Circuit Court for Frederick County
Cases Nos.: C-10-CV-23-000319
C-10-CV-23-000320

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 395

September Term, 2024

IN THE MATTER OF
CLEANWATER LINGANORE, INC., *et al.*

Zic,
Tang,
Kehoe, S.,

JJ.

Opinion by Kehoe, J.

Filed: November 26, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This matter is an appeal by appellants, Cleanwater Linganore, Inc. and a number of individual parties,[1] of an Order dated March 27, 2024, affirming a decision of the Frederick County Planning Commission (the "Planning Commission") to approve a preliminary site plan on property owned by developer appellee, New Market 279 (D.C.) ASLI VIII, LCC.[2] The particular aspect of the site plan approval that is the subject of this appeal is the approval of a payment by the developer appellee of a school construction fee option. This case involves an appeal of an administrative decision regarding the interface between a Developer's Rights and Responsibilities Agreement ("DRRA") and an Adequate Public Facilities Ordinance ("APFO"). The Planning Commission found that the developer's payment of the school construction fee was consistent with the APFO.

I. FACTUAL BACKGROUND

Appellee is the developer of Gordon Mill, a 610 unit (435 single family lots and 175 townhouse units) residential subdivision on 280± acres of land in the New Market area of Frederick County. On November 11, 2014, the Board of County Commissioners of

[1] The individual parties are Betsy Smith, Rebekah Bofinger, Susan E. Carr, Colin Cottingham, Kimberly Cottingham, Stephanie Kleiner, Jessica Kramer, Kristin Long, Donald A. Michelli, Veronica Mozzano, Rebecca Phelps, Emily Surette, Carol Swandby, Mindi Valuckas and Kathleen Wagner.

[2] New Market 279 (D.C.) ASLI VIII, LLC is the record owner of the subject property. Its brief lists additional appellees, which are identified as affiliated companies: Avanti Strategic Land Investors VIII, L.L.L.P., APG ASLI VIII GP, LLC, Avanti Properties Group III, L.L.L.P., APG III GP, LLC, Avanti Management Corporation and JNP Capital Management. Frederick County is also an appellee.

Frederick County[3] entered into a DRRA with Lillian C. Blentlinger, LLC and Blentlinger, LLC (collectively, "Blentlinger")[4] for the Gordon Mill property.

With respect to school construction, the DRRA provided in pertinent part:

> 3.4 Schools.
> A. School Construction Fee. The School Construction Fee was established by Ordinance No. 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO, with a sunset provision of five (5) years from the effective date. Notwithstanding a sunset of the School Construction Fee Ordinance, the parties intend: (i) that the Developer shall be bound to pay the School Construction Fee as a condition of APFO approval for the Project at Phase II, (ii) that this provision shall survive the sunset of the Ordinance, which shall be deemed to run with the full term of this Agreement and any duly approved extensions thereof and (iii) that payment of the School Construction Fee shall satisfy the Developer's school adequacy obligations under the APFO (unless the density or intensity of the Project is increased) and any school adequacy obligations that may be enacted in the future. The School Construction Fee shall be paid as provided in Section 1-20-62 of the APFO and in accordance with the fee schedule in effect at the time of plat recordation or the issuance of building permit, as applicable. If after the five year sunset, or for any other reason, the Frederick County Code no longer provides for the calculation of the School Construction Fee, then the school construction fee for purposes of this Agreement shall thereafter be based on the previous year's fee schedule, adjusted annually per the State of Maryland School Construction Cost Index, for the duration of this Agreement.

The DRRA also provided in pertinent part:

> 8.1 Effect of Agreement.
> A. Except as otherwise specifically provided herein, the local laws, rules, regulations and policies governing the use, density or intensity of the Property, including but not limited to, those governing development, subdivision, growth management, impact fee laws, water, sewer, stormwater management, environmental protection, land planning and design, and adequate public facilities (hereafter collectively the "Development Laws"),

[3] On December 1, 2014, Frederick County became a charter county pursuant to Article 11-A, § 1 of the Maryland Constitution.

[4] Blentlinger is a previous owner of the subject property.

> *shall be the local laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement, and the Developer shall comply with all Development Laws.* [Emphasis supplied.]

Frederick County's APFO is codified as § 1-20-01 *et seq*. of the Frederick County Code. The County Code in effect at the time of the execution of the DRRA contained the following provisions with respect to school construction:

> § 1-20-11. DEVELOPER OPTION.
> Except as provided in § 1-20-62(K), a developer shall have the option to: (1) provide the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities set forth in this chapter; or (2) exercise the school construction fee option described in § 1-20-62; or (3) wait for public facilities to become adequate by improvements made pursuant to the CIP or other sources. A county, state or municipal agency may participate in the improvements.

and:

> § 1-20-62 SCHOOL CONSTRUCTION FEE OPTION.
> (A) A developer may elect to satisfy the school adequacy standards of § 1-20-61 by the payment to Frederick County of school construction fees as described in subsection (E) below.
> (B) School construction fees shall be paid in addition to, and not in lieu of, public school development impact fees under Chapter 1-22 of the Frederick County Code.
> (C) The developer may elect to satisfy the school adequacy standards of § 1-20-61 by any combination of: (1)
> constructing the required public school facilities; or (2) waiting for the public school facilities to become adequate;
> or (3) paying the school construction fee.
> (D) If the developer elects the school construction fee option, the APFO Letter of Understanding, and any development rights and responsibilities agreement ("DRRA"), for the development shall incorporate provisions for payment of the school construction fees.
> (E) School construction fees due to the county shall be determined by using the chart below. The school construction fees shall be calculated by multiplying the appropriate school construction fee component(s) (based on

the proposed development's failure to meet public school adequacy at the elementary, middle or high school level) by the number of residential units of each type.

School Construction Fees

Housing Unit Type	Failure at Elementary School Level	Failure at Middle School Level	Failure at High School Level
Single Family Detached	$3,870	$2,530	$3,646
Townhouse/Duplex	$4,053	$1,996	$2,584
Other Residential	$897	$336	$20

(7) The Finance Division shall document each appropriation from the School Construction Fee Account.

* * * *

(I) The payment of the school construction fee or the obligation to pay the school construction fee under the terms of an APFO Letter of Understanding or DRRA shall not satisfy the public school adequacy requirement for:
any other development served by the same school or schools as the proposed development.

(J) Upon payment of all school construction fees applicable to the proposed development, the development shall not be subject to further testing for school adequacy under the APFO for the duration of the APFO approval period under the DRRA or APFO Letter of Understanding, unless the density or intensity of the development increases.

(K) THE DEVELOPER SHALL NOT HAVE THE OPTION TO SATISFY THE SCHOOL ADEQUACY PROVISIONS OF THIS CHAPTER BY PAYMENT OF THE SCHOOL CONSTRUCTION FEE IF ANY SCHOOL SERVING OR PROPOSED TO SERVE THE PROPOSED DEVELOPMENT EXCEEDS 120% OF STATE RATED CAPACITY, AFTER TAKING THE FOLLOWING FACTORS INTO ACCOUNT:
(1) THE CURRENT ENROLLMENT AS OF THE APFO TEST DATE; AND (2) ACTUAL CAPACITY EXPECTED TO BE PROVIDED BY NEW SCHOOLS AND SCHOOL ADDITIONS SCHEDULED FOR CONSTRUCTION IN THE FIRST 2 YEARS OF THE CIP. [Emphasis supplied.]

The APFO test date is defined as:

> APFO TEST DATE. The later of: (1) the date of plan submission, or (2) the first date upon which all necessary APFO documentation and materials have been submitted. County Code § 1-20-5(B).

"State rated capacity" is defined as:

> STATE RATED CAPACITY (SRC). The maximum number of students, as determined by the state, that can be reasonably accommodated in a school facility without significantly hampering delivery of the given educational program. County Code § 1-20-5(B).

"Capital improvement program" is defined as:

> CAPITAL IMPROVEMENT PROGRAM (CIP). An annual document adopted by the county indicating county capital projects having funding approval for the current fiscal year and those capital projects which are currently planned for the following 5 year period, including the proposed means of financing the same. County Code § 1-20-5(B).

The essence of this matter is the construction of subsection (K). Appellants contend that subsection (K) is a two-step process. If a developer can satisfy the first step, that the proposed development would not exceed 120% of the State rated school capacity, then the Planning Commission would have to consider actual capacity during the first two years of the capital improvement program ("CIP"). Appellees contend that items (1) and (2) are independent considerations.

The developer appellees filed for preliminary site plan approval for the subdivision. The Planning Commission held several hearings[5] to consider the various aspects of the site plan. On February 8, 2023, the County Division of Planning and Permitting issued a draft

[5] The hearing dates were February 8, 2023, February 13, 2023, March 15, 2023 and April 12, 2023.

Adequate Public Facilities Letter of Understanding ("LOU"). With respect to schools, the LOU stated:

> The Project is projected to generate 173 elementary school students, 91 middle school students and 114 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at all levels. The Developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This Project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62. The School Construction Fees must be paid at plat recordation based on the specific fees required by Section 1-20-62(E), per unit type and the school level(s) to be mitigated.

With respect to the payment of the school construction fee option, the parties set forth their positions. In a letter dated February 11, 2023, counsel for the appellants wrote to the Planning Commission to outline appellants' position with respect to the site plan. As to the issue of the school construction fee, she wrote:

> **School Capacity Is Inadequate Under The 2014 APFO Standards**.
> The project fails APFO testing standards under the 2014 law in effect at the time the DRRA was adopted for at least two reasons:
> 1. The 2014 Code does not state that the "test date" is the operative date for measuring school adequacy, it merely establishes the time frame for the supporting data to be used and at what point in time that data is [sic] no longer valid an[d] a new test must be conducted. If APFO approval has not been secured within 6 months of the "test date," then [] new test data must be analyzed. The Code does NOT make the "test date" the determinative point in time. Rather, a fair reading of the law would be that the Planning Commission has discretion to consider all years within the testing period.
> 2. At a minimum, the Planning Commission must consider the first two years. Section 1-20-62(k) [sic] of the 2014 APFO Code measures adequacy for the school construction fee option as follows:
>
> > (K) The developer shall not have the option to satisfy the school adequacy provisions of this chapter by payment of the school construction fee if any school serving or proposed to serve the proposed development exceeds 120% of state rated capacity, after taking the following factors into account:

> (1) The current enrollment as of the APFO test date; and
> (2) Actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the CIP.
>
> The Planning Commission is obligated to take into account BOTH factors. Why? Because if the school test fails the first year but new construction the second [year] alleviates school capacity to below 120%, then there is no issue. On the other hand, if in year 2 the schools fail, then adequacy cannot be satisfied. . . .
> After factoring in any actual capacity to be provide[d] by new schools and school additions for those schools subject to the APFO test, all three tested schools exceed 120% and the project is not eligible to satisfy the APFO through the school construction fee. To ignore the second statutory factor in making an APFO determination in this case would be arbitrary and capricious. The Planning Commission must find that the project fails to satisfy school APFO standards and must be denied. (Cleaned up.)

On March 10, 2023, the County Attorney sent a letter to the Planning Commission addressing the arguments that appellants' counsel had raised in her February 11 letter. The County Attorney rejected appellants' construction of § 1-20-62:

> The Project is projected to generate 173 elementary school students, 91 middle school students and 114 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at all levels. Pursuant to former County Code Section 1-20-62 of the APFO, which was in effect on November 11, 2014, and therefore remains applicable to the Project in accordance with Section 8.1 of the Blentlinger PUD Development Rights and Responsibilities Agreement, the Project is eligible to utilize the School Construction Fee option under the criteria set forth in Section 1-20-62(K). The Project's School Test confirms that no school serving or proposed to serve the Project has a current (as of the APFO Test Date) enrollment that exceeds 120 percent of state rated capacity, as required by Section 1-20-62(K)(1) and after taking Section 1-20-62(K)(2) into account. . . . Accordingly, the Applicant can and has chosen the option to mitigate the school inadequacy by paying the School Construction Fees which must be paid at plat recordation.

The County Attorney's APFO opinion letter provided:

2. School Capacity Testing – The [February 11, 2023] Letter [from appellants' counsel] states that the County Code (as it existed in 2014) does not state that the APFO Test Date "is the operative date for testing school capacity." This is simply wrong. The APFO Test Date is defined the same today and in the 2014 APFO as "The later of: (1) the date of plan submission, or (2) the first date upon which all necessary APFO documentation and materials have been submitted." In addition, §1-20-62(K)(1) (School Construction Fees) in the 2014 APFO very clearly states that the developer does not have the right to use the School Construction Fee option if the current enrollment as of the APFO Test Date is over 120%. In the case of the Gordon Mill/Blentlinger development, no school serving or proposed to serve the development had a current enrollment (as of the APFO Test Date) that was over 120% of state rated capacity.

The Letter also asserts, relying on the language in §1-20-62(K)(2), that the 2014 Code requires the Planning Commission to consider the first 2 years of the APFO test period. This, again, is based on a misreading or misinterpretation of the Code. The full text of §1-20-62(K), as it existed in 2014 is:

> *(K) The developer shall not have the option to satisfy the school adequacy provisions of this chapter by payment of the school construction fee if any school serving or proposed to serve the proposed development exceeds 120% of state rated capacity, after taking the following factors into account:*
>
> *(1) the current enrollment as of the of the APFO Test Date; and*
> *(2) actual capacity expected to be provided by new schools and school additions scheduled for construction in the first two years of the CIP.* [Emphasis added [in original]]

The language in subsection (K)(2) does not require the Planning Commission to look at the first 2 years of the school adequacy test in all cases. The "actual capacity expected to be provided by new schools and school additions scheduled for construction in the first two years of the CIP" is a factor to be considered in determining whether the developer can use the School Construction Fee Option only when the current enrollment as of the APFO Test Date actually exceeds 120% of state rated capacity. The school capacity to be added by school additions or construction in the first 2 years of the County CIP could only decrease the percentage of state rated capacity. In fact, subsection (K)(2) was added at the request of certain developers during

> the process of adding the School Construction Fee provisions. They wanted the additional school capacity in that 2-year CIP period to be used to mitigate the current enrollment numbers if they exceeded 120%. For example, if the enrollment of an elementary school serving the proposed development is currently 120% of state rated capacity, but a new elementary school is included in the first 2 years of the CIP, then the capacity (number of student seats) provided by the new school could be taken into account to lower the state rated capacity to some number less than 120%, and allow the development to use the School Construction Fee option.
>
> Bottom Line: The arguments in [appellants' counsel's February 11, 2023] Letter concerning the use of the School Construction Fee option are incorrect, and misinterpret the applicable 2014 County Code provisions. In addition, the examples submitted as Exhibit 4B to the Letter are not relevant, since the current enrollment for all schools analyzed in those tests did not exceed 120%.

During the Planning Commission's deliberations regarding the site plan, Commissioner Carol Sepe set forth her understanding as to how to apply § 1-20-62:

> I also understand everyone's concern about the school. I'm not happy with it. That's for sure. But I have to follow what's written, what's the law – what's in the law, and what is based on the zoning ordinance as of 2014, which is what the developer has to follow based on the DRRA, which is a commitment by the county.
>
> So I understood some of the arguments about the school and the way that the zoning ordinance is written. But when I read it again and again and again, what I see is that it's talking about specifically …. very specifically is Item 2 is where the question was on whether or not we are to review the – what is in the CIP within two years. And the way I read it is only when there is an addition or a proposed construction. Otherwise, they would've just said look at the CIP within two years, and that's not really what it says. It just says – it doesn't say what the capacity is in two years. It says what's – what additions or proposal are in the CIP. So to me, that's a zero, and therefore Number 2 is eliminated. And the only thing that the developer can look at is Item 1, which says what is the current capacity. And that's what they've done.
>
> So even though I know and I understand certainly that, yes, the schools are going to be over capacity, the county has entered into an agreement and kind of ties – which ties our hand. We can't do anything about it. I can't change what's written. I'm not happy that it's going to be

> overcrowded. I'm hoping that county executive puts some of the school construction in that area as a priority, as an emergency priority. I have to add because that is going to be a problem. But I can't deny a site plan because of that. I can't – I could maybe recuse from making a vote, but that would be irresponsible and not taking my job seriously. So I can't do that either. I would love to, but I can't.
>
> So, there's over 5,000 homes that are going to be built, but we do need – in that area when I looked at the projected – the projection, there's 5,000 homes that are going to be built in that area. So it is a major issue, and I'm going to do the best I can to make sure that the county pushes forward with CIP – on the CIP and put new schools in.
>
> The school – the county needs that piece of property to put that new middle school in. We can't just pick land and – we – this piece of property was already designated for a middle school, and we do need it. We also need that connection, and the New Market Bypass is absolutely necessary for the county.
>
> Because of all these approvals that already are in the works, we can't just ignore that. We need the connection, and we need the schools. So that's where I'm coming from, and that's why I'm not going to oppose this project, but I am going to try to do the best I can to get more out of the site plan. So does anybody have anything to say at this point?
>
> Commissioner Sepe's comments were echoed by Commissioner Sam Tressler, who added:
>
> And I'm sorry about the school situation too, but I'm hoping that the CIP and the county they can work to come in and build some schools there because they know this area is definitely a growth area. It's growing, and it's going to be built. So if it's going to be built, we just try to make the best we can out of the situation we have to deal with.

The Commission voted to approve the preliminary site plan subject to conditions that it had outlined in its discussions.

Additional facts will follow.

II. ISSUE ON APPEAL

Appellants noted two timely appeals of the Planning Commission's approval of the preliminary site plan to the Circuit Court for Frederick County. These appeals were

consolidated. On March 27, 2024, the circuit court issued an Opinion and Order denying the appeal and affirming the Planning Commission. Appellants noted an appeal to this Court in which they raise one issue, which we have restated as follows:[6]

> Did the Frederick County Planning Commission err in concluding that the developer was eligible to exercise the school construction fee option pursuant to County Code § 1-20-62(K)?

For reasons that follow, we answer this question in the negative.

III. STANDARD OF REVIEW

"When reviewing the decision of an administrative agency, we look through the circuit court's decision and 'evaluate the decision of the agency.'" *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 202–03 (2009) (cleaned up). We evaluate the decision of the agency. *People's Couns. for Balt. Cnty. v. Loyola College*, 406 Md. 54, 66–67 (2008).

An administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight. *Grasslands Plantation, Inc.*, 410 Md. at 204. We are, however, under no constraint to affirm a decision based upon an erroneous conclusion of law. *Id.*

[6] The issue as stated in appellants' brief is:

> Did the Frederick County Planning Commission err as a matter of law by concluding that the developer may exercise the fee option to satisfy school APFO requirements when instead the fee exclusion clause prohibits use of the fee option in this case?

This case comes down to a matter of statutory interpretation. Our primary goal in statutory interpretation is "to discern the legislative purpose, the ends to be accomplished[.]" *Barbre v. Pope*, 402 Md. 157, 172 (2007) (citing *Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399, 419–20 (2007)). "To ascertain the Legislature's intent, we first examine the plain language of the statute; if the statute is unambiguous when construed according to its ordinary meaning, then we will 'give effect to the statute as it is written.'" *Kelly*, 397 Md. at 419 (citing *Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2005)). If the statute is capable of more than one interpretation, we will resolve any ambiguity in light of the legislative history, caselaw and statutory purpose. *Id.* at 419–20.

IV. CONTENTIONS OF THE PARTIES

To the extent that we have not already outlined their respective positions, the parties make the following contentions.

Appellants urge that the school construction fee option is available to developers when capacity exceeds 100% of State rated capacity but does not exceed 120% of capacity. A developer cannot buy their way out of the APFO if capacity exceeds the 120% cap. To this end the Planning Commission had to consider whether enrollment exceeded 120% capacity on the APFO test date; and the actual capacity during the first two years of the CIP. The Planning Commission erred by looking at enrollment numbers and not at capacity. The Planning Commission's use of enrollment instead of capacity renders the word "and" between items (1) and (2) nugatory. In this regard, appellants cite *McHale v.*

DCW Dutchship Island, LLC, 415 Md. 145, 172 (2010). The Planning Commission's consideration of whether the school construction fee option can be exercised depends on the provision of capacity that will accommodate the additional capacity brought on by the additional students. If the enrollment exceeded capacity, then a developer would not be eligible to exercise the school construction fee option.

The County posits that the Planning Commission correctly applied § 1-20-62(K) because the current enrollment did not exceed 120%. It argues that the appellants obfuscate the concepts of enrollment and capacity. The projected capacity of the first two years of the CIP is a factor to be considered. In this case, there were no programs to add capacity in the first two years of the CIP. Therefore, consideration of the first factor was all that was necessary.

The developer appellees echo that § 1-20-62(K) does not take projected enrollment into account. Instead, it looks to see if enrollment at the APFO test date does not exceed 120% of State rated capacity. This section does not take projected enrollment into account. Since there is no expected additional capacity under the CIP, then the Planning Commission properly limited its consideration to whether enrollment fell under 120% of State rated capacity on the APFO test date. The second factor is to be considered as a mitigating factor that would allow for a developer to pay the school construction fee enrollment on the APFO test date exceeded the 120% rating, by looking at the projected additional capacity. Since there is no projected additional capacity, consideration of the first factor was appropriate.

V. ANALYSIS

Local jurisdictions may enact adequate public facilities ordinances. Md. Code Ann., Land Use ("LU") § 7-101.[7] Among the purposes of APFO is to enable a local jurisdiction to facilitate orderly development and growth. *Anselmo v. Mayor and City Council of Rockville*, 196 Md. App. 115, 122 (2010). A DRRA is governed by LU §§ 7-301 to 7-306 ("the DRRA statute"), and is defined as "an agreement between a local governing body and a person having a legal or equitable interest in real property to establish conditions under which development may proceed for a specified time." LU § 7-301(b); *see also Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 276–77 (2017).[8]

> The purpose of a DRRA is to allow developers and local governing bodies, such as a county, to negotiate terms and conditions under which development may occur. A DRRA serves to streamline the various approval processes that must occur for a complex development project. To that end, one of the key aspects of a DRRA is controlled by the 'freeze provision' of the DRRA statute, LU § 7–304(a), which permits parties to agree to freeze certain laws, rules, regulations, and policies as of the time of the execution of the DRRA.

Lillian C. Blentlinger, LLC, 456 Md. at 277. The effect of the freeze provision is that developers are able to move forward, with certainty regarding the applicable laws, with development projects that may extend over a long period of time. *Id.*

[7] On July 20, 2011, when the Board of County Commissioners of Frederick County approved Ordinance 11-18-584, enacting the APFO, LU § 7-101 *et seq.* was codified as Article 66B, § 10.01 *et seq.* Article 66B was largely recodified into the Land Use Article by ACTS 2012, ch. 426, effective October 1, 2012.

[8] The DRRA in this appeal had previously been the subject of litigation. In *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, our Supreme Court held that the DRRA was valid. 456 Md. 272, 307 (2017).

Problematically, in this case, to the extent that Frederick County had a capital improvement program, it did not include school construction. This problem was at the heart of Commissioner Sepe's analysis as to how to address the second consideration of the school construction fee option. She noted that there were no school construction projects in the pipeline and suggested that the County Executive be urged to move on school construction. She acknowledged that, since there were no school construction projects, the focus needed to be on whether existing enrollment exceeded 120% of State rated capacity. Since the current enrollment did not exceed 120% of State rated capacity, the Planning Commission had to follow the statute and grant approval. This understanding is consistent with the notion that the school construction fee option would create an infusion of capital that would enable the County government to proceed with its capital projects.

As noted, a court may look at the legislative history to resolve any ambiguity. *Oakland*, 392 Md. at 316. The then Board of County Commissioners considered these other iterations before arriving at the final language for § 1-20-62(K). At a joint Board of Education on Board of County Commissioners meeting on April 28, 2011, the following language was proposed:

> (1) The current enrollment as of the APFO Test date; and
> (2) pupils anticipated to be generated by the Proposed development, using pupil generation rates adopted by Frederick County Public Schools.

By using the term "pupil generation rates," this first iteration is looking at enrollment that will result from the development.

At a Board of County Commissioners' meeting on April 28, 2011, the following language was proposed.

> (K) If any school serving or proposed to serve the proposed development is over _____% of state rated capacity as of the APFO test date, the developer shall not have the option of choosing to satisfy the school adequacy provisions of this chapter by payment of the school construction fee.

This second iteration looks at hard and fast capacity quotient, which if exceeded, would bar the exercise of the option.

The final language directs the Planning Commission to consider whether existing enrollment exceeds 120% of State rated capacity, and whether there would be sufficient capacity during the first two years of the CIP. If existing enrollment were to exceed 120% of State rated capacity, then the Planning Commission would have to determine whether the first two years of the CIP would afford sufficient capacity to allow for the school construction fee option. This language, as developer appellees posit, allows flexibility to determine whether the fee option can be exercised.

Contrary to appellants' suggestion, the Planning Commission did not ignore the second part of § 1-20-62(K). Specifically, Commissioner Sepe stated:

> And the way I read it is only when there is an addition or a proposed construction. Otherwise, they would've just said look at the CIP within two years, and that's not really what it says. It just says -- it doesn't say what the capacity is in two years. It says what's – what additions or proposal are in the CIP. So to me, that's a zero, and therefore Number 2 is eliminated.

There were no capital projects for the construction of new schools. Accordingly, the Planning Commission could not speculate as to what capacity the CIP might create. Even

if the Planning Commission could have determined that the additional capacity is zero additional seats, it still could have rested its decision on its consideration of the first factor.

Appellants' argument is that, if at any time, enrollment would exceed capacity by 120%, then a developer could not exercise the school construction fee option. Appellees' argument is that the statute provides flexibility for a developer based on current enrollment and future capacity. Appellees' argument also considers that the exercise of the school construction fee option would provide an infusion of capital to enable the County government to move forward with capital improvement programs for school construction. The Planning Commission adopted appellees' construction of § 1-20-62(K), when it noted that no current capital improvement program included school construction. We hold that the Planning Commission's understanding of § 1-20-62(K) is correct.

To summarize, the Planning Commission fully understood the interplay between the DRRA and the APFO. It was also well aware that, although there was no school construction as part of any capital improvement project, the influx of capital for the school construction fee option could provide a jump start to begin school construction. The Planning Commission understood the scope of § 1-20-62(K) and applied it correctly. For these reasons, we affirm the judgment of the Circuit Court for Frederick County.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.