below full easement value;
- Tax-free interest earned from Installment Purchase Agreements (IPAs) ;
- Wetland Reserve Program;
- Wildlife Habitat Incentives Program; and
- Financial, production, distribution, & marketing programs.

## Water and Sewer Infrastructure and Master Plans, and Water Resources Elements

### The County Water and Sewer Plan

The county water and sewer plan is an implementing tool of the comprehensive plan. It identifies areas to be served with public sewer and water, including those areas where the highest density of growth is planned, (i.e., municipalities) and those areas of the county where commercial, industrial and PFA residential density exist or is planned.

Water and Sewer Plans are required by state law to be kept current every 3 years and amended as needed between the 3 year updates. State law also provides direction on the type of information to be included in such plans to be used as a basis for the county to make informed decisions about growth.

This information can be found at the following link:

<https://mgaleg.maryland.gov/mgawebiste/Laws/StatuteText?article=gen&section=9-505&enactments=false>.

The County water and sewer plan serves as the consolidated infrastructure planning document for all municipal subsidiary plans and the County at large, for at least the next 10 years, with a broader 20 year projected need, in a manner which:

- Protects Public Health and Water Quality;
- Ensures Sustainable Water Supply and Wastewater Management Capacities;
- Supports/implements Local Comprehensive Plans; and
- Provides systems information for monitoring surface water qualities to meet TMDLs for the State's waters and Chesapeake Bay.

### Incorporating Smart Growth Goals

Water and sewer plans incorporate smart growth by giving the highest priority to maintaining and improving systems in existing service areas. In this way, use of existing infrastructure is maximized. The plans also place an emphasis on coordinating growth areas of municipalities and surrounding or adjacent counties, focusing on serving areas that are within PFAs, and those areas planned for future growth by establishing service areas and expansions of water and sewer systems that are based upon:

- Local comprehensive plans;
- Realistic population projections derived from demographic analysis;
- An orderly infill and contiguous development pattern;

- Documented need for residential densities of 2 units/acre or greater and averaging 3.5 units/acre that are in line with the population projections; and
- Sufficient land to accommodate employment and commerce centers.

Understanding the relationship between the goals of the local land use plan and the influences that centralized water and sewer offer to the development of any area is paramount to determining consistency between all of the planning documents.

## **Functions of the Water and Sewer Plan**

The County Water and Sewer Plan incorporates subsidiary water and sewer plans (i.e. municipalities), sanitary districts, and private entities, as well as any multi-county plans of which it may be a part. Incorporating these various elements helps coordinate the regulatory functions of the plan and bring it into accord with applicable State and County permitting practices.

Water and Sewer plans provide a legal and policy basis for the issuance of permits to create, operate, or expand water supply or wastewater handling facilities that otherwise may not be obtainable from the permitting agency, be it local, County, or State. This same legal and policy function applies to land development practices and approvals, including subdivisions, rezoning and in some cases site development plans.

Other important elements of water and sewer plans are the financial statements of operations and capital improvement projects and tables. These elements of the plan are used to identify projects and costs necessary for maintaining fiscally sustainable systems that support the use of State funding in priority funding areas.

Water and sewer plans are sometimes amended to add new areas of service or indicate upgrades and expansions to water supply or wastewater treatment facilities. These changes are reviewed by MDP and MDE for consistency with State laws and with local comprehensive plans. Changes that serve existing or planned population and employment centers identified in local comprehensive plans are looked upon more favorably than proposed extensions of service areas that would provide infrastructure to outlying and less densely developed areas.

## **Water Resources Elements**

With the more recent legislation for Counties and municipalities to include a Water Resources Element in their comprehensive plans, local, County and regional planning efforts are even more focused on ensuring a sustainable growth pattern based on available water supplies. New water resource element requirements also include consideration of nutrient impacts from wastewater generated, both from the existing development and potential land use changes.

Per House Bill 1141, former Article 66B was amended to require that a new Water Resource Element be included in all comprehensive plans adopted on or before October 1, 2009. The element requires a technical analysis by Towns and Counties of potable and wastewater resources, constraints, capacity and the impact of future growth on water resources. The element helps counties and municipalities to fully integrate future land use planning with source water protection and the needed future water infrastructure improvements. The element helps protect state land and water resources, public health, safety and welfare, and advances local Smart Growth. The ultimate goal of the legislation is to use the integration of land use and water resource planning to protect future resource availability.

## **MDP/MDE Role and Responsibilities**

Both MDP and MDE share responsibility for providing technical assistance for the development of the WRE to local counties and municipalities. To aid municipal planners, MDP prepared a Models and Guidelines document and reviewed early drafts of the element. MDE has provided water data modeling and support for counties and municipalities. MDE and MDP have together coordinated technical training sessions. According to the law, all municipalities were required to adopt WREs by October 1, 2009, however MDP is authorized to review and grant requests for up to two 6-month extensions for municipalities showing good cause for extending this time limit.

## **WRE Impacts**

An assessment of the WRE requirement to date has resulted in:

- Greater consideration of existing and future water resources in land use planning;
- Documentation of constraints to existing and future water and sewer infrastructure; and
- Re-enforced good Smart Growth principles such as considering environmental protection for land and water resources, encouraging resource conservation, and supporting good community design.

The assessment has identified issues with some WREs including:

- “Drop-in” WREs which may or may not be consistent with other required elements of the local
- Comprehensive Plans;
- A lack of available water resource data at suitable scales for local planning; and
- Inconsistent or lack of TMDL development to guide identification of suitable source water. The assessment has highlighted some next steps including:
- Updating local zoning and subdivision ordinances to be consistent with the WRE;
- Incorporating the WRE into the overall comprehensive plan for each municipality; and
- Ensuring that future changes and growth are incorporated into the WRE to maintain consistency.

## Capital Improvement Programs

The details of capital improvement programs (CIP) will differ from jurisdiction to jurisdiction. This section will describe some of the common elements of CIPs and the CIP process that will be useful to most jurisdictions in Maryland.

### What is a capital improvement program?

A capital improvement program is a blueprint for planning a community's capital expenditures and is one of the most important responsibilities of local government officials. It coordinates community planning, financial capacity and physical development.

Capital improvement programs are composed of two parts -- **a capital budget** and **a capital program**. The capital budget is the upcoming year's spending plan for capital items (generally consisting of tangible assets or projects that have a useful life of at least five years). The capital program is a plan for capital expenditures that typically extends five or six years beyond the capital budget.

Development of a CIP that will insure sound fiscal and capital planning requires effective leadership and the involvement and cooperation of all municipal departments. A complete, properly developed CIP has the following benefits:

- Facilitates coordination between capital needs and the operating budgets;
- Enhances the community's credit rating, control of its tax rate, and avoids sudden changes in its debt service requirements;
- Identifies the most economical means of financing capital projects;
- Increases opportunities for obtaining federal and state aid;
- Relates public facilities to other public and private development and redevelopment policies and plans;
- Focuses attention on community objectives and fiscal capacity;
- Keeps the public informed about future needs and projects;
- Coordinates the activities of neighboring and overlapping units of local government to reduce duplication; and
- Encourages careful project planning and design to avoid costly mistakes and help a community
- reach desired goals.

### Legal Basis

In charter counties, established procedures for the preparation of the jurisdiction's budget and other fiscal matters specific to a capital improvement program may be found in the Charter. For municipalities and commission and code counties, while there is not specific language pertinent to CIPs in Article 23A, Article 25 or Article 25B, there is authority to build roads, buildings and other infrastructure, and a means by which to finance it.

## Sources of Funds

County funding might include, but is not limited to, the following sources:

**General Funds:** These funds are derived from tax revenues and are included in both the current expense budget and the capital budget.

**Reallocated General Funds:** These are General Funds reallocated from one project to another due to schedule changes, changes in priorities, or projects coming in under budget.

**General Obligation Bonds:** Bonds are borrowed funds. "General Obligation" means that the redemption of bonds and payment of interest is guaranteed by the full faith and credit and unlimited taxing power of the County. Before these bonds may be issued, they must be approved at a referendum held in each election year, approved by the County Council as a funding source in the budget year and further approved at the time of actual issuance by a bond ordinance. Bonds are the primary source of capital financing.

## Outside Funding Sources

**CDBG (Community Development Block Grants):** Federal legislation enacted in 1974 combines six previous grant programs (urban renewal, model cities, neighborhood facilities, open space, historical preservation, and water and sewer) into a single block grant. The block grant can be used at the discretion of the local government for broad community development programs, with priorities and funding levels established by the local governments.

**POS (Program Open Space):** These funds are used to support open space and recreation opportunities and come from the State of Maryland through the collection of the State Transfer Tax on real property.

**State Waterway Improvement Fund:** Funds provided by Department of Natural Resources for improvements related to storm water and waterways.

**State Aid:** State funds to assist the county in the financing of various capital projects.

**Developer's Responsibility:** Developer contributions that are applied to projects that provide facilities in approved developments. These contributions represent the developer's portion of the cost of the project.

**Petitioner's Responsibility:** This fund consists of the contributions made by the petitioner who requests a project be done by the county.

**County Agricultural Preservation Tax:** If applicable, the county's shares of the state agricultural transfer tax that is assessed on an agriculturally used property when the use is changed to non-agricultural.

**Local Open Space Waiver Fees:** Fees paid by developers to the county during the development process when the amount of required open space is less than 1/2 an acre and not adjacent to existing parkland.

**Other:** There are various other outside funding sources which may become available from time to time. When amounts are material, identifiable, and predictable, they will be cited as sources of funding in the capital budget.

## **CIP Process**

### **Inventory of Existing Facilities**

A CIP may include a complete inventory of all local capital assets. At a minimum, the inventory should include all buildings and equipment. It is desirable for the inventory to include utilities, roads and sewers as well. The inventory should include documentation on the need for renewal, replacement, expansion or retirement of all physical assets. The inventory should also include information on the year the facility was built or acquired, the date of last improvement, its condition, the extent of use, and the scheduled date for rebuilding or expansion.

### **Analysis of Previously Approved Projects**

A CIP usually indicates which projects are underway, so as to be able to determine whether additional funds are required, and to determine the amount of unspent funds available from completed and discontinued projects. The benefit of this update is that officials involved in the budget process will be kept informed of the progress of projects approved in prior years.

The results of this analysis should be reduced to a written report which should be included with presentation of the capital budget and program. This financial analysis will permit the scheduling of funding sources to:

- Keep the tax rate stable;
- Balance debt service and operating expenditures;
- Determine available debt capacity and acceptable debt service levels; and
- Maximize intergovernmental aid for capital expenditures.

### **Solicit, compile and evaluate project requests**

Some jurisdictions establish a CIP committee to review annual funding requests for current and new projects. The CIP Committee solicits departmental recommendations for CIP projects. Each department submits requests which include a clear statement of the need and justification for the project, its costs, its net effect on the operating budget, and an implementation schedule. The Committee then evaluates each request by reviewing the project information provided and meeting with the requesting department head or planning commission/planning board member, if necessary.

### **Capital Project Evaluation Criteria**

In evaluating the merit of a capital project request, the following questions should be asked:

- Does this project fit within the guidelines of the comprehensive plan and its amendments?
- Does this project fit within the guidelines of the State's Smart Growth initiative?
- Is this project necessary to continue or improve public safety and the health of the jurisdiction's residents?
- Will the impacted community be supportive of this project?
- Does this project serve to protect or enhance the environment?
- Is the timing for this project appropriate?
- Will this project help to leverage non-County funds, thus increasing the efficiency of local government services?
- Is this project necessary to comply with federal and State mandates?
- Does this project enhance or strengthen communities and neighborhoods?
- Does this project serve to repair or replace an existing deteriorated facility?
- Is this project part of a systematic replacement strategy that will provide a long-term upgrade of public facilities?

- Will this project improve the operating efficiency of a jurisdictional agency, perhaps by reducing future operating budgets?
- Is this project coordinated in its scheduling with other related capital projects?
- Does this project support or strengthen the jurisdiction's economy?

Based on its review, the Committee summarizes its findings in preparation for establishing project priorities.

## **Establish Project Priority**

Proposed projects should be ranked in priority order as objectively as possible. This is perhaps the most difficult aspect of the Committee's duties, so it would be extremely useful to have a set of adopted debt policies available. In addition to adopted policies, a rating sheet also encourages objectivity and can assist the Committee in the development of numerical ranking of projects and help in the setting of project priorities.

Whether or not a rating sheet is used, the CIP Committee should review each project utilizing a consistent set of criteria. The Committee should evaluate each project in relation to other projects and determine their relative importance. This will permit the Committee to establish project priorities based on both the community's goals and objective analysis.

## **CIP Approval process**

Once projects have been identified and priorities established for a CIP, the Committee (or other applicable review/recommendation mechanism) makes its recommendations to the Planning Commission/Board and/or governing body. The CIP is usually considered as part of an overall budget package by the governing body, including the jurisdiction's operating budget. Ultimately, decisions on CIP projects are based on these identified priorities as well as resources available to fund the projects.

## **Monitoring approved projects**

Once project implementation begins, procedures should be in place to monitor the efforts of the departments. Periodic reports should indicate changes in the targeted completion dates, identify serious problems, and document the financial status of each project. Those reports may be based on project updates provided by the responsible departments on a quarterly or other regular basis. These updates should provide the information necessary to determine the status of approved projects, and will help in the ongoing annual preparation of the CIP.

# Development Rights and Responsibilities Agreements

## What are DRRA's?

Development rights and responsibilities agreements (DRRA's) are agreements between a local government and a developer under which site specific conditions may be imposed with the right to develop in compliance with the DRRA being vested for a certain period of time. DRRA's attempt to accommodate a developer's desire for certainty and stability in land use regulation relating to a project with the authority of a local government to revise its land use regulations in the public interest.

Under Maryland law, a developer's ability to pursue development of a proposed use of a landowner's property is generally subject to future changes in local land use laws unless the landowner has commenced visible work on the land under a validly-issued building permit and intends to continue that construction to completion.

In the past decade or so, concern arose that developers of long term projects were sometimes disadvantaged in that local government could change its land use regulations in the midst of such a project to the detriment of the developer.

In 1995, the Maryland Legislature passed a bill authorizing local governing bodies to pass ordinances creating procedures for the adoption of development rights and responsibilities agreements (Article 66B, §13.01). The statute defines a DRRA as an agreement made between a governmental body of a jurisdiction and a person having a legal or equitable interest in real property for the purpose of establishing conditions under which the development may proceed for a specified time.

## What else does the DRRA's statute do?

The statute sets forth the basic aspects of such an agreement. A DRRA is to be recorded in the land records and contain detailed information concerning the property, the regulations governing the property, and the persons with interests in the property. It can include provisions for dedication of a portion of the property for public use, preservation and restoration of historic structures, and other matters. The DRRA can also fix a time frame and conditions for the development of the property.

A key element of a DRRA is that the laws and regulations concerning the use of the property, and the density and intensity of development in effect at the time of execution of the agreement ordinarily remain in effect. That is, the property is not subject to subsequent changes in planning and zoning unless the local jurisdiction determines that compliance with later-enacted laws is essential to ensure the health, safety, and welfare of its residents.

The statute further authorizes a local governing body to designate a "public principal" to execute a DRRA on behalf of the jurisdiction. State law also requires that the local DRRA ordinance contain certain basic procedures. For example, to commence the process for the adoption of the DRRA, a person with a legal or equitable interest in the property must file a petition with the public principal and a public hearing must then be held.

It is important to note the voluntary nature of DRRA's where the statute contemplates that the developer initiates the process leading to a DRRA, which the public principal "may" execute a DRRA, and that DRRA's exist only when a local government and developer have come to terms. A petition shall be entirely voluntary on the part of the petitioner and shall not be required by the jurisdiction as a condition of any land use classification, designation, permit, or approval.

It is also important to note that the public principal may not enter into a DRRA unless the planning commission of the local jurisdiction determines whether the proposed DRRA is consistent with the comprehensive plan of the local jurisdiction.

### **Can DRRA's be amended?**

Similarly, a DRRA may only be amended upon a determination of the planning commission that an amendment is consistent with the local land use plan.

### **When do they expire?**

DRRA's last for five years, unless the parties specify otherwise. A DRRA may be terminated earlier by mutual agreement. In addition, the public principal or local governing body may suspend or terminate a DRRA if, after a public hearing, it determines that the public health, safety, or welfare requires suspension or termination.

## Annexation laws and agreements

### What is Municipal Annexation?

Municipal annexation is the process of legally including an unincorporated area that is outside the municipality within the corporate limits of a city or town. For many cities and towns in Maryland, annexation of surrounding areas plays an important role in the economic growth, environmental protection, quality of life, and municipal fiscal well-being of their communities.

### Legal Basis

The authority to annex land in Maryland comes from Article 23A, Section 19 of the Annotated Code of Maryland. This is the primary source of Maryland law concerning annexation. Section 9 of Article 23A addresses changes in zoning classifications of newly annexed land.

### What are the advantages of annexation?

- To extend municipal services to communities that are adjacent to existing city/town corporate limits and that may not have such services.
- To expand the size, population base, property tax assessable base, and—in some cases—the political influence of a city or town.
- To ensure local input into and control over future development around the periphery of existing municipal corporate boundaries and to facilitate implementation of the Maryland Growth Management Act which focuses future growth in and around existing urban centers.
- Through legal agreements with developers, to exact concessions that will meet adequate public facility requirements and provide added amenities (for example: roads, parks, affordable housing) that are beneficial to the community.
- To support economic and community development goals by negotiating annexation agreements
- to attract business, industry and housing development.
- To unify currently incorporated and fringe unincorporated areas that share common sociological, economic, cultural, and geographic characteristics.
- To provide residents of areas adjacent to cities and towns a direct role in local community affairs through access to municipal election voting rights and the opportunity to serve in municipal elected and appointed offices.
- To achieve logical city/town growth and boundaries.

### What are the possible drawbacks to annexation?

- The city or town may lack adequate financial, personnel or infrastructure resources to extend public services to the area to be annexed.
- Annexation of an area may prove to be a fiscal drain on the city or town where potential revenues to be raised from the area to be annexed do not meet the costs of providing municipal services to the area.
- Residents in a potential area to be annexed may wish to maintain a separate community identity rather than having their identity subsumed within that of the existing city or town.
- Residents in an area to be annexed may consider municipal government to be unneeded, undesirable, or duplicative and may not wish to pay added taxes or fees to pay for the costs of municipal public services.
- There are difficulties set forth in law in achieving a successful annexation, including the ability of
- the county to veto for five years significant changes in zoning classifications in an area to be annexed and the ability of various parties to petition an annexation to referendum where it can be potentially voted down.

## **Annexation Zoning - The Five-Year Rule**

Cities and towns exercising planning and zoning powers have exclusive authority over planning and zoning in newly annexed areas. However, Article 23A, Section 9 of the Code provides that no city or town may for five years following an annexation allow development of property within an annexed area if the development would be substantially different than the use authorized under county zoning at the time of the annexation.

Also, for five years following an annexation, development density of newly annexed property may not be greater than 50% higher than would have been permitted under county zoning at the time of annexation. A county governing body may waive this requirement if its members so desire.

As a practical matter, the impact of this provision of law is to give county governments a major role in municipal annexations where substantial changes in land use are anticipated. Development projects dependent upon annexation and annexations themselves can not only be delayed, but derailed by action (or inaction) of the county to withhold approval of land use changes in some circumstances. It is recommended therefore that municipal and county planners and their respective elected officials work together early in the annexation process to negotiate these issues when the possibility of such changes is under consideration.

## **Annexation Procedures**

### **Minimum Prerequisites**

In order to be annexed into an existing municipality, an area must be contiguous and adjoining to the existing municipal corporate area and may not be located within another incorporated municipality.

Also, annexation of the area may not create an enclave of unincorporated area that would be completely surrounded on all sides by land within the municipality upon completion of the annexation.

### **Annexation Petition/Consent**

An annexation petition signed by at least 25% of the qualified voters along with the owners of 25% of total assessed property in the area to be annexed may be filed with the municipal legislative body. Alternatively, the legislative body may initiate an annexation by obtaining the consent of a like percentage of qualified voters and property owners.

### **Annexation Resolution**

Upon verification that the annexation petition signatures meet the requirements of law and that all other prerequisites of the law have been met, the elected body should promptly introduce a resolution proposing the annexation. Similarly the elected body may initiate the resolution upon receipt of the consent of the required percentage of voters and property owners. The resolution should describe the area to be annexed together with any conditions or circumstances applicable to the proposed annexation.

### **Annexation Plan**

A municipal governing body must prepare, adopt and make available to the public a plan detailing the following:

- The proposed land use or uses in the area to be annexed;
- Available land that could be used for anticipated public facilities that may be needed ;
- A schedule for extending municipal services to the area to be annexed, and
- Anticipated means of financing the extension of services.

The plan must be provided to the county in which the municipality is located as well as to the Maryland Department of Planning and any regional and state planning agencies having jurisdiction within the county at least 30 days prior to holding the public hearing required by law for an annexation.

## **HB 1141 Provisions**

As referred to earlier in this course, House Bill 1141 and the requirement for inclusion of a Municipal Growth Element in local comprehensive plans has a significant effect on the required level of detail of an annexation plan for most cities and towns. The element requires a detailed and quantitative analysis of a municipality's anticipated expansion over the next twenty years based on a capacity analysis of the areas identified for growth, including those areas anticipated for annexation. The element helps counties and municipalities to fully consider the capacity of land use, public services and infrastructure, costs and financing associated with growth before committing resources. The legislation requires coordination between counties and municipalities to attempt to reach consensus on the character, intensity and timing of growth at the local level. The ultimate goal of the legislation is to help direct future growth at the local level in a rational, predictable manner.

### **Other steps in the annexation process**

After introduction of the resolution, a municipality must publish in one or more newspapers of general circulation a notice of the proposed annexation, and a place and time of public hearing. After conducting the required hearing, the municipal elected body may pass (or reject) the resolution which becomes effective 45 days after its passage unless it is petitioned to referendum.

Any of three groups may petition the annexation resolution to referendum. At least 20% of the registered voters in the existing municipality or in the area to be annexed may petition the resolution to referendum. Alternatively, a minimum of two-thirds of the county governing board may call for a referendum on the annexation question. The annexation referendum may be held from 15 to 90 days following newspaper publication. Should the referendum pass, the annexation will become effective.

### **Registration of Resolution and Boundaries**

Regardless of whether or not the annexation is brought to referendum, the annexation resolution and the new municipal boundaries of the municipality must be promptly sent to:

- The county clerk of courts in the county in which the annexation occurred;
- The Maryland Department of Legislative Services; and
- The Maryland-National Capital Park and Planning Commission, if applicable.

### **Annexation Agreements**

An annexation agreement is a contract typically made between a city or town and the owner or owners of land or private developers of land in an area to be annexed. An agreement is used to overcome obstacles to potential annexations by exacting concessions from one or more of the parties involved prior to consenting to annexation. It normally sets out the terms and conditions under which an annexation is to occur as well as any special obligations of the parties relating to a proposed annexation.

Provisions included in annexation agreements frequently address the following:

- The intent of the parties to enter into a contract;
- On-site and off-site public improvements to be provided by the developer of land in the area to be annexed;
- Financial terms such as temporary or phased municipal property tax abatements or service fee reductions;
- Timetables for the extension and provision of public utilities and other services;
- Land use stipulations (Note however that "contract zoning" or offering to guarantee a specified zoning classification as a precondition for annexation is prohibited in Maryland.) ;
- Construction and environmental protection requirements;
- Agreement enforcement provisions; and
- Conditions for terminating the agreement under specified circumstances.

Given the legal complexities involved, it is strongly recommended that professional legal counsel be employed throughout the process of negotiating, drafting, and carrying out the provisions of any annexation agreement.

--Source: *Maryland Municipal League Annexation Handbook*.

## Module Three: Review Questions

1. Which of the following is not land conservation tool?
  - A. Mandatory clustering (combined with protective zoning).
  - B. Right to farm laws.
  - C. Restrictive zoning.
  - D. Installment purchase agreements.
2. According to state law, the county water and sewer plan should be kept current every:
  - A. Year.
  - B. 6 years, just like the comprehensive master plan.
  - C. 3 years.
  - D. Whenever the county sees the need.
3. Sources of funds for capital improvement funds can include which of the following:
  - A. General funds.
  - B. General obligation funds.
  - C. Block grant (CDBG) funds.
  - D. All of the Above.
4. Unless the original agreement is amended or extended by the local approving body, how long do Development rights and responsibilities agreements last?
  - A. Sorry, after all that work they only last two years.
  - B. Five years.
  - C. Ten to twenty years.
  - D. Forever.
5. Provisions included in annexation agreements typically do not address the following:
  - A. Timetables for the extension and provision of public utilities and other services.
  - B. The name for the new subdivision and streets.
  - C. Construction and environmental protection requirements.
  - D. On-site and off-site public improvements to be provided by the developer of land in the area to be annexed.

# Planning Commission, PlanningBoard and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.

