

**RESOLUTION
ENDORING THE WASHINGTON COUNTY
AND TOWN OF KEEDYSVILLE
PUBLIC FACILITIES POLICY**

RECITAL

WHEREAS, the Mayor and Council of the Town of Keedysville as the duly constituted legislative body of said municipality finds that it is in the best interests of the citizenry of said community, and surrounding environs, to reiterate the policies in reference to development and growth in the Town and in reference to development and growth in the surrounding environs.

It has consistently been the policy of the Town of Keedysville and the Planning Commission to consider all elements of its Comprehensive Plan, Subdivision Ordinance, Zoning Ordinance, the County Comprehensive Plan, and development policies and availability of public facilities.

The Town has not authorized or delegated the County to enforce the County's Adequate Public Facilities Ordinance within the boundaries of the municipality in accordance with the provisions of Article 23A, Section 2B Annotated Code of Maryland. The County Adequate Public Facilities Ordinance (APFO) is not enforceable or applicable as an Ordinance within the corporate limits of the Town of Keedysville (Section 3.2, Washington County APFO). The Mayor and Council of the Town of Keedysville and the Planning Commission and its various agencies reserve the right of approval of any plans for any construction, development, subdivision or extension of any facilities within the Corporate boundaries. It is reiterated that the primary concern of the Town in relation to future growth and development is to assure that adequate public facilities are available and that same are provided for by the developer.

This has long been the established policy of the Town of Keedysville and it is intended by this Resolution to reiterate this policy.

Each and every sentence and paragraph of this Recital is incorporated in the Resolution. Each and every sentence and paragraph of the Resolution is incorporated in this Recital.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Keedysville as follows:

1. The Mayor and Council as the duly constituted legislative body of the Town of Keedysville recognized that Washington County, Maryland has an Adequate Public Facilities Ordinance (APFO) effective December 1, 1990. The Ordinance is not

applicable, and is not enforceable as an ordinance within the corporate limits of the municipality of Keedysville. (Section 3.2, Washington County Adequate Public Facilities Ordinance, Article 23A, Section 2B, Annotated Code of Maryland.)

2. The Mayor and Council by passage of this Resolution do not adopt the County Ordinance and make same effective within the Corporate limits, except as a development policy. HOWEVER, it is intended by this Resolution to reiterate the longstanding policy of the municipality, and endorse the purposes and concepts and requirements of the APFO as it relates to land development within the municipality where applicable

3. It is recognized that it has long been the policy of Keedysville to consider all elements in reference to orderly growth. Developers and builders are presently required pursuant to the policies of the Town of Keedysville, the Land Development Ordinances and Comprehensive Plan to provide for and construct all capital improvements required to serve the contemplated development and/or subdivisions at their expense. The Subdivision Ordinance and policy requires that developers furnish agreements to construct all infrastructure at their expense, and bonds to assure that same are completed properly. These and annexations agreements specifically refer to construction of adequate sewer and sanitation facilities in accordance with the applicable policies and regulations of Washington County Water/Sewer Department.

4. The Town has a longstanding policy that prior to any annexation, the persons requesting annexation must enter into agreements to construct all public facilities and infrastructure required that may be needed to implement orderly growth in the development at their expense and in accordance with all Federal, state, county and municipal acts, ordinances and regulations.

5. It is recognized that certain land development ordinances of the Town are now regulated and administered by Washington County among them are the following:

- Chapter 5: Excavation Ordinance
- Chapter 6: Floodplain Ordinance
- Chapter 7: Conservation Ordinance
- Chapter 18: Storm Water Management

It is also recognized that the Town does not have a sanitary sewage disposal system and that same is administered by Washington County in accordance with its established policy.

6. It is intended that this is a Resolution and not an Ordinance. It establishes and reiterates the existing and continuing policy of the Town of Keedysville to engage in orderly development and growth as may be necessitated, and that prior to any approvals of subdivisions or any other improvements, that the Town will endeavor to assure that all public facilities and services needed to support any new development shall be available prior to approval the development. It is the policy of the Town to cooperate with and

assist the County in orderly administration of the APFO as it may pertain to the Town of Keedysville.

7. The Town reserves its autonomy and authority for final approval of development and subdivision plans, and it is not intended by this Resolution to delegate authority to the County, but only to endorse the concepts and policies set forth in the APFO insofar as applicable to the Town of Keedysville.

**WITNESS AND ATTEST
AS TO CORPORATE SEAL**

TOWN OF KEEDYSVILLE

Amy Simmons, Clerk

K. Lee Brandenburg, II, Mayor

Introduced: _____, 2004

Passed: _____, 2004

Effective: _____, 2004

COPY

**RESOLUTION AMENDING ADEQUATE PUBLIC FACILITIES
ORDINANCE OF THE TOWN OF KEEDYSVILLE**

Recital

Pursuant to the provisions of House Bill 1272, Section 2-701 of the Code of Public Laws of Washington County, Maryland, the Mayor and Council of the Town enacted an "Adequate Public Facilities Ordinance: in order to qualify for the benefits of same.

On November 1, 2005, the Board of County Commissioners of Washington County Maryland revised and amended the County APFO revising and making adequacy tests for schools more stringent than previously (Section 5.2(b) County APFO, effective November 1, 2005).

It is the purpose of this amendment to the Town APFO to assure that the APFO is substantially similar to or more stringent than the County APFO which became effective November 1, 2005 in order to be eligible to retain a portion of the building excise tax pursuant to the provisions of the aforementioned statute.

Each and every sentence and paragraph of this recital is incorporated in the resolution, and each and every sentence and paragraph of the resolution is incorporated in this recital.

NOW, therefore, be it resolved, enacted, and ordained by the Mayor and Council, that Adequate Public Facilities Ordinance Article II Definitions 2.3.8 – Engineer, and Article V – Schools, be and are hereby revoked, amended and reenacted as follows:

ARTICLE II – DEFINITIONS

2.3.8 ENGINEER

Wherever the term engineer is used in this ordinance, it shall be construed as the duly designated and authorized engineer of the Town and does not include the Chief Engineer or Engineering Department of Washington County, unless the Mayor and Council and Board of County Commissioners enter into a formal agreement and resolutions establishing such relationship pursuant to the provisions of the annotated code of Maryland.

ARTICLE V – SCHOOLS

5.1 ADEQUACY

All residential new development shall be served by public schools that:

- (a) Are currently adequate;
- (b) Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation program, scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program (CIP) following final plat or site plan approval to be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100% of State Rated Capacity for middle schools and high schools; or
- (c) Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur in the current or the next year of final plat or site plan approval that will render the public schools adequate.

5.1.1 CAPACITY CREATED BY MITIGATION PROGRAM

Funded construction capacity to be created by a mitigation program may not be used in a determination of adequacy for any Developer other than the Developers who are parties to the mitigation program.

5.2 EXEMPTIONS

Article V of this Ordinance does not apply to:

- (a) New development to be developed exclusively for non-residential uses;
- (b) New development to be developed according to federal regulations restricting occupancy in the dwelling units to elderly persons;
- (c) The planning commission may exempt a new development to be developed as a retirement community;
- (d) Public or private elementary and secondary schools, and public safety facilities; or

- (e) Simplified plat/subdivision.

5.3 DATA ON WHICH ADEQUACY SHALL BE DETERMINED

The BOE is required pursuant to Section 5.3 of the Washington County APFO to provide actual enrollment data to the Board of County Commissioners for the last school day of September, December, March, and June and the State Rated Capacity for each elementary and secondary school.

5.4 DETERMINATION OF ADEQUACY

5.4.1 The Planning Commission shall determine whether public school facilities are "adequate" for the proposed new development after evaluating enrollment information provided by the BOE to the Board of County Commissioners, and/or to the Planning Commission. The Planning Commission shall determine that a school is adequate if the school has the capacity as follows:

- (a) Elementary schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding 90% of the State Rated Capacity (SRC) for each school.
- (b) Middle schools and high schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding the State Rated Capacity established for each school.
- (c) Available capacity for individual schools shall be determined in accordance with Section 5.5, below.
- (d) Final approval will not be granted for developments in the review process until the affected schools obtain adequate status.

5.5 MEASURING FOR AVAILABLE CAPACITY

- (a) Adequacy of every elementary, middle and high school serving the proposed development shall be tentatively measured at the time of preliminary consultation and preliminary plat review, and shall be finally measured and determined as of the date of final plan submission, or the first date upon which all necessary documentation and materials have been submitted, whichever occurs last, based upon data as published by the BOE.
- (b) If approval has not been received from the Planning Commission within six (6) months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

- (c) For determining adequacy, enrollment shall mean the total of the BOE official enrollment figures, background enrollment, pupils generated from the proposed development, and other previously approved developments, including municipalities.
- (d) Pupil generation rates shall be determined using the formulas proposed by the BOE and adopted by the Board of County Commissioners and shall reflect the characteristics of the school attendance area within which the proposed development is located.
- (e) If a school is not adequate as defined in section 5.4.1 and an adjoining school district at the same level is at least twenty (20) percent below State Rated Capacity, then the applicant may request the BOE to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in Section 5.4.1, then the school shall be considered adequate.
- (f) If a school is not adequate, and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in Section 5.4.1, then the final subdivision or site plan approval shall be denied, except as provided for in Article IX.
- (g) Any Developer proposal to create improvements to meet adequacy shall be submitted to the Board of Education for recommendations and reviewed under any BOE adopted mitigation policy then in effect and be subject to the standards and review processes of the Interagency Committee on School Construction (IAC) of the Maryland Board of Public Works.
- (h) Background enrollment growth will be extrapolated over the number of years for which approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete.
- (i) The Planning Commission may require phasing or an annual maximum build-out rate to plan for future adequacy.

5.6 RESIDENTIAL BUILDING PERMIT APPROVAL

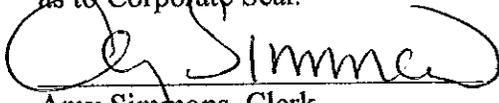
The Mayor and Council shall have the authority to limit the number of building permits in the Town that impact upon any school attendance area. The decision to limit building permits shall be based on the recommendation of the Planning Commission as to the adequacy of the school district, the geographical relationship of a school district to a designated urban growth area or town growth areas as indicated on the Comprehensive Plan of the Town and Washington County, Maryland, and enrollment capacity in immediately adjacent school attendance areas. The Mayor and Council shall also take into consideration the recommendations of the BOE to the Planning Commission in relation to the adequacy of the school attendance area and enrollment capacity in immediately adjacent school attendance areas.

Be it further resolved, enacted, and ordained that this amendment shall be and are passed and considered as an emergency ordinance, and

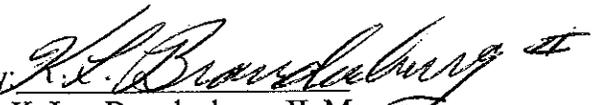
Be it further resolved, enacted, and ordained that the effective date of this amendment is the date of passage, and

Be it further resolved, enacted, and ordained that all other provisions of the ordinance shall and do remain in full force and effect.

Witness and Attest
as to Corporate Seal:


Amy Simmons, Clerk

Town of Keedysville

By: 
K. Lee Brandenburg, II, Mayor

Introduced: 2/6, 2006
Passed: 2/6, 2006
Effective: 2/6, 2006

NOTICE

NOTICE is hereby given pursuant to the Town charter and the provisions of Article 23A of The Annotated Code of Maryland by the Mayor and Council of The Town of Keedysville, that at a duly constituted meeting, amendments were enacted to the Adequate Public Facilities Ordinance. Article V entitled, Schools was revised to set forth adequacy requirements and availability of educational facilities in relation to development. Article II, Definitions was amended to define engineer as Town engineer and does not include Chief or County Engineer. The entire ordinance and amendment is on file in the office of the Town Clerk for inspection, and is incorporated herein and made a part hereof.

The amendments were passed as an emergency ordinance on the _____ day of _____, 2006. The effective date of said amendments is the date of passage.

MAYOR AND COUNCIL OF THE
TOWN OF KEEDYSVILLE

Publish on: _____, 2006

_____, 2006

Send certification and billing to:

Amy Simmons, Clerk
Town of Keedysville
P.O. Box 359
Keedysville, MD 21756

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MEMORANDUM:

December 22, 2005

TO: Mayor and Council
Town of Funkstown
Town of Keedysville
Town of Williamsport
Town of Hancock

SUBJECT: Adequate Public Facilities Ordinance (APFO)

As you are well aware, each of the above municipalities enacted an APFO pursuant to the Provisions of House Bill 1272 (2005), Section 2-701 of The Code of Public Laws of Washington County. This statute became effective July 1, 2005.

After each of the above municipalities enacted an APFO the Board of County Commissioners of Washington County revised its APFO. This revision became effective November 1, 2005, and provided for more stringent requirements in Section 5.4.1(a) pertaining to school capacity adequacy tests. I refer you to Greg Snook's letter of 12/13/05.

On that same date, county Attorney Richard Douglas discussed the APFO's with the writer.

Attached is his opinion in reference to the Funkstown APFO. Section 5 of your ordinance is the same so he feels his reasoning applies to all. Although I take exception to the fact that the County revised their APFO after we had passed an APFO, it is advisable to amend the existing ordinance to conform to the County guide lines.

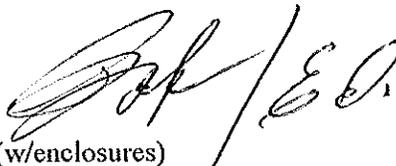
Otherwise, I am sure the staff for the County, and the Board probably will take the position that you must "do the work" and not retain any portion of the excise tax.

Therefore, attached you will find an appropriate resolution amending the APFO accordingly.

Please introduce, pass, and make effective at your next meeting as an emergency ordinance. Notify us of passage; return a signed original to me. We will advertise, record, and deliver to the County Attorney and Board of County Commissioners for distribution.

Thank you for your attention to this important revenue sharing matter.

Robert E. Kuczynski, Esquire
Edward L. Kuczynski, Esquire



cc: Dick Douglas, County Attorney (w/enclosures)
Greg Snook, President, Board of County Commissioners
Rod Shoop, County Administrator (for information and distribution, w/o enclosures)



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December 13, 2005

Robert E. Kuczynski, Esq.
Edward L. Kuczynski, Esq.
55 N. Jonathan Street
Hagerstown, MD 21740

Re: Funkstown ("the Town") APFO

Gentlemen:

This is to follow up on our telephone conversations to the effect that, in my opinion, the APFO adopted by the Town of Funkstown does not meet the requirements of Section 2-701 of the Code of the Public Local Laws, as amended by House Bill 1272, passed during the 2005 session ("the Statute"), for similarity with the County APFO.

As you know, Section 8(b)(1) of the County APFO, implementing subsection (d)(1)(i) of the Statute, provides that in order to retain a portion of the building excise tax, the municipal corporation must adopt "...an adequate public facilities ordinance with school adequacy tests substantially similar to or more stringent than the adequate public facilities ordinance adopted by the County Commissioners. (Emphasis supplied). Failure to satisfy this standard means that the municipal corporation would not be eligible to retain a portion of the building excise tax.

There are two primary respects in which the Town's APFO fails to satisfy the statutory requirement for conformance with the County APFO:

1. Town's APFO: The Town's APFO provides in Section 5.2 that: "The Planning Commission shall determine that a school is adequate if the school has the capacity to accommodate student enrollment without exceeding 105% of the Washington County Board of Education's capacity rating for each school." (Emphasis supplied).

County APFO: By contrast, the County APFO requires in Section 5.2(b) that the schools: "...be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100% of State Rated Capacity for middle schools and high schools."

2. Town APFO: The Town APFO provides, at the beginning of Article V - Schools, that: "All residential new development shall be served by public schools which are currently adequate or programmed in the Washington County Capital Budget or

Robert E. Kuczynski, Esq.
Edward L. Kuczynski, Esq.
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Six-Year Capital Improvement Program to be adequate within six (6) years of final plat or site plan approval." (Emphasis supplied).

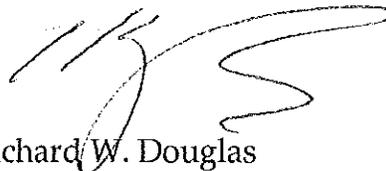
County APFO: The County APFO provides, also in Section 5.1(b), that the schools: "Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation program, scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program (CIP) following final plat or site plan approval." (Emphasis supplied).

I would also forward a comment from Gary Rohrer, Director of Public Works, that the top engineer in County government is now called the "Chief Engineer" rather than the "County Engineer" as in the past. He is also concerned that the present language of the Town APFO pulls the County Engineering Department into the Town's review process and that the Department is not staffed to undertake that responsibility.

Note { I would suggest that the incompatibility arises principally from recent changes to the County APFO. Accordingly, I have enclosed a copy of the latest version of the County APFO as adopted on November 1, 2005. The County Web site always maintains a current version of the County APFO and other measures under "County Ordinances." The address of the County site is www.washco-md.net.

Let me know if you have any questions or comments concerning this matter.

Very truly yours,



Richard W. Douglas
County Attorney

RWD/tbm

cc: County Commissioners (via e-mail)
County Administrator (via e-mail)
Planning Director (via e-mail)
Director of Public Works (via e-mail)
Director of Budget and Finance (via e-mail)

Enclosure -- current County APFO
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