



FREDERICK COUNTY GOVERNMENT

Jan H. Gardner
County Executive

OFFICE OF THE COUNTY EXECUTIVE *Raymond V. Barnes, Jr., Chief Administrative Officer*

TO: Frederick County Council Members

THROUGH: County Executive Jan Gardner *JHG*

FROM: Kelly Weaver, Assistant Budget Director
Janice Spiegel, Education Liaison

DATE: January 15, 2019

SUBJECT: 2019 Annual Report and Adjustment Recommendations to APFO
School Construction (Mitigation) Fees

ISSUE:

1. In compliance with § 1-20-62(G) of the County's Adequate Public Facilities Ordinance (APFO) this is the 2019 annual report regarding the Public School Construction Fees, also known as Mitigation Fees.
2. The County Council should consider legislation to adjust the Public School Construction Fees, using consistent data and methodologies as presented in this annual report.

BACKGROUND:

In July 2011, a third option was added to the County Adequate Public Facilities Ordinance (APFO). The third option allowed development that failed the school adequacy test of the County APFO to "buy-out" by paying an extra fee called a school construction fee, effectively allowing developers to pass the school adequacy provision in the county's APFO even when the development failed to have adequate capacity for the entire length of the school capacity test period or development build-out period. The third option was effective through July 2016. When the option sunset.

Developers electing to use the school construction fee option, documented their approval with an APFO Letter of Understanding (LOU) or Development Rights and Responsibilities Agreement (DRRA) fully executed with the County prior to December 1, 2014.

School construction fees are paid at the time of recording subdivision plats for each unit, except for multi-family units, which are paid not later than the time of building permit application. The school construction fees applied to each residential unit are the fees in effect at the time of plat recordation or building permit application for multi-family.

Who pays School Construction Fees?

The ONLY developments eligible to pay a school construction fee:

- have a valid, fully executed LOU or DRRA with the County that was issued prior to July 20, 2016; and
- failed the school adequacy test of the county’s APFO at one or more levels; and
- **voluntarily** elected to pay the school construction fees in order to obtain phase 1 planning approval, thus mitigating the failed APFO test.

The option to pay a school construction fee sunset on July 20, 2016. No new developments seeking approvals after July 20, 2016 have the option to pay a school construction fee to bypass the County APFO school adequacy provision.

History of Proposed Fee Adjustments from 2014 to Present

2016

In January 2016, County Executive Jan Gardner proposed a revision to the School Construction Fee to reflect increases in the cost of school construction since the fees were last updated by the Board of County Commissioners in 2014.

- Bill 16-05 **Revisions to APFO School Construction Fees and Annual Adjustments** was introduced by former Council President Bud Otis on January 19, 2016, on behalf of the County Executive
- Bill 16-05 recommended the following fee adjustments:

Housing Unit Type	Failure at Elementary School Level	Failure at Middle School Level	Failure at High School Level
Single Family Detached	3,977 \$6,709	1,752 \$2,660	3,721 \$5,623
Townhouse/Duplex	4,981 \$8,402	1,533 \$2,327	2,894 \$4,373
Other Residential	2,182 \$3,680	594 \$902	1,148 \$1,735

- Bill 16-05 was amended by a majority of the County Council on March 1, 2016. The amendment struck any adjustment to fees and modified § 1-20-62(G) of the County’s APFO with the following language; *On or before January 15, 2017, and on or before January 15 of each year thereafter, the County Executive shall provide to the County Council a report which proposes an annual adjustment to the school construction fees, based on the most recent data from the State of Maryland School Construction Cost Index. The proposed annual adjustment will not take effect unless the County Council enacts a bill adopting it.*
- Bill 16-05 was adopted as amended by 5-2 vote in April 2016. The school construction fee remained set at the adopted 2014 fee rate.

2017

In January 2017, the County Executive provided the annual report to the County Council, as required. The report recommended no change to the School Construction Fee, pending the outcome of a full independent consultant review of the components needed to calculate school construction fees.

In August 2017, the County Executive made another attempt to update fees. The legislation added a 3.2% escalator, the School Construction Cost Index for 2017, to the fee previously proposed in 2016.

- Former County Council President Otis introduced Bill 17-19 *Adequate Public Facilities— Adjustment of School Construction Fees* on behalf of the County Executive in December 2017. Bill 17-19 Recommended the following school construction fees:

Housing Unit Type	Failure at Elementary School Level	Failure at Middle School Level	Failure at High School Level
Single Family Detached	\$ [3,977] <u>6,924</u>	\$ [1,752] <u>2,745</u>	\$ [3,721] <u>5,803</u>
Townhouse/Duplex	\$ [4,981] <u>8,671</u>	\$ [1,533] <u>2,401</u>	\$ [2,894] <u>4,513</u>
Other Residential	\$ [2,182] <u>3,798</u>	\$ [594] <u>931</u>	\$ [1,148] <u>1,791</u>

- Council Member Chmelik moved to “lay on the table” Bill No. 17-19 on January 9, 2018. The motion passed 4-3 with Council Members Donald, Keegan-Ayer and Fitzwater opposed. With no further action, Bill 17-19 expired on March 5, 2018. The School Construction fees remained set at the 2014 rate.

2018

- Former Council President Otis reintroduced the County Executive’s bill, now re-named Bill 18-13, on April 3, 2018. The County Council held a second reading for Bill 18-13, but ultimately Bill 18-13 expired on July 2, 2018 after failing to be scheduled on an agenda for a third reading. School construction fees remained set at the rate adopted in 2014.
- Former Council President Otis convened a workgroup to examine the School Construction Fees. The group included former Council President Otis; former Council Vice-President M.C. Keegan-Ayer; Mark Lancaster, former President of the Frederick County Building and Industry Association, Inc.; Tom Natelli, from Natelli Communities; Eric Soter, from Rodgers Consulting; and citizens Kyle Bostian and Jim Racheff.

- **Bill 18-21 Adequate Public Facilities - Adjustment of School Construction Fees** was introduced by former Council President Otis on August 21, 2018. Bill 18-21 recommended the following language be added: *The school construction fees shall be increased once annually, on January 1, 2019 through and including January 1, 2026, without further action of the County Council. The annual fee increases shall be based on the following formula: the change in the State of Maryland School Construction Cost Index from the prior year to the current year, expressed as a percentage, plus two percent (2%). The result will be multiplied by the then-current school construction fees, provided that the fee increases in any single year shall not exceed six percent (6%).*
- Bill 18-21 was amended to include a definition of the State of Maryland School Construction Cost Index. Amended Bill 18-21 was adopted on October 16, 2019 by a 5-2 vote of the County Council, CM Donald and Keegan-Ayer opposed. The new fees were effective as of January 1, 2019.
- Amended Bill 18-21 adjusted the 2014 school construction fees by a fixed percentage, capped at 6%. For example, the 2019 fees were increased by the Maryland School Construction Cost Index (5% currently), and to that was added an additional 2%. However; since Bill 18-21 capped the maximum increase to be no more than 6%, the 2019 fee reflects the maximum 6% increase added to the 2014 fee.

Current School Construction Fees

Housing Unit Type	Failure at Elementary School Level	Failure at Middle School Level	Failure at High School Level
Single Family Detached	\$4,216	\$1,857	\$3,944
Townhouse/Duplex	\$5,280	\$1,625	\$3,068
Other Residential	\$2,313	\$630	\$1,217

How are School Construction Fees Calculated?

County Budget Staff calculate the school construction fee using the same method that was established in 2011, when the fee was first proposed. That method was solidified by the adoption of Ordinance 11-18-584, and by Ordinance 14-07-662 in September 2014. The method was described in §1-20-62(E) of the County Code, *prior to July 20, 2016*:

“School construction fees, when added to the current Public School Development Impact Fee, equals 115% of the sum total cost of the Local Share and the State Share associated with each new residential housing unit type”

To calculate school construction fees:

1. Divide the total cost to construct the school (Local + State Share) by the number of school seats in the building. This equals the building construction cost per additional student. The cost per student using the FCPS prototype model for each grade level is:

School Type	Local Share + State Share	Total capacity	Cost per Additional Student Seat
Prototype Elementary	\$44,656,232	725	\$61,595
Prototype Middle	\$56,841,290	900	\$63,157
Prototype High School	\$107,362,470	1600	\$67,102

2. Multiply the cost per additional student seat by 115% to calculate the building construction cost per student with the 115% inflator. Subtract any principal payments to calculate the net capital cost per student:

School Type	Elementary	Middle	High School
Cost Per Additional Seat	\$61,595	\$63,157	\$67,102
X 115%	\$70,834	\$72,631	\$77,167
Principal Payments	\$ 3,619	\$ 3,619	\$ 3,619
NET CAPITAL COST PER STUDENT	\$67,215	\$69,012	\$73,548

3. Use the Public School Students Per Household Factor (pupil yield data provided by the County adopted Pupil Yields in July 2017),

Public School Students per Housing Unit = Pupil Yields	Elementary	Middle	High School
Single Family	0.20	0.10	0.14
Townhouse/Duplex	0.27	0.11	0.13
Multi-Family	0.13	0.04	0.05

and multiply the Net Capital Cost per Student, as calculated in #2 above, by the appropriate pupil yield for each grade level and dwelling unit type to determine the Calculated Cost by dwelling unit and grade level.

Calculated Cost (=Net Calculated Cost X Pupil Yield)	Elementary	Middle	High School
Single Family	\$13,443	\$6,901	\$10,297
Townhouse/Duplex	\$18,148	\$7,591	\$ 9,561
Multi-Family	\$ 8,738	\$2,760	\$ 3,677

4. Subtract the Impact Fee, which is already being paid by development. The example below is based on data reported in the most recent 2017 Impact Fee Study and reported by dwelling unit and grade level type (housing only, no land or bus component at this time).

Proposed Impact Fee – no land and no bus component included

Housing Unit Type	Elementary	Middle	High School
Single Family	\$5,725	\$3,029	\$4,532
Townhouse/Duplex	\$7,729	\$3,332	\$4,208
Multi-Family	\$3,721	\$1,212	\$1,619

The balance remaining is the school construction fee.

Proposed School Construction Fee using consistent 2017 data:

Housing Unit Type	Elementary	Middle	High School
Single Family	\$7,718	\$3,872	\$5,765
Townhouse/Duplex	\$10,419	\$4,259	\$5,353
Multi-Family	\$5,017	\$1,548	\$2,058

RECOMMENDATION:

The School Construction fee adopted on January 1, 2019 is substantially lower than what it would be, if the same methodology and formula established by the County Commissioners in 2011 and reconfirmed in 2014 was utilized. Developers paying the fee after January 1, 2014 are not actually mitigating the cost to provide the proportional share of a new school seat, as is the intent of the APFO school adequacy test. Instead, the cost to provide needed school capacity to keep pace with residential growth is being paid by existing residents and taxpayers.

In addition, County Council Bill 18-21 did not address § 1-20-62(G) of the law which requires the County Executive to provide a report on or before January 15 of each year with a recommendation for adjusting the fee. Therefore, in order to comply with the law and provide an update on or before January 15, 2019, staff offers the following recommendations:

1. Propose an adjustment to the Public School Construction Fee based on standard data and methodologies used in all component parts of the calculation. According to those data and methodologies, school construction fees should be adjusted:

- Component costs are now based on the FCPS prototype for all school levels. Prototype square footage and other data provide a more consistent assessment of the costs to add

capacity and mitigate a failure of APFO, than did the pre-bid schools used in the 2014 calculation and subsequent adjustments that used the same component data.

- Pupil Yields were updated in 2017 and pupil yields are a component used to calculate the school construction fees. When pupil yields are adjusted to reflect the number of students being generated per dwelling unit, the school construction fee should also be updated to incorporate these changes.

- The impact fee is a component in determining the School Construction Fee. Any increase or decrease in impact fees causes a subsequent lowering or increase to school construction fees.

Recommended School Construction Fees:

Housing Unit Type	Elementary		Middle		High School	
	Current Fee as of 1/1*	Proposed Fee	Current Fee as of 1/1*	Proposed Fee	Current Fee as of 1/1*	Proposed Fee
Single Family	\$4,216	\$7,718	\$1,857	\$3,872	\$3,944	\$5,765
Townhouse/Duplex	\$5,280	\$10,419	\$1,625	\$4,259	\$3,068	\$5,353
Multi-Family	\$2,313	\$5,017	\$ 630	\$1,548	\$1,217	\$2,058

* This fee reflects a 6% increase to the 2014 rate.

2. Bill 18-21 mandated that an annual fee adjustment be made each year on January 1 through 2026. Staff suggests amending this recommendation by inserting language that provides for an annual adjustment each July 1, the start of the county's fiscal year. School construction fees should be adjusted annually and tied to updates to component parts, such as the State of Maryland School Construction Cost Index. Staff suggests the following language be added:

On July 1, 2019, and on July 1 of each year thereafter in which the public school construction fee is in effect, the amount of the school constructions fees, per dwelling unit and school level, shall be adjusted as follows:

(A) On or before January 15, 2019, and on or before January 15 of each year thereafter, the County Executive shall provide to the County Council a report which proposes an annual adjustment to the school construction fee. The adjustment shall be calculated by taking into account the most recent data from the State of Maryland School Construction Cost Index and changes to other factors and data components in the fee calculations.

(B) The proposed annual adjustments shall automatically take effect on the following July 1, unless the County Council enacts a bill that takes effect on or before the following June 30 to change the school construction fee, following receipt of the report.

Providing a report in January provides ample time for the County Council to enact a bill, if they wish to amend an automatic annual adjustment, prior to July 1.

3. Staff recommends a complete update of the school construction fees on a regular schedule, such as every 2-3 years when the Impact Fee Study is updated, or following regular updates to pupil yield rates or updates to the other components that are used in the fee calculations.

