

ORDINANCE NO. 06-107

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF QUEEN ANNE S COUNTY, MARYLAND, REPEALING CHAPTER 28 (INTERIM ADEQUATE PUBLIC FACILITIES ORDINANCE); ADOPTING A NEW CHAPTER 28 (ADEQUATE PUBLIC FACILITIES ORDINANCE) TO THE COUNTY CODE, TO ADOPT A PERMANENT ADEQUATE PUBLIC FACILITIES ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the “Board”) is responsible for providing water and sewer facilities to County residents; and

WHEREAS, the Board, in conjunction with the Board of Education, is responsible for providing school facilities to County residents; and

WHEREAS, the County and the State Highway Administration are responsible for maintaining major intersections in the County; and

WHEREAS, the Board finds that, in the interest of the protecting the public health, safety, and general welfare, it is necessary to ensure as new development occurs in Queen Anne’s County (the “County”) that adequate water, sewer, school, and transportation facilities be in place to serve new residents; and

WHEREAS, the Board has adopted a capital improvements program to ensure the adequate provision of water, sewer, school, and road facilities as new growth occurs; and

WHEREAS, the Board has instituted policies and procedures for coordinating with the State Highway Administration in the development and implementation of its Consolidated Transportation Plan and in the provision of adequate transportation facilities as new development occurs; and

WHEREAS, state policy dictates that development shall be concentrated in suitable areas; that, in rural areas, growth shall be directed to existing population centers; and that resources shall be protected and conserved; and

WHEREAS, state policy dictates that adequate public facilities and infrastructure shall be available and planned where growth is to occur; and

WHEREAS, the County is authorized, among other things, to require the planning, staging, and provision of adequate public facilities; and

WHEREAS, the 2002 Comprehensive Plan requires the provision of adequate public facilities as new residential and nonresidential growth occurs, including water, sewer, schools, and roads; and

WHEREAS, certain exemptions from the provisions of this chapter are necessary to advance the policies set forth in the Comprehensive Plan, including those related to economic development in the County; and

WHEREAS, this Ordinance is necessary in order to implement these and other state and local planning policies; and

WHEREAS, the Board of County Commissioners hereby adopts and incorporates the purpose, intent, and findings set forth in this Ordinance.

WHEREAS, the Board of County Commissioners do not intend, by the adoption of this Ordinance, to preclude the future expansion of this Adequate Public Facilities Ordinance to cover the provision of fire and emergency service facilities and hereby express their intent, following review of the extent and adequacy of fire and emergency service infrastructure and facilities in Queen Anne's County, to provide for the provision of adequate facilities and infrastructure for fire and emergency services in Queen Anne's County as part of the next comprehensive plan review;

WHEREAS, the Board of County Commissioners do not intend, by the adoption of this Ordinance, to preclude the future improvement to the application of the ordinance, and hereby express their intent to study the appropriate number of units that when this ordinance applies, and the possibility of a County sponsored Adequate Public Facilities test in Queen Anne's County as part of the next comprehensive plan review;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Queen Anne's County, Maryland, as follows:

Section 1. The Code of Queen Anne's County, Maryland shall be amended to repeal Chapter 28.

Section 2. The Code of Queen Anne's County, Maryland shall be amended to add the following new Chapter 28.

28-1 SHORT TITLE

This chapter shall be known and may be cited as the "Adequate Public Facilities Ordinance of Queen Anne's County."

28-2 PURPOSE, INTENT, AND FINDINGS

- (a) The purpose and intent of this chapter is:
- (1) To ensure that Public Facilities needed to support new development meet the Level of Service standards established herein.
 - (2) To ensure that Capital Improvements Programs are maintained to accommodate reasonable growth and development based on the County's ability to provide adequate Public Facilities to serve new development.
 - (3) To ensure that no Development Proposal is approved that would cause a reduction in the Levels of Service for any Public Facilities below the Level of Service standards established in this chapter, unless mitigation measures are approved.

- (4) To ensure that adequate Public Facilities needed to support new development are available to address the impacts of such development, as defined by this chapter.
 - (5) To establish uniform procedures for the review of APF Applications subject to the standards and requirements of this chapter.
 - (6) To discourage urban sprawl and the inefficient development of land in Queen Anne's County.
 - (7) To encourage development in designated Growth Areas where Public Facilities exist or are planned.
 - (8) To implement the 2002 Comprehensive Plan, including the "capital facilities" (Element 5) and "fiscal health" (Element 6) polices and strategies.
 - (9) To implement Land Use Issue 2 of the Comprehensive Plan that calls for the "coordination of growth area development with public infrastructure;" and the Plan's directive to "tie subdivision and site plan approvals to adequate public facilities standards" (pp. 24 and 25, Vol. 2, 2002 Comprehensive Plan).
 - (10) To ensure that all applicable legal standards and criteria are incorporated in these procedures and requirements.
 - (11) To ensure that Proposed Development will not adversely affect the public health, safety, and welfare of existing and future residents of Queens Anne's County.
- (b) In adopting this chapter, the County hereby finds and determines as follows:
- (1) The availability and adequacy of Public Facilities subject to the provisions of this chapter are necessary for the general public health, safety, and welfare.
 - (2) New growth and development within the County has an impact on the availability and capacity of Public Facilities, which impact can be mitigated by ensuring development does not occur prior to the provision of adequate Public Facilities, as provided herein.
 - (3) The County and/or other cooperating agencies have prepared and adopted a Capital Improvements Programs to provide the water, sewer, schools, and transportation facilities needed to accommodate reasonable rates of growth and development, which CIPs will be periodically updated to reflect changes in the County's growth rate, available financial resources, and other relevant factors.
 - (4) The Level of Service standards adopted for each Public Facility in this chapter are necessary for the protection of the public health, safety, and welfare, and will not unduly inhibit new growth and development within Queen Anne's County.
 - (5) The *Background and Validation Report*, dated August 10, 2005, prepared by White & Smith, LLC and Professor James C. Nicholas, the data relied upon in the development of the *Background and Validation Report*, applicable Capital Improvement Programs, and budgets demonstrate that the capacity of Public

Facilities may be exceeded if site plan and subdivision approvals occur at projected rates without regard to the adequacy of the Public Facilities necessary to serve those developments at the Level of Services standards adopted herein.

- (6) The impacts on Public Facilities resulting from new development may be mitigated by measures that either reduce projected impacts on or increase the Capacity of Public Facilities.

28-3 DEFINITIONS

The words, terms, and phrases used in this chapter shall have the meanings set forth below.

Adequate Public Facilities Technical Committee or APF Technical Committee – a committee comprised of designees of the County Commissioners, the Planning Director, the Director of Public Works, the Superintendent of the Queen Anne’s County School Board, and any other official the Planning Director deems necessary to implement the provisions of this chapter. The Planning Director shall be the chairperson of the Committee.

Adequate Public Facilities (APF) Allocation – a reservation of Capacity made by the Adequate Public Facilities Technical Committee upon a Determination of Adequacy.

Adequate Public Facilities (APF) Application – an application for a Determination of Adequacy of Public Facilities as required by and described in this chapter. An APF Application includes, but is not limited to, an application form, a Phasing Schedule, an APF Study, a Mitigation Plan, as appropriate, and an administrative review fee, as determined by the County.

Adequate Public Facilities (APF) Schedule – a schedule maintained by the Planning Director that tracks the capacity of Public Facilities.

Adequate Public Facilities (APF) Study – an assessment of the impact of a Proposed Development on Public Facilities and of whether Available Capacity exists for the Proposed Development, including all background data or analysis relied upon in the development of the study.

Advanced Facilities Capital Improvements proposed to be donated, constructed, or funded by an applicant pursuant to an approved Mitigation Plan.

Board means the County Board of County Commissioners.

Capacity – the demand that can be accommodated by a Public Facility.

Capacity, Available – the circumstance where a Public Facility has sufficient Capacity to accommodate the demand created by a Proposed Development, or, in the case of a Phased Development Proposal, to accommodate the demand created by each phase of the Proposed Development.

Capacity, Reserved – Capacity allocated through administrative action of the Board.

Capacity, Used Capacity allocated to Preexisting Development Approvals and capacity already in use.

Capital Improvement – a physical asset, including land, the cost of which is generally non-recurring and which may require multi-year financing, and that provides additional Capacity needed to accommodate the demand for Public Facilities generated by a Proposed Development.

Capital Improvements, Existing – Capital Improvements constructed and operational at the time of an APF Application.

Capital Improvement, Planned - a Capital Improvement that is under contract or under actual construction at the time an APF Application is considered by the APF Technical Committee.

Capital Improvements Program or CIP – a document adopted annually by the County Commissioners, or other service provider, itemizing Capital Improvements funded for the current fiscal year and those capital projects planned for the following five-year period, including the means of funding such projects.

Capital Improvements, Total Existing Capital Improvements and Planned Capital Improvements.

Comprehensive Plan – the Queen Anne’s County Comprehensive Plan, adopted by the County Commissioners on May 21, 2002, as amended, and which is hereby incorporated by this reference.

County means Queen Anne’s County, Maryland.

Determination of Adequacy – a determination by the APF Technical Committee that each Public Facility impacted by a Proposed Development has Available Capacity, which determination may be based on an approved Mitigation Plan.

Development Proposal – either of the following:

- (1) a preliminary plat, multi-family site plan application, or nonresidential subdivision which proposes six (6) or more new units or lots; or
- (2) a site plan application, which proposes the creation of 10,000 square feet or more of new enclosed floor area to be dedicated to nonresidential uses; or
- (3) a preliminary plat or a nonresidential or multi-family site plan application, which will generate twenty-five (25) or more peak hour trips.

Dwelling Unit – a principal building, room or group of rooms providing, or intended to provide, living quarters for not more than one (1) family.

Essential Public Services services owned, managed, or operated in the interest of a governmental entity that provides a function critical to the health, safety, and welfare of the public, but which is not proprietary in nature. Essential Public Services may specifically include schools, water and sewer services, emergency services, publicly-owned housing, fire protection services, and law enforcement services.

Intersection means a place or area where two or more roads or site access entrances cross or meet and cause or create a straight or directional turning movement.

Level of Service or LOS – an indicator of the extent or degree of service provided by a Public Facility, based upon, and related to the operational characteristics of the facility, in comparison with the Capacity of the Public Facility.

Mitigation Plan – a voluntary plan, effectuated through a binding agreement or condition of approval of a Development Proposal, to ensure the provision of Available Capacity, where Capacity is not otherwise adequate to support the demand resulting from a Proposed Development.

Phased Development Proposal – a Development Proposal wherein the Proposed Development will be constructed incrementally in a logical time and geographical sequence according to a Phasing Schedule.

Phasing Schedule – a schedule that sets forth the timing of the development of a Phased Development Proposal, including, but not limited to, provision of necessary Public Facilities, the number of units, and, as applicable, their location on the site.

Planning Director – the Director of the Queen Anne’s County Department of Planning and Zoning or the Planning Director’s designee.

Preexisting Development Approvals – approved, but unbuilt developments, which have received a capacity reservation under either the County’s Interim APFO or this chapter, and any other development or subdivision approved within the unincorporated and incorporated areas of the County, which have or will result in an impact on Public Facilities, and which were approved prior to the APF Technical Committee’s action on a given APF Application.

Proposed Development – development proposed pursuant to a Development Proposal and an APF Application.

Public Facilities – certain water, sewer, schools, and transportation Capital Improvements provided by the County or other responsible agency as provided by this chapter.

Public Works Agreement – an agreement made between an applicant and the Department of Public Works.

School Service Area – the school district within which a Determination of Adequacy will be made pursuant to this chapter.

28-4 APPLICABILITY.

The provisions of this chapter shall apply to any Development Proposal submitted in the unincorporated area of the County, as follows:

(a) **Residential Development.**

A Determination of Adequacy of water, sewer, schools, and transportation facilities is required for any preliminary plat or multi-family site plan application, which proposes twenty (20) or more new lots or units.

(b) **Mixed use and nonresidential development.**

(1) A Determination of Adequacy of water and sewer facilities is required for nonresidential site plan applications that propose the creation of 10,000 square feet or more of new enclosed floor area to be dedicated to nonresidential uses.

(2) A Determination of Adequacy of transportation facilities is required for nonresidential site plan applications that generate twenty-five (25) or more peak hour trips. The APF applicant is responsible for providing information necessary for the County to determine whether this threshold will be met, including but not limited to, the size and scope of the Development Proposal and applicable trip generation data.

(3) A Determination of Adequacy of water, sewer, and transportation facilities is required for any nonresidential subdivision, which proposes six (6) or more new lots or units.

(c) **Essential public services.**

The provisions of this chapter shall not apply to any Development Proposal, or portion thereof, that includes the construction of buildings, structures, or facilities necessary to the provision of Essential Public Services.

(d) **Previously submitted APF Studies.**

The requirements of this chapter shall not apply to any Development Proposal for which an APF Study has been approved pursuant to the former Chapter 28, "Interim Adequate Public Facilities Ordinance."

(e) **Age-Restricted Housing.**

For a Development Proposal, or portion thereof, that consists of age-restricted or senior citizen housing, the Determination of Adequacy shall not consider the Available Capacity of school facilities. However, this subsection shall not apply to any Development Proposal unless the applicant demonstrates that all age-restricted or senior citizen housing units are subject to a recorded deed restriction prohibiting persons under the age of eighteen (18) from residing in the proposed Dwelling Units.

(f) **Minimal use development proposals.**

A Determination of Adequacy is not required for nonresidential buildings or uses designed for average water and wastewater demands that do not exceed 250 gallons per day. Development approvals issued pursuant to this exception shall include a condition that approval will be revoked if average demands exceed 250 GPD.

(g) **Economic development projects.**

The Board of County Commissioners may exempt from the provisions of this chapter, completely or in part, any nonresidential Development Proposal that will provide a significant economic benefit to the County in terms of:

(1) Number of quality jobs created.

(2) An increase in the tax base.

- (3) Diversity in the work place.

28-5 APPLICATION AND REVIEW PROCEDURE.

(a) When required.

Subject to the requirements of this section, a complete APF Application must be submitted and approved prior to the submission and review of a development application for a Development Proposal. No Development Proposal will be submitted for consideration for approval as provided in Chapter 18, unless a Determination of Adequacy has been made by the APF Technical Committee or the Planning Director has determined that the Development Proposal otherwise has complied with or is exempt from the terms of this chapter.

(b) Requirements for APF Study.

(1) *Scoping Meeting Required.* Prior to submission of an APF Application, the applicant shall meet with the APF Technical Committee to confirm the scope of the study and to identify potential deficiencies that would need to be mitigated pursuant the provisions of this chapter. During or following the scoping meeting, the APF Technical Committee shall:

- (i) provide the current Adequate Public Facilities Schedule;
- (ii) identify planned and funded Capital Improvements that affect Available Capacity for the project;
- (iii) provide other available demand and Capacity information; and
- (iv) summarize the scope of the study requirements, which shall include the information listed in paragraph (b)(2) of this section.

(2) *General APF Study Requirements.* The APF Study shall include:

- (i) Description of the Proposed Development, including the type and amount of each land use.
- (ii) Identification of the Used Capacity affecting Available Capacity to serve the Proposed Development.
- (iii) Description of the Total Capital Improvements available to serve the Development Proposal.
- (iv) Identification of the demand assumptions, including student generation rates and traffic generation rates, as applicable, associated with the Development Proposal.
- (v) A Phasing Schedule for any Residential Development of twenty (20) or more new Dwelling Units.
- (vi) For proposed residential uses, the schools to be attended by the projected students, by School Service Area; existing enrollments; Used Capacity, and Reserved Capacity.

- (vii) For Development Proposals subject to a transportation facilities APF Determination, information regarding the following roadway improvements or conditions: pavement, drainage, traffic control devices, bridges and culverts, existing service levels at all impacted intersections and projected service levels.
- (viii) Other information required by the APF Technical Committee as identified at the Scoping Meeting or required by County administrative policy necessary to evaluate the APF Study and to make a Determination of Adequacy pursuant to this chapter.
- (ix) A statement regarding whether Available Capacity exists for applicable Public Facilities.

(c) **Completeness review.**

Within fifteen (15) days of its receipt, the Planning Director shall determine whether the APF Application is complete and complies with the submission requirements set forth in this section. If the APF Application is complete and the submission requirements have been met, the Planning Director will forward the APF Application to the members of the APF Technical Committee for review.

(d) **Determination of Adequacy and Allocation of Capacity.**

(1) Within forty-five (45) days of the Planning Director's determination that an APF Application, or a revised application or Mitigation Plan, is complete, the APF Technical Committee will make one of the following determinations with respect to each applicable Public Facility:

- (i) If the APF Technical Committee concludes that Available Capacity exists, in accordance with sections 28-6 and 28-7, or that an approved Mitigation Plan will ensure Available Capacity, the Planning director shall submit the Development Proposal application for consideration for approval as provided in Chapter 18, including a Mitigation Plan where proposed.
 - 1. If the Determination of Adequacy is based on an Advanced Facility, subsequent development approvals under Chapter 18 shall be conditioned on the acceptance by the Board of County Commissioners of a Mitigation Plan as provided herein.
 - 2. Upon a Determination of Adequacy and APF Allocation by the APF Technical Committee, the Planning Director shall:
 - a. Notify the applicant in writing within ten (10) business days of the Determination of Adequacy and APF Allocation; and
 - b. Record the APF Allocation on the APF Schedule.
- (ii) If the APF Technical Committee determines that Available Capacity does not exist and no Mitigation Plan has been approved pursuant to subsection § 28-5 (f) below, the application shall not be reviewed or considered for approval, as provided in Chapter 18 of the County Code and the Planning Director shall:

1. Notify the applicant, in writing, within ten (10) business days of the determination, stating with specificity the basis of the determination, including materials from the APF Technical Committee and any County or non-County agency that provides the basis of the decision, and the month and year in which Available Capacity is planned to be provided according to the applicable CIP, and
 2. Stating the actions that the applicant may take voluntarily to achieve a Determination of Adequacy, including the actions described in § 28-5(f).
- (iii) Except as provided in (iv) below, any Development Proposal that fails to receive a Determination of Available Capacity, but which has mitigated, or has committed to mitigating, its proportionate share impacts on Public Facilities, shall be allowed to proceed for review and consideration for approval, as provided in Chapter 18 of the County Code, as of the earlier of the following:
1. the month and year the APF Technical Committee indicates that Available Capacity is planned, according to the applicable CIP; or
 2. five (5) years from the date of the Planning Director's notification, as provided in (d)(1)(ii)(1) of this section.

In order to proceed in accordance with this paragraph, the applicant must submit a written request to the Planning Director, which shall be forwarded to the Board of County Commissioners for consideration.

- (iv) The Board of County Commissioners may either grant approval to proceed, as provided above in paragraph (iii), or deny the request where the Board finds that:
1. approval of the Development Proposal would be detrimental to the public health, safety, and welfare; and
 2. denial of the request will not result in an unlawful taking of property.

(e) Duration and effect of a Determination of Adequacy.

- (1) A Determination of Adequacy and the issuance of an APF Allocation shall be deemed to indicate that:
- (i) Available Capacity exists at the time of the Determination of Adequacy by the APF Technical Committee; and
 - (ii) The APF Allocation will remain in effect, if the following conditions are met:
 1. for residential and nonresidential subdivision applications:
 - a. an application for plat approval is submitted within ninety (90) days of the Determination of Adequacy;
 - b. preliminary plat approval is received within two (2) years of the Determination of Adequacy; and

- c. final plat approval is received within one (1) year of preliminary plat approval.
 - 2. for multifamily and nonresidential site plans:
 - a. an application for site plan approval is submitted within ninety (90) days of the Determination of Adequacy; and
 - b. final site plan approval is received within two (2) years of the Determination of Adequacy.
- (2) Upon the request of the applicant, the County Commission may extend the duration of a Determination of Adequacy. No extension will be granted except upon a showing by the applicant that the application is actively continuing through the development process, by demonstrating such factors as:
 - (i) whether building permits for the Development Proposal have been issued and remain active;
 - (ii) whether the applicant can demonstrate unique hardship or extenuating circumstances not created by the applicant; or
 - (iii) whether site improvements and development has progressed during the duration of the initial Determination of Adequacy.
- (3) A Determination of Adequacy of Public Facilities shall not affect the need for the applicant to meet all other County requirements, including any lawfully adopted ordinance of the County.
- (f) **Determination of No Available Capacity; Development Alternatives, and Mitigation Plans.**

Upon the rejection of an APF Application, the applicant may seek approval by:

- (1) submitting a Development Proposal that has a reduced amount of development for which Available Capacity exists;
- (2) submitting a Phased Development Proposal, which may be approved only pursuant to a Public Works Agreement or other appropriate binding agreement or condition of approval, that includes the following:
 - (i) a proposed Phasing Schedule setting forth the amount, location, and timing of development associated with each proposed phase;
 - (ii) a determination that Available Capacity will exist at the beginning of each phase of development;
 - (iii) where Advanced Facilities are proposed, the location and timing of the proposed facilities; and
 - (iv) other additional relevant information or materials as identified by the APF Technical Committee.
- (3) proposing a Mitigation Plan that provides for the provision of Advanced Facilities within the timeframes set forth in section 28-7.

- (i) Any Mitigation Plan that proposes the provision of Advanced Facilities must comply with the following:
 - 1. The applicant must provide an estimate of the incremental cost of providing the Advanced Facilities, a schedule for commencement and completion of the Advanced Facilities, and necessary binding performance guarantees.
 - 2. The applicant must submit a proposed Public Works Agreement, or other appropriate binding agreement, committing the applicant to the timely and adequate provision of Advanced Facilities as described in the approved Mitigation Plan.
 - 3. Any proposed Mitigation Plan must be approved by the Board of County Commissioners, either prior to an APF Determination or as a condition of an APF Determination and the final approval of a Development Proposal.
- (ii) Any proposed Advanced Facilities shall be offset in order to reflect impact fee payments that will be made for the same development, pursuant to Chapter 18.

28-6 DETERMINATION OF AVAILABLE CAPACITY

Public Facilities will be deemed adequate only if the applicant demonstrates that Available Capacity exists to accommodate the demand generated by the Proposed Development, in accordance with the following calculation methodology, based on the standards set forth in section 28-7:

- (a) Calculate Total Capital Improvements by adding:
 - (1) Capacity provided by Existing Capital Improvements, to
 - (2) the capacity of any Planned Capital Improvements.
- (b) Calculate Available Capacity by subtracting from the Total Capital Improvements, the sum of:
 - (1) Used Capacity;
 - (2) Reserved Capacity, if applicable; and
 - (3) the demand on each Public Facility created by the Proposed Development.

28-7 ADEQUACY STANDARDS BY PUBLIC FACILITY

The following standards, by Public Facility, shall be applied in determining Available Capacity pursuant to subsection 28-6 above.

- (a) **Potable water.**
 - (1) *Properties served by central water.* Determinations of Adequacy for Proposed Developments, which at the time of APF Application are served by the County's central water system, or will be served at the time of building

permit, pursuant to the Comprehensive Water and Sewerage Plan, will be based on the following standards:

(i) Water Supply.

1. *Determination of Adequacy.* Prior to the issuance of a building permit for a Proposed Development, adequate water supply must be available, pursuant to a valid consumption permit issued to the County by the Maryland Department of the Environment (MDE).
2. *Mitigation.* If the County's existing consumption permit does not include adequate water supply, the applicant may propose a Mitigation Plan to provide for Advanced Facilities that result in adequate MDE-compliant water supply by the time a building permit is issued. Neither payment of County connection fees nor provision of onsite wells shall be considered sufficient mitigation for properties served by central water under this chapter.

(ii) Water Treatment & Storage.

1. *Determination of Adequacy.* Adequate water treatment and storage capacity must be available to serve the Proposed Development prior to the issuance of a building permit for the Proposed Development.
2. *Mitigation.* If water treatment and storage facilities are not adequate, the applicant may propose a Mitigation Plan that will result in the construction or dedication of water treatment and/or storage Capital Improvements such that there is Available Capacity prior to the issuance of a building permit. Neither payment of County connection fees nor provision of onsite wells shall be considered sufficient mitigation for properties served by central water under this chapter.

(iii) Level of Service standard. Determinations regarding the adequacy of water facilities under this subsection (a)(1) shall be based on the water consumption demands adopted by the Department of Public Works.

(2) *Properties not served by central water.* Determinations of Adequacy for Proposed Developments, which at the time of APF Application are not served by the County's central water system, and will not be served at the time of building permit, pursuant to the Comprehensive Water and Sewerage Plan, may be found where onsite well systems will be available prior to the issuance of a certificate of occupancy for the Proposed Development. Adequacy will be found only where the Proposed Development can meet the standards and requirements of the Department of Environmental Health. A Determination of Adequacy made under this subsection (2) must be conditioned on a requirement that onsite wells be inspected and approved by the Department of Environmental Health prior to issuance of a certificate of occupancy.

(b) **Sewer system.**

(1) *Properties Served by Central Sewer.* Determinations of Adequacy for Proposed Developments, which at the time of APF Application are served by

the County's central sewer system, or will be served at the time of building permit, pursuant to the Comprehensive Water and Sewerage Plan, will be based on the following standards:

(i) Sewer Treatment.

1. *Determination of Adequacy.* Adequate sewer treatment capacity must be available to serve the Proposed Development prior to the issuance of a building permit for the Proposed Development.
2. *Mitigation.* If sewer treatment facilities are not adequate, the applicant may propose a Mitigation Plan that will result in the construction or dedication of sewer Capital Improvements such that there is Available Capacity prior to the issuance of a building permit. Neither payment of County connection fees nor provision of onsite septic systems shall be considered sufficient mitigation under this chapter.

(ii) Level of Service Standard. Determinations regarding the adequacy of sewer facilities under this subsection (b)(1) shall be based on the wastewater generation demands adopted by the Department of Public Works.

(2) *Properties not served by central sewer.* Determinations of Adequacy for Proposed Developments, which at the time of APF Application are not served by the County's central sewer system, and will not be served at the time of building permit, pursuant to the Comprehensive Water and Sewerage Plan, may be found where onsite septic systems will be available prior to the issuance of a certificate of occupancy for the Proposed Development. Adequacy will be found only where the Proposed Development can meet the standards and requirements of the Department of Environmental Health. A Determination of Adequacy made under this subsection (b)(2) must be conditioned on a requirement that onsite septic systems be inspected and approved by the Department of Environmental Health prior to issuance of a certificate of occupancy.

(c) **School system.**

(1) *Determination of Adequacy.* A Determination of Adequacy with regard to public schools shall be based on the following standards:

- (i) School Service Areas. Available Capacity will be calculated, in accordance with section 28-6, based on the Capacity of the School Service Area, for each school level, in which a Proposed Development is located; except that, Available Capacity may be found based on the capacity of an adjacent School Service Area only upon a written determination by the Board of Education that the adjacent School Service Area will accommodate the impacts of the Proposed Development through redistricting or other operational adjustments.
- (ii) Level of Service standard. The minimum level of service standard for schools shall be 100% of state-rated capacity for each level of school and shall be measured by School Service Area.

(2) *Mitigation.* In the event that the APF Technical Committee determines that school capacity exceeds the above Level of Service standards, an applicant may propose a Mitigation Plan that will provide Advanced Facilities sufficient to offset the impacts of the Proposed Development on school Capacity. However, Advanced Facilities proposed pursuant to a Mitigation Plan must comply with the following:

- (i) except as provided in section 28-7(e), the Advanced Facility must result in the construction, dedication, or funding of a Capital Improvement included or to be included within the first two (2) years of the County's Capital Improvement Plan.
- (ii) temporary or portable classroom structures will not be accepted as sufficient forms of mitigation.
- (iii) the proposed Mitigation Plan must be approved by the Queen Anne's County Board of Education.

(d) **Transportation Facilities.**

(1) *Determination of Adequacy.* A Determination of Adequacy with regard to transportation facilities shall be issued if:

- (i) *In Designated Growth Areas.* The projected Level of Service, after buildout of the Proposed Development, for intersections affected by the Proposed Development, is C or above for peak hours; provided, however, that a projected Level of Service D for peak hours shall be considered adequate if the applicant submits and the Board of County Commissioners approve a Mitigation Plan as provided herein.
- (ii) *Outside Designated Growth Areas.* The projected Level of Service, after buildout of the Proposed Development for and intersections affected by the Proposed Development, is B for peak hours.

For purposes of this chapter, intersections identified for evaluation may include existing and future intersection conditions.

(2) *Mitigation.* In the event that the APF Technical Committee determines that transportation capacity exceeds the above Level of Service standards, an applicant may propose a Mitigation Plan that will provide Advanced Facilities sufficient to offset the impacts of the Proposed Development on the transportation Capital Facilities addressed above. However, Advanced Facilities proposed pursuant to a Mitigation Plan must comply with the following:

- (i) the Advanced Facility will result in an overall improvement to either road capacity or Level of Service in the vicinity of the Proposed Development;
- (ii) except as provided in section 28-7(e), the Advanced Facility must result in the construction, dedication, or funding of a Capital Improvement that will be under contract or actual construction within two (2) years of the APF Determination; and

- (iii) if a state road improvement, the proposed Mitigation Plan must be accepted by the State Highway Administration and scheduled for timely completion.
- (e) Notwithstanding the timeframes required by subsections 28-7 (c) and (d), in order to advance the purpose and intent of this chapter, the Board may extend the timeframes within which Advanced Facilities may be accepted. However, in no event shall these timeframes be extended except where the Board makes one (1) or more of the following findings, in writing:
 - (i) that the nature, extent, or cost of an Advanced Facility, whether provided by a public or private agency, is such that the improvement reasonably cannot be completed within the timeframes set forth in subsections 28-7 (c) and (d); or
 - (ii) that all or some of the development impacts to be mitigated by the Advanced Facility will not occur within the timeframes set forth in subsections 28-7 (c) and (d); or
 - (iii) that an applicant has proposed providing an Advanced Facility with capacity greater than that required to meet the fairshare impacts of the applicant's Development Proposal and additional time is necessary reasonably to fund the improvements.

The Mitigation Plan must reflect the Board's findings and must include provisions necessary to implement the timeframes approved by the Board. Said Mitigation Plan must be approved by the Board and other responsible agencies, as required by this chapter.

28-8 CAPITAL IMPROVEMENTS PROGRAM

(a) Purpose.

The CIP is the mechanism by which Queen Anne's County, and the governmental agencies with which it coordinates in the provision of Public Facilities, to ensure adequate Capacity for existing and anticipated population and employment. Through the CIP, the County intends to use all reasonable means to provide the Public Facilities and services needed to accommodate new growth and development, consistent with the availability of revenue sources, binding contributions for Capital Improvements provided by state or federal sources or applicants, and physical, environmental, or topographical constraints on the expansion of the Capacity of Public Facilities.

(b) Requirements for CIP Implementation.

The CIP contains:

- (1) A schedule of year-by-year Capital Improvements that indicates the manner in which the County or other applicable agency will reduce existing deficiencies, remain abreast of replacements, and meet future demand.
- (2) A description and general location of each Capital Improvement included.

- (3) A list of projected costs and revenue sources by type of Public Facility for each year addressed in the CIP.

28-9 ANNUAL MONITORING

- (a) On an annual basis, the Planning Director, with input from the APF Technical Committee, shall prepare a report describing the following:
 - (1) The Available Capacity of Public Facilities.
 - (2) Anticipated increases in Dwelling Units and nonresidential development, based on population projections, development permit trends and the Comprehensive Plan.
 - (3) The need for any further Public Facilities, including the Capacity of said Public Facilities, resulting from changes in population increase, employment growth, or other relevant factors.
 - (4) The projected financing for any additional Capacity resulting from the factors set forth in subsections (i) through (iii), above.
- (b) *Fire and EMS Level of Service.* On an annual basis, beginning one (1) year after the effective date of this chapter, the Planning Director shall submit to the Board of County Commissioners a report regarding the capacity of the Volunteer Fire Districts and the County Department of Emergency Services to address existing and projected demands from new development. The Planning Director's report shall:
 - (1) reflect coordination and input from the Director of the Department of Emergency Services as well as the Chairman of the Fire and Emergency Services Commission;
 - (2) identify whether Existing and Planned Capital Improvements are adequate to serve the fire protection and emergency medical services (EMS) needs of existing and projected residents and employees in the County;
 - (3) be based on the Level of Service standards recognized by the Board of County Commissioners for fire and EMS services; and
 - (4) take into consideration the capacity of Capital Improvements operated by both the County and the Volunteer Fire/EMS Districts.
- (c) The County Commissioners shall consider the report prepared by the Planning Director and may consider any appropriate amendments to the Capital Improvements Program or to this chapter, including application of this chapter to additional public facilities, based upon a demonstration that Capital Improvements Capacity is inadequate to serve new growth.

28-10. APPEALS.

Any decision of a County official or the APF Technical Committee under this chapter may be appealed, pursuant to section 18:1-114, *et. seq.* of Chapter 18, within 30 days from the date of the decision, to the Queen Anne's County Board of Appeals. The Board

of Appeals shall affirm the decision of the County official or the APF Technical Committee unless the Board finds the decision to be arbitrary, capricious, or illegal.

Section 3. Conflict.

To the extent of any conflict between other County ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing County ordinance, resolution, or regulation.

Section 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decisions of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 5. Effective date.

This ordinance shall be effective on the 46th day following its adoption by the County Commissioners.

Introduced by: Commissioner Gene Ransom

Co-Sponsored by: Commissioners Billups, Fordonski, Gunther and Wargotz

Date of Introduction: December 19, 2006

Public Hearing Scheduled for: January 16, 2007 @ 7:20 p.m.

Public Hearing held: January 16, 2007 @ 7:20 p.m.

Vote: 5 Yea 0 Nay

Date: February 6, 2007

The undersigned hereby certifies that this Ordinance was Approved and Adopted by the Board of County Commissioners of Queen Anne's County, Maryland, on the 6 day of February, 2007.

Margie A. Houck, Clerk

FISCAL IMPACT NOTE

Legislation No: O-06-107 **Hearing Date:** 1-16-07
Date Introduced: 12-19-06 **Note Date:** 1-9-07

Legislation Title: Adequate Public Facilities Ordinance of Queen Anne's County

Description:

The purpose of this legislation is essentially to manage growth in Queen Anne's County so that approval for new development is dependant upon the availability and adequacy of public facilities, such as water, sewer, schools and transportation. In situations where it is determined that existing facilities and infrastructure are not adequate to support the proposed development, this ordinance allows for the deferral of the proposed development.

Analysis of Fiscal Impact:

Since this legislation is basically a tool with which to more effectively manage growth in Queen Anne's County, there is no fiscal impact generated by the legislation itself. Fiscal impact would be determined for proposed development on a case-by-case basis, since the area(s) for which the development may be proposed in might differ in terms of the adequacy of public facilities.

In terms of the adequacy of fire and emergency services, which are funded with General Fund (tax) revenue, there may be certain costs involved if the review of the adequacy of current fire and emergency services involves obtaining a professional study performed by an outside agency. If it is determined that the current fire and emergency services are not adequate, the costs involved in provision of adequate facilities and infrastructure (which, according to the legislation, is the intent of the commissioners), would likely call for increased funding in both the County's Capital Improvement Program and General Fund Operating Budget.

Fiscal impact generated by the reduction of the minimum level of service standard for schools from 120% to 100% is dependant upon whether or not projected enrollment exceeding 100% capacity will result in that particular growth area to be closed to new growth, if a school Advanced Facility of some type will be required from developments that generate additional students, or if the County will bear the costs of adding to the capacity of the school(s) within the growth area in question. It is important to note that if there are currently any schools that will be at the 100% level of service as a result of this legislation (including capacity projected to be used by Preexisting Development Approvals), the schools serving the areas in question will possibly need to be moved

forward in the County's Capital Improvement Plan, which will result in fiscal impact for that planned project year (particularly if bonds are expected to be issued in order to fund the cost of a new school or an addition to an existing school).

In the event that it is determined that school capacity exceeds the acceptable Level of Service standards, and results in the construction of an Advanced Facility, operating costs to run said facility will be incurred by the Board of Education, and thereby the County. The amount of increased costs would have to be determined at the time any Advanced Facility is proposed.

In the case of increasing the capacity of water/sewer facilities, this legislation would produce no fiscal impact, as costs of water and sewer facilities and usage are received in the form of user fee revenue from the users of the facilities.

In the case of increasing the capacity of transportation (roads) facilities, this legislation would produce no fiscal impact, as the costs of building and maintaining County roads are funded with State Highway User Revenue.