To the Graduate Council:

I am submitting herewith a thesis by Thomas Durham entitled "Development Timing With the Adequate Public Facilities Ordinance: A Case Study of Three Counties in the Washington Metropolitan Area." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science in Planning.

James A. Spencer, Major Professor

We have read this thesis
and recommend its acceptance:

Accepted for the Council:

Vice Chancellor
Graduate Studies and Research

Thesis
T
.D87
Copy 2

DEVELOPMENT TIMING WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE: A CASE STUDY OF THREE COUNTIES IN THE WASHINGTON METROPOLITAN AREA

A Thesis

Presented for the

Master of Science in Planning

Degree

The University of Tennessee, Knoxville

Thomas Durham

June 1977

1324007

ACKNOWLEDGMENTS

I wish to acknowledge the cordial and articulate officials of Montgomery, Prince George's, and Fairfax County whose patience and assistance provided me with an insight into the nature and problems of development timing with the adequate public facilities ordinance in each county. I particularly thank Royce Hanson, John Broda, Luke Lukasewski, Philip Yates, Jim Reid, and Marilyn Pray for their help.

I wish to acknowledge the benefit of the stringent encouragement and significant support of my wife, Daryl, and especially James Spencer.

ABSTRACT

This study of development timing with the adequate public facilities ordinance examines the growth management systems and strategies of three counties in the Washington Metropolitan area that have utilized the ordinance--Prince George's and Montgomery County, Maryland, and Fairfax County, Virginia. The purpose of this study was to determine the impact of the ordinance on the growth management strategy of each county; and to identify the factors, or determinants of the ability of each county to regulate the timing of development with the adequate public facilities ordinance. An examination of the adequate public facilities ordinance within the context of the growth management system and strategy of each of the three Metropolitan Washington area counties was designed to provide a greater understanding of the nature of the ordinance, and the issues and problems that may be encountered with such an ordinance.

Published articles, planning reports, court records, and published records of each county supplied much of the data for the study. Personal interviews with planners, lawyers, and developers in Prince George's, Montgomery, and Fairfax County provided a major portion of needed information.

The conclusions reached were that the Adequate Public Facilities Ordinance has had the greatest impact towards achieving the growth management policies and objectives of Montgomery County. The ordinance has been utilized with less success in Prince George's County. Fairfax County failed in its attempt to adopt and implement an adequate public facilities ordinance modeled after the one used in Ramapo, New York.

It was concluded that the ability of a municipality to regulate the timing of development with the adequate public facilities ordinance is commensurate with the degree that a sound planning foundation has been established upon which to base the controls. A comprehensive plan and a capital improvements program are fundamental elements of the planning and legal foundation for the adequate public facilities ordinance, as well as the support from the public and private sectors for the growth management policies and objectives of the municipality.

TABLE OF CONTENTS

CHAPTER		PAGE
I.	THE INTEREST IN THE ADEQUATE PUBLIC FACILITIES ORDINANCE AND AN OVERVIEW OF THE STUDY. . . .	1
	The Growth Management Problem	1
	Need for the Study.	10
	Methodology	13
	The Data.	14
	The Scope and Limitations of the Study. . . .	17
II.	THE EVOLUTION OF DEVELOPMENT TIMING AND THE ADEQUATE PUBLIC FACILITIES ORDINANCE.	19
	The Concept of Development Timing	19
	Subdivision Controls.	22
	Development Timing with Zoning Techniques . .	24
	Development Timing with Utility Extension Policies.	28
	The Ramapo Plan	30
	The Development Point System.	35
	Summary	38
III.	THE SETTING FOR DEVELOPMENT TIMING WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE.	40
	A Profile of Growth in the Washington Metropolitan Area	40
	The Year 2000 Plan.	42
	"Wedges and Corridors"--the General Plan for Montgomery and Prince George's Counties . .	46
	Prince George's County.	49
	Montgomery County	58
	Fairfax County.	67
	Summary	78
IV.	THE ADEQUATE PUBLIC FACILITIES ORDINANCE IN THE COUNTY GROWTH MANAGEMENT STRATEGIES	80
	Prince George's County.	80
	Montgomery County	89
	Fairfax County.	99
	Summary	110

CHAPTER PAGE

V. THE DETERMINANTS OF THE ABILITY OF EACH COUNTY TO REGULATE THE TIMING OF DEVELOPMENT WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE. . . 112
The Importance of a Sound Planning Foundation. 112
Control Over Public Improvements. 121
Legal Issues. 127
The Importance of Regional Planning 143
Relations with Developers 146
Conclusion. 152

VI. SUMMARY AND CONCLUSIONS 155

LIST OF REFERENCES. 168

APPENDIX. 176

VITA. 190

CHAPTER I

THE INTEREST IN THE ADEQUATE PUBLIC FACILITIES ORDINANCE AND AN OVERVIEW OF THE STUDY

The Growth Management Problem

The problems inherent with suburban sprawl are manifested in communities across the nation, particularly in areas experiencing rapid growth. Since the Second World War, the greatest increases in population have occurred in the suburbs of our cities. By 1970, census figures showed that for the first time suburbanites outnumbered city dwellers. Accompanying this trend has been an increase in the demand for public facilities and services needed to support the new growth. In many instances, however, the costs of providing these services have outstripped the sources of revenue needed to finance them. In the relative absence of the type and amount of industry and businesses that yield large tax revenues, residential suburbs normally have to rely on revenue generated from the property tax to finance the provision of services. As the demand for public facilities and services increases, many suburban communities have come under severe financial stress. Revenues generated from local tax systems typically fail to keep pace with the increases in local expenditures.

This problem is exacerbated in low density suburban communities whose operating costs of services are relatively high as compared with costs in areas of greater density.

Suburban sprawl has also led to increased concern for the quality of the environment. In municipalities experiencing rapid, uncontrolled growth, more and more citizens and local officials are expressing concern over a broad range of environmental problems, including the rise in pollution and the loss of open space and agricultural lands. In some communities, suburban sprawl is perceived as endangering a "way of life."

For these reasons and others, local governments are beginning to utilize a greater variety of techniques, tools, and plans in an effort to regulate, and in some cases to limit growth in their jurisdictions. The most extreme local approaches to controlling growth include the establishment of a total population limit based on the environmental or fiscal capacity of the locality. In Boca Raton, Florida, for example, the City Charter was amended to provide a numerical limit or "cap" on the total number of housing units for that community.[1] Petaluma, California

---

[1]Royce Hanson, "Growth Control: the Role for Regionalism," Management and Control of Growth, Vol. 3 (Washington, D. C.: The Urban Land Institute, 1975), p. 294.

uses another approach by putting an annual quota on the number of building permits to be issued. Population limits tend to be local reactions against rapid population increases which have been perceived to generate higher taxes. In many instances, growth control techniques designed to limit population have been challenged in court on the grounds that they are exclusionary in nature, violate the due process and equal protection clauses of the Constitution, or infringe on the right to travel.

Interim development controls (moratoria), large lot zoning, public acquisition of land, and developer contribution of land or money are among the more indirect techniques and tools for controlling growth that are listed in a recent report[2] by the International City Management Association. Many of these methods too have usually proved inadequate in preventing suburban growth from outstripping services when used alone.

Ramapo, New York was one of the first communities to directly address the problem of timing residential development in accordance with the availability of public facilities and services. Faced with a significant increase

---

[2]Steve Carter, Kendall Bert, and Peter Nobert, "Local Government Techniques for Managing Growth," Management Information Service Report, Vol. 6, No. 5 (Washington, D. C.: International City Management Association, 1974), 41 pp.

in population and the prospect of further sprawl, Ramapo developed a sophisticated growth management system which is based on planning over a long period of time and regulating new development based on the adequacy or provision of public facilities needed to serve it. Ramapo's system has survived legal challenges and in the process has generated considerable interest on the part of planners, lawyers, and local officials in the concept of timed development through the provision of adequate public facilities.

The concept of development timing based on the adequacy of public facilities has become a fundamental element of growth management programs in the Metropolitan Washington Area, where growth control has become a political and planning issue in recent years. From 1960 to 1970, Washington was the fastest growing metropolitan area in the nation. The greatest increase in population occurred in Prince George's and Montgomery County, Maryland and Fairfax County, Virginia. All three counties have been confronted with many of the problems inherent in suburban sprawl-premature development, overburdened facilities, and potential damage to the environment. Each county, in turn, has focused on the adequacy of public facilities as a technique for regulating the timing of development.

Montgomery County (502 square miles) and Prince George's County (486 square miles) are large, urban counties located adjacent to Washington, D. C. (see Figure 1), which has been the major factor in the development of each county. Montgomery and Prince George's County are served by the Maryland-National Capital Park and Planning Commission (M-NCPPC), a bi-county agency established by the Maryland General Assembly in 1927. The General Plan, On Wedges and Corridors, adopted by Montgomery and Prince George's County in 1964, provides the foundation for the growth management programs of each county, which are regarded as among the most sophisticated in the nation.[3]

During the 1960's, Montgomery and Prince George's County experienced rapid, unprecedented growth, largely as a result of the expansion of federal jobs and facilities in each county. The greatest increase in population occurred in Prince George's County. The County's average annual increase in population in the sixties of 30,549 was almost double the level of the earlier decade (16,362).[4]

---

[3]"Washington Metropolitan Area Moves Toward Regional Growth Coordination," A.I.P. Newsletter (April, 1975) (Washington, D. C.: American Institute of Planners, 1975), p. 8.

[4]U.S. Bureau of the Census, Statistical Abstract of the U.S.: 1975 (96th edition) (Washington, D. C.: U. S. Government Printing Office, 1975), p. 19.

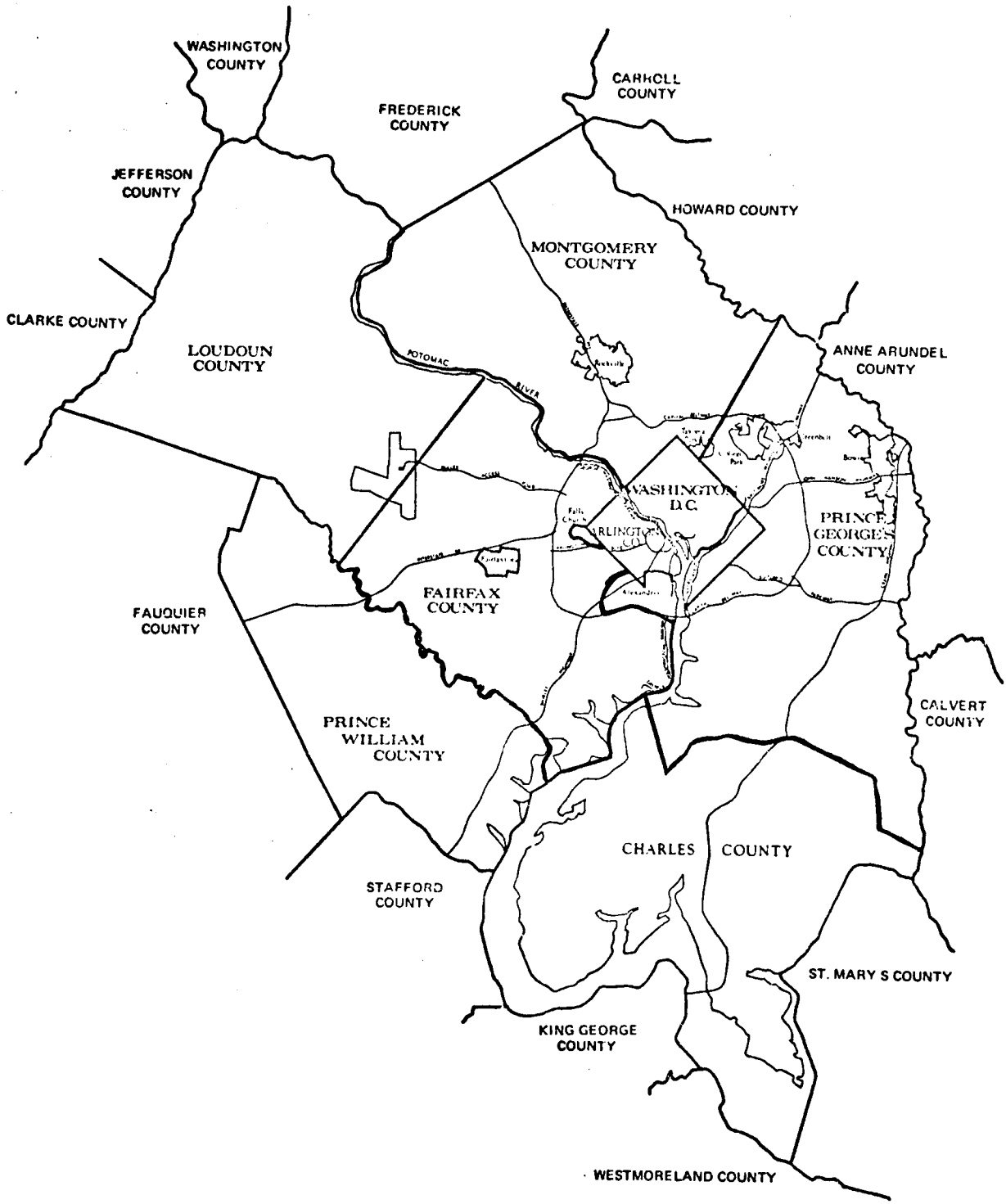


Figure 1. Washington Standard Metropolitan Statistical Area.

Source: Overall Program Design, 1976-78 (Washington, D. C.: Metropolitan Washington Council of Governments, 1976), p. 8.

In Prince George's County, the average personal and family income is significantly lower than in Montgomery County, while property taxes are somewhat higher.[5] The widening gap between the demand for facilities and services to support development, and the sources of revenue with which to finance the provision of such services, became a central concern of Prince George's officials in the late sixties. In 1970, Prince George's County took an important step towards preventing scattered and premature development with the adoption of an adequate public facilities ordinance through an amendment to the subdivision regulations, becoming the first Washington area jurisdiction to have such an ordinance.

Montgomery County has the highest per capita income of any jurisdiction in the nation.[6] County residents are well above the national average in their level of education and, as one observer notes, "County planning efforts frequently become the focus of a very large number of citizen groups, whose members are not only articulate

---

[5] State of the Economy, Technical Staff Report, No. 1 (Prince George's County, Maryland: General Planning Division, 1973), p. 10.

[6] U. S. Bureau of the Census, Statistical Abstract of the U. S.: 1975, p. 82.

and involved, but often sharply critical in pursuit of higher goals."[7]

While Montgomery County's average annual increase in population during the sixties of 18,461[8] was considerably lower than Prince George's, there was evidence that premature development was taking place in the outlying areas of the County, which was contrary to the County's growth management policies and objectives. In 1973, Montgomery County amended its subdivision regulations to provide for a test of the adequacy of public facilities to support the proposed subdivision, an ordinance that is very similar to Prince George's.

Fairfax County, Virginia (399 square miles) is a "second tier" urban county located to the west of Washington, D. C. Unlike Montgomery and Prince George's County, comprehensive planning in Fairfax County is a more recent development. Until about 1950, Fairfax remained basically a semirural community, with the major portion of the population concentrated in the eastern section of the County. Between 1960 and 1970, Fairfax County's

---

[7]Richard Tustian, "Montgomery County Already Uses Most Known Tools; Began Annual Growth Policy Report Last Year," A.I.P. Newsletter (April, 1975), p. 7.

[8]U. S. Bureau of the Census, Statistical Abstract of the U. S.: 1975, p. 20.

population increased by 206,124 persons, nearly equalling the total 1960 County population.[9] The County was unprepared for the rapid growth of the fifties and sixties. Existing plans and programs for channeling growth were soon outdated. In 1971, growth control was a major campaign issue in the local elections for the Board of Supervisors. The following year, the new Board made the decision to replan the entire County and to implement a stronger system land use controls. A key element of the County's new growth management system was an adequate public facilities ordinance modeled after the strategy used in Ramapo.

A brief examination of Montgomery County, Prince George's County, and Fairfax County reflects the differences between each county with respect to their history of development; the nature and scope of the problems that each confronts; and the level, or maturity of the growth management programs of each county. Montgomery and Prince George's County, and Fairfax County have also addressed their respective problems with two separate, and rather distinct strategies for regulating the timing of development with the adequate public facilities ordinance.

---

[9]Preliminary Countywide Plan, Fairfax County: 1975 (Fairfax County: Office of Comprehensive Planning, 1975), p. 6.

The objective of this thesis is twofold: first, to determine the impact of the adequate public facilities ordinance, as an individual growth management technique, on the growth management strategies of Montgomery County, Prince George's County, and Fairfax County; and secondly, to identify the factors and forces which have impacted on the ability of officials in each county to regulate the timing of development with the adequate public facilities ordinance.

Need for the Study

A significant amount of research has been undertaken in recent years on the spectrum of techniques, tools, and plans encompassed in the growth management systems of communities across the nation. The most comprehensive effort to date on the subject of growth management is the three volume set published by the Urban Land Institute titled, Management and Control of Growth. This anthology contains the works of over 140 authors and covers in depth many of the issues, trends, and problems in the field of growth management. A recent publication of the American Society of Planning Officials[10] focuses on the socioeconomic

---

[10]American Society of Planning Officials, Urban Growth Management Systems, Planning Advisory Service, Report Numbers 309, 310 (Chicago, Illinois: ASPO, 1975), 141 p.

and environmental impacts of growth management systems, as well as some of the legal issues of growth management. Some of the emerging techniques for managing the environment are examined in a report published by the Environmental Protection Agency.[11]

While considerable research has been oriented towards current techniques, issues, and trends in growth management, there are few studies that have focused in depth on one particular element of a growth management system. A growth management technique that received a great deal of attention in planning circles in recent years is the adequate public facilities ordinance. As suburban communities continue to experience rapid growth, there is increasing need, as one observer succinctly puts it, "for direct, flexible tempo and sequence controls that enable municipalities to balance over time increasing housing needs with diminished land resources and increased needs for public services with tight municipal budgets."[12] The adequate public facilities ordinance is a relatively new and untested technique for regulating the

---

[11]Office of Research and Development, U. S. Environmental Protection Agency, Managing the Environment (Washington, D. C.: EPA, 1973), 386 p.

[12]Stephen Urbanczyk, "Phased Zoning: Regulation of the Tempo and Sequence of Land Development," Stanford Law Review, Vol. 26 (Stanford School of Law, 1974), p. 585.

timing of development. Assuming that more and more planners and local officials will become interested in the adequate public facilities ordinance, it becomes apparent that a need exists to study the ordinance. The purpose of this thesis is to help meet that need by conducting an examination of the adequate public facilities ordinance within the context of the growth management systems and strategies of communities that have adopted the technique.

Montgomery, Prince George's, and Fairfax County represent three different approaches to development timing with the adequate public facilities ordinance. An investigation and comparison of the differences in the application of the adequate public facilities concept to the growth management strategies of the three counties will contribute towards a better understanding of the ordinance as a technique for regulating the timing of development. By comparing the use of the adequate public facilities ordinance in each county from the perspective of the dynamics of each growth management system, it is possible to identify the major determinants of an effective development timing strategy with the adequate public facilities ordinance.

Methodology

A descriptive case study is the basic method used to investigate and compare the approaches of Montgomery County, Prince George's, and Fairfax County to development timing with the adequate public facilities ordinance. The study examines the impact of the adequate public facilities ordinance on the growth management strategies of each county. For the purposes of this study, the "impact" of the adequate public facilities ordinance is commensurate with the degree that the ordinance has been used to achieve the stated growth management policies and objectives of each county. Generally speaking, the immediate objective of Montgomery, Prince George's and Fairfax County in adopting the ordinance is to regulate the rate and distribution of growth in accordance with the availability of adequate public facilities to support the growth. In the final analysis, the impact of the adequate public facilities ordinance on the growth management strategies of each county is examined within the context of local, and thus more defined growth policies, which are outlined in subsequent chapters.

An extensive web of factors has shaped the experiences of each county with the adequate public facilities ordinance. These factors may be grouped into two categories: (1) factors inherent in the ordinance itself,

i.e., the standards for determining "adequacy"; and (2) external factors that have impacted on the ability of the county to administer the adequate public facilities ordinance. By comparing the development timing strategies of each county, certain factors or forces emerge that are critical to development timing with the adequate public facilities ordinance. The identification of such factors constitutes an important part of the study.

The Data

Three main sources of information are utilized in the study. The first source consulted was the literature of planning and law, including court case records that resulted from challenges of the adequate public facilities ordinance.

The second source consisted of publications of the Office of Comprehensive Planning, Fairfax County, the Maryland-National Capital Park and Planning Commission, the Planning Boards of Montgomery and Prince George's County, the Urban Institute, and the Metropolitan Washington Council of Governments. Other sources in the second category include public records, maps, and letters and memorandums to local government officials in each county. The third, and most important source of data, was a series of interviews in Fairfax County, Montgomery County,

and Prince George's County. The following persons were interviewed:

John Broda, Chief, Development Review Section, Maryland-National Capital Park and Planning Commission (M-NCPPC), Montgomery County.

Grace Dawson, Research Associate, The Urban Institute, Washington, D. C.

Michael Dechant, Technical Director, Suburban Maryland Homebuilders Association.

Dr. Royce Hanson, Chairman, Montgomery County Planning Board, M-NCPPC, Montgomery County.

Monte Kolste, Chief, Public Facilities Division, M-NCPPC, Prince George's County.

Marilyn Lowney, Associate General Counsel, M-NCPPC, Prince George's County.

Luke Lukasewski, Chief, Research and Special Studies Division, M-NCPPC, Prince George's County.

Marilyn Pray, Director, Planning, Programming, and Economic Development, M-NCPPC, Prince George's County.

Jim Reid, former Director, Office of Comprehensive Planning, Fairfax County.

Philip Yates, Chief, Plans Implementation Branch, Office of Comprehensive Planning, Fairfax County.

These people have been key participants in the growth management programs of Montgomery, Prince George's,

and Fairfax County. Through their first-hand participation in conceiving, developing, and administering the Adequate Public Facilities Ordinance, these individuals have knowledge that cannot be duplicated. The opinions of these individuals are undoubtedly shaped by their particular role in the growth management process of the county. The variation in the backgrounds and interests of these people, in turn, affords an opportunity to examine the Adequate Public Facilities Ordinance from each individual's professional, and personal perspective.

Having lived in the Washington Metropolitan area since 1960, the author has been able to closely observe the growth management process in Prince George's, Montgomery, and Fairfax County. The author's familiarity with the planning program of each county, coupled with rather extensive contact with local planning officials, is reflected somewhat in the discussion of the development timing strategies of the three counties. In a few instances, the absence of citation may be attributed to the author's first-hand knowledge of the growth management programs of Prince George's, Montgomery, and Fairfax County.

The Scope and Limitations of the Study

The study focuses on the application of the Adequate Public Facilities Ordinance in the growth management strategies of three counties in the Washington Metropolitan area, Fairfax, Prince George's, and Montgomery. As is true with descriptive research in general, a case study lacks well-defined variables. In the present study, the Adequate Public Facilities Ordinance is viewed as one technique in an integrated system of controls that operates in a highly dynamic setting. The number and complexity of the variables inherent in the subject matter of the study does not lend itself to quantitative analysis. Consequently, in an effort to determine the impact of the Adequate Public Facilities Ordinance on the growth management strategies of each county, the study focuses on the several key actors in the growth management process, and their perceptions of the impact of the ordinance.

Finally, the experiences of Montgomery County, Prince George's, and Fairfax County with the Adequate Public Facilities Ordinance have been impacted on by the constant interaction of a variety of forces. One prominent writer devotes an entire study to an examination of the "processes, forces, and actors" that shape

the suburban land conversion process in America.[13] Many of the "processes, forces, and actors" that are the focus of Marion Clawson's study have had both direct and indirect implications for the development timing strategies of the three Washington counties. Again, given the number and complexity of the factors that have impacted on the Adequate Public Facilities Ordinance of each county, the findings of the present study are not expected to be exhaustive. The findings of the study, however, may be used as a foundation for subsequent research of the Adequate Public Facilities Ordinance.

---

[13]Marion Clawson, Suburban Land Conversion in the United States: An Economic and Governmental Process (Baltimore, Maryland: The Johns Hopkins Press, 1971), 406 p.

CHAPTER II

THE EVOLUTION OF DEVELOPMENT TIMING AND THE ADEQUATE PUBLIC FACILITIES ORDINANCE

The concept of development timing emerged largely in response to the increasing need among many local governments for more flexible tools and techniques for controlling growth. Although the concept of development timing is well established, there has been considerable experimentation with both traditional and innovative tools, techniques, and plans for implementing the concept. A brief discussion of the concept of, and approaches to development timing, and some of the important case decisions involving timing controls, will give perspective to the significance of the adequate public facilities ordinance.

The Concept of Development Timing

The concept of regulating the timing of urban development was introduced as early as 1955. Henry Fagin, for one,[1] observed that the comprehensive plan was not

---

[1]The timing of development is also the subject of a well-written article by Henry Schmandt, "Municipal Control of Urban Expansion," Fordham Law Review, Vol. 24, No. 4 (New York, New York: Fordham Law School, 1961), pp. 637-57.

responsive to the ever-changing land use activities involved in urban development. The comprehensive plan most often depicted an ideal balance among districts of land classified as residential, commercial, and industrial, and in this sense, it represented what Fagin termed, "static space coordination." Fagin, however, stressed the need for a dynamic approach to planning, one that shifted the emphasis from a map depicting categories and patterns of land use, to a consideration of the activities involved in urban development.[2] The concept of development timing clearly addresses the dynamics of urban growth, including: (1) the tempo, or rate at which development takes place; (2) the geographic sequence, or the successive locations at which development takes place; and (3) the balance, or the continuing relationship between different types of development within the community.[3]

There are several motivating factors for regulating the timing of urban development. Henry Fagin cites at least four legitimate planning bases for timing controls:

---

[2]Henry Fagin, "Regulating the Timing of Urban Development," Law and Contemporary Problems, Vol. 20, No. 2 (Duke University Law School, 1955), p. 299.

[3]Philip Green, Cases on Planning Law and Administration (Chapel Hill, North Carolina: Institute of Government, 1962), Chapter 14, p. 37.

(1) to economize on the costs of providing municipal facilities and services; (2) to maintain control over the eventual character of development by preventing premature and sporadic building in unripe places; (3) to maintain a desirable degree of balance among various uses of land; and (4) to achieve greater detail and specificity in development regulations.[4]

Many communities, particularly those in areas of rapid growth, have attempted to regulate the tempo and/or sequence of growth through a variety of direct and indirect methods. Philip Green notes that the following techniques have been used to regulate the timing of development: public ownership of land; tax policies; subdivision controls; zoning; and government policies for the extension of public utilities.[5] The following section focuses on the application of the development timing concept through subdivision regulations and zoning, and examines some of the legal issues that have emerged in connection with the development timing schemes of a few communities.

---

[4]Henry Fagin, "Clinic: Development Timing," Planning (1955) (Chicago: American Society of Planning Officials, 1956), p. 95.

[5]Green, p. 37.

Subdivision Controls

Subdivision controls have traditionally been used by local officials to regulate the internal design of a subdivision. A growing number of communities, however, require dedication of land, or payment in cash toward the cost of parks, school sites, and other public places. Despite steady progress in the area of subdivision control, an authority on subdivision law proclaimed during the sixties that subdivision legislation and control ordinances were not sufficiently sophisticated to allow communities to regulate more than the internal aspects of each subdivision. Richard Yearwood, among others, have decried the lack of control over timing and location of subdivision activity.

> Land subdivision is the single most important factor in guiding growth and developing the community pattern, and it is vitally important that our communities be able to exercise control over where and when subdivision actually takes place, as well as to regulate the physical improvements necessary in them.[6]

No statutes in the United States explicitly authorize the use of subdivision control to regulate the rate of growth and the sequence of growth.[7] Despite the

---

[6]Richard Yearwood, "Subdivision Law: Timing and Location Control," Journal of Urban Law, Vol. 44 (Detroit: Detroit University Law School, 1967), p. 585.

[7]Ibid., p. 586.

absence of specific statutory authority, some communities have attempted to adopt regulations to prohibit subdivision of land unless public facilities are adequate. Since an average of one third of all public service costs is for education,[8] it is not surprising that municipalities have tried to prohibit new subdivisions on the grounds that local school facilities are not adequate to cope with an influx of families. The Planning Board of Milford, Connecticut, for example, attempted to deny subdivision approval because school facilities were inadequate, basing the disapproval on the fact that the financial circumstances of the town were such that no new schools could be built in the area for some time. The court ruled that there was nothing in the enabling legislation, "which authorizes regulations prohibiting the subdivision of land because it would place additional financial burdens upon the town."[9] In the absence of enabling legislation, no cases were reported as of 1967 in which the use of subdivision regulations to control the timing or location of development had been upheld.[10]

---

[8]Marion Clawson, Suburban Land Conversion in the United States, p. 159.

[9]Beach v. Planning and Zoning Commission, 141 Conn. 84, 103 A.2d 814 (1954).

[10]Richard Yearwood, p. 601.

Development Timing with Zoning Techniques

Recognizing the statutory limitations of regulating the tempo and sequence of development through subdivision regulations, several communities have utilized zoning, either directly or indirectly, to channel residential development. The zoning requirement of a large minimum lot size--of five acres or more--has been widely used as an indirect approach to development timing. Later, when the need for more intense development in the large lot zones becomes apparent and facilities and services can be extended, these areas can be rezoned for higher density development. Another popular approach to development timing has been to zone fringe areas not ready for residential development for agricultural, commercial, or industrial use. This implies a requirement that residential development be prohibited in such zones. Once the need for residential development is determined, the municipality can rezone the fringe areas accordingly.

In view of the fact that zoning fringe areas for future development is no guarantee against premature development, a few municipalities experiencing particularly intense development pressures have turned to more direct zoning devices for channeling growth. One bold approach to emerge during the mid-1950's was the timing of development through a limitation on the number of building permits issued over a given period of time.

A scheme along these lines was adopted by the town of New Castle in northern Westchester County, New York. The town's zoning ordinance was amended in 1956 to put all lands not served by necessary municipal services such as streets, water, sewer, schools, police, into a special residential district. The ordinance stipulated that no more than 112 building permits could be issued annually in the special district. The New York Supreme Court invalidated the ordinance on the dual grounds that it was arbitrary and without statutory authority, and the court held directly that the New York zoning enabling act gave the town no power to regulate its rate of growth.[11] The court also noted that no emergency existed that demanded the exercise of police power so as to limit building permits.

During the 1950's, a number of municipalities amended their subdivision regulations or zoning ordinance for the express purpose of regulating the timing of development within their jurisdiction. In nearly every case, these efforts were thwarted in court.[12] Two legal

---

[11]Albrecht Realty Co. v. Town of New Castle, 8 Misc. 2d 255. 167 N.Y.S. 2d 843 (1957).

[12]Richard Cutler, "Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe," Wisconsin Law Review (Wisconsin Law School, 1961), p. 387.

issues, in particular, were addressed by the courts: (1) the statutory validity of development timing controls--does the municipality have the proper legislative authority to regulate the rate and/or sequence of development within its jurisdiction? and (2) the constitutional validity of development timing controls--is the means of regulation "reasonable" and in the "public interest"? Development timing efforts utilizing subdivision controls generally failed the first test. The first case to uphold the use of zoning to control the tempo and sequence of development was Joseph v. Town of Clarkstown.

Clarkstown, located in Rockland County, New York, pioneered with a rational approach toward regulating the timing of development. A carefully worked-out plan designated areas for immediate residential development, primarily around existing settlements, and areas for subsequent development (R-1 districts) farther out from such settlements. The town's zoning ordinance was amended in 1955 to set minimum lot sizes of 40,000 feet in the R-1 district. The development timing provision of the ordinance was introduced in the form of a special permit for automatic reduction in lot size--from 40,000 feet to 22,000 feet--if the planning board found that the various public facility requirements for the permit had been met. The specific findings to be made by the planning board

were: (1) public water and sewer facilities should be available; (2) the development must lie within 1,000 feet of an area already developed at similar density; and (3) public services (including schools) or plans for provision of them for residents of the development are adequate.[13]

Five years after the ordinance was passed, the refusal of a special permit for smaller lot development in the R-1 district was challenged in court. The plaintiff applied for a special permit, and was refused on the ground that it would crowd schools unduly to build on 22,500 square foot lots. In Joseph v. Town Board of Clarkstown, the court upheld the validity of the zoning ordinance, noting that one of the purposes of zoning regulations is the "facilition of adequate provision of school requirements."[14]

The Clarkstown scheme is important as it represents an attempt by a municipality to rationally plan the tempo and sequence of growth. More specifically, the Clarkstown plan demonstrates the significance of coordinating a municipality's zoning powers with the availability of

---

[13]Richard May, Jr., "Clinic: Development Timing," p. 92.

[14]Josephs v. Town Board of Clarkstown, 24 Misc. 2d 368, 198 N.Y.S. 2d 699 (1960).

public facilities and services to support development.

Development Timing with Utility Extension Policies

The provision of public services has long been recognized by planners as a potentially significant method of regulating the tempo and sequence of development. Several planners have shown how particular services, or combinations of them have influenced suburban development. F. Stuart Chapin and Shirley Weiss[15] have demonstrated the importance of the proximity of elementary schools and highways, and the availability of sewer as determinants of the land development process. Kenneth B. Kenney shows that water and sewer extension policies can assume a critical role in determining urban development, densities, and sequence. Kenney, however, observes that the "manipulation of these service policies in a conscious manner to accomplish a desired form and sequence of urban growth has been seldom used to date."[16]

Bucks County, Pennsylvania is among the few jurisdictions in the nation to utilize the provision of public

---

[15]F. Stuart Chapin and Shirley Weiss, Factors Influencing Land Development (Chapel Hill, North Carolina: Institute for Research in Social Science, 1962).

[16]Kenneth B. Kenney, Urban Water Policy as an Input in Urban Growth Policy (Knoxville, Tennessee: Water Resources Research Center, 1972), p. 44.

services and utilities in conjunction with well-defined development policies to regulate the tempo and sequence of growth at the urban fringe. The basic development policy of Bucks County is to prevent scattered development and urban sprawl, while encouraging development in general.[17] To this end, the County has been divided into "development areas" on the basis of the suitability of the land for development. The strategy of Bucks County is to concentrate the provision of public facilities and services in well-defined areas of the County where development pressures are intense, while postponing development for fringe areas where growth pressures are not intense, and where public facilities and services cannot be provided in the immediate future. The Development Area, in turn, is extended every five years through the provision of public services and utilities in order to accommodate new growth.

If utilized to full advantage, then, policies for the extension of public facilities and services can be a powerful tool for regulating the timing and location of development. Ramapo, New York is another municipality which has consciously used utility extension policies to

---

[17]"The Urban Fringe: Techniques for Guiding the Development of Bucks County," Land Use Controls Quarterly, Vol. 4, No. 1 (Chicago: American Society of Planning Officials, 1970), p. 35.

regulate the timing and location of growth. Ramapo, however, has been the first community in the nation to link the provision of public facilities and services to the Town's regulatory powers, in this case the zoning ordinance. In 1969, the "adequate public facilities" concept was manifested in Ramapo's well-known plan for growth control. The importance of the Ramapo plan and the subsequent court decisions on the adequate public facilities ordinance warrants further discussion.

The Ramapo Plan

The Town of Ramapo is located in Rockland County, New York, approximately 30 miles northeast of New York City. The unincorporated area of the town is 48.6 square miles and the entire township is 89 square miles. The development of major transportation routes during the sixties made Ramapo within commuting distance of New York City. Between 1960 and 1966 alone, the population of the Ramapo unincorporated area increased by 78.5 percent, a faster rate than any other unincorporated township in the state. In 1964 more than one-half of the unincorporated land was considered developed and unavailable for future growth.[18]

---

[18]Manuel Emanuel, "Ramapo's Managed Growth Program: After Five Years' Experience," Management and Control of

Faced with pressures of an increasing population and the prospect of further urban sprawl, the Town Planning Board took a series of steps toward growth control. In 1966, a Master Plan was adopted that enunciated two key development policies:

> (1) The population increase provided for in the town's Development Plan should be kept to a moderate level so that the existing rural, semirural and suburban character in different parts of the town can be maintained and so that the existing and projected public facilities will not be overburdened; and
> (2) Provision should be made for adequate public facilities (e.g., transportation, circulation, education, recreation, etc.) consistent with the anticipated needs of a growing population.[19]

Other key elements were progressively added to Ramapo's system of controls. A comprehensive, revised zoning ordinance was adopted in 1966 which, among other things, stated a purpose "to limit development to an amount equal to the availability and capacity of public facilities and services."[20] In 1967, an official map was adopted that included all new roads to be built, and designated

---

Growth, Vol. 3 (Washington, D. C.: Urban Land Institute, 1975), p. 302.

[19]Ibid., p. 303.

[20]Israel Stollman, "Ramapo: An Editorial and the Ordinance as Amended," Planning, July, 1972 (Chicago: American Society of Planning Officials, 1972), p. 24.

areas for future use as drainage ways, parks and recreation areas. The following year, the Town proceeded to prepare and adopt a capital budget that provided a firm commitment for the development of capital improvements specified as needed for a period of six years. To supplement this step, the Planning Board also adopted a capital plan which provided for the location and sequence of capital improvements for the following 12 years. Together, the capital budget and capital plan provided for the capital improvements anticipated for full development of Ramapo in accordance with its master plan.

With the plan and capital budget process as the basic framework, the Planning Board sought a way to implement control of development in accordance with both. This was accomplished by linking the zoning controls to the availability of existing or programmed public facilities and services to support development. The Town Board amended the zoning ordinance to make residential development a special use classification. Furthermore, in order to be issued a building permit, or granted subdivision approval, an applicant has to obtain a special permit from the Town Board. To obtain a special permit, in turn, the applicant has to show that certain municipal services existed: public sanitary sewers or approved substitutes; drainage facilities; improved public parks or recreation

facilities, including public schools; state, county, or town roads; and firehouses.[21] Each facility or service was given a sliding point value and the degree of availability of each service to the particular development determined the number of points awarded. In order to obtain a special permit, a project had to have at least 15 such points. However, the capital budget and capital plan spelled out when the various services and facilities would be installed for the next 18 years, thus no developer would have to wait more than 18 years for enough points to permit subdivision of his property. Thus, the master plan, the capital budget and capital plan, and the newly-adopted zoning ordinance provided "an overall program of orderly growth and adequate facilities through a sequential development policy commensurate with progressing availability and capacity of public facilities."[22]

The zoning ordinance and its scheme of controlled growth was promptly challenged, and the case was eventually appealed to the state's highest court. In Golden v. Planning Board of Town of Ramapo, three basic issues were

---

[21]Ibid., p. 21.

[22]Golden v. Planning Board of Ramapo, 285 N.E. 2d 293 (1972).

addressed: (1) was the ordinance within the scope of the enabling legislation; (2) did the controls amount to an absolute prohibition of subdivision; and (3) was the effect of the controls exclusionary in nature.[23]

On the first issue, the court found that while the enactment of "sequential" and "timing" controls was not specifically authorized by such legislation, it was "necessarily implied" by the power to restrict and regulate land uses.[24] The plaintiff's claim that the controls, in effect, prohibited any subdivision, because development could only be carried out if the Town provided facilities, was rejected by the court because the developer was free to install the services and facilities himself. The court also noted that the restriction was only temporary in that development would ultimately take place within the 18-year period.[25] The proposition that the restrictions resulted in a confiscation of property without compensation

---

[23]Robert Freilich, "Development Timing, Moratoria, and Controlling Growth: Preliminary Report," Management and Control of Growth, Vol. 2, pp. 367-8.

[24]Golden v. Planning Board of Ramapo, 285 N.E. 294 (1972).

[25]Zoning Digest Editors, "The Ramapo Case: Five ZD Commentaries," Zoning Digest, Vol. 24 (Chicago: American Society of Planning Officials, 1972), p. 67.

was rejected. Finally, the court did not find the Ramapo plan to be exclusionary. It pointed out the distinction between reasonable controlled growth and exclusionary zoning, holding that the point system was linked to a comprehensive plan and included provision for large amounts of low- and moderate-income housing.[26]

The Development Point System

The heart of Ramapo's plan for controlled growth with development timing is the development point system. Manuel Emmanuel, a planning consultant to Ramapo, later acknowledged that two critical planning considerations in the evolution of the town's zoning amendment were: (1) which facilities and services should be included in the point system; and (2) what standards should be established for the issuance of the special permits which revolve around the point system.[27]

During the process of determining the elements of the point system, namely sewer facilities, drainage facilities, recreation facilities, roads, and firehouses, initial consideration was given to the scope of the master

---

[26]Robert Freilich, "Development Timing, Moratoria, and Controlling Growth," p. 367.

[27]Manuel Emanuel, "Ramapo's Managed Growth Program," p. 307.

plan, official map, and three special facilities studies that were conducted early in the planning process. The latter included a plan for future sewer development, a drainage study and plan, and a recreation plan. The final determinant of the facilities and services to be included in the point system was the scope of the proposed capital budget and capital plan. An early decision was made by the Planning Board to include only those elements over which it had direct or indirect fiscal control. For this reason, the inclusion of standards with respect to the adequacy of school facilities was first considered and finally rejected as inappropriate since separate special district jurisdictions had control over this matter.[28]

The problem of choosing standards and criteria for each element was facilitated by the special facility studies and the master plan. The data generated from the special studies, together with the projected capital improvements for the next 18 years, indicated the general capacity of each element. By mapping this information on an overlay, it was possible to identify the point values assigned to a given area within which a prospective subdivision was located.[29]

---

[28]Ibid., p. 307.

[29]Ibid., p. 308.

Five years after the adoption of the point system, Ramapo officials were unanimous in their conviction that the point controls had been effective towards slowing the rate of residential development, and in guiding that development to servicable areas.[30] In 1974, Emanuel commented:

> We've been finding that the development has been filling in, which was one of the objectives of the program. It's working in two respects. One is the number of lots coming into development. The general magnitude of growth is being significantly diminished. In the late '60's we were getting 900-1000 lots coming into development each year; now we are down to 250 to 300.
>
> Another thing we're finding is that the sequence of development is right. Development is filling in the areas where services are available. Developers are participating in the provision of public facilities to a limited extent in two areas. One is drainage; the other is recreation.[31]

Much of the recent commentary on the Ramapo method for controlling growth has focused on the legal aspects of the town's point system, and the significance of the Ramapo case. Herbert Franklin, a critic of the Ramapo scheme, acknowledges:

> The Ramapo development timing ordinance is a potentially useful planning and regulatory device,

---

[30]Susan Adams, "Growth Control with Development Timing in Ramapo, New York," unpublished Master's Thesis, The University of Tennessee, Knoxville, 1974, p. 59.

[31]Ibid., pp. 58-9.

> and, in the case of Ramapo's development timing, the town's development plan is given far greater legal effect than is usually the case since it is more clearly the basis for controlling the rights of private parties who wish to develop land for housing.[32]

Robert Freilich, Ramapo Town Attorney and the author of the amendments to the town's zoning ordinance which incorporated the point system, comments:

> The most significant aspect of the Ramapo case, is that it represents the first time any court of the United States has upheld the concept of long term restrictions on development in metropolitan areas through comprehensive planning, or an exercise of the zoning power, without compensation.[33]

Summary

Since the 1950's, suburban communities have used a variety of techniques, tools, and plans in an effort to regulate the timing and location of development, including subdivision regulations, zoning, and policies for the extension of utilities. Ramapo's adequate public facilities ordinance represents the integration of the latter two. The ordinance was prepared and enacted under the

---

[32]Herbert Franklin, "Controlling Urban Growth: But for Whom? The Social Implications of Development Timing Controls" (Washington, D. C.: The Potomac Institute, Inc., 1973), p. 8.

[33]Robert Freilich, "Golden v. Town of Ramapo: Establishing a New Dimension in American Planning Law," Urban Lawyer, Vol. 4, No. 3, 1973, pp. ix-x.

twin propositions that (1) policies for extending public facilities and services have a significant impact on the timing and location of future development; and that (2) zoning regulations that restrict or phase development where the local government is unable to provide facilities is permissible--as long as a "reasonable" effort is made by the government to provide those facilities and services. By linking the provision of public facilities and services to the regulatory tools, the adequate public facilities ordinance allows a municipality to "time" or "stage" growth in accordance with the availability of public services to support the development. In view of the rationality of the adequate public facilities concept, it would seem only a matter of time before other communities facing development pressures similar to Ramapo's would attempt to adopt the adequate public facilities ordinance.

CHAPTER III

THE SETTING FOR DEVELOPMENT TIMING WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE

A Profile of Growth in the Washington Metropolitan Area

Since the Second World War, the Washington Standard Metropolitan Statistical Area (SMSA) has had one of the highest growth rates of any metropolitan area in the nation. Its current population of over three million is three times what it was in 1950.[1] Although growth in the Washington SMSA has slowed markedly in recent years from those of the fifties and sixties, few areas have experienced such a high, sustained rate of growth.

The basic driver of population growth in the Washington SMSA has been the Federal Government. The area's economy is based on and driven by the policies and programs of the Federal Government. Over a quarter of the area's work force is directly employed by the Federal Government, and another one-quarter to one-third work for agencies or businesses that are supported by Federal

---

[1]U. S. Bureau of the Census, Statistical Abstract of the U. S.: 1975 (96th edition) (Washington, D. C.: U. S. Government Printing Office, 1975), p. 25.

dollars.[2] The high proportion of Federal workers in the Washington SMSA is one reason why three counties, Montgomery, Prince George's, and Fairfax, are among the nation's highest in terms of per capita income.

From a planning perspective, the most significant factor in the growth of the Washington SMSA has been the change in the distribution of the population during the past three decades. Since World War II, population growth in the Washington SMSA has been overwhelmingly suburban oriented. A variety of causal factors can be cited to explain this geographic shift: (1) the establishment of the Federal Housing Administration which made possible the rapid development of the suburban home building industry; (2) the construction of the Interstate Highway System and the improvement of the area's major arterials during the 1950's; (3) the completion of the Capital Beltway (the major circumferential); and (4) overt Federal action to locate Federal facilities and jobs in the suburbs. Between 1960 and 1974, nearly 80 percent of the region's Federal civilian employment growth took place in the suburbs.[3]

Concomitant to the suburbanization process has been

---

[2]Metropolitan Washington Council of Governments, Overall Program Design, 1976-1978, March, 1976, p. 1.

[3]Ibid., p. 4.

increased accessibility and the availability of more land for suburban development. Today, there are basically three tiers of suburbs in the Washington area. The first tier consists of the "mature" counties--Arlington and Alexandria--whose areas are, for the most part, fully developed. The second tier of suburban counties, Prince George's, Montgomery, and Fairfax, are the fastest growing, having comprised over 85 percent of the region's total population growth between 1960 and 1970.[4] Loudoun County, Prince William, and Charles Counties constitute a third development tier. These counties are basically semi-rural, and potentially bear the major burden of metropolitan growth in the near future.

The Year 2000 Plan

The first substantial step toward development of a metropolitan planning process was taken in 1961 when a "Policies Plan for the Year 2000," or Year 2000 Plan was published by the National Capital Planning Commission. A major feature of the Year 2000 Plan was the requirement that Federal facilities be located in conformance with the development policies of the Year 2000 Plan.

---

[4]Thomas Muller, Fiscal Issues in Metropolitan Growth (prepared for the Metropolitan Washington Council of Governments, August, 1973), p. 11.

In 1964, the Washington Council of Governments Board of Directors adopted a policy resolution based upon the Year 2000 proposals, and this statement has served as the general planning guide for the Washington area since that time. The "Resolution on Development Policies for the Year 2000" recommends the development of a series of new communities situated on rapid transit corridors radiating from the central city and separated by large wedges of open space. At the same time, emphasis was laid on the need for a strong central core with increased federal employment.[5]

The Year 2000 Plan, then, proposed that the problem of urban sprawl could best be solved if the future development of the region were to assume a radial corridor pattern. Some of the advantages thought to be gained by following this development pattern were: (1) convenience based upon the concentration of facilities and population; (2) economies in the provision of public services; (3) reduction in travel times to and from employment; and (4) preservation of open country in the same proportion to urbanized area.[6]

---

[5]Metropolitan Washington Council of Governments, Re-examination of the Year 2000 Policies Plan, Vol. 1, 1972, p. 24.

[6]Ibid., p. 53.

Although the Year 2000 Plan has often been referred to as the "Radial Corridors" plan, no mapped representation of the plan has been adopted at the metropolitan level. Local governments and planning agencies have developed, and in some cases adopted and implemented, more detailed plans and programs based upon the general policy recommendations of the Year 2000 Plan.

In 1966, the National Capital Regional Planning Commission was disbanded and the Washington Council of Governments began to assume major responsibilities in the field of regional planning. Approximately 10 years after the publication of the Year 2000 Plan, local officials decided that a re-examination of the plan was warranted. Questions had been raised about the feasibility of implementing the Year 2000 Plan, particularly with regard to the rapid transit and preserving open space and wedges.

The Re-examination of the Year 2000 Policies Plan, or Re-examination, was conducted in three phases which included an analysis of development trends in the 1960's, a public discussion of the alternatives to the wedges and corridors development concept, and a detailed examination of the issue of metropolitan growth. It was discovered that the growth patterns of the 1960's did not severely undermine the plan, although there were indications that the wedges would soon come under increased development

pressure.[7] Public preference for the wedges and corridors concept was reaffirmed over other alternatives including centralized high density development, low density suburbanization, and separated satellite cities.

The major conclusion of the Re-examination was that the weakness of the Year 2000 Plan was not so much in its general recommendations as in the lack of guidance provided on the subject of how to implement the plan. Although the general goals still met with public approval to a substantial extent, the view of the Washington area as it should appear in the year 2000 provided very little guidance to policy makers faced with such decisions as when and where to extend sewer lines. It was concluded that planning in the metropolitan area should focus much more sharply on current choices and the long-range implications of current decisions.[8]

With the Year 2000 Plan as a policy guide (however weak) for the development of the Washington Metropolitan area, Prince George's, Montgomery, and Fairfax counties each began to take a series of steps toward strengthening their land use controls. Although planning and zoning

---

[7]Ibid., p. 59.

[8]Metropolitan Washington Council of Governments, A Proposal for a Metropolitan Growth Policy Program, 1975, p. 15.

efforts in these counties began as early as the 1920's, the unprecedented population growth of the 1950's and 1960's provided the impetus for the development of sophisticated land use control systems in each county.[9] An integral element of each county's growth control strategy in the 1970's has been development timing with the adequate public facilities ordinance.

"Wedges and Corridors"--the General Plan for Montgomery and Prince George's Counties

Prince George's and Montgomery County both have a strong tradition of planning. The Maryland-National Capital Park and Planning Commission (M-NCPPC), a bi-county agency serving both counties, was created in 1927, making it one of the oldest in the nation. In 1964 a major policy step was taken with the adoption by the Planning Commission of the General Plan On Wedges and Corridors for both Montgomery and Prince George's County. On Wedges and

---

[9]A series of external factors (national and local) have also forced each County to adopt more stringent growth management programs and techniques. The national economic recession, the "energy crisis," the existence of sewer moratoriums, and increasing pressures for more low-income housing in Montgomery, Prince George's, and Fairfax County have been major factors in the acceleration of the growth management efforts in each county.

Corridors was modeled after the Year 2000 Plan for the Washington Metropolitan Area, and provides for consolidated development, taking place in orderly stages, to minimize the effects of urban sprawl. More specifically On Wedges and Corridors proposes that most of the new growth be located in planned, large-scale corridor cities strung out like beads along the four major transportation corridors in both counties. The "wedges," or spaces between the corridors, are to be maintained in rural and very-low density uses in order to conserve their open space character.[10]

Land use planning in Montgomery and Prince George's County is based on a hierarchy of plans that represent different levels of specificity. On Wedges and Corridors establishes broad policy guidelines for land use, transportation and circulation, conservation, open space, sewer and water systems, employment, and housing. More detailed land use recommendations are contained in the Area Master Plans of each county. Technically, all Area Master Plans are amendments to On Wedges and Corridors and are in accord with its express policies but fleshed out in greater detail. The 26 Area Master Plans in Prince George's County are, in

---

[10]General Plan On Wedges and Corridors: 1964 (Montgomery and Prince George's Counties, Maryland: the Maryland-National Capital Park and Planning Commission, 1964), pp. 16-19.

turn, organized into seven Subregion Plans which emphasize the delineation of whole communities rather than specific land uses. In some instances, specific land use problems call for more detailed study and analysis than are normally required in master plan preparation. In Prince George's County, Special Treatment Area Plans are designed to cover specific and complex land use problems. In Montgomery County, such problems are addressed in the Sector Plan.

When On Wedges and Corridors was adopted in 1964, zoning and subdivision regulations were the basic tools available to implement the "wedges and corridors" concept embodied in the plan. Zoning was relatively weak as a means of guiding development and protecting the wedge areas. A significant portion of land in both counties was overzoned for residential use. Residential over-zoning was so pronounced that in 1964, both counties could have accommodated five and one-half times their present population under existing zoning.[11] This ratio of zoning to foreseeable use was dysfunctional to the objective of preserving the natural resource wedges. Nowhere in Prince George's County were lot sizes of more than 20,000 feet (one-half acre) required. In Montgomery County, two-acre

---

[11]Ibid., p. 74.

zoning had been adopted for only a few locations.[12]

The General Plan for Montgomery and Prince George's County also took note of the overall state of subdivision controls:

> . . . with the present subdivision regulations, high quality development is not guaranteed. Much land is being divided into lots prematurely, without adequate reservations or dedications of land for public purpose, and with too little regard for conservation practices. These deficiencies need attention now.[13]

The major weakness of On Wedges and Corridors was that it lacked the necessary tools to implement the wedges and corridors pattern of development. Soon after the Plan was adopted, Montgomery and Prince George's County each began a systematic effort towards strengthening their control over the location and timing of development within their respective jurisdictions. In Prince George's County, fiscal problems provided an additional incentive for the adoption of more direct growth control measures.

Prince George's County

During the 1960's, Prince George's County led the way among Washington area jurisdictions in terms of population growth and housing construction, particularly with regard to apartment development. Prevailing trends in

---

[12]Ibid., p. 77.

[13]Ibid., p. 93.

terms of home values, personal income, and job quality, however, were not nearly as favorable. Prince George's County was essentially a "bedroom community" during the sixties with almost one half of its residential labor force commuting to neighboring jurisdictions for employment.[14] As a result, the "physical" growth of the County during this period rather heavily exceeded its "economic" growth. As a direct consequence of this unbalanced development pattern, income and property taxes were forced upward. Even though substantial increases in both types of taxes were enacted, the increases were still not large enough to meet the needs being generated.[15] The overall problem facing County officials, then, became one of how to revise this situation and to assure that the economic growth of the County would keep pace with the County's physical development. A related problem was how to maintain an improved level of public facilities and services, while stabilizing tax rates.

It was from this general background that the idea of staging development in Prince George's County first emerged. Several Area Master Plans published during the 1960's

---

[14] State of the Economy, Technical Staff Report, No. 1 (Prince George's County, Maryland: General Planning Division, 1973), p. 9.

[15] Ibid., p. 17.

recognized the need to stage development. One plan stated:

> Without staging the sequence of development, urban growth leapfrogs across the countryside; the urbanized areas become problem areas which are susceptible to unplanned development, which often turns out to be incompatible with adjacent land uses.[16]

However, none of the plans attempted to designate staging districts on a map. The major problem was the absence of tools to implement the staging concept.

In 1968 the County Council took an important step towards better management of the development process with the creation of a Six Year Capital Improvements Program. The following year the Maryland General Assembly, in recognition of the direct relationship between water and sewer line extensions and the urban growth pattern, enacted the Ten Year Water and Sewerage Law. The law requires every jurisdiction in the state to submit annually an updated plan for the construction of water and sewer facilities. The plan must delineate portions of the county to be served by community systems in the succeeding ten-year period and, therefore, has become known popularly as the "Ten Year Water and Sewerage Plan." The Washington Suburban Sanitary Commission, a bi-county agency serving Montgomery and Prince George's Counties, is required to

---

[16]Bowie-Collington Master Plan: 1968 (Prince George's County, Maryland, General Planning Division, 1968), p. 14.

prepare the Ten Year Water and Sewerage Plan for each county. The regulation implementing the Ten Year Water and Sewerage law requires the delineation of five categories of service areas; namely:

> (1) areas currently served;
> (2) areas for which facilities are under construction or are in the final planning stage;
> (3) areas for which construction of facilities is to be given top priority;
> (4) areas for which community facilities are foreseeable in ten years; and
> (5) areas for which community facilities are not foreseeable in ten years.[17]

The Capital Improvements Program, together with the Ten Year Water and Sewerage Plan enhanced the County's ability to regulate the timing and location of development. Nevertheless, the newly enacted controls did not preclude the possibility that premature development could, in fact, still occur. Marilyn Pray, Director of Planning in 1969, comments,

> A major concern of the County Council at the time was whether the Ten Year Water and Sewer Plan, by putting a piece of property in a given systems area designation, prohibit septic tank villages from springing up all over the county. And the answer was, "No, it couldn't." With this in mind, the Council at that time directed us to look into the question to see what we could do to control this kind of activity.[18]

---

[17]Ten Year Water and Sewerage Plan: 1969 (Prince George's County, Maryland, General Planning Division, 1968), p. 14.

[18]Marilyn Pray, Director of Planning, Programming and Economic Development, M-NCPPC, Prince George's County, Interview, October 3, 1976.

A provision in the State enabling act gives the County the right to control subdivisions in order to provide for:

> . . . the avoidance of such scattered and premature subdivisions as would involve danger or injury to health, safety, or welfare by reason of the lack of water supply, drainage, transportation, or other public services or necessitate an excessive expenditure of public funds for the supply of such services. . . .[19]

It was apparent that the County had the proper statutory authority to adopt an ordinance preventing "scattered and premature" subdivision. The next step was to establish a legal linkage between the Capital Improvements Program and the Ten Year Water and Sewerage Plan, which indicates the future availability of facilities and services, and the County's Subdivision Regulations. In June, 1970, an amendment to the Subdivision Regulations was proposed by the Planning Board that established grounds for judging the adequacy of public facilities in conjunction with the preliminary approval of subdivision plats. The amendment became known as the "adequate public facilities ordinance." W. C. Dutton, Chairman of the Planning Board, explained to the County Council the necessity of the ordinance:

---

[19]Laws of Maryland 1959, Section 71(a) of the Regional District Act, Chapter 780.

> The need for such an amendment became apparent to the Planning Board during its consideration of the Ten Year Water and Sewerage Plan. To be consistent with the objectives of that plan, the Planning Board should consider the adequacy of public facilities at the time of subdivision approval. If it were to neglect such consideration, the approval of a subdivision could lead to premature development of areas which lack adequate facilities. In short, this amendment is needed to adopt your Water and Sewerage Plan.[20]

In October, 1970, the County Council amended the Subdivision Regulations to provide a requirement that:

> . . . before preliminary approval may be granted for any subdivision plat the Planning Board must find that: sufficient public facilities and services exist or are programmed for the area. . . .[21]

The basic elements of the ordinance and standards for determining adequacy include the following:

> (1) the availability of access roads adequate to serve traffic which would be generated by the subdivision, or the presence of a proposal for such road(s) on an adopted Master Plan and in the current Capital Improvements Program or the State Roads Commission program; (2) the availability of existing or programmed sewerage or water mains. Future availability is determined on the basis of the approved Ten Year Water and Sewerage Plan; and (3) the availability within a reasonable distance, and the adequacy of school, fire, police, utility, and park and recreation services.

---

[20]W. C. Dutton, Memorandum to Francois Aluisi, Chairman of the District Council, July 21, 1970.

[21]Regulations for the Subdivision of Land, Prince George's County, as Amended, 1974, Section 3-16.

> Facilities are considered to be programmed if they are included in an adopted Capital Improvements Program for construction in the next two years.[22] (See Appendix for a copy of the entire ordinance.)

Prince George's Adequate Public Facilities Ordinance, then, establishes rather broad criteria and standards for determining "adequacy." Hardly any consideration was given to a point system such as Ramapo's. For one thing, the underlying purpose behind the adoption of the ordinance was to prevent premature subdivision of land. With the newly adopted Six Year Capital Improvements Program and Ten Year Water and Sewerage Plan, the County was able to designate when, and where public facilities would be provided in the future. The Adequate Public Facilities Ordinance provides the legal basis for the denial of subdivision if these public facilities are insufficient.

Nevertheless, the apparent vagueness of the ordinance raised some doubts as to its legal viability. As Marilyn Pray recalls,

> I know that the County Attorney at the time, for one, was against adoption of the ordinance because he thought it would be difficult to sustain in court due to its vagueness . . . not to mention the problems of administering it. But the Council members at the time were up for re-election and felt that something had to be done about the problem of premature development. So, the ordinance

---

[22]Ibid., Section 3-16 (i, ii).

> was drafted in a very hasty fashion with the idea that it could be amended at a later date.[23]

Following the adoption of the Capital Improvements Program, Ten Year Water and Sewerage Plan, and the Adequate Public Facilities Ordinance, the Planning Commission began to focus its attention on the staging of development in response to the County's overall problem: a population growth that was exceeding the County's economic growth. The Staging Policy was proposed in 1973 as an intermediate-range (10 years) means for coordinating public investment with private development. The Staging Policy conformed to the wedges and corridors concept of the General Plan, but was a much shorter-ranged instrument designed to indicate the areas for development during the next 10 years. Four categories of development were identified: (1) preferred development areas (where services were available or readily extended); (2) economic development areas (where opportunities existed for major economic development in terms of improving the balance between residential and economic growth); (3) limited potential areas (minor additions to existing development); and (4) deferred development areas (which encompassed approximately 55 percent of the County and were located in

---

[23]Marilyn Pray, Interview, October 3, 1976.

Systems Areas 4 and 5 of the Ten Year Water and Sewerage Plan).[24] The Staging Policy also set forth population targets by sewer service areas. Finally, based on the average annual increase in population since 1970, the Planning Commission proposed a figure of 14,000 as the County's target for annual average population growth, and 8,000 new jobs per year. Such target figures were to be used in the programming of public facilities and services during the next 10 years. However, these target figures could be adjusted if two County-wide threshold ratios were not met--26 jobs per 100 residents or $4,250 assessed value per capita.[25]

In 1973 Prince George's County appeared to be making significant progress towards two major and related goals: to stabilize the population growth while at the same time stimulating the economic growth of the County. The Staging Policy provided a comprehensive framework for the County's three primary tools for regulating the timing of the development: the Capital Improvements Program, the Ten Year Water and Sewerage Plan and the Adequate Public Facilities Ordinance.

---

[24] Proposed Staging Policy, Prince George's County: 1973 (Prince George's County; M-NCPPC, 1973), pp. 15-18.

[25] Ibid., p. 15.

Montgomery County

Montgomery County, during the 1960's, experienced a 6 percent annual increase in population, highest in the County's history. Montgomery's annual rate of growth during that time was considerably lower than Prince George's (12-13 percent), but more important, it was in a much better fiscal position to accommodate new growth than its neighbor.[26] Montgomery County was the only suburban jurisdiction to employ more than half its resident labor force in jobs located within the County (55 percent). In fact, the rate of increase in jobs in Montgomery County was faster than the increase in the County's population. The total tax burden of Montgomery County residents was lower than residents of Prince George's County. The increase in economic activity and incomes, coupled with a decline in birth rates and school enrollment, provided Montgomery with a healthy balance between revenue collections and need for services.[27]

When the General Plan was adopted in 1964, Montgomery County was adding 18,000 new residents to its population each year. The Planning Commission, in

---

[26]State of the Economy, Prince George's County, p. 29.

[27]Advisory Committee on County Growth Policy, Interim Report (Montgomery County: M-NCPPC, 1974), p. 29.

conformance with the wedges and corridors concept, proposed that the bulk of long-range growth in the County should be channeled to the I-270 Corridor in the form of satellite cities which have both jobs and housing in a balanced ratio. A more limited amount of growth was proposed for the activity centers within the suburban ring. A rural zone was recommended to protect the wedge, or open space areas in the upper portion of the County.

By 1967, continuing sprawl development had raised questions about the viability of the General Plan. An Evaluation Committee was appointed by the County Council to analyze the situation. The Committee reported that the plan had been eroded, but was still viable, and should be strengthened by giving it the implementation tools needed, specifically a County-wide Capital Improvements Program to focus the delivery of public works to serve the plan.[28] In 1968, the newly adopted County Charter required the development, beginning in 1970, of a Capital Improvements Program, a Public Services Program, and a Fiscal Plan to measure and project the capital costs, operating costs, and revenue sources for the next six years.

---

[28]Advisory Committee on County Growth Policy, "Directions for Growth Policy in Montgomery County, Final Report (Montgomery County; M-NCPPC, 1974), p. 5.

The Capital Improvements Program served to strengthen the County's control over the location of development. The General Plan and the Area Master Plans clearly spelled out where development should take place. The County's regulatory tools, primarily zoning and subdivision controls, together with the Capital Improvements Program, provided the County with a stronger set of tools for implementing the Area Master Plans.

Montgomery County, however, was much weaker in its control over a second parameter of growth--the timing of development. One of the priorities of the Planning Commission in the late sixties was the prevention of premature subdivisions in those areas of the County which lacked adequate public facilities and services. John Broda, Chief of the Development Review Section of M-NCPPC recalls the situation:

> . . . the Planning Commission realized that something had to be done about the premature development that was taking place in the upper part of the County . . . that is, subdivision activity that was occurring in areas where sewer service was not adequate, the roads in many cases were not adequate, the schools were not adequate, and police and fire protection were not adequate. Few of the necessary public facilities existed, but this is where development appeared to be going.[29]

---

[29]John Broda, Chief of the Development Review Section, M-NCPPC, Montgomery County, Interview, September 20, 1976.

In 1968 the County Council took the initiative towards strengthening the County's control over premature development by appointing an "Ad Hoc Committee to Study and Evaluate Methods of Avoiding Premature Subdivisions." After extensive study of the problem, the Committee recommended that the County's Subdivision Regulations be amended to include a provision that would deny premature subdivision. It was concluded that a "Premature Subdivision Regulation" was within the State enabling act which gives the County the right to control subdivisions in order to "prevent scattered or premature subdivision."[30] The proposed amendment was held in abeyance, however, primarily because there was no agreement on what constituted "scattered and premature subdivision."

Meanwhile, the Planning Commission turned its attention to the concept of staging development. The Ten Year Water and Sewerage Law had recently been enacted by the State, which gave the County considerably more leverage over the timing of development. The staging concept was being considered in a few Area Master Plans, notably the plan for a satellite "new town" called

---

[30]Ad Hoc Committee to Study and Evaluate Methods of Avoiding Premature Subdivisions, Final Report (Montgomery County; M-NCPPC, 1968), p. 16.

Germantown. Conceptually, then, staging development through a strict adherence to the Capital Improvements Program and Ten Year Water and Sewerage Plan would ensure that a linkage between private growth and public service had been planned in advance. The "missing link" to the staging process was a mechanism that would tie the Capital Improvements Program and the Ten Year Water and Sewerage Plan to the Subdivision Regulations to ensure that private development took place in an orderly fashion in accordance with the provision of public facilities and services. The need for an "adequate public facilities ordinance," similar to the one in Prince George's County, became apparent to the County Council in 1972 when the Planning Commission was attempting to implement the Germantown Plan. The situation in Germantown served as an impetus for the subsequent adoption of the Adequate Public Facilities Ordinance. Royce Hanson, Chairman of the Planning Board, explains that:

> our ability to produce the Adequate Public Facilities Ordinance was enhanced by the concern that the Council had that development in Germantown was occurring in a helter-skelter and unrelated way, and that we needed some mechanism for staging the public facilities there, and for staging private development in concert with those public facilities. So, the coincidence of trying to implement the staging concept in the Germantown Plan was a great advantage to us in being able to demonstrate

the importance of the adequate public facilities concept.[31]

While the County Council was studying the adequate public facilities concept in connection with the Germantown Plan, a series of environmental problems began to emergy in the County. In 1969 the first Ten Year Water and Sewerage Plan projected continued use of the one central metropolitan wastewater treatment plant at Blue Plains. In 1970, however, sewage overflows were discovered in two Montgomery County river basins, and a health moratorium on building permits was imposed by the State in the two basins. Simultaneously, the Federal government raised serious questions about the adequacy of the Blue Plains plant and stepped up its direct involvement in the water quality level of the Potomac River. Following extensive negotiations among local jurisdictions and State and Federal governments for the solution to escalating pollution problems in the metropolitan area, the Federal government decreed in 1971 that Montgomery County must plan for its own treatment plant.

A site was selected for Montgomery County's new wastewater treatment plant in 1973, with completion of the

---

[31]Dr. Royce Hanson, Chairman of the Planning Board, M-NCPPC, Montgomery County, Interview, September 29, 1976.

plant scheduled for 1978. The County government, meanwhile was faced with the problem of how to ration a scarce resource in the most equitable manner. In February, 1973, the County Council banned all further permits for connections to existing sewer lines pending the establishment of a priority system for utilization of existing capacity. A sewer allocation policy was adopted the following year which gave priority for sewer permits to low- and moderate-income and commercial and industrial development.

The spotlight was once again on the adequate public facilities concept. John Broda describes the situation in Montgomery County in 1973:

> The adequate public facilities concept lay quiet until the sewer moratoriums. Now we have a scarce resource and the question is going to be, "who is going to get it and where's it going to be?" And at that time the Adequate Public Facilities Ordinance seemed to be the answer to stopping haphazard and uncoordinated development in the County where development has preceded public facilities. And the Planning Commission felt that since we do have a limited resource, namely sewers, which we've never had before, now is the time to bring the Adequate Public Facilities Ordinance into being.[32]

On June 26, 1973, Montgomery County's Subdivision Regulations were amended to provide that future approval of preliminary subdivision plats be contingent upon a finding that public facilities are adequate to support

---

[32]John Broda, Interview, September 20, 1976.

and service the proposed subdivision. The statutory authority for the ordinance was derived from the provision in the State enabling act which gives the County the right to control subdivision of land in order to prevent "scattered and premature subdivision of land as would involve danger or injury to health, safety or welfare. . . ."[33]

Montgomery County's ordinance, like Prince George's, is based upon a solid foundation of State and County plans and programs for implementing Area Master Plans, notably the Six Year Capital Improvements Program, the Ten Year Water and Sewerage Plan, and the State Highway Administration's Five Year Construction Program. However, Montgomery County's ordinance sets forth more detailed guidelines for determining the "adequacy" of public facilities and services. For example, the Montgomery ordinance requires that "public bus, rail, or other forms of mass transportation sufficient to serve the proposed subdivision be available or programmed within the area affected or within one-third mile of the subdivision under consideration."[34]

The Montgomery ordinance also provides a degree of

---

[33]Laws of Maryland, 1959, Section 71(a) of the Regional District Act, Ch. 780.

[34]Montgomery County Code, Subdivision of Land, Section 50-1 (iii).

flexibility not found in Prince George's Adequate Public Facilities Ordinance. Both ordinances stipulate that a subdivision has adequate water and sewerage service if it is located in an area where such service is available, or programmed within the first two years of a current approved Ten Year Water and Sewerage Plan. The Montgomery ordinance, however, includes a provision for subdivisions not situated within an area designated for service within the first two years, but one which is within the last eight years of the Water and Sewerage Plan. The provision states that the latter subdivision can be deemed adequate if the applicant provides community sewerage and/or water systems, and that these systems are approved by the Washington Suburban Sanitary Commission and the County Health Department.[35]

Finally, Montgomery's County Council demonstrated a sensitivity to legal issues in its enactment of the Adequate Public Facilities Ordinance. An accompanying resolution states:

> It is not the intent of the Council in adopting the Adequate Public Facilities Ordinance to preclude indefinitely development which cannot immediately occur due to the lack of available or planned adequate public facilities. The County government and individual developers share the responsibility for orderly, programmed development in the County. To this end a mutual effort is

---

[35]Ibid., Section 50-2.

> desirable to see that, consistent with sound planning policies within necessary fiscal constraints, and within legally permissible bounds required public facilities, if they do exist, are included in appropriate plans and programs affecting the County.[36]

The same year that Montgomery County enacted its Adequate Public Facilities Ordinance, a third county in the Washington Metropolitan area, Fairfax, was examining the adequate public facilities concept in connection with its new program for managed growth.

Fairfax County

Fairfax County, like the other suburbs of the Washington Metropolitan area, experienced a post-war population explosion due, in large part, to the expansion of the Federal bureaucracy. Fairfax's geographic location, with its relationship with Washington, D. C., has been a significant factor in the County's historic development. As a second tier or "outer ring" suburb, Fairfax County remained essentially a rural community until the 1950's, when land began to become scarce in the "inner ring" suburbs of Arlington and Alexandria. From a base of roughly 96,000 inhabitants in 1950, the County population

---

[36]County Council, Montgomery County, Maryland, Resolution No. 7-1290, adopted June 26, 1973, p. 2.

increased more than 150 percent to 248,000 in 1960, and increased over 80 percent to 450,000 in 1970.[37] This unprecedented population growth greatly accelerated the rate of land absorption in Fairfax County. During the decade 1960-1970, approximately 40,000 acres of vacant land were absorbed by developments in Fairfax County. The land which was developed represented 23 percent of the 172,000 acres vacant in 1960. If all of the 132,300 acres vacant in 1970 were judged suitable for development and land was absorbed at the same rate in the future as during the past decade, it is projected the County would be fully developed by the year 2007.[38]

The history of planning and zoning in Fairfax County began with the adoption of the first zoning ordinance in 1941. The first attempt at master planning took place in 1954 when a proposal was made by a planning consultant to the Board of Supervisors. Although the plan was rejected by the Supervisors, it did become the basis for a Comprehensive Plan and a new zoning ordinance, both adopted in 1958. This was a significant period in Fairfax's efforts

---

[37]Preliminary Countywide Plan, Fairfax County: 1975 (Fairfax County: Office of Comprehensive Planning, 1975), p. 4.

[38]Ibid., p. 5.

to regulate its population growth. For the first time, planning and zoning were coterminously related to each other on a Countywide basis.

Subsequent to the adoption of the plan and the ordinance, however, legal action was initiated, challenging the so-called "Freehill Amendment," which had uniformly zoned the rural area of the County for two-acre development. The immediate result of the decision[39] by the Virginia Supreme Court was the reduction of rural lot sizes to one acre. More importantly, the decision opened the door for rapid development in outlying areas of the County. From 1959 to 1970, more than 2,800 new rezoning cases were filed, and the zoning map had been amended more than 230 times.[40] In 1969, the Board of Supervisors felt that the zoning ordinance required complete revision and a Zoning Ordinance Study Committee was appointed to draft a new ordinance for the County.

"Controlled growth" soon became a political issue in Fairfax County. In September, 1970, citizens expressed

---

[39]A Brief History of Planning, Zoning, and Environmental Constraints in Fairfax County, Virginia (Fairfax County: County Attorney's Office, 1974), p. 7.

[40]Preliminary Countywide Plan, Fairfax County: 1975 (Fairfax County: Office of Comprehensive Planning, 1975), p. 8.

their dissatisfaction with higher taxes by defeating a 39 million dollar sewer bond issue. As Jim Reid, former Director of Comprehensive Planning comments:

> Citizens were refusing to accept the concept of growth as inevitable, along with normative planning as the solution to development pressures, expensive housing, higher taxes, and overburdened public facilities. All proposals for concentrating development made by rezoning applications, or staff studies recommending logical locations for higher density, were actively, and at times, passionately, resisted.[41]

In 1972, the new Board of Supervisors arrived in office with a firm commitment to regulating growth. A resolution was adopted on February 5, 1973, which directed the establishment of a Task Force on Comprehensive Planning and Land Use Controls which was to develop a program to achieve improved planning and growth management. The program was referred to as PLUS (Planning Land Use System). In the resolution, the Chairman of the Board of Supervisors describes the new planning program:

> The time has come, I believe, to launch a comprehensive attack on the problem of controlling growth in Fairfax County. The recent upholding by New York's highest court of the principle, embodied in the zoning ordinance of Ramapo, New York, that localities have the right to control and time phase development, even though zoning has already been

---

[41]Jim Reid, "Fairfax County's Planning and Land Use System; a Lot of Techniques and Legal Issues," Newsletter, American Institute of Planners (Chicago: A.I.P., April, 1975), p. 11.

> granted, gives us a solid legal foundation upon which to proceed. . . . What is needed is to attack the problem as a whole, rather than a piece-meal approach which will not stand up under court scrutiny.[42]

With a budget of 1.5 million dollars and a time frame of 18 months, the County set forth to revitalize its planning program. One of the first steps taken by the Task Force was the recommendation of a set of policies to guide future growth in Fairfax County. The essence of County policy on growth was:

> (1) The amount of growth, as well as its distribution, should be compatible with the environmental limitations of the County's natural resources; and
> (2) The rate of growth, as well as its distribution, should be compatible with the existence of adequate public facilities to support growth as it occurs.[43]

In the Fall, 1973, efforts began toward simultaneous preparation of updated Countywide and Area Plans. An important concept of the plans is the use of planned development centers as focal points for future growth. As an alternative to sprawl, this development concept was

---

[42]Robert Freilich, The Legal Basis for a Growth Control System in Fairfax County, Va., PLUS Program Research Paper No. 2 (Fairfax County: Office of Comprehensive Planning, 1974), p. 62.

[43]Proposal for Implementing an Improved Planning and Land Use Control System in Fairfax County. Final Report of the Task Force on Comprehensive Planning and Land Use Control (Fairfax County: Board of Supervisors, adopted June 11, 1973), p. 12.

designed to increase local employment; to decrease reliance on the automobile by reducing the length of work trips and making mass transit facilities more easily accessible; and to lower costs by more efficient provision of public services.[44]

The Task Force report outlined subsequent steps to be taken to implement PLUS. These included: the enactment of zoning moratoria procedures to prevent undesirable growth while the County plans were being updated; the development of a capital improvements program; the improvement of analytic tools to measure the economic and environmental impact of future development in the County; and the adoption of the revised Zoning Ordinance.

At the heart of the County's new growth management program was the objective of timing development in accordance with the availability of public facilities and services. The following County policies relate directly to the overall objective of development timing:

> (1) To economize on the capital and operating costs of public facilities and services by carefully phasing residential development so as to be consonant with adequate and efficient provision of public improvements; and
> (2) To establish and maintain County control over

---

[44]Preliminary Countywide Plan, Fairfax County: 1975 (Fairfax County: Office of Comprehensive Planning, 1975), p. 4.

> the character, direction, and timing of development.[45]

Fairfax officials began to consider the problem of how to regulate development in accordance with the availability of public facilities. The Ramapo strategy caught the eye of several members of the PLUS program. As Jim Reid explains:

> The Ramapo plan seemed just what the doctor ordered. In terms of development, much of the County had already been committed. The problem was to get a handle on when this development could take place . . . and the Ramapo approach utilizing the additional permit process was thought to be useful in terms of solving this particular problem. For one thing, Ramapo's approach put the local government in the driver's seat with respect to when development could take place. Also, the fact that it had been tested in the New York courts was an important factor in our decision to go the Ramapo route. And finally, it was our judgment that we had broader enabling legislation flexibility under our zoning powers than we had under our subdivision control powers.[46]

In April, 1973, the County Attorney was directed to ascertain whether Virginia's enabling legislation would allow Fairfax County to enact a zoning ordinance which would have the effect of time-phasing growth in the County. A review of the zoning enabling legislation found Article

---

[45]Proposal for Implementing an Improved Planning and Land Use Control System, p. 28.

[46]Jim Reid, former Director of Comprehensive Planning, Fairfax County, Interview, October 13, 1976.

8, Chapter II, Title 15.1 of the Code of Virginia to be most pertinent:

> The governing body of any County . . . may, by ordinance, divide the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape, and area as it may deem best suited to carry out the purposes of this article. . . .[47]

The task of analyzing the legal issues inherent with the adoption of an Adequate Public Facilities Ordinance in Fairfax County was largely the responsibility of Robert Freilich (former Attorney for the Town of Ramapo) who was hired by the County Attorney's Office for such purposes. After a thorough study of national law, and Virginia cases and statutes, Freilich concluded that:

> Implementation of a land use control scheme based on timing and sequential controls is both legally constitutional and feasible as well as practical to meet the needs of the entire County and its citizens.[48]

The proposed amendment to Fairfax County's Zoning Ordinance states that:

> Prior to the issuance of any building permit, special permit of the Board of Supervisors, preliminary subdivision approval, final development plan or final site plan approval, for

---

[47]Code of Virginia, Article 8, Chapter II, Title 15.1.

[48]Robert Freilich, The Legal Basis for a Growth Control System, p. 27.

> residential use, a residential developer or development agent shall be required to obtain a special permit from the Board of Supervisors.[49]

Fairfax County's proposed Adequate Public Facilities Ordinance established a set of standards based upon the availability to the proposed residential development of public facilities and services, and the projected improvements scheduled in the Capital Improvements Program. The issuance of a special permit was contingent upon a finding that the proposed development had accrued a minimum of 22 development points based on a sliding scale of values. Public facilities and services were grouped into seven categories: (1) public sanitary sewers; (2) drainage facilities related to adequate runoff capacity at maximum development; (3) improved parks and recreation facilities; (4) improved major, secondary, and collection roads; (5) firehouses within appropriate distances; (6) police stations within appropriate distances; and (7) elementary schools with sufficient capacity so as to avoid overcrowding within appropriate distances.[50]

Fairfax County's proposed ordinance was modeled

---

[49]Ibid., p. 72.

[50]Ibid., p. 74.

closely after Ramapo's. In addition to incorporating a development point system, Fairfax's Adequate Public Facilities Ordinance contained provisions which were designed to enhance the legal viability of the ordinance. Under the Fairfax ordinance, a developer would receive a vested right to proceed with residential development for each year as the proposed development met the required points indicated by the capital outlay program and plan. For example, if the plan indicated that facilities in the area would be available for 22 points within seven years, a special permit would be issued for development in seven years. In the meantime, the developer could accelerate the date of development by agreeing to provide at his own expense those improvements that would bring the development within the required number of points. In any event, no developer would have to wait more than the 20 year period covered by the capital plan to subdivide his property.

In order to maximize the possibilities of success of a time phased zoning ordinance, the Task Force on Comprehensive Planning and Land Use Controls concluded that such a plan must include:

(1) A positive commitment to growth;
(2) A capital facilities plan to support planned growth;
(3) A capital facilities budget to pay for necessary facilities;

(4) Tax relief for properties which must wait for capital facilities to be provided;
(5) "Bonus points" for developers who provide low- and moderate-income housing units in his development; and
(6) A definite time frame within which the property owner would be able to develop his property.[51]

At a meeting before the Board of Supervisors in October, 1973, Robert Freilich presented a step-by-step description of what the County needed to do to implement the Adequate Public Facilities Ordinance. The first step consisted of imposing a zoning moratorium to allow the County staff time to update local plans. Step two involved updating the local plans, with the objective of projecting the desired density for each section of the County at some distant date when the County reached full development. Step three was the development of revenue/expenditure estimates to determine the pace at which the County would be able to approach this ultimate buildout stage. The data generated from the revenue/expenditure study would constitute the basis for the development of a long-range capital improvement program, the fourth step to be taken by the County. The final step would be the actual amendment to the zoning ordinance to include a special permit system similar to Ramapo's, requiring

---

[51]Proposal for Implementing an Improved Planning and Land Use Control System, p. 63.

residential development to proceed at a rate compatible with the County's ability to provide facilities.[52] Fairfax County's trial with the Adequate Public Facilities Ordinance is discussed in the following chapter.

Summary

By 1973 the adequate public facilities concept had become a fundamental element of the growth management strategies of Prince George's, Montgomery, and Fairfax Counties. The differences in the approaches taken by these counties to development timing with the Adequate Public Facilities Ordinance have, in large part, been a function of the factors that motivated each County to adopt the ordinance. Montgomery and Prince George's Counties, despite marked differences in economic and demographic profiles, were motivated by a similar set of interrelated objectives in their consideration of the Adequate Public Facilities Ordinance: to stage development in concert with the availability of public facilities and services; to prevent "scattered and premature development"; and to provide a "legal linkage" between the subdivision controls of both counties, and the capital

---

[52]Grace Dawson, "No Little Plans: Fairfax County's PLUS Program for Managing Growth," unpublished Working Paper 5028-01 (Washington, D. C.: The Urban Institute, 1976), p. 67.

improvements program and Ten Year Water and Sewerage Plan. As a commitment to the provision of public facilities and services for the next 10 years, the CIP and Ten Year Plan provided Montgomery and Prince George's Counties with a foundation for the adoption of an Adequate Public Facilities Ordinance. The ordinance, in turn, was designed to give the latter programs greater leverage as a determinant of the location and timing of future development.

In 1973, the Adequate Public Facilities Ordinance was regarded by several PLUS officials as a practical, and legally defensible tool for regulating the timing and location of development. The apparent effectiveness of the Ramapo ordinance, coupled with the belief that such an ordinance could be legally sustained in Virginia's courts, translated into a determination to model the Fairfax ordinance after Ramapo's.

CHAPTER IV

THE ADEQUATE PUBLIC FACILITIES ORDINANCE IN THE COUNTY GROWTH MANAGEMENT STRATEGIES

In Prince George's, Montgomery, and Fairfax Counties, the Adequate Public Facilities Ordinance represents one element of an integrated system of land use controls which operates in a very dynamic setting. The impact of the ordinance on the growth management strategies of each county has been shaped by the constant interaction of a variety of forces, which include legal issues; state policies and programs; the degree of support from developers and politicians for the ordinance; and the existence of other plans, policies, and tools for timing development. Finally, factors inherent in the ordinance itself, such as the use of broad versus objective standards and criteria for determining "adequacy," have been a determinant of the overall impact of the Adequate Public Facilities Ordinance.

Prince George's County

The following interrelated objectives were behind the adoption of the Adequate Public Facilities Ordinance in Prince George's County:

(1) To prevent premature development in areas where public facilities and services are inadequate to support and service the development; and
(2) To guide County population growth to areas in which adequate public facilities exist, or are included in the County's Ten Year Water and Sewerage Plan and Capital Improvements Program.[1]

These objectives, in turn, are in conformance with the following stated fiscal and growth management goal of the County:

> To coordinate the County's population and employment growth with the County's fiscal ability to provide public facilities and services.[2]

The concensus among Prince George's County officials interviewed in October, 1976, is that the Adequate Public Facilities Ordinance has had a nominal impact on guiding County population growth to areas where public facilities and services are adequate to support the development. Following are some of their comments:

> Luke Lukasewski, Chief, Research and Special Studies Division:
>
> I think the adequate public facilities concept is fundamental in the sense that it has been in the forefront of everyone's mind in terms of developing, say, the Staging Policy, and other growth management

---

[1]Regulations for the Subdivision of Land, Prince George's County, as amended, 1974, Section 3.16.

[2]County Council, Prince George's County, Maryland, Council Resolution No. CR-47-1975, adopted June 17, 1975.

efforts. The whole question of adequate facilities has become recognizes as an important question to ask. I think the ordinance itself, however, has been quite ineffective, mainly because it is so loosely written that it is left wide open for interpretation by developers, judges, the Board, and what not. The problem goes back to the objective of the Planning Board when they adopted ordinance--they wanted some control over growth as it was occurring in the County--and they picked water and sewer mainly because of the State requirements for a Ten Year Water and Sewer Plan, and they added the other facilities without really thinking of what they were trying to do. We now face the task of developing a set of County standards to apply to the ordinance, the CIP, and other County tools.[3]

Marilyn Pray, Director, Planning, Programming and Economic Development:

From a programming point of view, your three biggies for determining the timing and location of development are water and sewer service, roads, and schools. The potential effectiveness of the Adequate Public Facilities Ordinance has been severely crippled by what has happened in the areas of transportation and education. So that leaves us with water and sewer service and the Ten Year Water and Sewerage Plan has been the truly effective determinant of timing and location. The Adequate Public Facilities Ordinance merely creates the test. Is the property in a given systems area or isn't it?[4]

Monte Kolste, Chief, Public Facilities Division:

With the Ten Year Water and Sewerage Plan, we have a formal, adopted plan and policy for the

---

[3]Luke Lukascwski, Chief, Research and Special Studies Division, Maryland--National Capital Park and Planning Commission, Interview, September 24, 1976.

[4]Marilyn Pray, Interview, October 3, 1976.

> delineation of systems areas for water and sewer. So the ordinance works in that respect, as a tool for the implementation of the Ten Year Water and Sewerage Plan. But we have nothing like that for traffic, which is our big hang-up right now. Unlike sewer systems which you can determine geographically, the traffic impact is an awfully nebulous thing. I think it gets right down to the imprecise art of traffic assignment.
>
> I think our overall problem is the lack of a political commitment to controlled growth. Even if we could iron out all of the bugs in the ordinance, there's still the fact that we're not approving any fewer subdivisions now than we were three or four years ago.[5]

The adequate public facilities concept is a fundamental element of Prince George's growth management strategy. It is apparent that the impact of the ordinance itself, however, has been weakened by at least two interrelated factors: (1) the inability of the Planning Board to effectively utilize school facilities and roads in the adequate public facilities test; and (2) the overall vagueness in the wording of the ordinance.

The ability of Prince George's Planning Board to deny subdivision approval because of inadequate school facilities has been seriously weakened by a series of local court decisions in 1972-73 ordering the County to desegregate its schools. Marilyn Lowney, Associate General

---

[5]Monte Kolste, Chief, Public Facilities Division, M-NCPPC, Prince George's County, Interview, October 11, 1976.

Counsel for the County, explains the implications of these rulings for the Adequate Public Facilities Ordinance:

> The recent busing decisions have certainly eroded the "adequacy" test with respect to school facilities. For one thing, the County is no longer in a position to establish definite geographic boundaries for a school's service area because today, Prince George's literally busses children from one end of the County to the other. So now you have a situation where if you have school vacancy in any one area of the County, that vacancy can technically be accredited to an applicant in another part of the County. Proximity, then, is no longer the ruling factor in determining the adequacy of schools. So I would say that the desegregation decisions, together with the Rosenburg decision, has caused the reticence you see on the part of the Board in applying the adequacy test to schools.[6]

The use of school facilities as an element of the Adequate Public Facilities Ordinance was further weakened in 1973 as a result of the decision by the State's highest court in Maryland-National Capital Park and Planning Commission v. Rosenburg. In the Rosenburg case, the court ruled that the Planning Board's denial of a preliminary plan, which was based on evidence that the proposed development would yield 41 more students than the local elementary school could accommodate was "unreasonable." The court noted that the boundaries of the service areas of three other schools within the vicinity could have been adjusted sufficiently to accommodate the projected pupil

---

[6]Marilyn Lowney, Associate General Counsel, M-NCPPC, Prince George's County, Interview, September 27, 1976.

yield of the proposed development. The court also made reference to the ambiguity in the wording of the ordinance. Since the ordinance did not define "reasonable distance," the court held that the Board could not conclude that a mile or even a mile and one-half would not be a reasonable distance.[7] Although the court states at the beginning of its opinion that it is not deciding the validity of the Adequate Public Facilities Ordinance, the court expresses certain reservations over the Prince George's scheme in its statement that the ordinance may have an "inherent deficiency" which even the Ramapo court would not have overlooked.[8] The court does not, however, indicate what the "deficiency" is.

There was a concensus among the Prince George's County officials interviewed that the transportation element of the Adequate Public Facilities Ordinance has presented the most problems of those associated with effectively administering the ordinance. The following problems were identified:

(1) The absence of standard criteria for determining the adequacy of roads;
(2) There is no single data base for use in the adequacy test, which often results in conflicting

---

[7]Maryland-National Capital Park and Planning Commission v. Rosenburg, 307 A.2d 705 (1973).

[8]Ibid., p. 704.

data, i.e., between traffic engineers and the Planning Commission; and

(3) The lack of control over when and where State roads will be constructed.

Marilyn Pray addresses the overall problem.

> The problem the Planning Board faces in administering the adequacy test for roads is what I feel the underlying problem of the ordinance: its vagueness. Since the ordinance was adopted, the Board has gone to court on three occasions to defend its denial of subdivision on the basis of inadequate roads. In each case the Board lost on procedural grounds . . . the applicationof the ordinance was ruled unreasonable. Validity (of the ordinance) has never been the question. So the problem always goes back to, "how do you define adequacy?" And in the case with traffic, our inability to measure impact has detracted considerably from the potential effectiveness of the ordinance.[9]

The lack of standards and criteria in determining facility/service adequacy has been recognized as a weakness not only of the Adequate Public Facilities Ordinance, but of the overall growth management system of the County. A study of existing standards and criteria for determining facility/service adequacy reported the following:

> Evaluation of current standards and criteria has led to the conclusion that, in many instances, these "standards and criteria," are no more than general locational or comparative guidelines. In actuality, when applied to public facilities and services, they reveal little about community needs or facility/service adequacy. Furthermore, they usually address only one or two components of

---

[9]Marilyn Pray, Interview, October 3, 1976.

> a public service system and provide no means by which to gain an understanding of the complex interrelationships of all components of the system.[10]

The need to conduct an analysis of the standards used in the County's public facility/service planning and programming efforts became increasingly apparent in connection with the proposed Staging Policy. Although the Staging Policy is followed to some degree unofficially, it was never adopted by the County Council, primarily for two reasons:

> (1) The lack of data to support the Staging Policy's proposed annual growth target of 14,000 population; and
> (2) The lack of standards and facilities inventory to support the designation of preferred and deferred development areas.[11]

In 1975, the County Council took a significant step towards developing a firm empirical base for determining facility and service adequacy with the enactment of legislation creating the "Standards Evaluation Program." The following objectives of the Standards Evaluation Program were identified:

> (1) To formulate standards and criteria for each type of public facility and service that reflect the specific characteristics of Prince George's County and its citizenry;

---

[10]Standards Evaluation Program (Prince George's County, Maryland: General Planning Division, 1976), p. 4.

[11]Ibid., p. 6.

(2) To determine the adequacy of public facilities and services for the present population, by community and type of service; and
(3) To develop projections of future public facility and service needs and to identify the relation of these needs to the County's fiscal capability to provide public facilities and services.[12]

The Standards Evaluation Program is a prodigious undertaking. It is expected to take at least four years to develop analytical tools capable of identifying and measuring the demand for each of the selected public facilities and services. The result of the analysis and evaluation work is envisioned to be the development of adequacy and need measures based on empirical studies and tied to the variances in the facility/service demand characteristics throughout the County. (An important assumption of the Standards Evaluation Program is that the demand for each type of facility/service is not a constant function of total population, but rather that it varies from community to community). Finally, the adequacy and demand measures for each type of public facility and service is expected to provide the County with a much stronger data base for the Adequate Public Facilities Ordinance, the Capital Improvements Program, and the Staging Policy.

---

[12]County Council, Prince George's County, Maryland, Resolution No. 104--1974, adopted September 24, 1974.

Luke Lukasewski reflects on the future of Prince George's Adequate Public Facilities Ordinance.

> I'm aware that certain members of the County Council are in favor of revising the ordinance. It's at the idea stage right now. I think once we are better able to define our standards and criteria of adequacy, and build up our data base, we'll have a better idea of which direction to go, which facilities we should emphasize and how much. I think what I'm basically saying is that the Adequate Public Facilities Ordinance cannot be a one or two paragraph statement saying there shall be adequate public facilities. The ordinance has never, in my mind, been tied into a comprehensive strategy for growth management. We've got the tools, but it's a matter of tying them into the whole development process. Both the public and private sectors have to be merged, and I think the Adequate Public Facilities Ordinance can be used to bring these two together. We're going inthe right direction now. The Staging Policy is evidence that we are redefining our thinking.[13]

Montgomery County

The immediate objective of the County Council in adopting the Adequate Public Facilities Ordinance was stated in the legislation accompanying the ordinance.

> The Adequate Public Facilities Ordinance is being adopted with the express purpose and intent of insuring orderly development within the County consistent with the availability of public facilities adequate to support such development.[14]

---

[13]Lukasewski, Interview, September 24, 1976.

[14]County Council, Montgomery County, Maryland, Resolution No. 7-1290, adopted June 26, 1973, p. 2.

In 1974, the year the ordinance was adopted, the Montgomery County Planning Board was in the midst of a broad based effort to develop a comprehensive growth management process and strategy. In October, 1974, the Planning Board published its first annual growth management policy report, Framework for Action, which was an examination of the forces generating and constraining growth, together with recommendations as to how the County could mold together its regulatory powers into a comprehensive strategy to manage growth. Three key parameters of the growth process were identified in the initial growth policy report: location, timing, and cost. The report concluded that the County is "strongest" in its control over the location of growth (private and public land use), "weak" in timing, and "weakest" in its control over the cost of growth.[15] The following conclusions and recommendations were made with regard to strengthening the County's control over the timing of development:

(1) Staging elements should be included in all area master plans to ensure that a linkage exists between private growth and public service;

---

[15]Framework for Action, first annual Growth Policy Report of the Montgomery County Planning Board (Montgomery County, Maryland: Planning Board, 1974), p. 35.

(2) The staging policy should serve as a guide for the Capital Improvements Program, the Ten Year Water and Sewerage Plan, and the use of the Adequate Public Facilities Ordinance;
(3) The adequate public facilities concept is the best and most defensible method of "timing" or "staging" the release of land for private development in pace with the development of new public facilities under the Capital Improvements Program.[16]

The first annual growth policy report for Montgomery County, Framework for Action, depicts the Adequate Public Facilities Ordinance as a fundamental tool (at least conceptually) to the County's objective of strengthening its control over the timing of development. It is viewed as one element in an integrated system of programs and policies, which include the Capital Improvements Program, Ten Year Water and Sewerage Plan, and the staging elements in the area master plans. In the Fall, 1976, Montgomery County planning officials were interviewed concerning the impact of the Adequate Public Facilities Ordinance towards achieving the growth policies set forth in Framework for Action and other County documents. Their responses indicate that: (1) the ordinance is an integral tool in the County's system of controls; and (2) as the case with Prince George's County, forces exogenous to the ordinance have had adverse implications

---

[16]Ibid., pp. 39-40.

for the administration of the ordinance.

Royce Hanson, Chairman of Montgomery County's Planning Board, comments:

> Conceptually, the Adequate Public Facilities Ordinance is a fundamental element of our growth management program. The concept is that you allow development, or permit or channel development commensurate with your ability to serve it. You make a good faith effort within the economic capacity of the County to do that (to provide facilities and services). So conceptually, the Adequate Public Facilities Ordinance is a foundation of any kind of rational growth management program. The ordinance, however, I would not like to evaluate standing alone. I don't think you can evaluate that kind of ordinance standing alone. I think it must be seen as a piece of the overall strategy, and the overall set of techniques that have to be employed to obtain your objectives. And therefore I place no greater stress on the ordinance than I place on rationalizing the Ten Year Water and Sewerage Program, rationalizing the Capital Improvements Program, having staging elements in the master plans, and doing all the things that are necessary as part of that <u>flowing</u> process.[17]

John Broda, Chief, of the Development Review Section:

> When we first adopted the Adequate Public Facilities Ordinance, the idea was . . . here is government making a promise to developers through its Capital Improvements Program and an annual review of the Ten Year Water and Sewerage Plan so the developer knows where facilities are going to be, and these are the areas where he should be considering developing. The ordinance, then, is a basic tool in our system of controls in that it provides the County with the legal mechanism whereby the Planning Board can deny development

---

[17]Royce Hanson, Interview, September 29, 1976.

> if these facilities are not adequate to support the growth.[18]

Two key points are reflected in the observations of Hanson and Broda: (1) the Adequate Public Facilities Ordinance is regarded as a key component in an integrated system of programs, policies, and tools designed to strengthen the County's control over the timing of development; and (2) the legal and planning foundation for the Adequate Public Facilities Ordinance is the commitment by the County to provide public facilities and services for future development.

In practice, however, a series of recent events has undermined the Planning Board's ability to administer the ordinance with respect to three elements: school facilities, roads, and water and sewer service. In April, 1976, the Development Review Section of the Maryland-National Capital Park and Planning Commission conducted an investigation of the impact of the ordinance on the location and extent of subdivision activity in the County. The following section of the report addresses the problems of administering the adequacy test for school facilities:

> As for the adequacy of schools, the Planning Board has been extremely hesitant about any denials based on these grounds because of the recent court

---

[18]John Broda, Interview, September 20, 1976.

> decisions in Prince George's County, which held that approval could not be denied for this reason. An additional consideration in avoiding the use of this reason for denial has been the practical difficulty of defining adequacy; the Board of Education does not support statements concerning the inadequacy of their facilities, and in any case it can always be demonstrated that busing or boundary adjustments, or both, can make available school facilities in other areas that are now oversupplied.[19]

The Montgomery County Planning Board, then, has been operating under the same constraint as Prince George's Planning Board with regard to determining the adequacy of school facilities: the inability to designate boundaries for school service areas, and thus to establish "reasonable distance" standards. This predicament, coupled with excess school capacity in both counties, has had the effect of weakening the school facilities element of the Adequate Public Facilities Ordinance in both Montgomery and Prince George's Counties.

A second problem that Montgomery County shares with Prince George's in its administration of the Adequate Public Facilities Ordinance is the state/county conflict inherent in the programming and funding of the state roads. Royce Hanson states the problem currently facing Montgomery County:

---

[19]"A Report of the Adequate Public Facilities Ordinance," Prepared by the Development Review Section of M-NCPPC, Montgomery County, April 12, 1976.

> A serious problem, and one we've raised with the Council and with the State on a number of occasions is that as we administer the ordinance, the crucial public facility in most instances is turning out to be traffic, and the roadways which are crucial are almost always state roads. This is a county ordinance. We do not have the authority to force the State to build certain facilities. The State, because of its own financial requirements, has removed a lot of facilities from the Five Year Construction Program, and the Adequate Public Facilities Ordinance says that you either have to have it, or it has to be in the Five Year Construction Program. Our principal power is getting the State to take something out of the Five Year Construction Program. We have much more of a problem getting something put into the Program. Plus we have the problem of long term programming of State facilities in the face of Federal highway alternative alignment requirements and environmental impact requirements. So, the lead time from knowing that you need a State road to getting it built is a minimum of ten years if the funds are available. We're in a very hard kind of situation here and I don't know exactly how we're going to work this problem out.[20]

The sewer moratoria, imposed by the County Council in 1973, has created additional problems for the administration of the Adequate Public Facilities Ordinance in Montgomery County. The Interim Sewerage Policy, adopted by the Council in 1974, gave priority for sewer permits to low- and moderate-income housing and commercial and industrial developments. Michael Dechant, Technical Director for the Suburban Maryland Homebuilders Association, describes the problem that confronted developers in 1974.

---

[20]Royce Hanson, Interview, September 29, 1976.

> We could not, under the Adequate Public Facilities Ordinance and the regular subdivision system, get approval for a subdivision plan unless we had a letter from the Sanitary Commission saying that water and sewer service is available. But under the Interim Sewer Service policies, which were developed to help the administration of the moratoria, we couldn't get a letter from the Sanitary Commission until we had an approved subdivision. It was a "Catch-22" situation.[21]

In May, 1975, the County Council adopted a resolution which provided for conditional approval of preliminary subdivision plans that are located within categories 1 and 3 in the Ten Year Water and Sewerage Plan. Final approval is contingent upon a commitment from the Washington Suburban Sanitary Commission to provide water and sewer service. John Broda comments on the implications of the sewer moratoria for the administration of the ordinance:

> What we are essentially doing in Montgomery County is reviewing the preliminary plans in accordance with the Adequate Public Facilities Ordinance, with the exception of sewers. What we are saying to the developers is, "submit your plans and we will conditionally approve them, as long as they are in the right systems area." But the developer still has to wait in line for sewer and water service. And until the developer gets a letter from the Sanitary Commission guaranteeing sewer service, we do not formally approve the plan. So, we are essentially enforcing the ordinance at the record plat stage of the review process.
>
> It's difficult, then, to make an assessment of the impact of the ordinance in view of the moratorium

---

[21]Michael Dechante, Technical Director, Suburban Maryland Homebuilders Association, Interview, October 8, 1976.

> situation. Assuming that we could be in a position to provide sufficient water and sewer service to meet demands, it would be a different situation. The ordinance could then receive a fair test.[22]

Although the school facilities, transportation, and water and sewer elements of the Adequate Public Facilities Ordinance have each been weakened by factors largely exogenous to the ordinance, there is evidence that the ordinance remains a fundamental link in the County's system of land use controls. Royce Hanson discusses the Adequate Public Facilities Ordinance in terms of the County's growth management strategy:

> The Adequate Public Facilities Ordinance, together with the Capital Improvements Program, Ten Year Water and Sewerage Plan, and the staging elements of the area master plans, have provided the county with a greater degree of leverage towards rationally planning the sequence of growth. In concept, if we are opening a new area to development, the way in which it is in fact open to development is by the extension of public facilities, primarily sewers and roads, which are capital intensive. And of course the Adequate Public Facilities Ordinance is most useful in areas where raw land is about to be developed. It is of marginal value in areas where the infrastructure is already in place as it is in the down county area. In the upper county and corridors, however, we're in a much better position to deny subdivision with the Adequate Public Facilities Ordinance. And with regard to the County's financial commitments and expenditures, it is extremely useful to have an ordinance that makes it possible to relate subdivision activity, and therefore demand of facilities--to the way you have programmed the

---

[22]John Broda, Interview, September 20, 1976.

> delivery of those facilities. And it makes it possible also to plan the extension of facilities in a manner that opens up enough land to absorb all the reasonable expectations of the market, but at the same time to channel that market so that it locates close to those facilities rather than somewhere else.[23]

The recent study of the Development Review Section of the Adequate Public Facilities Ordinance, indicates the ordinance (in conjunction with other controls) is achieving at least one of its objectives. The report states that:

> Since 1974, the trend in Montgomery County has been toward a reduction of subdivision activity outside the "sewer envelope." In view of the recent overall decline in home building in the County, which is due to several factors, it is difficult to ascertain what impact the ordinance has had towards the reduction of subdivision activity in these areas. It is clear, however, that the Adequate Public Facilities Ordinance has been utilized most effectively in areas, such as Germantown, which have staging mechanisms built into the master plan.[24]

Based on information illicited from interviews with County officials, and key Planning Commission publications, it appears that Montgomery County is making significant progress towards strengthening its control over the timing of development, particularly in the planning areas of the County that have utilized staging elements in their master

---

[23]Royce Hanson, Interview, September 26, 1976.

[24]"A Report of the Adequate Public Facilities Ordinance," p. 4.

plans. The Adequate Public Facilities Ordinance, in turn, is viewed as one element in a dynamic system of policies, programs, and tools designed to make it possible for the County to rationally plan the sequence of its growth. Royce Hanson points out the strategic value of coordinating the County's timing elements, in a discussion of the potential utility of the Adequate Public Facilities Ordinance in developing areas of the County.

> My thinking at the present time is that what we need to do, in all likelihood, is pretty much what we've done in the Germantown area--and that is to look far more critically at categories 4 and 5 in the Ten Year Water and Sewerage Plan, and begin to correlate categories 4 and 5 with the extension of the transportation system. By doing that and by developing a staging plan for each of the developing areas of the County, we would then be in a position to essentially deny applications on a prima facie basis. Either you're in the right sewer category, or not--and if you're not in the right sewer category, we can't let you subdivide. So the ordinance becomes a means of simply enforcing your plan.[25]

Fairfax County

In January, 1974, Fairfax County took its first step towards adopting an Adequate Public Facilities Ordinance modeled after the Ramapo, New York ordinance with the enactment of moratoria procedures designed to temporarily prevent further development while the County

---

[25]Royce Hanson, Interview, September 26, 1976.

was updating its plans. On the advice of Robert Freilich and members of the County's legal staff, the Board of Supervisors decided to use its emergency powers to adopt an Interim Development Control Ordinance (IDO), which provided for a temporary moratorium (for a maximum of 18 months) on the rezoning of land in the County and on the processing and approval of any site plans not already approved. The Board's emergency powers allow that if emergency conditions can be shown to exist, the Board may temporarily enact an ordinance without prior public notice.[26] The legal staff advocated the use of these powers in order to prevent a rash of rezoning applications and the filing of site plans that may otherwise have occurred had the normal legislative process been followed. In the words of the County Attorney, the emergency powers were used to prevent a "race of diligence."[27]

The Interim Development Control Ordinance, which Jim Reid later admitted was "one of the biggest mistakes of the PLUS program," met with immediate resistance from local developers. Grace Dawson briefly describes the situation in January, 1974:

---

[26]Code of Virginia, Article 8, Chapter 11, Title 15.1-491.

[27]"Fairfax Supervisors Enact Emergency Ban on Building Permits," Washington Post, January 8, 1974, p. 1.

> Almost immediately after the announcement of the passage of the ordinance, there was an uproar among the development community, with threats of a court suit over the ordinance's alleged deprivation of property rights. The local and Washington press carried stories describing charges made against the Board by the development community, claiming that the Board espoused a no-growth policy and by its irresponsible behavior was determined to kill the local construction industry.[28]

Following the adoption of the IDO, more than 100 suits were filed against the County, challenging the legality of the ordinance. These suits were aggregated into two major cases: one involving opponents to the County's refusal to process site plans and subdivision plats and the other involving those opposing the County's refusal to process rezoning requests. In the site plan case (which represented 13 petitioners), Fairfax County's Circuit Court ruled that the site plan provisions of the IDO were invalid, basing its decision on the fact that under Virginia law, "no person shall be deprived of his property without due process." The Court ruled that the Interim Development Control Ordinance had effectively denied property owners the use of their land for lawful purposes under existing zoning for a period up to 18

---

[28]Grace Dawson, "No Little Plans: Fairfax County's PLUS Program for Managing Growth," p. 28.

months.[29] The County was ordered by the Court to begin accepting and processing site plans and subdivision plats.

The petitioners who challenged the rezoning provisions of the Interim Development Control Ordinance decided to settle their case with the County out of court. The agreement reached provided that there be a period of two weeks (September 16-30, 1974), during which the County would receive new rezoning applications. At the time of adoption of the ordinance there were 172 cases on file, and as part of the out-of-court settlement which allowed filings for a two-week period, an additional 163 cases were filed. Under the agreement, however, Fairfax County would not have to hear and decide the total number of zoning cases (335) until after July 1, 1975, at which time the zoning moratorium would be lifted.

The failure of Fairfax County to successfully implement the Interim Development Control Ordinance had wide-ranging implications for the PLUS program, and the future of the Adequate Public Facilities Ordinance. Jim Reid, Director of Comprehensive Planning at the time, reflects back on the IDO as a turning point in the PLUS program:

---

[29] M. S. Howe, et al. v. The Board of Supervisors of Fairfax County, 215 S.E. 2d 453 (1974).

> First of all, I really don't think that we needed to put the entire County under a building moratorium, particularly in view of the economic down turn--there wasn't much financing of development during that period. So, I think that if we had been prepared to put only selected, critical areas of the County under moratorium, we would have been much better off. But by springing the IDO on the County, particularly the site plan portion, we certainly alienated ourselves from the building industry. From that point on, there was a general distrust on the part of the developers of PLUS officials, and the theme of those days was, "I'll see you in court. . . ." The defeat of the ordinance also raised serious doubts about the future of development timing under existing Virginia law, the question being, "what were the chances of defending any development timing system under Virginia law given the mood of developers toward the County and our inability to sustain even a zoning moratorium in the local courts?"[30]

During the Spring and Summer, 1974 (which was during the height of the controversy over the IDO), PLUS officials met periodically with Dr. Freilich to discuss the problems inherent in transferring Ramapo's development timing system to Fairfax County. The differences between the two jurisdictions with respect to spatial characteristics and the level of existing development were obvious. Ramapo, New York is a township with a total area of 89 square miles; Fairfax County contains 399 square miles. Ramapo, at the time the Adequate Public Facilities Ordinance was implemented, was more than half

---

[30]Jim Reid, Interview, October 13, 1976.

developed. The capital budget and capital plan covered a period of 18 years and provided the capital improvements anticipated for full development of the Town. Fairfax County, on the other hand, was less than half developed and given its size, an 18- or 20-year capital improvements program would only include facilities for a portion of the remaining undeveloped land.

In recognition of the problems posed by Fairfax County's size and level of development, and the fact that the County's first capital improvements program would not contain facilities for the entire land area of the County, Freilich proposed the establishment of a three-tier system of development categories. Tier 1 would include all of the currently developed land in the County; Tier 2 would include all the land to be developed during the next 15 years (or land that would be serviced by facilities listed in the first capital improvements program); and Tier 3 would include the balance of the County, namely the land not included in the capital improvements program. Freilich explained that since the capital improvements program would be continually updated, reaching an additional year at annual update, the Tier 3 area would decrease in size as the Tier 2 area expanded outward. This "ripple effect" would continue for the 30 years or so that it

would take the County to reach buildout.[31]

Throughout the year, 1974, PLUS officials grew increasingly apprehensive about the feasibility of transferring the Ramapo system of development timing to Fairfax County. One member of the Board of Supervisors bluntly referred to the proposed ordinance as "the damndest thing I've ever heard." Philip Yates, Chief of the Implementations Branch, discusses the types of problems that contributed to the growing disillusionment over the Adequate Public Facilities Ordinance:

> For one thing, there were many kinks in the ordinance itself that hadn't been worked out to our satisfaction. One problem, for example, was the large amount of vacant land that wouldn't be serviced for 50 or 60 years. Now one alternative would be to lock yourself into a development pattern in the future, which of course would be impractical in view of the fact that we're a fast growing and dynamic County. On the other, there was a financial problem . . . in all likelihood, the County would have been faced with the prospect of purchasing long-term easements on these undeveloped areas, and where do you get the money for this sort of thing?
>
> And even if we could have tailored an ordinance to fit the County's needs, our experience with the building moratoria, and our track record in general (in court), and the overriding problem of enabling legislation, these are all reasons why I feel we'll never be able to adopt an ordinance of this nature, at least not in the near future.[32]

---

[31]Grace Dawson, "No Little Plans: Fairfax County's PLUS Program for Managing Growth," p. 68.

[32]Philip Yates, Chief, Plans Implementation Branch, Office of Comprehensive Planning, Fairfax County, Interview, October 13, 1976.

Jim Reid comments on the overall problem facing the County in 1974-75:

> Eighteen months is not a realistic time frame for achieving the objectives set forth in PLUS, and we all recognized this. Consequently, we found ourselves trying to adopt the Adequate Public Facilities Ordinance and update our comprehensive plan simultaneously, which is the medical equivalent of having nine babies in one month.[33]

In June, 1975, Fairfax County's efforts to regulate the timing of development were dealt a severe blow when the Virginia Supreme Court upheld a lower court's ruling that the Board of Supervisors acted illegally when it rejected a rezoning request because it felt that public facilities were not adequate. A brief review of the Court's decision in Board of Supervisors of Fairfax County v. Williams is warranted because it illustrates how dangerously out of step the County's legal and planning strategies were at this point in the PLUS program.

In the Williams case, the Board of Supervisors took the position that its denial of a rezoning for higher density was "mandated by state law and deficiencies in public facilities." The state law on planning and zoning, the Board argued, authorizes it to decide "when" public facilities "will be available," requires it to plan the

---

[33]Jim Reid, Interview, October 13, 1976.

growth of Fairfax County and to provide public facilities "consonant with the efficient and economical use of public funds."[34] The Board further asserted that it had determined, by an adopted policy, that higher density development of the area in which the land in question was located "should not occur until public facilities are adequate."

In Virginia's highest court, the inquiry focused upon two issues: (1) whether certain public facilities, namely highways, schools, and sewage disposal, were available to serve the land in question, and (2) whether the Board's denial of the rezoning request was discriminatory. After a review of the evidence, Virginia's Supreme Court supported the trial court's findings that: (1) public facilities were or soon would be available to serve the land in question; (2) nearby similarly-situated property had already been rezoned for higher density use; (3) existing zoning of the land in question was unreasonable and therefore invalid; and (4) it was discriminatory and therefore arbitrary and capricious to deny higher-density zoning to the land in question.[35]

---

[34]Code of Virginia, Article 8, Chapter 11, Title 15.1-427.

[35]Board of Supervisors of Fairfax County v. Williams, 216 S.E. 2d 34 (1975).

Although the Board had a policy in effect (incorporated in the area's master plan) of holding back development until appropriate facilities and services became available, neither the trial court nor the Virginia Supreme Court was impressed. Concerning the plan, the Virginia Supreme Court stated:

> It is true . . . that a comprehensive plan . . . is merely a guide for development, rather than an instrument of land use control. In this case, however, the Board, relying on the density provisions, has used its plan as a sword to permit development of some property . . . and relying on the timing provision, has used the plan as a shield to justify denial of similar treatment to other property in the same area.[36]

Lee Ruck, County Attorney, explains the legal implications of the Williams decision for the County's efforts to regulate the timing of development in accordance with the availability of public facilities:

> Since rapid, unplanned development over the past years has resulted in overburdened facilities in some parts of the County, as long as a landowner can point to development that has been allowed in such overburdened areas, the courts, on equity grounds, would have to grant him development approval even if it can be shown that the proposed development would overburden facilities. In the absence of judicial norms on adequacy, the cycle of overburdened facilities is perpetuated.[37]

---

[36]Ibid., p. 35.

[37]Lee Ruck, Memorandum to Board of Supervisors, Fairfax County, June 18, 1975.

The Virginia Supreme Court, in its decision in the Williams case, put what the County staff interpreted as the "last nail in the coffin" of prospects for using the adequacy of facilities as a development timing test. Since the Summer, 1975, PLUS officials have not actively pursued development timing with the Adequate Public Facilities Ordinance in Fairfax County.

The County's failure to adopt the Adequate Public Facilities Ordinance undercut a major growth management policy set forth early in the PLUS program:

> The rate of growth, as well as its distribution, should be compatible with the existence of adequate public facilities to support growth as it occurs.[38]

According to one key planning official, the loss of the Adequate Public Facilities Ordinance has left Fairfax County with little control over the timing of development. Philip Yates assesses the County's situation in the Fall, 1976:

> To put it simply, the adequacy of public facilities is no longer a critical factor in the development review process, particularly in light of the recent court decisions. The availability of sewer is one tool we have for timing development in the County, but its impact is marginal. I think we've been providing sewer on a reactionary basis, if you will, satisfying demand that we know

---

[38]Proposal for Implementing an Improved Planning and Land Use Control System in Fairfax County, p. 12.

> is going to be there rather than programming where we're going to put the next sewer to accommodate the next tier of development.[39]

Summary

While Montgomery County has been relatively successful in utilizing the Adequate Public Facilities Ordinance towards achieving its growth management objectives, Prince George's County has met with somewhat less success, and Fairfax County officials have altogether abandoned, at least temporarily, the idea of development timing with the Adequate Public Facilities Ordinance. The relative success or failure of each county to regulate the timing of development with the Adequate Public Facilities Ordinance is the function of several factors, including: the ability to use the "adequacy of public facilities" as a basis for regulating the timing of development; the degree of control over the planning and programming of public facilities and services; and the support, or lack of support from the development sector for the county's growth management policies and programs. The key factor or determinant of the impact of the Adequate Public Facilities Ordinance on the growth management strategies of each county has been the ability, or inability of the county to

---

[39]Philip Yates, Interview, October 15, 1976.

develop a sound planning foundation upon which to administer the ordinance. The importance of a sound planning foundation, and the other major determinants of the ability of Montgomery County, Prince George's, and Fairfax County to regulate the timing of development, is discussed in greater detail in the following chapter.

CHAPTER V

THE DETERMINANTS OF THE ABILITY OF EACH COUNTY TO REGULATE THE TIMING OF DEVELOPMENT WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE

The Importance of a Sound Planning Foundation

Table 1 reflects the incremental, progressive approaches that Montgomery and Prince George's County have taken towards developing a growth management program. The General Plan, adopted in 1964, remains the foundation of each county's policies for managing growth and development. Since 1964, Montgomery and Prince George's County have progressively added a variety of plans, tools, and techniques to their respective growth management systems in an effort to implement the "Wedges and Corridors" concept embodied in the General Plan. In subsequent years, Montgomery and Prince George's County each developed a set of Area Master Plans which provided more detailed land use guidelines and recommendations for each of the planning areas in both counties.

A milestone in the growth management programs of Montgomery and Prince George's County was the law passed by the Maryland General Assembly in 1969 requiring the Washington Suburban Sanitary Commission (WSSC) to prepare an

TABLE 1

CHRONOLOGY OF MAJOR EVENTS IN THE GROWTH MANAGEMENT PROGRAMS OF PRINCE GEORGE'S, MONTGOMERY, AND FAIRFAX COUNTY, 1964-1976

County	Year				
	1964	1968	1969	1970	1971
Prince George's	General Plan adopted	Six year CIP adopted	Preparation of area master plans begun; First Ten Year Water and Sewerage Plan enacted	Adequate Public Facilities Ordinance adopted	
Montgomery	General Plan adopted	Premature subdivision regulation studied; preparation of area master plans begun	First Ten Year Water and Sewerage Plan enacted	Six year CIP enacted	Final area master plans adopted
Fairfax			Zoning Ordinance Study Committee (ZOSC) appointed		
	1972	1973	1974	1975	1976
Prince George's	Final area master plans adopted	Staging policy proposed			Standard evaluation program established
Montgomery		Adequate Public Facilities Ordinance	First annual growth policy report published; Germantown plan adopted	Second annual growth policy report published	
Fairfax		Resolution adopted establishing PLUS; Adequate Public Facilities Ordinance introduced	First six-year CIP adopted "in principle"; Interim Development Control Ordinance (IDO) enacted	Williams Case; Adequate Public Facilities Ordinance Abandoned; Comprehensive Plan, Area wide plans adopted	Rezoning/ Remapping Begun

updated Ten Year Water and Sewerage Plan designating portions of each county to be served by community water and sewer systems. An important provision of the state law is that the Ten Year Water and Sewerage Plan be based on county policies and guidelines.[1] The Ten Year Water and Sewerage Plan, together with the Capital Improvements Program, General Plan and Area Master Plans provided a planning foundation for the subsequent adoption of the Adequate Public Facilities Ordinance in Prince George's County in 1970, and Montgomery County in 1973. The ordinance, by design, serves as a "legal linkage" between the staging policies set forth in the Area Master Plans, and the commitment by each county through the CIP and Ten Year Water and Sewerage Plan to provide public facilities and services for future development.

The progressive approaches of Montgomery and Prince George's County towards developing a foundation for development timing with the Adequate Public Facilities Ordinance are in sharp contrast to Fairfax County's strategy set forth in the PLUS program. In an overall effort to "revitalize its planning program" within a period of 18 months, Fairfax County officials established the following

---

[1]Annotated Code of Maryland, Section 387, Article 43 Chapter 756 (1969).

objectives under PLUS: to develop a Five Year-Capital Improvements Program; to update the Comprehensive Plan and the four Areawide Plans; to adopt a new Zoning Ordinance; to conduct a facilities/services inventory; and to enact an Adequate Public Facilities Ordinance modeled closely after Ramapo's. Consequently, four elements that were critical[2] to the implementation of Ramapo's development point system: the facilities/services data base, the capital improvements program, the revised zoning ordinance, and the Master Plan, were each in the process of being completed when the Board of Supervisors took its first step towards implementing the Adequate Public Facilities Ordinance with the enactment of the Interim Development Control Ordinance. The absence of a sound planning foundation proved to be a fundamental problem in the County's efforts to implement the Adequate Public Facilities Ordinance.

A major problem confronting PLUS officials was the inherent difficulty of developing one element of the system independent of the others. The preparation of the County's first CIP, for example, was contingent upon the development policies incorporated in the Comprehensive Plan and the Area

---

[2]Manuel Emanuel, "Ramapo's Managed Growth Program," pp, 307-8.

Plans, none of which were scheduled for review until Winter, 1975; and the data generated from the public facilities and services inventory which was undertaken in conjunction with the updating of the plans. In recognition of these factors, and others, County officials focused on establishing a CIP process, rather than a product.[3] As a result, the County's first CIP, completed in May, 1974 (FY74-79) was only approved "in principle" by the Board of Supervisors.

The most complex task facing PLUS officials was the implementation of the new Zoning Ordinance, which had been adopted in principle in 1974 but which could not go into effect until a map representing the zoning categories of the new Ordinance had been prepared and adopted. The re-mapping of the County in accordance with the densities of the new plans was complicated by the legal requirement of uniform application Countywide. Following the completion of the new plans in 1975, the Board decided to remap the County on a direct conversion basis from current zoning districts into the most equivalent districts of the new Zoning Ordinance. The rezoning/remapping process began in 1976, and is scheduled for completion in 1978. Until then,

---

[3]Grace Dawson, "No Little Plans: Fairfax County's PLUS Program for Managing Growth," p. 136.

the 1959 Ordinance remains in effect.

Fairfax County's planning program, then, was clearly in a state of transition at the time County lawyers were testing the adequacy of public facilities as a timing mechanism in the local and state courts. Any chances that the County may have had to regulate the timing and location of development with the Adequate Public Facilities Ordinance under Virginia law were negated by the absence of the completed plans and the capital improvements program. Jim Reid sums up the problem inherent in the County's development timing strategy, "We were talking about the Adequate Public Facilities Ordinance as an implementation technique when we hadn't even done the replanning job. It was a classic case of putting the cart before the horse."[4]

A comparison of the growth management strategies of Montgomery County, Prince George's County, Ramapo, and the strategy pursued by PLUS officials illustrates the importance of developing a planning foundation for the Adequate Public Facilities Ordinance. The basic function of the Adequate Public Facilities Ordinance, whether administered through the subdivision controls or the zoning ordinance, is to connect residential development to the

---

[4]Jim Reid, Interview, October 13, 1976.

capital improvements programming, thus connecting private to public investment. To this end, two tools that are fundamental to the Adequate Public Facilities Ordinance are the Comprehensive Plan and the capital improvements program, as Royce Hanson explains:

> The enforcement of an Adequate Public Facilities Ordinance has to be based, it seems to me, on what you put ahead of it in the way of plans and capital programs. If you do your planning and capital programming right, then the ordinance does what it is designed to do to prohibit development where facilities are inadequate. If you don't do that part right, then its putting, it seems to me, an almost intolerable stress on a relatively weak system, and so no matter whether you have a point system or a weighted system or a case by case system, you're always running right at the edge of whether the regulation you're using is a reasonable one, because you haven't set up your basis for reasonableness in the first place.[5]

An important element of the planning foundation for the Adequate Public Facilities Ordinance is the existence of a firm empirical base to support the standards and criteria used in determining the adequacy of public facilities and services. In Ramapo, for example, the special facilities studies that were undertaken early in the planning process were used in conjunction with the capital improvements program and the Master Plan to determine which elements should be included in the development points system, and the number of development points

---

[5]Royce Hanson, Interview, September 29, 1976.

to be assigned to each category of facilities and services.[6] In Montgomery County, a strong data base has aided the planning and programming of public facilities, and the administration of the adequate public facilities test. The Planning Commission's data base was critical to the preparation of the Planning Board's second annual growth policy report, Fiscal Impact Analysis, which is an examination of the impact of three alternative rates of growth over a ten-year period on the County's fiscal resources.

In Prince George's County, however, a weak data base has been dysfunctional not only to the Adequate Public Facilities Ordinance, but also to the County's overall growth management efforts. The 1973 Proposed Staging Policy, for example, was never adopted by the County Council because of the lack of data to support the major proposals of the document. Prince George's "Standards Evaluation Program" was initiated in 1976 in response to a weak empirical base for determining public facility and service needs in the County; the fiscal capability of the County to provide public facilities and services; and standards and criteria for determining the adequacy of

---

[6]Emanuel, p. 308.

each category of public facilities and services.[7]

The importance of a strong data base for determining the adequacy of public facilities and services and, concomitantly, the need for well-defined standards of adequacy, became further apparent to Prince George's Planning Board in connection with the court cases involving the Adequate Public Facilities Ordinance. On at least three occasions, Prince George's Circuit Court has ruled that the Planning Board's denial of subdivision approval because of inadequate public facilities (in each case, roads) was "arbitrary and capricious."[8] A major factor that persuaded the court in each case was the lack of data and/or the discrepancies in the data presented by the Planning Board in its testimony of the inadequacy of the facilities. In the Rosenburg case, the state's highest court noted the Planning Board's inability to define "reasonable distance" in its ruling that the Board had been "unreasonable" in its rejection of a subdivision application based on the inadequacy of school facilities.

While Montgomery County's data base is more

---

[7]Standards Evaluation Program, p. 4.

[8]Beane v. Prince George's County, 315 A2d 777 (1974); Hampton v. Prince George's County, 327 A2d 774 (1975); Savage-Fogarty v. Prince George's County, 313 A2d 627 (1973).

developed than Prince George's, an important factor from the point of view of administering the Adequate Public Facilities Ordinance is the quality of the data. As Royce Hanson explains, Montgomery County has partly solved the problem of discrepancies in data of the Planning Commission and the data of the various state and County line departments responsible for determining facility/service adequacy.

> We recognized the importance of providing a solid, technical justification for a land use regulation, at least to the point of meeting the general reasonableness test. . . . We have, therefore, added to our staff a research division that we think is quite outstanding. We now find that public agencies are using our data instead of generating their own. To the extent that you can get other people to use your data, you're ahead.[9]

Control Over Public Improvements

Control over the extension of public improvements, particularly roads, water and sewer lines, and schools, is generally recognized by planners as a powerful tool for the regulation of the timing and location of development.[10] The Adequate Public Facilities Ordinance, in turn,

---

[9]Royce Hanson, "Practical Aspects of Growth Management," a speech to the Seminar on Growth Management, sponsored by the Tennessee Chapter of the American Institute of Planners, May 7, 1976.

[10]Marion Clawson, Suburban Land Conversion in the United States, p. 317.

is based upon the commitment by the local government to provide facilities and services to support existing and future development. The commitment to growth, coupled with the degree of control that a municipality is able to exercise over the programming of improvements, constitutes a major determinant of the impact of an Adequate Public Facilities Ordinance. In Prince George's and Montgomery County, for example, the degree of control each county has over the programming of roads, water and sewer lines, and schools has important implications for the administration of the Adequate Public Facilities Ordinance.

A problem currently confronting Montgomery and Prince George's County planning officials is the difficulty in administering the adequacy test for state roads. The Adequate Public Facilities Office in both counties (see Appendix) provides similar standards and criteria for determining the adequacy for roads: existing roads must be adequate to accommodate the traffic that would be generated by the subdivision, and in the event additional roads are needed, they must be included in the current adopted CIP or the State Highway Administration's Five Year Construction program. Montgomery and Prince George's County are faced with a dilemma. In some cases, approval of a preliminary subdivision plan is contingent upon the

adequacy of a state road, yet neither county has any control over the capital programming of improvements to these facilities. The situation has been compounded in both counties as a result of the recent cutbacks in state funds allocated for road improvements. Consequently, Montgomery and Prince George's County planning officials are confronted with the problem of administering the transportation element of the Adequate Public Facilities Ordinance in the absence of any firm commitment from the state to provide the necessary road improvements. This is a problem that neither county has been able to fully resolve.

Although Prince George's and Montgomery County officials have encountered problems inherent in the planning and programming of state roads, each county has enjoyed a considerable degree of success in utilizing water and sewerage facilities to regulate the timing and location of development. The 1969 Water and Sewerage law, which Royce Hanson once referred to as "one of the most important land use laws anywhere in the country,"[11] has added a new dimension to the growth management programs of Montgomery and Prince George's County. The major provision of the law, that each Maryland jurisdiction prepare

---

[11]Royce Hanson, Speech, May 7, 1976.

and adopt a Ten Year Water and Sewerage Plan, enables Prince George's and Montgomery County to designate areas to be served by water and sewerage facilities in the succeeding ten years, and thus has strengthened each county's control over the timing and location of growth. A Prince George's County planner stated that "the County has realized a high degree of success with its water and sewerage plan in controlling land use and development. No other land use control device has been more successful in achieving a low growth or controlled growth profile than this plan."[12]

The Ten Year Water and Sewerage Plan has also facilitated the administration of the adequacy test for water and sewerage facilities. The Adequate Public Facilities Ordinance in both counties is quite clear in the criteria and standards used in determining the adequacy of water and sewerage facilities: the proposed subdivision must be located in an area that is currently served by water and sewerage facilities, or where such service is programmed within the first two years of a current approved Ten Year Water and Sewerage Plan. Although the sewer moratoria in Montgomery County has created

---

[12]Robert Edwards, "Prince George's County: Staging Growth," Management and Control of Growth, Vol. 3, p. 275.

administrative difficulties for the Development Review Section, preliminary subdivision plans must still meet the basic adequacy test for water and sewer facilities provided in the ordinance.

An important difference in the growth management strategies of Prince George's and Montgomery County has been the ability of the latter to integrate the Adequate Public Facilities Ordinance, Ten Year Water and Sewerage Plan, and the CIP in a cohesive system of development timing controls. The 1974 Germantown Plan reflects the current development strategy of the Montgomery County Planning Commission in the developing areas of the County. In Germantown, growth is planned in increments over a 25-year period based on the programmed extension of water and sewerage facilities and the transportation system. The Adequate Public Facilities Ordinance is fundamental to the Germantown Plan as it provides a legal linkage between the staging policy and the County's commitment to provide public facilities and services.

Prince George's County has used the Adequate Public Facilities Ordinance in a somewhat more limited capacity. The motivating factor behind the adoption of the Adequate Public Facilities Ordinance by the County Council in 1970 was to prevent premature development from occurring in areas not served by the Ten Year Water and Sewerage Plan.

There was general agreement among Prince George's planning officials interviewed in Fall, 1976 that the Adequate Public Facilities Ordinance is used primarily in conjunction with the Ten Year Water and Sewerage Plan, and has been most effective in this capacity.[13]

One element of the Adequate Public Facilities Ordinance that neither Montgomery nor Prince George's County has been able to administer with any degree of success is the requirement of the adequacy of school facilities. In Montgomery and Prince George's, school facilities are no longer given formal consideration in the adequate public facilities review process. Partly as a result of the court order in Prince George's County to desegregate the County Public School System, both Prince George's and Montgomery County operate under a "Countywide school service" policy which considers total school capacity as being available for service for any geographic area within each county. As a result, officials of either county are unable to designate geographic boundaries for school service areas, a fact which leads one Montgomery County planner to conclude, "We cannot find, in my judgment, that

---

[13]Marilyn Pray, Interview, October 3, 1976; Luke Lukasewski, Interview, September 24, 1976; Monte Kolste, Interview, October 11, 1976.

school facilities are inadequate."[14]

Legal Issues

Legal issues inherent in development timing with the Adequate Public Facilities Ordinance are still very much in a state of flux. For one thing, the regulation of the timing and location of growth through requirements of the adequacy of facilities and services is a relatively recent development in land use control and legislation. At least two approaches to development timing with the Adequate Public Facilities Ordinance have emerged since 1969: Ramapo, and later Fairfax County, have applied the Adequate Public Facilities Ordinance through an amendment to the zoning ordinance establishing the development points system. Montgomery and Prince George's County have amended their respective subdivision regulations to include an adequate public facilities test based on rather broad standards and criteria. The following section focuses on each approach separately, beginning with the Ramapo plan for development timing.

The ability of Ramapo officials to sustain the development points system in New York's highest court was ultimately due to evidence that the Town Board had prepared and adopted a Master Plan that contained the Town's

---

[14]Royce Hanson, Interview, September 29, 1976.

development policies; prepared and implemented an 18-year-capital improvements program providing for the full development of the Town, and included a formula in the Master Plan for gradually inducing low- and moderate-income housing.[15]

In June 1973, PLUS officials made the decision to model Fairfax County's development timing strategy and point system closely after Ramapo's. Eighteen months later, the idea of development timing with the Adequate Public Facilities Ordinance was no longer pursued by County lawyers or planners. From a legal perspective, Fairfax County's failure to implement the Adequate Public Facilities Ordinance can be attributed to at least three factors: first, the decision by PLUS officials to model the County's development timing system on the strategy used in Ramapo; secondly, the failure to develop a foundation upon which to administer the Adequate Public Facilities Ordinance; and finally, the belief among the County's legal staff that under Virginia law, Fairfax County could not regulate the timing of development on the basis of the adequacy of public facilities. Although the Williams case marked the last of the County's efforts to regulate the timing of development in accordance with the

---

[15]Emanuel, p. 306.

adequacy of public facilities, planning officials interviewed in the Fall, 1976 were of the opinion that the source of the County's problems was the decision to implement the Ramapo system of controls, a strategy that was never suited to Fairfax County in the first place, as the following discussion reflects.

The differences in the spatial characteristics of Ramapo and Fairfax County were recognized by County officials early in the PLUS program as a major problem with serious implications for the County's legal strategy.[16] The Ramapo point system applied only to unincorporated parts of the Town, which totaled 47 square miles, and Ramapo officials were thus able to provide facilities and services anticipated for the full development of the Town in accordance with the Master Plan. The 18 year-capital improvements program was a critical element of the Ramapo plan, as it was evident that the Town Board was committed to growth, and therefore any restrictions on the right to develop were only temporary in nature. The court in Golden noted:

> Without a doubt restrictions upon the property in the present case are substantial in nature and duration. They are not, however, absolute. The amendments contemplate a definite term, as the

---

[16]Grace Dawson, p. 69.

> development points are designed to operate for a maximum period of 18 years and during that period, the Town is committed to the construction of capital improvements.[17]

Fairfax County, on the other hand, was not in a position to make a commitment through its capital improvements program to the development of the entire land area. For one, the sheer size of the County (399 square miles) was a prohibitive factor; and secondly, as Philip Yates points out:

> If you look closely at our plans you'll see that we have what we call a Complex area which are tougher areas of the County and where public policy is less clear about what ought to be done in the long term. So to commit ourselves to a future level of development in these areas just didn't make sense.[18]

The absence of a commitment to provide facilities and services in the developing areas of the County raised concern among members of the County's legal staff that denial of development because of inadequate public facilities would constitute the "taking" of property without due compensation. In a discussion of the legal ramifications involved in the implementation of the Ramapo strategy, the County Attorney commented in 1973 that:

---

[17]Golden v. Planning Board of Town of Ramapo, 285 N.E. 2d 295 (1972).

[18]Philip Yates, Chief, Plans Implementation Branch, Interview, October 15, 1976.

> The confiscation issue is the most difficult barrier facing a time-phasing zoning scheme. The Golden decision is, of course, helpful, but obviously not binding on Virginia courts. And other courts have not been as liberal as the Golden court. It cannot be said, then, with any degree of confidence, that a time-phased zoning ordinance will be sustained on the confiscation issue in Virginia. To maximize the chances of an ordinance of this type, however, it is necessary to provide tax relief for properties which must wait for capital facilities to be provided.[19]

Fairfax County planners and lawyers were particularly sensitive to the taking issue in connection with the Tier 3 area of the County, or the land that would not be included in the capital improvements program. A provision was, therefore, included in the proposed Adequate Public Facilities Ordinance that would allow prospective developers to advance the date of subdivision approval by agreeing to provide those improvements which would bring the proposed plat within the number of points required by the amendment. In a further effort to relieve potentially unreasonable restrictions, Robert Freilich suggested that the County purchase mandatory long-term development easements on all the land in Tier 3 to compensate landowners for the loss of development rights until facilities became available. Feilich's proposal was similar to Ramapo's

---

[19]Proposal for Implementing an Improved Planning and Land Use Control System, p. 64.

Development Easement Acquisition Commission (DEACOM) program, created in 1967 for the purpose of maintaining lands as open space, and which is authorized to acquire development easements in areas of the Town not scheduled for capital improvements for a number of years. The DEACOM program is an important corollary of Ramapo's growth management program since the development easement results in a reduction of assessed valuation of parcels of land in such areas.[20] Freilich's proposal for a development easement acquisition program was never realized, however, primarily because of the enormous costs to the County under such a program. Jim Reid focuses on a fundamental problem that faced the County's planning and legal staff:

> The basic problem we had in the PLUS program with respect to the Adequate Public Facilities Ordinance was that the legal strategy and the growth management goals we laid out didn't necessarily compliment each other. The Ramapo approach is to guarantee the adequacy of facilities at some time certain in the future. We began to realize that this would never work in Fairfax. The Adequate Public Facilities Ordinance just wasn't tailored to our particular situation.[21]

The confiscation issue was the principle legal barrier in the County's efforts to implement the

---

[20]Sue Adams, "Growth Control with Development Timing in Ramapo, New York," p. 72.

[21]Jim Reid, Interview, October 13, 1976.

development points system. Ramapo officials, as discussed earlier, were able to sustain the development points system primarily because of evidence that the controls were linked to a bona fide comprehensive plan and a long-range capital improvements program that indicated the Town's commitment to growth. The initial PLUS document, Proposal for Implementing an Improved Planning and Land Use Control System, pointed out the need for Fairfax County to take similar steps in order to maximize the chances of the Adequate Public Facilities Ordinance being sustained in court, particularly on the confiscation issue.[22]

In 1973, however, the Board of Supervisors attempted to deny a request for a rezoning to a higher density on the basis of the inadequacy of facilities to support the proposed development. The Williams case eventually reached the state's highest court, which ruled that the actions of the Board were "arbitrary and capricious," citing evidence that a similarity situated property had been rezoned to a higher density.[23]

---

[22]Proposal for Implementing an Improved Planning and Land Use Control System, p. 66.

[23]Board of Supervisors of Fairfax County v. Williams, 216 S.E. 2nd 34 (1975).

The Virginia Supreme Court's decision in the Williams case in June, 1975 officially ended Fairfax County's hopes of sustaining a development timing strategy based on the adequacy of facilities under Virginia law. The County's lawyers interpreted the court's decision to mean that a developer could demand a higher density zoning category, despite the inadequacy of existing facilities to support the development, as long as it could be shown that it had been granted to other similarly situated landowners. It then would become the burden of the County to show why the higher zoning category is unreasonable, rather than the burden of the landowner to show that a higher density category is warranted.[24]

The frustration of the County's lawyers was reflected by their decision to seek review by the U. S. Supreme Court of the Williams case and Allman (211 S.E. 2d 48), an earlier case decided under similar circumstances by the Virginia Supreme Court and combined with Williams in the appeal. In the petition for certiorari, the County Attorney claimed that in the Williams and Allman cases, the Virginia Supreme Court had misinterpreted the due process clause of the Fourteenth Amendment by substituting

---

[24]Lee Ruck, County Attorney, Fairfax County, "The Williams Decision," Memorandum to the Board of Supervisors, Fairfax County, June 18, 1975, p. 1.

its judgment for that of the relevant legislative body. In the writ of certiorari, the County Attorney explains the implications of the Virginia Supreme Court's decisions in the Williams and Allman cases:

> The Court's decision will allow developers in the cases at bar to develop at densities they desire. This will force the legislature to react--i.e., to provide public facilities/public services for the people who inhabit these developments. The concept for planning for future development, whether residential or public facilities, is no longer a viable one in Virginia. The local legislature can only react to the private developer--wherever and whenever he elects to build, the locality must provide his development with facilities sufficient for the inhabitants generated thereby.[25]

The County's argument did not prevail, however, and the U. S. Supreme Court returned the appeal on November 3, 1975, stating that the cases had been decided on adequate State grounds.

Fairfax County's development timing strategy was beset with a number of complex planning and legal issues that were never resolved. Although Freilich prescribed a step-by-step process for the adoption of the Adequate Public Facilities Ordinance early in the PLUS program, the lawyers for the County found themselves in litigation over the issue of the adequacy of public facilities as a timing

---

[25]Lee Ruck, County Attorney, Petition for Writ of Certiorari to the Supreme Court of the United States, October Term, 1975, p. 52.

mechanism even before the plans and capital improvements program had been completed and implemented. Given the conservative nature of the local courts on land use control issues, even with all the necessary machinery in place, it is by no means certain that a public facilities test would be sustained; but in the absence of the necessary documents, the County's development timing strategy was doomed to failure.

Since the 1950's, developers have had to provide an increasingly higher proportion of both "on-site" and "off-site" improvements in order to be granted subdivision approval. More and more subdivision regulations today require mandatory dedication of land for parks and public spaces and/or cash payments toward the cost of school sites, parks, sewers, etc.[26] However, the requirement that public facilities and services within the "service area" of a proposed subdivision must be adequate to support development is a significant departure from the subdivision regulations currently in effect across the nation. The important question that emerges is, "What factors have enabled Prince George's and Montgomery County to administer the adequate public facilities test in conjunction with the subdivision review process?"

---

[26]Richard Cutler, "Legal and Illegal Methods for Controlling Growth at the Urban Fringe," p. 386.

The state enabling legislation in both counties provides for:

> . . . the avoidance of such scattered or premature subdivision of land as would involve danger or injury to health, safety or welfare by reason of the lack of water supply, drainage, transportation or other public services. . . .[27]

The enabling legislation, then, does not directly authorize the adoption and implementation of an Adequate Public Facilities Ordinance in Montgomery or Prince George's County. One lawyer, commenting on the adequate public facilities ordinances of Ramapo, Montgomery County, and Prince George's County observes that "the ordinances of these communities are based on enabling legislation that does not address the question of the adequacy of public facilities in the first place. Existing enabling legislation does not relate zoning or subdivision controls to the provision of public facilities."[28]

In the absence of specific subdivision enabling legislation, Montgomery and Prince George's County have based the adoption of the Adequate Public Facilities Ordinance on the need to protect the health, safety, and welfare of its citizens. (Lacking specific zoning

---

[27]Laws of Maryland, Section 71(a) of the Regional District Act, 1959, Chapter 780.

[28]Robert Linowes, The States and Land Use Control (New York, New York: Praeger Publishers Incorporated, 1975), p. 165.

enabling legislation, Fairfax County lawyers employed the same legal reasoning.)[29] Montgomery's County Council justifies the enactment of the Adequate Public Facilities Ordinance, in part, on the basis that:

> The best interests of the health, safety, and welfare of all the citizens of this County require that development throughout the County be related to the availability of existing or planned public facilities adequate to support such development.[30]

The validity of the Adequate Public Facilities Ordinance has never been tested in either Prince George's or Montgomery County. A critical factor, from a legal point of view, is the "reasonableness" of the regulation, as Royce Hanson explains:

> It is crucial to the good faith of the ordinance, and I think the Ramapo case implicitly says, you can sustain an ordinance like this as a reasonable regulation of land use, only if there is a prima facie good faith effort on the part of government to utilize its available resources to provide the necessary public facilities and services for development. You cannot put the developer in a posture in which you say to him, "you can only develop if the facilities are available" if you do not make a reasonable effort to provide the facilities in the first place.[31]

Marilyn Lowney, Associate General Counsel for

---

[29]Proposal for Implementing an Improved Planning and Land Use Control System, p. 61.

[30]County Council, Montgomery County, Maryland, Resolution No. 7-1290, adopted June 26, 1973, p. 1.

[31]Royce Hanson, Interview, September 29, 1976.

Prince George's County, commented on an important aspect of the capital improvements programming in both Montgomery and Prince George's County:

> A critical distinction to make between our growth management program and Adequate Public Facilities Ordinance and Ramapo's is that although we have made a commitment to growth, we have not committed ourselves to the full development of the County. A state law requires us to designate those areas of the County to receive water and sewer service during the next ten years, and I believe right now that about 50 percent of the County is outside the sewer envelope. And only through an amendment to the Ten Year Water and Sewer Plan can we extend service to these areas. So the Ten Year Plan diffuses any potential problems we might have in these areas.[32]

Remedial provisions also exist in the Adequate Public Facilities Ordinances of Prince George's and Montgomery County that were designed to relieve a property owner of any unreasonable restrictions on the right to subdivide. In Montgomery County's ordinance, property that does not lie within an area designated for service within the first two years of a current approved Ten Year Water and Sewerage Plan, but is within the last eight years of such a plan, may be deemed to have adequate water and sewerage service if the applicant provides community sewerage and/or water systems and provided the facilities meet the specifications set forth by WSSC and the County

---

[32]Marilyn Lowney, Interview, September 27, 1976.

Health Department. Septic systems are permitted in both counties provided they meet State and County health standards and are granted approval by the WSSC.

Although the statutory and constitutional validity of the Adequate Public Facilities Ordinances of Prince George's and Montgomery County has not been the subject of judicial scrutiny, questions have been raised concerning the manner in which the Adequate Public Facilities Ordinance has been administered. The use of broad, versus objective standards and criteria in the Adequate Public Facilities Ordinance, then, has important legal ramifications.

One advantage of the use of objective standards in the Adequate Public Facilities Ordinance is that it decreases the chances of unequal administration of the regulation. As one lawyer observes, "The Ramapo ordinance removed practically all discretion from the Town Board by conditioning permits solely on objective criteria. Although the Ramapo ordinance may be too inflexible to serve all the stated purposes of the ordinance, it clearly avoids giving the local government too much discretion."[33]

The development points system is well suited for

---

[33]Stephen Urbanczyk, "Phased Zoning: Regulation of the Tempo and Sequence of Land Development," p. 598.

Ramapo, a small jurisdiction whose facilities and services have been programmed for the full development of the Town in accordance with the densities prescribed by the Master Plan. However, the inflexibility of the development points system was regarded in Fairfax County as a serious drawback, if not an anethema, to the County's development strategy. Under the point system, for example, Fairfax County officials could not grant density increases over the planned densities to developers offering planned community proposals or special amenities, since such increases would overburden the capital facilities already planned in the capital improvements program. The "planned development center," it will be recalled, is an important growth management concept in Fairfax County.

The administrative discretion afforded by the broad standards and criteria in the Adequate Public Facilities Ordinances of Montgomery and Prince George's County has been a valuable aid to the Planning Board of each County. In Montgomery County, for example, administrative flexibility has been crucial to the application of the adequacy test for sewer facilities during the sewer moratoria. As Royce Hanson explains, "I think you have a better system if you allow for extenuating circumstances, and if you have a little bit of play in the joints, and you can do that if you handle the matter on a case

by case basis under general standards."[34]

If standards and criteria for determining adequacy are too broad, the chances are greater that they may be applied in an "arbitrary" fashion. One of the major weaknesses of Prince George's Adequate Public Facilities Ordinance is that the text of the ordinance is so broad that the Planning Board has had difficulty administering the adequacy test in a "hard and judicious" fashion. The standards and criteria are generally vague and provide little guidance to developers, administrators, and judges. As a result, the Planning Board has been ruled "arbitrary and capricious" on a few occasions in its denial of subdivision approval based on the inadequacy of facilities. Marilyn Lowney commented on the implications of broad versus narrowly written land use regulations in her discussion of the Adequate Public Facilities Ordinance.

> There's a fine line that the legislature has to tread (in drafting a regulation) between being too broad and too objective, or specific. If it's too broad, you run the risk of its being administered in an arbitrary manner. If it's too narrow, you're in a position of exclusion. If you look at a lot of laws that are considered to be vague, by their use there gets to be a generally accepted interpretation of the ordinance. You get court cases which narrow it down. So, it's a balancing thing, but with a regulation

---

[34]Royce Hanson, Interview, September 29, 1976.

> of the nature of the Adequate Public Facilities Ordinance, you're probably better off with broad standards.[35]

The Importance of Regional Planning

Much of the legal commentary that followed the Golden case has focused on the exclusionary issue. The Court of Appeals rejected the argument that Ramapo's development points system was exclusionary on the basis that it was linked to a Master Plan and included a provision for low- and moderate-income housing. One critic of the Ramapo plan, however, makes the point that, "The ordinance may be deemed exclusionary, in that it unilaterally slows or prohibits residential development, restricts natural population growth, fails to absorb a fair share of housing needs, and reduces regional housing needs."[36] Both critics and proponents of the Ramapo plan for managing growth do agree that a need exists for greater regional planning. The majority in Golden, for example, comments:

> Of course, these problems cannot be solved by Ramapo or any single municipality, but depend upon the accommodation of widely disparate interests for their ultimate resolution. To that

---

[35]Marilyn Lowney, Interview, September 27, 1976.

[36]Randall Scott, "The Ramapo Case: Five ZD Commentaries," Zoning Digest, Vol. 24 (Chicago: American Society of Planning Officials, 1972), p. 75.

> end, state-wide or regional control of planning would insure that interests broader than that of the municipality underlie various land use policies.[37]

The Washington Metropolitan Area has a tradition of strong regional planning, particularly since the formation of the Washington Council of Governments (COG) in 1965 as the primary regional body. The following passage of a recent Montgomery County publication is indicative of the posture of Washington area governments towards interjurisdictional cooperation:

> Montgomery County's future is closely tied to that of the Washington Metropolitan Area and the State of Maryland. Federal, State, and regional policies and the problems of our neighbors cannot be ignored in devising our own policies to manage growth. Montgomery County contributes to, and shares responsibility for regional and state problems and should cooperate in a program to coordinate interjurisdictional solutions to growth problems.[38]

The Washington Council of Governments has taken an active role in the 1970's towards developing a regional growth policy. In 1972, COG's Board of Directors adopted a Fair Share Housing Formula for use in guiding the distribution of federally subsidized housing throughout the Metropolitan Area. In 1975, the COG initiated a

---

[37]Golden v. Planning Board of Town of Ramapo, 285 N.E. 2nd 296 (1972).

[38]Advisory Committee on County Growth Policy, "Directions for Growth Policy in Montgomery County," p. 8.

Metropolitan Growth Policy Program in an attempt to provide a "metropolitan framework that would serve both as a foundation for the legal and constitutional defense of local growth management efforts and as a means of effecting coordination among these different efforts."[39] More specific objectives of the Program include the initiation of a cooperative forecasting process (of future population and employment growth); and the development of fair share agreements among local area governments on housing policy, Federal employment locations, wastewater treatment, and solid waste disposal.

Interviews in Fall, 1976 with planning officials from Montgomery County Prince George's, and Fairfax County indicated that COG is most valuable as a source of technical expertise, but has had less impact in other aspects of regional planning. The following comments were typical:

> Marilyn Pray: While the emphasis has shifted in recent years towards growth allocation policies and programs, I think the Council of Governments has been most effective in its functional planning, particularly in areas like mass transportation and solid waste disposal. But once you get into formulating a regional growth policy and developing fair share formulas, you have to deal with a certain amount of parochialism, which of course,

---

[39]Metropolitan Washington Council of Governments, A Proposal for a Metropolitan Growth Policy Program, p. 13.

> is to be expected. The needs of the County come first, and when you negotiate the location of a regional shopping center or a major government facility, it's hard to be objective.[40]
>
> Royce Hanson: I think that you have to be realistic in your expectations of COG in that it has no governmental authority in its own right. There isn't any likelihood that it can perform a supervisory role over the local planning process, although theoretically that might be highly desirable. I don't anticipate seeing that in the near future. I think that's logically correct and correct from the point of view of democratic government, and it's correct from the point of view of public administration. But while that's correct in the abstract, I don't sense a groundswell of support for those ideas of mine in the area.[41]

Relations with Developers

The current literature on the subject of growth management reflects an increased awareness among planners, local government officials, and private developers of the need for closer cooperation between the public and private sectors in solving the often complex problems of managing growth. The recently published three volume set of the Urban Land Institute, entitled Management and Control of Growth, devotes an entire section to the problems and issues that exist between the public and private sectors in the urban development process. One author, a

---

[40]Marilyn Pray, Interview, October 3, 1976.

[41]Royce Hanson, Interview, September 29, 1976.

developer, discusses the benefits that accrue to a public/private partnership in urban development. "Both land development industry and local government can profit by land use plans and procedures which reflect entrepreneurship by the community and public consciousness by the developer. Accepting broader responsibilities by each partner in the land planning/development game can achieve high quality land development."[42]

The case study of Fairfax County illustrates the importance of maintaining a working relationship with the development community in the course of preparing and adopting land use plans and controls or conversely, the deleterious consequences of isolating the development sector from the planning process. One of the major accomplishments of the PLUS program was the involvement of the County's citizens in the preparation and review of plans and programs. The building industry, however, was largely disregarded, particularly during the first year of the PLUS program (1973-74). The lack of communication between County officials and representatives of the development sector had serious consequences for the overall growth management efforts of the County. The differences

---

[42]Allan Hodges, "Planning Partnership: Public and Private," Management and Control of Growth, Vol. 3, p. 522.

between the two groups often had to be resolved in court, which is reflected in the title of a recent article, "Growth Management through Litigation: A Case Study of Fairfax County." The author is a prominent zoning attorney in Fairfax County, who points out that between 1972 and 1975, 231 land use suits were filed by local developers against the County, the majority of which the County lost.[43] Philip Yates discusses the strained relations between the County and the local developers, and the implications for the PLUS program:

> I think the biggest mistake that was made in the PLUS program was the noninvolvement of the building industry in the whole process. There are many developers who are sympathetic to the concepts and some of the overall objectives of the County, but in too many instances they were treated like black sheep. The IDO was a particular slap in the face and it just served to put them (developers) on the defensive. I really believe that if we had involved the developers more in conjunction with all the citizen participation that took place during PLUS, we may have conceivably come out with some ordinances and programs that would have been palatable.[44]

Information elicited from County publications and documents, and an interview with a representative of the Maryland Homebuilders Association indicates that a high

---

[43]Till Hazel, "Growth Management through Litigation: A Case Study of Fairfax County, Virginia," Urban Land, November, 1976, p. 13.

[44]Philip Yates, Interview, October 15, 1976.

level of communication and awareness exists between the Planning Commission in each county and local developers; but that developers in Prince George's and Montgomery County are of the opinion that the Adequate Public Facilities Ordinance is both time-consuming and costly.

In 1976, a study of the development review process in Montgomery County, which included interviews with 47 local developers, issued the following report of the County's Adequate Public Facilities Ordinance:

> The adequate public facilities requirements, which have to be prepared between completion of preliminary plans and their submission to the Planning Commission, are very time-consuming. In many cases, developers report that gathering information from various sources takes up to three to four months, and is often very costly. There is also no waiver of the requirement in areas where it is clear that the public facilities are readily available.[45]

In response to the above statement of the "Report of the Task Force on the Development Authorization Process," Royce Hanson stated, in a letter to Montgomery's County Executive:

> The only problem with the Adequate Public Facilities Ordinance which is identified in the report is the trouble and time developers expend in obtaining information on the adequacy of facilities. Since most of the material needed is

---

[45]"Report of the Task Force on the Development Authorization Process in Montgomery County" (Montgomery County: County Executive's Office, 1976), p. 32.

> available in published documents such as the County CIP, the Ten Year Water and Serewage Plan, or the State's Five-Year Construction Program, we fail to understand why it takes line departments three or four months to respond to developers' inquiries about facilities.[46]

In September 1976, a meeting was held between the Planning Board of Montgomery County and representatives of the building industry for the purpose of studying procedures for expediting the data collection process for the Adequate Public Facilities Ordinance. One alternative that was suggested by the Planning Board was an amendment to the Adequate Public Facilities Ordinance giving the Planning Commission the responsibility for collecting the necessary data with regard to the adequacy of public facilities and services. As of this writing, the Planning Board's proposal has not been acted upon by the County Council.[47]

Developers in Prince George's County have also voiced concern over the costly delays that have been attributed to the County's Adequate Public Facilities Ordinance. Michael Dechant, Technical Director of the Suburban Maryland Homebuilders Association, states that:

---

[46]Royce Hanson, Letter to County Executive, Montgomery County, Maryland, August 16, 1976.

[47]Royce Hanson, Interview, September 29, 1976.

> The Adequate Public Facilities Ordinance has created problems in both counties. I think we get by with a little more in Prince George's County in the sense that the Planning Board has been more lenient in such areas as traffic and particularly schools. We have had reports, nevertheless, that the ordinance does create unnecessary delays and also that the planning staff has not done a very good job of determining what level of service is "adequate." That's a question that has caused confusion in both counties, but especially Prince George's.[48]

Dechant, however, has positive feelings about the relationship between the Planning Commission of both counties and local developers:

> I would characterize our relations with both Planning Commissions as basically healthy. I think there's kind of a "we're all in this together" type of feeling between the planning staffs and most developers, although I'm sure some would disagree with that.[49]

The "Report of the Task Force on the Development Authorization Process in Montgomery County" states:

> The Planning Commission staff received high praise directed especially to John Broda of the Regulatory Division and his staff; this is worth noting because it points up what is lacking in other agencies. The agency staff is fair, prompt, gives and expects cooperation, is flexible, willing to make decisions and has an attitude of trying to make things work rather than trying to find out why they won't work.[50]

---

[48]Michael Dechant, Interview, October 8, 1976.

[49]Ibid.

[50]"Report of the Task Force on the Development Authorization Process," p. 21.

Conclusion

Several factors have impacted on the development timing strategies of Montgomery, Prince George's, and Fairfax County (see Table 2). In the final analysis, however, the ability or inability of each county to regulate the timing of development through a test of the adequacy of public facilities and services has been commensurate with the degree that the County has established a planning, as well as a legal foundation for the Adequate Public Facilities Ordinance. In Prince George's and Montgomery County, the ordinance has been linked to an established system of plans, programs, and tools for managing growth. By making an effort, within the County's fiscal capacity, to provide the necessary public facilities and services to support future development, Montgomery and Prince George's County have been able to administer the Adequate Public Facilities Ordinance as a "reasonable" regulation of development. The control of each county over the programming of public facilities and services, particularly water and sewer lines, has been critical not only to the administration of the Adequate Public Facilities Ordinance but to the overall capacity of each county to stage growth in accordance with the "wedges and corridors" concept embodied in the General Plan and the Area Master Plans.

TABLE 2

MAJOR DETERMINANTS OF THE ABILITY OF THE THREE COUNTIES TO REGULATE THE TIMING OF DEVELOPMENT WITH THE ADEQUATE PUBLIC FACILITIES ORDINANCE

Determinants	Montgomery	Prince George's	Fairfax
Planning Foundation			
General Plan	Major growth policy guide since 1964	Major growth policy guide since 1964	Adopted in 1975
Capital Improvements Program	Strong program and process	Strong program and process	Weak--still being developed
Data Base	Strong in quality and depth	Weak in quality and depth	Weak--still being developed
Integration of the Ordinance with Other Growth Management Tools	Extensive; conscious growth management policy	Moderate integration. Primarily with Ten Year Water and Sewerage Plan	
Legal Issues			
Statutory Authority	Not directly authorized; not challenged	Not directly authorized; not challenged	Not directly authorized; never fully tested
Constitutional validity	Evidence of a commitment to growth	Evidence of a commitment to growth	"Confiscation" issue raised
Procedural Issues	Not a problem	Broad standards "arbitrary" application in a few cases	
Control over Major Public Improvements			
County Roads	Moderate	Moderate	Moderate
State Roads	Weak	Weak	Weak
Water Facilities	Strong*	Strong*	Moderate
Sewer Facilities	Strong*	Strong*	Moderate
Schools	Weak	Weak	Moderate
Relations with Developers	Good communication and cooperation	Good communication; fair cooperation	Poor communication and cooperation in early 70's; currently improving

Fairfax County attempted to implement, within a period of 18 months, a development timing system and strategy that in Ramapo was developed over a period of five years through a meticulous, step-by-step planning process. Fairfax County, however, proceeded to adopt a development timing system without having developed the necessary plans and programs upon which to base the controls. The County's predicament was further compounded by the realization that the development points system which was used to implement Ramapo's planning objective, was incongruous to the growth management concepts under the PLUS program.

Perhaps the greatest mistake made during the PLUS program was the noninvolvement of the development sector during the planning process. The differences between the public and private sectors were often resolved in court, and the case decisions of the local and state courts had a significant impact on the outcome of several PLUS plans and programs. Montgomery and Prince George's County provide a useful counterpoint to the value of public-private sector interaction. While acknowledging that differences between the two groups do exist, these differences are usually resolved through negotiation, rather than litigation.

CHAPTER VI

SUMMARY AND CONCLUSIONS

With the realization growing among local government officials that residential development often costs more in services than it generates in taxes, many communities are searching for ways to limit growth and provide services efficiently. More and more interest is being expressed in the Adequate Public Facilities Ordinance.

This case study of the experiences of Montgomery, Prince George's, and Fairfax County with the Adequate Public Facilities Ordinance addresses the nature of the impact of the ordinance on the growth management strategy of each county. Another orientation of the case study is the identification of factors, or determinants of the ability of each county to regulate the timing of development with the Adequate Public Facilities Ordinance. An examination of the ordinance within the context of the growth management system and strategy of each county is designed to provide a greater understanding of the nature of the ordinance, its relation to other growth management tools and techniques, and the types of issues and problems that may be encountered with such an ordinance.

The adequate public facilities concept was first

applied to the growth control program of Ramapo, New York. In a conscious effort to regulate the timing and location of growth, Ramapo officials injected the element of time into the zoning ordinance. In recognition of the importance of the provision of facilities and services as a determinant of the timing and location of development, the Town Board of Ramapo amended the zoning ordinance to make residential development a special use, and furthermore to provide that applicants obtain a special permit in order to be granted the right to subdivide. The standards for the issuance of the special permits are framed in terms of the availability to the proposed development of existing, or programmed facilities and services. Ramapo's development points system, then, represents the integration of the Town's zoning controls and the commitment to provide the necessary public facilities and services for the full development of the Town. The legality of Ramapo's development points system was upheld in New York's highest court, and in the process focused attention on the rationality of the adequate public facilities concept.

At the time Ramapo was implementing its growth control program, the Washington Metropolitan area was experiencing rapid, unprecedented growth. The Federal expansion of facilities and jobs in the sixties was a

major factor in the area's rapid development. The great bulk of the Washington area growth following the Second World War occurred in three counties, Montgomery and Prince George's, Maryland, and Fairfax, Virginia. As the pace of development in these counties accelerated, local government officials became alarmed over the scattered and premature development that was occurring; the concomitant increase in the cost of providing public facilities and services; and the potential damage to the environment caused by rapid, uncontrolled growth. Prince George's officials were particularly concerned over the growing imbalance between the increase in population and the fiscal capacity of the County to support the new development.

In Montgomery and Prince George's County, the scattered and premature growth that occurred in the sixties was regarded as a threat to the "wedges and corridors" concept embodied in the 1964 General Plan. In an effort to strengthen its control over the timing and location of development, Montgomery and Prince George's County progressively added a variety of tools and techniques to their respective growth management programs. In the late sixties, each county prepared and implemented a six year-capital improvements program. In 1969, the State of Maryland enacted a law which required Montgomery and Prince

George's County to prepare a plan designating areas to receive water and sewerage service in the succeeding ten-year period. The Ten Year Water and Sewerage Plan, together with the six year-capital improvements program, and the regulatory controls, provided Montgomery and Prince George's County with a greater capacity to stage development through the provision of public facilities and services. In 1970, Prince George's County Council, concerned over the fact that premature development could still take place under the Ten Year Water and Sewerage Plan, amended the County's subdivision regulations to provide for a test of the "adequacy" of public facilities and services in conjunction with the subdivision review process. The amendment, which established broad standards and criteria for determining the adequacy of public facilities, became known as the Adequate Public Facilities Ordinance.

Montgomery County's Planning Commission, meanwhile, was making a deliberate effort to strengthen the County's control over the timing of development, particularly in the developing areas of the County. The Adequate Public Facilities Ordinance was regarded by Montgomery County planners and legal officials as a technique for linking private growth and public service in these areas. The need for an Adequate Public Facilities Ordinance was

demonstrated during the preparation of the Germantown Plan. In 1973, Montgomery's County Council adopted an Adequate Public Facilities Ordinance, similar to the ordinance in Prince George's County, but one which sets forth more detailed guidelines for determining the adequacy of public facilities and services.

Of the Washington Metropolitan area counties, Fairfax was perhaps the least prepared, from a planning perspective, for the rapid growth and development that occurred after the Second World War. By the late sixties, the Comprehensive Plan was outdated, and the zoning ordinance had been amended so many times that the Board of Supervisors decided in 1969 that it needed to be completely revised. Many of the County's citizens, in turn, were vociferous in their dissatisfaction over uncontrolled growth and rising taxes.

In 1973, the Board of Suprevisors launched a comprehensive attack on the problem of controlling growth in the County with the establishment of the PLUS program. The basic goal of the PLUS program was to replan the entire County and to implement an improved system of land use controls. More specifically, PLUS officials set out to update the Comprehensive Plan and the Area Master Plans, adopt a revised zoning ordinance, and prepare and adopt a five year-capital improvements program. The heart of the

new growth management program of Fairfax County was an Adequate Public Facilities Ordinance modeled closely after the one used by Ramapo, New York.

Since 1970, Prince George's, Montgomery, and Fairfax County have each attempted to regulate the timing and location of development in accordance with the availability of public facilities and services to support the development. The Adequate Public Facilities Ordinance has had the greatest impact towards achieving the growth management policies and objectives of Montgomery County. The ordinance has become an integral element of the staging policy incorporated in the Area Master Plans in the developing areas of the County. In such areas, the Adequate Public Facilities Ordinance functions as a legal linkage between the capital improvements programming and the subdivision regulations. Montgomery County is able to stage the release of land for private development in pace with the fiscal capacity of the County to provide the public facilities and services to support the development.

In Prince George's County, the Adequate Public Facilities Ordinance has had the greatest impact when used in conjunction with the Ten Year Water and Sewerage Plan for staging development. The vagueness of the text of the ordinance, and the general lack of data for determining the adequacy of public facilities and services, have

detracted from the potential impact of the ordinance on the growth management strategy of the County.

Fairfax County officials were never able to implement the Adequate Public Facilities Ordinance. Development timing based on the adequacy of public facilities and services is no longer actively pursued by the Board of Supervisors and the Office of Comprehensive Planning in connection with current efforts to manage the County's growth.

The ability of a municipality to regulate the timing of development in accordance with the adequacy of public facilities is commensurate with the extent that a sound planning foundation has been established upon which to base the controls. A comprehensive plan and a capital improvements program are two fundamental elements of any development timing strategy with the Adequate Public Facilities Ordinance. Fairfax County's failure to implement the development points system can be attributed, in large part, to the absence of these key elements, as well as the general lack of support from the public and private sectors for the Adequate Public Facilities Ordinance. Montgomery County's growth management program illustrates the importance of the existence of a sound planning foundation for the Adequate Public Facilities Ordinance, as well as the strategic value of integrating the ordinance and the

capital improvements program with the staging policies of the Area Master Plans to form a cohesive system of development timing controls.

The degree of control that a municipality is able to exercise over the planning and programming of public facilities and services has direct implications for the administration of the Adequate Public Facilities Ordinance. Montgomery and Prince George's County have had greater success in enforcing the adequate public facilities test for those elements of the ordinance over which the County has control in the programming of capital improvements. As a result of a State law, both counties are in a position to coordinate the programming of water and sewerage lines with local policies for staging development. The Ten Year Water and Sewerage Plan, in turn, has facilitated the administration of the adequacy test for water and sewerage facilities. The weakest elements of the Adequate Public Facilities Ordinances of Montgomery and Prince George's County--state roads and schools--are facilities which each county has little or no control in the programming of capital improvements.

As a relatively new and untested technique for regulating the timing of development, the Adequate Public Facilities Ordinance has yet to come under broad judicial scrutiny. Existing zoning and subdivision enabling

legislation does not specifically authorize the denial of subdivision on the basis of the adequacy of public facilities. An examination of the legal issues which have surfaced in connection withthe Adequate Public Facilities Ordinance, however, reveals a consistency in judicial re-soning with respect to the following factors: First, in order to sustain the Adequate Public Facilities Ordinance as a "reasonable" regulation of development, the ordinance must be linked to a bona fide Comprehensive Plan embodying the growth policies and objectives of the municipality. Second, there must be evidence that the municipality has made a good faith effort, within its fiscal capacity, to provide public facilities and services to support future development. The capital improvements program is critical to the legal defense of the Adequate Public Facilities Ordinance. Finally, in order to avoid exclusionary attacks, the Adequate Public Facilities Ordinance and other techniques and tools for managing growth should be based on, and responsive to, the problems and requirements of regional growth. More and more courts are judging the "reasonableness" of a growth management system (and the individual techniques) in relation to the extent that it accommodates its "fair share" of the region's market demand.

Factors inherent in the ordinance itself, such as

the use of broad, versus objective standards and criteria for determining the adequacy of public facilities, has important legal implications for the administration of the Adequate Public Facilities Ordinance. The use of objective standards removes practically all discretion from the administrator of the adequacy test, and therefore decreases the chances of "unequal" administration. An Adequate Public Facilities Ordinance with broad standards and criteria allows for administrative discretion in the application of the adequacy test, and thus permits a greater degree of administrative flexibility than is afforded under an ordinance with objective standards. If the standards and criteria for determining adequacy are too broad, or if there is not sufficient data to justify the determination of the adequacy of facilities, the chances are greater that the Adequate Public Facilities Ordinance may be administered in an "arbitrary" fashion.

The nature of the Adequate Public Facilities Ordinance, and the disposition of local and State courts toward land use controls, has a direct bearing on the ability of a municipality to adopt the ordinance, and sustain the regulation in court. Ramapo's development points system was conceived, enacted, and ultimately sustained in court under a unique set of circumstances. The development points system is well suited for Ramapo,

a relatively small township which is able to commit itself to the full development of the unincorporated land area of the Town. Fairfax County's ill-fated attempt to adopt the Ramapo system of development timing controls demonstrates the importance of selecting a legal strategy which conforms to the growth management policies and objectives of the municipality, as well as the physical and political setting under which the controls operate. The unique conditions under which Ramapo implemented the development points system prompted Daniel Mandelker, a highly respected authority on land use controls, to make the observation that ". . . we are not likely to see many Ramapo's in the near future."[1]

The nature of the relations between the public and private sectors is an important and sometimes a critical determinant of the ability of a municipality to implement its growth management policies and objectives. The differences between the public and private sectors can often be resolved, or minimized by maintaining close communication and by developing a working relationship between the groups. The existence of such a relationship is vital to

---

[1]Daniel Mandelker, "Legal Aspects of Growth Management," a speech delivered at the Seminar on Growth Management, sponsored by the Tennessee Chapter of the American Institute of Planners, Nashville, Tennessee, May 7, 1976.

the effective administration of the Adequate Public Facilities Ordinance, a technique which is potentially time consuming and costly to developers.

An examination of the Adequate Public Facilities Ordinance within the context of the growth management programs of Montgomery, Prince George's, and Fairfax County reflects the dynamics of the growth management process. The Adequate Public Facilities Ordinance must be viewed as one technique in an integrated system of plans, programs, and techniques for managing growth that operates within a dynamic, and often complex, setting. The courts, local developers, and State legislation and programs have each had a role in shaping the experiences of the three counties with the Adequate Public Facilities Ordinance. In the final analysis, the basic determinant of the success or failure of each county to develop and implement the Adequate Public Facilities Ordinance has been the ability of the county to establish a solid planning foundation upon which to base the controls. The function of the Adequate Public Facilities Ordinance is to link the regulatory tools, either the zoning ordinance or the subdivision regulations, to the capital improvements program in a manner that permits the municipality to rationally plan the tempo and sequence of growth in concert with the availability of public facilities to support

development. Only by establishing a sound planning foundation can the Adequate Public Facilities Ordinance be sustained in court as a reasonable regulation of development.

Royce Hanson has said ". . . the Adequate Public Facilities Ordinance is too often oversold as a gimmick for controlling growth. It is not. To make it work, it has to be part of a whole system, a whole process of growth management that is rational from beginning to end and has paid fairly meticulous care to the legal framework."[2] As one link in an integrated system of plans, programs, and controls, the Adequate Public Facilities Ordinance is only as strong and effective as the other elements of the system.

---

[2]Royce Hanson, Interview, September 29, 1976.

LIST OF REFERENCES

LIST OF REFERENCES

I. PUBLICATIONS

Adams, Sue. "Growth Control with Development Timing in Ramapo, New York." Unpublished Master's Thesis, University of Tennessee, Knoxville, 1974.

Albrecht Realty Co. v. Town of New Castle, 8 Misc. 2d 255, 167 N.Y.S. 2d 483 (1957).

Annotated Code of Maryland, Section 387, Article 43, Chapter 756 (1969).

Beach v. Planning and Zoning Commission, 141 Conn. 84, 103 A. 2d 814 (1954).

Beane v. Prince George's County, 315 A2d 777 (1974).

Board of Supervisors of Fairfax County v. Williams, 216 S. E. 2d 34 (1975).

Carter, Steve, Kendall Bert, and Peter Nobert. "Local Government Techniques for Managing Growth," Management Information Service Report, Vol. 6, No. 5 Washington, D. C.: International City Management Association, 1974.

Chapin, F. Stuart and Shirley Weiss. Factors Influencing Land Development. Chapel Hill, North Carolina: Institute for Research in Social Science, 1962.

Clawson, Marion. Suburban Land Conversion in the United States: An Economic and Governmental Process. Baltimore, Maryland: The Johns Hopkins Press, 1971.

Code of Virginia, Article 8, Chapter 11, Title 15.1-491 (1969).

Cutler, Richard. "Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe," Wisconsin Law Review, Vol. 1961. Madison, Wisconsin: Wisconsin Law Review, 1961, pp. 370-401.

Dawson, Grace. "No Little Plans: Fairfax County's PLUS Program for Managing Growth." Unpublished Working Paper 5028-01. Washington, D. C.: The Urban Institute, 1976.

Edwards, Robert. "Prince George's County: Staging Growth," Management and Control of Growth, Vol. 3. Washington, D. C.: The Urban Land Institute, 1975, pp. 274-76.

Emanuel, Manuel. "Ramapo's Managed Growth Program: After Five Years Experience," Management and Control of Growth, Vol. 3. Washington, D. C.: The Urban Land Institute, 1975, pp. 302-13.

Fagin, Henry. "Clinic: Development Timing," Planning (1955). Chicago: American Society of Planning Officials, 1956, pp. 81-96.

_____. "Regulating the Timing of Urban Development," Law and Contemporary Problems, Vol. 20, Number 2 (Spring, 1955). Durham, North Carolina: Duke University Law School, 1955, pp. 298-302.

Fairfax County, Virginia. A Brief History of Planning, Zoning, and Environmental Constraints in Fairfax County, Virginia. Fairfax County: County Attorney's Office, 1974.

_____. Preliminary Countywide Plan, Fairfax County: 1975. Fairfax County: Office of Comprehensive Planning, 1975.

_____. Proposal for Implementing an Improved Planning and Land Use Control System. Final Report of the Task Force on Comprehensive Planning and Land Use Control. Fairfax County: Board of Supervisors, 1973.

"Fairfax Supervisors Enact Ban on Building Permits," Washington Post, January 8, 1974, p. 1.

Franklin, Herbert M. "Controlling Urban Growth--But for Whom?: The Social Implications of Development Timing Controls." Washington, D. C.: The Potomac Institute, 1973.

Freilich, Robert. "Development Timing, Moratoria, and Controlling Growth: A Preliminary Report," Management and Control of Growth, Vol. 2. Washington, D. C.: The Urban Land Institute, 1975, pp. 361-96.

_____. "Golden v. Town of Ramapo: Establishing a New Dimension in American Planning Law," Urban Lawyer, Vol. 4, No. 3. Kansas City, Missouri: University of Missouri-Kansas City School of Law, 1972, pp. ix-xvi.

_____. The Legal Basis for a Growth Control System in Fairfax County, Virginia. Prepared for the Board of Supervisors. Fairfax County: County Attorney's Office, 1974.

General Plan On Wedges and Corridors: 1964. Montgomery and Prince George's County: The Maryland-National Capital Park and Planning Commission, 1964.

Golden v. Planning Board of Town of Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291 (1972).

Green, Philip. Cases on Planning Law and Administration. Chapel Hill, North Carolina: Institute of Government, 1962.

Hampton v. Prince George's County, 327 A2d 774 (1975).

Hanson, Royce. "Growth Control: The Role for Regionalism," Management and Control of Growth, Vol. 3. Washington, D. C.: The Urban Land Institute, 1975, pp. 293-97.

Hazel, Till. "Growth Management through Litigation: A Case Study of Fairfax County, Virginia," Urban Land, November 1976, pp. 11-21.

Hodges, Allan. "Planning Partnership: Public and Private," Management and Control of Growth, Vol. 3. Washington, D. C.: The Urban Land Institute, 1975, pp. 521-26.

Josephs v. Town Board of Clarkstown, 24 Misc. 2d 366, 198 N.Y. S. 2d 695 (1960).

Kenney, Kenneth B. Urban Water Policy as an Input in Urban Growth Policy. Knoxville, Tennessee: Water Resources Research Center, 1972.

Laws of Maryland 1959, Section 71(a) of the Regional District Act, Chapter 780.

Linowes, Robert. The States and Land Use Control. New York, New York: Praeger Publishers, Inc., 1975.

M. S. Howe, et al., v. The Board of Supervisors of Fairfax County, 215 S.E. 2d 243 (1974).

Maryland-National Capital Park and Planning Commission v. Rosenburg, 307 A. 2d 705 (1973).

May, Richard. "Clinic: Development Timing," Planning (1955). Chicago: American Society of Planning Officials, 1955, pp. 91-2.

Metropolitan Washington Council of Governments. A Proposal for a Metropolitan Growth Policy Program. Washington, D. C.: Metropolitan Washington Council of Governments, 1975.

_____. Overall Program Design, 1976-78. Washington, D. C.: Metropolitan Washington Council of Governments, 1976.

_____. Re-examination of the Year 2000 Policies Plan, Vol. 1. Washington, D. C.: Metropolitan Washington Council of Governments, 1972.

Montgomery County, Maryland. Advisory Committee on Growth Policy, Final Report. Montgomery County: The Planning Board, 1974.

_____. Advisory Committee on Growth Policy, Interim Report. Montgomery County: The Planning Board, 1974.

_____. Framework for Action. First Annual Growth Policy Report. Montgomery County: The Planning Board, 1974.

_____. Montgomery County Code, Chapter 50, Subdivision of Land. Effective July 1, 1974.

_____. Report on the Development Authorization Process in Montgomery County, Maryland. Montgomery County: County Executive's Office, 1976.

_____. Resolution Number 7-1290. Adopted by the Montgomery County Council on June 26, 1973.

Muller, Thomas. Fiscal Issues in Metropolitan Growth. Prepared for the Metropolitan Washington Council of Governments. Washington, D. C.: Metropolitan Washington Council of Governments, 1973.

Prince George's County, Maryland. Bowie-Collington Master Plan: 1968. Prince George's County: General Planning Division, 1968.

_____. Proposed Staging Policy. Prince George's County: General Planning Division, 1973.

_____. Regulations for the Subdivision of Land, Section 3-16, as amended, 1974.

_____. Resolution Number CR-47-1975. Adopted by the Prince George's County Council on June 17, 1975.

_____. Standards Evaluation Program. Prince George's County: The Planning Board, 1976.

_____. State of the Economy. Prince George's County: General Planning Division, 1973.

Reid, Jim. "Fairfax County's Planning and Land Use System," A.I.P. Newsletter (April, 1975). Washington, D. C.: American Institute of Planners, 1975.

Savage-Fogarty v. Prince George's County, 313 A. 2d 627 (1973).

Scott, Randall. "The Ramapo Case: Five ZD Commentaries," Zoning Digest, Vol. 24. Chicago: American Society of Planning Officials, 1972, pp. 75-80.

Stollman, Israel. "Editorial: Ramapo," Planning (July, 1972). Chicago: American Society of Planning Officials, 1972, pp. 108-13.

Ten Year Water and Sewerage Plan: 1969. Prince George's County: Washington Suburban Sanitary Commission, 1969.

U. S. Environmental Protection Agency. Managing the Environment. Washington, D. C.: EPA, Office of Research and Development, 1973.

"The Urban Fringe: Techniques for Guiding the Development of Bucks County," Land Use Controls Quarterly, Vol. 4, No. 1 (Winter, 1970). Chicago: American Society of Planning Officials, 1970, pp. 34-42.

Urban Growth Management Systems. Planning Advisory Report Numbers 309, 310. Chicago: American Society of Planning Officials, 1975.

Urbanczyk, Stephen. "Phased Zoning: Regulation of the Tempo and Sequence of Land Development," Stanford Law Review, Vol. 26. Stanford Law School, 1974, pp. 585-617.

Yearwood, Richard. "Subdivision Law: Timing and Location Control," Journal of Urban Law, Vol. 44. Detroit University Law School, 1967, pp. 584-612.

II. UNPUBLISHED MATERIALS

"A Report of the Adequate Public Facilities Ordinance," prepared by the Development Review Section of the Maryland-National Capital Park and Planning Commission, Montgomery County, April, 1976. (Mimeographed.)

Dutton, W. C. "Adequate Public Facilities Ordinance," Memorandum to Francois Aluisi, Chairman of the District Council, Prince George's County, July 21, 1970. (Mimeographed.)

Hanson, Royce. "Practical Aspects of Growth Management," a speech to the Seminar on Growth Management, sponsored by the Tennessee Chapter of the American Institute of Planners, Nashville, Tennessee, May 7, 1976.

Mandelker, Daniel. "Some Legal Aspects of Growth Management," a speech to the Seminar on Growth Management, sponsored by the Tennessee Chapter of the American Institute of Planners, Nashville, Tennessee, May 7, 1976.

Ruck, Lee. "The Williams Decision," Memorandum to the Board of Supervisors, Fairfax County, June 18, 1975. (Mimeographed.)

III. INTERVIEWS

Broda, John. Chief, Development Review Section, Maryland-National Capital Park and Planning Commission, Montgomery County, September 20, 1976.

Dawson, Grace. Research Associate, The Urban Institute, Washington, D. C., September 28, 1976.

Dechant, Michael. Technical Director, Suburban Maryland Homebuilders Association, Montgomery and Prince George's County, Maryland, October 8, 1976.

Hanson, Royce. Chairman, Montgomery County Planning Board, Maryland-National Capital Park and Planning Commission, Montgomery County, September 29, 1976.

Kolste, Monte. Chief, Public Facilities Division, Maryland-National Capital Park and Planning Commission, Prince George's County, October 11, 1976.

Lowney, Marilyn. Associate General Counsel, Maryland-National Capital Park and Planning Commission, Prince George's County, September 27, 1976.

Lukasewski, Luke. Chief, Research and Special Studies Division, Maryland-National Capital Park and Planning Commission, Prince George's County, September 24, 1976.

Pray, Marilyn. Director, Planning, Programming, and Economic Development, Maryland-National Capital Park and Planning Commission, Prince George's County, October 3, 1976.

Reid, Jim. Former Director, Office of Comprehensive Planning, Fairfax County, October 13, 1976.

Yates, Philip. Chief, Plans Implementation Branch, Office of Comprehensive Planning, Fairfax County, October 15, 1976.

APPENDIX

APPENDIX

MONTGOMERY COUNTY'S AMENDED SUBDIVISION REGULATIONS

OF 1973

Be It Ordained by the County Council for Montgomery County, that--

Sec. 1. Section 50-35, title "Same-approval procedure," of Chapter 50, title "Subdivision of land," is hereby amended by adding thereto a new Subsection (j) to follow immediately after Subsection (i) thereof and read as follows:

(j) Adequate Public Facilities. No preliminary plan of subdivision shall be approved unless the Planning Board determines that public facilities are adequate to support and service the area of the proposed subdivision. The applicant shall submit sufficient information and data on the proposed subdivision to demonstrate the expected impact on and use of public facilities by the residents or occupants of said subdivision.

(1) Public facilities may be determined to be adequate to service a tract of land or an affected area when the following conditions are found to exist:

(a) The tract or area is adequately accessible by means of roads and public transportation facilities. Said area or tract to be subdivided shall be deemed adequately accessible via roads and public transportation facilities if any of the following conditions are present:

(i) Existing roads are adequate to accommodate the traffic that would be generated by the subject subdivision in addition to existing traffic, and are publicly maintained, all-weather roads; or

(ii) Such additional roads, necessary in combination with existing roads to accommodate the additional traffic that would be generated by the subject subdivision, are proposed on an adopted master plan and are programmed in the current adopted Capital Improvements Program or the State Highway Administration's Five Year Program for construction with public or private financing; or

(iii) Public bus, rail, or other form of mass transportation sufficient to serve the proposed subdivision, in combination with (i) or (ii) or both, is available or programmed within the area affected or within one-third (1/3) mile of the subdivision under consideration.

(iv) In its determination of the adequacy of a road to accommodate traffic, the Planning Board shall consider the recommendation of the State Highway Administration or County Department of Transportation, the applicable levels of traffic service, peak hour use and average use, and any other information presented.

(b) The tract or area has adequate sewerage and water service.

(i) For a subdivision dependent upon public sewerage and water systems:

(1) Said area or tract to be subdivided shall be deemed to have adequate sewerage and water service if located within an area in which water and sewer service is presently available, under construction, or designated by the County Council for extension of water and sewer service within the first two years of a current approved Ten Year Water and Sewerage Plan.

(2) If said area or tract to be subdivided is not situated within an area designated for service within the first two years of a current approved Ten Year Water and Sewerage Plan, but is within the last eight years of such plan, it shall be deemed to have adequate water and sewerage service if the applicant provides community sewerage and/or water systems as set forth in Section 387C of Article 43 of the Annotated Code of Maryland provided the installation of such facilities shall have been approved by the State Department of Health and Mental Hygiene, the Washington Suburban Sanitary Commission, the County Health Department, and the Montgomery County Council.

(ii) For a subdivision dependent upon the use of septic systems:

Said area or tract to be subdivided shall be deemed to have adequate sewerage service if development with the use of septic systems is in accordance with Sec. 104-16 of

this Chapter, or regulations published by the Maryland State Department of Health and Mental Hygiene pursuant to Article 43, Annotated Code of Maryland, whichever imposes the greater or more stringent requirement.

(iii) In its determination of the adequacy of sewerage or water service, the Planning Board shall consider the recommendation of the Washington Suburban Sanitary Commission, the capacity of trunk lines and sewage treatment facilities and any other information presented.

(c) The tract or area is so situated as not to involve danger or injury to health, safety or general welfare. Such danger or injury may be deemed not to exist:

(i) when physical facilities, such as police stations, firehouses, health clinics and schools, in the service area for the preliminary subdivision plan are currently adequate or are scheduled in an adopted Capital Improvements Program in accordance with the applicable area master plan or general plan to provide adequate and timely service to the subdivision; and

(ii) the applicant provides written assurances that adequate public utility services will be available to serve the proposed subdivision.

(d) Existing or proposed street access within the tract or area is adequate. Street access may be deemed adequate if the streets:

(i) are adequate to serve or accommodate emergency vehicles,

(ii) will permit the installation of public utilities and other public services,

(iii) are not detrimental and would not result in the inability to develop adjacent lands in conformity with sound planning practices, and

(iv) will not cause existing street patterns to be fragmented.

(2) In considering questions of adequacy of public facilities, as set forth in paragraphs (j) (1) (a), (b),

(c) and (d) the Planning Board shall consider, but not be limited to, the nature, extent, and size of the proposed subdivision and its impact in terms of the following:

(a) The estimated increase in population likely to result when said subdivision is developed in context with projected densities, as anticipated by adopted area master plans and currently approved subdivisions, in the surrounding area and immediate vicinity of the proposed subdivision.

(b) The present or projected state of development likely to result when said subdivision is developed in context with projected densities, as anticipated by adopted area master plans and currently approved subdivisions, in the surrounding area and immediate vicinity of the proposed subdivision.

(c) The avoidance of excessive expenditures of public funds necessitated by the proposed subdivision.

Sec. 2. Subsection (e), title "Presentation of Plan to Board," of Section 50-35, title "Same-approval procedure," Chapter 50, title "Subdivision of Land," Montgomery County Code 1972, is hereby repealed and re-enacted, to read as follows:

(e) Presentation of the Plan to the Board. Every preliminary plan shall be presented to the Board for its review and action at the earliest regular meeting after the staff has completed its study and is ready to make its recommendation or communications received concerning such plan, provided that the staff shall present the plan to the Board not later than the first regular meeting which occurs after sixty (60) days have elapsed from the date of receipt of said plan, plus any extension of time granted for review by other agencies. The Board shall act to:

(1) Approve, <u>if in accordance with the purposes and other requirements of these regulations</u>.

(2) Approve, subject to conditions and/or modifications necessary to bring the plan and the proposed development into accord with these and other regulations. Any modification as to roads or grades shall be approved by the County Department of Transportation.

(3) Disapprove, if contrary to the purposes and other requirements of these regulations, said disapproval to be by written notice to the applicant stating the reasons therefor.

PRINCE GEORGE'S COUNTY'S AMENDED SUBDIVISION

REGULATIONS OF 1970

Section 3: General Requirements for the Subdivision of Land.

16. Before preliminary approval may be granted for any subdivision plat the Planning Board must find that: sufficient public facilities and services exist or are programmed for the area. It is the intent of this section that public facilities and services should be adequate to preclude danger or injury to the health, safety and welfare and excessive expenditure of public funds.

i. The Planning Board shall give due weight to the potential of the proposed subdivision in relation to the surroundings, including the nature, extent and size of the proposed subdivision; the estimated increase in population; the anticipated timing of the development of the land proposed for subdivision; and the degree of urbanization or development within a reasonable distance of the subject property; and the following factors:

The availability of existing or programmed sewerage or water mains.

The potential effect of the proposed subdivision on the efficient and economic operation of existing or programmed public facilities.

The distance of any necessary extension of sewerage and water facilities through unsubdivided lands which are indicated for eventual development on an approved plan.

The location of the proposed subdivision in respect to the approved Ten Year Water and Sewerage Plan, or in any future plan which designated the timing of construction of facilities.

The availability of access roads adequate to serve traffic which would be generated by the subdivision, or the presence of a proposal for such road(s) on an adopted Master Plan and in the current Capital Improvement Program or the State Roads Commission program.

The availability within a reasonable distance, and the adequacy of school, fire, police, utility, and park and recreation services.

ii. Facilities shall be deemed programmed if they are included in an adopted Capital Improvement Program for construction in the next two (2) years.

iii. Subdivisions which satisfy the following criteria shall be deemed adequate in regard to water and sewerage facilities:

The proposed density is in accord with an adopted plan, and

The plat of subdivision proposes to divide the land area into lots with a minimum size of two (2) or more acres; it being permissible however, that lots of lesser size may be supplemented in the amount of such deficiency by the creation of an easement(s) on adjoining areas that will establish a total area of two (2) acres for each individual sewerage system, and in the opinion of the Director of the County Health Department, soil and topographic conditions indicate that an individual sewerage system(s) can function satisfactorily.

PROPOSED AMENDMENT TO FAIRFAX COUNTY'S ZONING ORDINANCE

ARTICLE 9, PART 7

ADEQUATE PUBLIC FACILITIES

9-700 Adequate Public Facilities

9-701 General Considerations

The County of Fairfax, being a major urbanized area of the Washington, D.C. metropolitan region, has been experiencing continuing unprecendented and rapid growth with respect to pupulation, housing, economy, land development and utilization of resources, for the past decade. Transportation, water, sewerage, schools, parks and recreation, drainage, and other public facilities and requirements have been and are being constructed to meet the needs of the County's growing population, but the County has been unable to provide these services and facilities at a pace which will keep abreast of the ever-growing need. The rapid growth and spread of urban development is creating encroachment upon and elimination of the open areas and spaces of the County and loss of agricultural, horticultural and forest uses which must be preserved in the public interest. The rapid growth and urban sprawl is creating a series of major problems, including: imbalance of growth between uses; inability to provide public services to match private development; soaring tax rates due to inefficient provision of services; land speculation, environmental degradation of natural landscape, flood plains, hillsides and stream valleys, uncontrolled character of private development; an inability to plan or implement planning, lack of time to develop solutions or adequate administrative and legal mechanisms and a lack of proper housing for low and moderate income families needed to attract industrial and commercial employment, for senior citizens and young families and to meet the economic and tax needs of the County and serious problems of shortages of gasoline, heating fuel and energy by reason of extended distances of urban sprawl for commutation, police, fire, school and essential services and other public and private needs.

Faced with the physical, social, fiscal and environmental problems caused by the rapid and unprecedented growth, the County of Fairfax is adopting a new comprehensive plan to guide its future development and is adopting an official map and a capital outlay program and plan so as to provide for the maximum orderly, adequate and economical development of its future residential, industrial, commercial and public land uses and facilities including transportation, water, sewerage, schools, housing, parks and recreation sites, open space, drainage, preservation of agricultural, horticultural and forest uses, flood plains, wetlands and environmental critical areas and other public facilities.

In order to insure that these comprehensive and coordinated plans are not frustrated by disorganized, unplanned and uncoordinated development which would create an undue burden and hardship on the ability of the community to translate these plans into reality.

The following objectives are established as policy determinations of zoning and planning for the County of Fairfax:

1. To economize on the capital and operating costs of public facilities and services by carefully phasing residential development so as to be consonent with adequate and efficient provision of public improvements;

2. To establish and maintain county control over the character, direction and timing of development;

3. To establish and maintain a desirable degree of balance among the various uses of the land;

4. To establish and maintain essential quality of community services and facilities;

5. To preserve and protect open space land, and agricultural, horticultural and forest uses;

6. To preserve and protect the environment and environmentally critical areas;

7. To preserve gasoline, heating fuel and energy for vital public and private functions, wasted by useless urban sprawl and extended roads, utilities and development.

The County through its comprehensive plan, official map, capital outlay program and plan, zoning and subdivision regulations, open space land commission laws, and complementary planning programs, studies, ordinances and regulations has mandated a program of continuing improvements which is designed to insure complete availability of all public facilities and services for all land within the urbanized area of the County and the urbanizing area of the County within the next twenty (20) years, in accord with proper planning. Haphazard, sprawling and uncoordinated development of land without the adequate provision of public services and facilities will destroy the continuing implementation and adoption of the program. Residential development will be carefully phased so as to insure that all developable land will be accorded a present vested right to develop at such time as services and facilities are available. Residential land which has the necessary available municipal facilities and services will be granted approval. Residential land which lacks the available facilities and services will be granted approval for development at such time as the facilities and services are indicated to be available by the ongoing capital outlay program and plan of the County, or in which the residential developer agrees to furnish such facility or improvement in advance of the scheduled program for improvement of the public sector.

These regulations are adopted pursuant to the authority of the Constitution of the State of Virginia; thePlanning, Subdivision of Land and Zoning Law, Va. Code 15.1-427 to 15.1-503.2; the Urban County Forms of Government Law, Va. Code 15.1-722 to 15.1-791; the Open Space Land Act, Va. Code 10-151 to 10-158; the Special Assessments for Agricultural, Horticultural, Forest or Open Space Real Estate Act, Va. Code 58-769.4 to 58-769.16; by providing for comprehensive planning and zoning for the government, protection, order, conduct, safety, health and well being of the persons and property in the County and consistent with the purposes of expediting the provision of adequate police and fire protection, transportation, water, sewerage, flood protection, schools, parks, playgrounds, recreational facilities and other public

requirements; to preserve open space, agricultural, horticultural and forest uses; to assist in shaping the character, direction and timing of community development; and that the growth of the community be consonant with the efficient and economical use of public funds.

9-702 Special Permit - Residential Development Use - Effective Date

Prior to the issuance of any building permit, special permit of the Board of Supervisors, preliminary subdivision approval, final development plan or final site plan approval, for residential development use, a residential developer or development agent shall be required to obtain a special permit from the Board of Supervisors pursuant to §9-700 et seq.

The provisions of this section shall not be applicable to lots contained in subdivisions preliminarily approved prior to the effective date of this section.

This section shall become effective upon the date of adoption of each section sheet (or sheets), properly identified and dated, and constituting the "Official Zoning Map, Fairfax County, Virginia" as provided in Article 2, Section 2-202 of this Ordinance, for each planning district of the County.

9-703 Procedure For Special Permit

1. The residential developer or residential development agent shall be required to submit an application to the Zoning Administrator in such detail and in such number of copies as shall be set forth in forms to be prepared by the Zoning Administrator, including a map showing, the location of all land holdings of the applicant in the same ownership in the immediate vicinity, and, the extent of the land proposed for residential development use. The zoning administrator shall review the application with respect to all standards set forth in Section 9-704 as to the availability of municipal services and facilities and projected improvements scheduled in the capital outlay program and capital outlay plan of the County. The Zoning Administrator may request reports from appropriate county, municipal, regional, state or federal agencies, boards or officials as may be required. Within forty-five (45) days of the submission of the application, the Zoning Administrator shall report his findings in writing with reason therefore to the Board of Supervisors and the said Board shall proceed to notice the application for public hearing at the first regular meeting of the Board of Supervisors, not less than two weeks after the submission of the Zoning Administrator's written report.

2. The Board of Supervisors shall within thirty (30) days after conclusion of the public hearing render its decision in writing stating whether the application is approved or denied, and if approved, the Board of Supervisors shall render its determination as to the number of residential dwellings that shall be permitted to be built, and the year in which such development shall be permitted to proceed in accordance with the capital outlay program and plan.

9-704 Standards For The Issuance of Special Permits

No special permit shall be issued by the Board of Supervisors unless the residential development has available twenty-two (22) development points on the following scale of values:

(1) Sewers

(a) Public sewers available	5 points
(b) Package sewer plants	3 points
(c) County approved septic system in R-C district	3 points
(d) All others	0 points

(2) Drainage

Percentage of Required Drainage Capacity Available

(a) 100% or more	5 points
(b) 90% - 99%	4 points
(c) 80% - 89.9%	3 points
(d) 65% - 79.9%	2 points
(e) 50% - 64.9%	1 point
(f) less than 50%	0 points

(3) Improved Park or Recreational Facility Including Public School Recreational Site

(a) Within 1/4 mile	5 points
(b) Within 1/2 mile	3 points
(c) Within 1 mile	1 point
(d) Further than 1 mile	0 points

(4) State, County, or Town, Major, Secondary or Collector Road(s) Improved With Curbs and Sidewalks

(a) Direct Access	5 points
(b) Within 1/2 mile	3 points
(c) Within 1 mile	1 point
(d) Further than 1 mile	0 points

(5) Fire House

(a) Within 1 mile	3 points
(b) Within 2 miles	1 point
(c) Further than 2 miles	0 points

(6) Police Station

(a) Within 2 miles	3 points
(b) Within 4 miles	1 point
(c) Further than 4 miles	0 points

(7) Elementary School (with sufficient capacity to absorb the number of children expected to inhabit the development without resorting to double sessions or other methods to handle over crowding)

(a) Within 1 mile	5 points
(b) Within 1 1/2 mile	4 points
(c) Within 2 miles	3 points
(d) Within 2 1/2 miles	2 points
(e) Within 3 miles	1 point
(f) More than 3 miles	0 points

All distances shall be computed from the proposed location of each separate lot or plot capable of being improved with a residential dwelling and not from the boundaries of the entire parcel, to the boundaries of the public facility. The Board of Supervisors shall issue the special permit specifying the number of dwelling units that meet the standards set forth herein.

Bonus for Low and Moderate Income Housing

Any residential developer who provides low and moderate income housing units in his development shall receive the following bonus toward the twenty-two points required to obtain a special permit:

(a) 30% of total units	4 points
(b) 25% of total units	3 points
(c) 20% of total units	2 points
(d) 10% of total units	1 point
(e) less than 10% of total units	0 points

9-705 Vested Approval and Relief

1. Vested Approval of Special Permit

A. The Board of Supervisors shall issue an approval of the application for special permit vesting a present right for the residential developer to proceed with residential development use of the land for such year as the proposed development meets the required points as indicated in the scheduled completion dates of the capital outlay program and plan as amended. If the residential development fails to meet the required points for any period within the twenty (20) year period of the capital outlay program and plan, the application for special permit shall be denied. Any improvement schedule in the capital outlay program and plan more than one year from date of application shall be credited as though in existence as of the date of the scheduled completion. Any improvement scheduled in the capital outlay program or plan for completion within one year from the date of application for the special permit shall be credited as though in existence on the date of application.

B. A developer may advance the date of authorization by agreeing to provide such improvements as will bring the development within the required number of points for earlier or immediate development. Such agreement shall be secured by either a cash deposit or surety bond sufficient to cover the cost of proposed improvemnt, the form, sufficiency, and amount of which bond shall be determined by the Board of Supervisors. In application of this section the developer shall be entitled to pay his pro-rate share of such off-site improvements for reasonable sewerage and drainage facilities, in accordance with regulations to be established by the Board of Supervisors, pursuant to Va. Code §15.1-466(i).

C. All approved special permits vesting a present right to future development shall be fully assignable without restriction.

D. Nothing herein contained shall prevent such land from being immediately used for all other purposes other than residential development use, as is authorized by the zoning ordinance.

2. Relief

Any residential developer or development agent who has applied for a special permit from the Board of Supervisors pursuant to this section, shall be entitled as of right, to apply within one year from the Board of Supervisor's determination granting the vested approval, or denial, to the Open Space Land Commission Ordinance, pursuant to Chapter 17A of the Fairfax County Code for:

A. A property owner holding less thar five (5) acres an assessment benefit pursuant to §17A-9 Fairfax County Code (Va. Code §10-155) upon the property owner conveying to the County a development easement or other interest in the property for the period of the restriction; or

B. A property owner holding five (5) or more acres, or agricultural, horticultural or forest lands taxation on the basis of a use assessment pursuant to §17A-10 Fairfax County Code (Va. Code §58-769.8)

The assessment shall reflect the extent to which the temporary restriction on residential development use of the land shall affect the assessed valuation placed on such land for purposes of real estate taxation and such assessed valuation on such land shall be reduced as provided above and pursuant to the Open Space Land Commission Ordinance as compensation for the temporary restriction placed on the land.

9-706 Variances

1. The Board of Supervisors shall have the power to vary or modify the application of any provision of §9-700 of this ordinance upon its determination in its legislative discretion, that such variance or modification is consistent with comprehensive planning forproper land use including the comprehensive plan, official map, capital budget and capital outlay program and plan upon which this ordinance is based and with the health, safety, and general welfare of the County and its inhabitants.

2. Upon receiving any application for such variance or modification, such application shall be referred to the Planning Commission of Fairfax County for a report and recommendation of said Planning Commission with respect to the effect of the proposed variance or modification upon the comprehensive planning of the County including the comprehensive plan, official map, capital outlay program and plan, existing laws and regulations and the health, safety and general welfare of the County and its inhabitants.

3. All applications for a variance or a modification shall be filed with the Zoning Administrator who shall forward same within two weeks to the Planning Commission for its report. Such report shall be made in writing and shall be returned by the Planning Commission to the Zoning Administrator within 30 days of such reference. The said Zoning Administrator shall forward said report to the Board of Supervisors, and the Board of Supervisors shall proceed to notice the application for public hearing at the first regular meeting of the Board of Supervisors not less than thirty (30) days after submission of the written report by the Planning Commission. The Board of Supervisors shall render its determination within thrity (30) days after the conclusion of the public hearing.

VITA

Thomas S. Durham was born in Jacksonville, Florida in 1951. He attended public schools in Arlington, Virginia, graduating from Yorktown High School in June, 1969. In August, 1973 he received a Bachelor of Arts degree in Political Science from Wofford College, Spartanburg, South Carolina.

In August, 1974, he entered the Graduate School of Planning. The following year he worked for the Vice-Ministry of Urban Planning in Managua, Nicaragua.

The author is married to the former Daryl Taylor of Cleveland, Tennessee. They will both be working in The Gambia, West Africa with the Peace Corps following the author's graduation.