

Testimony of Steve McKay in Opposition to the Bill to Adjust the School Construction Fee

\$5,700,000. That's what I've calculated as the cost of the Council's inaction on the School Construction Mitigation Fee. Had the Council kept this fee up to date by raising it each year based on the State's School Construction Inflation Index, this is the additional amount that would have been collected for all of the new homes permitted since that time. Instead, you failed to act while the cost of new schools continued to rise. Instead of this amount being paid by new development – per their agreement – this cost was passed on to the general taxpayer, just as if you'd raised all of our taxes.

You've had opportunities. County Executive Gardner has proposed fee increases but you listened to the development community instead of the rest of us, and you pushed the can down the road. Every year that can has gotten bigger. I continue to support the idea of getting the fee caught up – right now – and then raise/lower the fee each year based on the State index.

But that's not what's on the table before you right now. Instead, you've brought forward a "compromise" bill, developed over the last several months in a working group. I am certainly not opposed to compromise. However, in this case, I think you've compromised too much. Remember this – the existence of the fee is a compromise between not building or building and paying the full price for needed school capacity. That was a HUGE compromise in favor of the development community. So you'll have to understand that I look unfavorably on further compromise which shifts more of the burden to the general tax payer, and that's what this bill will likely do.

Here are my views on the three primary elements of the bill:

- 1) Fees will be adjusted every year for the next eight years, based on the State index (TBD). This is what should have been happening since 2014, and I totally agree.
- 2) An additional 2% above the change in the State index will be collected to help recoup the additional funding that should have been collected since 2014. This is an attempt to collect the \$5.7M that I noted earlier. Unfortunately, given average building rates, you won't make up the difference. In fact, you'll fall short by about \$1.5M and that's ignoring the fact that these funds will be collected over eight years, which means that money is worth less given inflation.

I propose that you raise this add-on fee to 3%. This amount will actually recoup the \$5.7M, plus a little inflation.

- 3) This bill proposes a maximum annual fee increase of 6%. This is totally unacceptable. I accept that the average school construction cost change is 3-4%. When you add the 2% add-on fee in the bill, it all appears to make sense. However, school costs have recently jumped 28% in a year, reflecting the impact of Annapolis-driven and market-driven cost factors that the County has little control over. Setting an arbitrary 6% cap on the fee imposes a significant risk to the County and us tax payers. If costs rise more than

4%/year, then the burden for new school capacity will shift from the new developments to the general tax payer, and that is contrary to the purpose of this fee.

I propose that the 6% ceiling be removed from this bill. The fees should adjust in accordance with the actual change in school construction cost.

I can already hear the development community stating that such fee increases will bankrupt their business and cost jobs. That's ridiculous. This approach to the fee is far less than what CE Gardner proposed (which I still support), and that fee increase would have only represented a worst case (failure at all three levels) of an additional \$6,000 on a single family home. New single family homes in the developments governed by this fee are selling in the \$500,000 range. That \$6,000 increase would NOT have harmed their marketability – the homes would still sell, and the jobs would still be there.

You will hear people say that not all school over-crowding is from new development. That's correct but it's also irrelevant for this bill. Always remember, this is an optional fee that developers sought out so that they could keep building into over-crowded school districts. This fee is only applicable for those developers that chose it. The broader problem of over-crowding is simply irrelevant to this discussion.

You will also hear people lament that school construction costs are too high. That may be true, but it is still the reality we must live with until it is changed. By all means, pursue measures to reduce school construction costs. In the meantime, however, adjust the fees in accordance to the costs we have today – NOT what we hope we'll have tomorrow.

Lastly, you may hear the argument that “these fees” artificially raise the cost of homes, which then lead to existing home values being “artificially” higher, resulting in higher property taxes. I've heard this argument – not often, but it's out there. I accept that this may be a factor, but it is only an indirect factor in the broader valuation of homes. There are clearly many factors that feed into the valuation of homes, and the comps for new homes is only one. Even if I accept the premise, however, what does the alternative hold? The alternative is to spread the cost of new school construction across the entire tax base. We would trade an uncertain, indirect effect on property taxes with a certain and direct tax increase to every homeowner. I have yet to meet anyone that supports county-wide tax increases to support schools required by new development.

The bottom line is this. The developers sought this fee. The fee has always been based on the cost of new school construction. The fee has been allowed to lag behind rising construction costs and this represents an increasingly large tax burden to the rest of the County. You should have adopted County Executive Gardner's proposed fee increase but you didn't. I can accept the current fee approach, as long as you raise the add-on fee from 2% to 3% and you eliminate the 6% ceiling. Failing this approach, I would strongly advocate that the Council consider removing this fee option entirely, including from current developments covered under DRRAs. If this fee cannot be adjusted properly, and building continues into over-crowded school districts, then this will represent a danger to the health, safety, and welfare of our most precious assets – our children.

Councilman Tony Chmelik's Claims of Millions Being Miss-Spent

I would be remiss in this testimony without discussing what I'm sure you'll hear from Councilman Tony Chmelik. Tony has written a blog article about the hundreds of millions in school-related fees that have been collected, including supposedly \$76,000,000 from the School Construction Mitigation Fee. He has used these numbers to make an argument that the County has been miss-spending these funds, rather than using them for new schools. He recently testified before the Planning Commission, conveying this information and his accusation.

There's only one problem with Tony's analysis – it is completely wrong.

The graphic below outlines the problem with Tony's analysis, illustrating it using the funding table that Tony includes in his blog post, and has formed the basis for his faulty argument. The bottom line is this – Tony constructed a table showing what he purports to be the various fees, including the School Construction Mitigation Fee, collected each year. He then adds all of these, and claims that nearly \$262 million has been collected and miss-spent by the County. Here's his mistake. He used revenue projections from the Capital Improvement Program (CIP) budget. Each of these numbers are estimates of six years-worth of funding and Tony is using them as if they are single year funding numbers. **Tony has grossly exaggerated the funds collected by the County in order to build his false argument about County miss-spending!**

Tony Chmelik's Depiction of the Funds Collected for Schools (FY14-FY19)

Tony argues against increasing the School Construction Mitigation Fee by claiming that all of these funds have already been collected – a total of \$261.8 million – and that the County has miss-spent the funding. The problem with Tony's argument is that he is grossly wrong about the funding. Each of these numbers were taken from the Capital Improvement Program (CIP) budget. These amounts don't represent the amount collected in each year. Instead, they represent 6-year projected amounts. Each year in Tony's table, he's using 6-year projected revenue estimates instead of 1-year amounts, resulting in massive double-counting.

Tony is grossly exaggerating the amount of money collected by the County for schools to support his false argument!

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees				
	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$3,090,000		3,000,000	4,000,000
2014	\$2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

SOURCE:

<https://tonyfor2.com/the-truth%3A-no-lies/f/3-big-issues-facing-frederick-how-to-solve-them-correctly>

I anticipate that some of you may not believe me. So let's walk through the analysis, shall we?

In the following graphic, I clearly show where Tony's numbers come from. Tony's numbers are from the Revenue Summary for each fiscal year's CIP budget. In the example below, I show how Tony's numbers correspond to the FY19 CIP budget.

Tony's Revenue Numbers Came from the CIP Revenue Summary in Each Year's CIP Budget Document, from FY14 to FY19

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees

	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
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2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

FY19 CIP Revenue Summary

	APPROVED
General Fund*	\$ 112,599,362
General Fund Bonds/Lease	326,536,680
Recordation Taxes - Parks	23,515,204
Recordation Tax Bonds - Parks	15,274,962
Recordation Taxes - Schools	16,926,992
Recordation Tax Bonds - Schools	10,500,000
Impact Fees - Library	3,191,251
Impact Fees - Schools	42,693,903
Mitigation Fees - Schools	18,729,424
Enterprise Fund Pay-go	20,841,398
Enterprise Fund Bonds	55,307,524
Grants - State	115,357,065
Grants - Federal	5,336,672
Cash - Forward Fund State	(8,128,007)
Other	136,036,085
Total	\$ 894,718,515

*Includes \$2.1 million from reserve funds

SOURCE: FY19 CIP Budget, page 2

<https://www.frederickcountymd.gov/DocumentCenter/View/307014/FY2019-FY2024-Adopted-Capital-Improvements-Program?bidId=>

Next, the following graphic verifies that these are indeed six-year funding estimates, again, using the FY19 CIP to illustrate the point.

These Charts Show that the CIP Revenue Summary Uses 6-Year Projected \$\$

CIP Revenue Summary

	APPROVED
General Fund*	\$ 112,599,362
General Fund Bonds/Lease	326,536,680
Recordation Taxes - Parks	23,515,204
Recordation Tax Bonds - Parks	15,274,962
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Other	136,036,085
Total	\$ 894,718,515

*Includes \$2.1 million from reserve funds

FY19-FY24 Mitigation Fees – Schools:

\$18,729,424

\$3,659,500
+ \$3,069,924
+ \$12,000,000
\$18,729,424

CIP Details

FY2019-2024 CAPITAL IMPROVEMENT PROGRAM ADOPTED										
SUMMARY - ALL PROJECTS										
6-Year ** Approved	Total Project	Prior Budget	2019	2020	2021	2022	2023	2024	Costs After	
PROJECT										
General Government	154,259,539	212,016,071	16,132,610	26,762,961	17,014,652	4,352,652	40,310,834	21,248,655	34,569,785	41,624,722
Parks & Recreation	52,151,366	75,946,489	17,111,793	20,427,933	5,768,447	797,558	4,294,583	10,488,382	3,374,463	6,683,330
Watershed Restoration and Retrofit	39,639,265	71,005,546	2,219,281	6,110,599	7,532,499	853,667	6,037,500	6,037,500	6,037,500	24,150,000
Roads	34,770,700	66,134,482	13,300,982	17,358,600	9,171,600	711,600	315,500	5,547,200	666,200	17,972,600
Bridges	6,293,900	14,173,500	4,745,600	639,600	1,423,100	2,429,900	1,390,000	373,500	1,524,000	1,134,000
Highways	118,803,033	150,717,644	12,146,309	23,131,935	21,352,300	15,379,700	18,079,700	19,079,700	15,579,700	19,766,300
Water and Sewer	210,774,900	260,658,792	46,436,641	32,915,100	25,839,000	24,677,000	22,090,000	27,135,000	78,158,000	3,447,251
Solid Waste	1,850,000	1,850,000	0	800,000	210,000	210,000	210,000	210,000	210,000	0
Community College	22,044,741	42,059,174	20,014,363	3,409,533	5,191,750	7,511,210	2,749,607	2,252,603	850,000	0
Board of Education	248,791,472	614,873,155	95,718,053	21,535,500	46,846,143	56,023,395	85,357,210	29,930,924	9,094,500	270,363,430
Municipalities	3,339,417	12,078,368	8,739,021	2,601,528	520,000	116,569	101,250	0	0	0
Total Expense	894,718,515	1,521,517,021	241,656,673	157,773,289	140,868,499	135,370,251	180,937,064	122,303,464	151,464,948	385,141,833
FUNDING										
General Fund*	112,599,362	211,612,719	23,674,930	18,773,013	18,424,176	18,690,551	18,764,888	17,117,738	20,828,962	75,338,427
General Fund Bonds & Capital Lease*	326,536,680	560,156,574	74,875,002	71,323,002	55,586,200	49,890,400	56,348,158	43,596,755	49,792,185	158,744,892
Recordation Tax & Bonds	66,775,152	91,388,748	14,808,800	19,654,113	9,514,214	15,118,308	7,972,184	11,968,130	1,972,211	10,564,990
Impact Fee & Bonds	3,382,453	97,545,448	20,203,681	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	31,456,613
School Mitigation Fee	18,729,424	31,756,522	13,027,096	3,659,500	3,069,924	0	12,000,000	0	0	0
Excise Tax	76,148,922	2,073,492	2,073,492	0	0	0	0	0	0	0
Enterprise Fee & Bonds	76,148,922	83,404,951	5,331,042	9,785,477	4,040,921	4,854,000	2,303,500	6,358,680	48,766,144	1,924,987
Grants	120,693,737	155,565,659	28,181,522	19,155,445	21,062,164	20,714,592	27,110,349	16,384,417	16,266,767	6,690,400
Other	127,969,078	288,012,908	59,683,306	13,678,736	25,171,898	22,756,570	41,675,985	10,018,733	14,696,156	100,421,524
Total Funding Source	894,718,515	1,521,517,021	241,656,673	157,773,289	140,868,499	135,370,251	180,937,064	122,303,464	151,464,948	385,141,833

*Includes funding to/from "appropriation for future years"
** 6-Year Approved is the sum of FY2019 through FY2024

To complete the analysis, the following graphics illustrate how Tony made the same error for each fiscal year CIP budget going back to FY14.

Tony Repeats His Error for FY18 ...

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees				
	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$ 3,090,000		3,000,000	4,000,000
2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

SOURCE: FY18 CIP Budget, page 2

<https://www.frederickcountymd.gov/DocumentCenter/View/299207/FY2018-FY2023-Adopted-Capital-Improvements-Program>

FY18 CIP Revenue Summary

APPROVED	
General Fund*	\$ 107,238,052
General Fund Bonds/Lease	363,002,673
Recordation Taxes - Parks	14,629,205
Recordation Tax Bonds - Parks	11,123,978
Recordation Taxes - Schools	12,298,682
Recordation Tax Bonds - Schools	4,000,000
Impact Fees - Library	3,693,958
Impact Fees -Schools	29,416,346
Impact Fee Bonds -Schools	5,000,000
Mitigation Fees - Schools	30,226,555
Enterprise Fund Pay-go	7,929,048
Enterprise Fund Bonds	48,723,880
Grants - State	102,209,739
Grants - Federal	6,933,203
Cash - State Forward Fund	7,659,761
Other	28,546,120
Total	\$ 782,631,200

*Includes \$733 thousand from reserve funds

Tony Repeats the Error Again for FY17 ...

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees				
	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$ 3,090,000		3,000,000	4,000,000
2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

SOURCE: FY17 CIP Budget, page 2

<https://www.frederickcountymd.gov/DocumentCenter/View/291135/FY2017-FY2022-Adopted-Capital-Improvements-Program>

FY17 CIP Revenue Summary

APPROVED	
General Fund*	\$ 108,471,650
General Fund Bonds/Lease	269,387,683
Recordation Taxes - Parks	13,824,134
Recordation Tax Bonds - Parks	11,622,348
Recordation Taxes - Schools	5,150,000
Impact Fees - Library	3,653,405
Impact Fees -Schools	24,280,755
Impact Fee Bonds -Schools	5,000,000
Mitigation Fees - Schools	17,500,000
Enterprise Fund Pay-go	11,126,048
Enterprise Fund Bonds	67,710,980
Grants - State	89,779,388
Grants - Federal	8,559,000
Municipal	8,591,020
Other	18,303,000
Total	\$ 662,959,411

*Includes \$5.26 million from reserve funds

... and Again for FY16 ...

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees

	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$ 3,090,000		3,000,000	4,000,000
2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

FY16 CIP Revenue Summary

	APPROVED
General Fund*	\$ 121,467,102
General Fund Bonds/Lease	277,762,122
Recordation Taxes - Parks	12,373,008
Recordation Tax Bonds - Parks	11,622,348
Recordation Taxes - Schools	4,900,000
Recordation Tax Bonds - Schools	4,500,000
Impact Fees - Library	3,689,468
Impact Fees - Schools	16,400,000
Mitigation Fees - Schools	3,500,000
Excise Tax	240,000
Enterprise Fund Pay-go	545,000
Enterprise Fund Bonds	50,287,598
Grants - State	98,836,041
Grants - Federal	5,374,020
City of Frederick	9,617,909
Other	18,838,314
Total	\$ 639,952,930

*Includes \$8.6 million from reserve funds

SOURCE: FY16 CIP Budget, page 2

<https://www.frederickcountymd.gov/DocumentCenter/View/281903/FY2016-FY2021-Adopted-Capital-Improvements-Program>

... and Again for FY15 ...

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees

	Mitigation	School impact	Record tax/school	Record tax/bonds
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$ 3,090,000		3,000,000	4,000,000
2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

FY15 CIP Revenue Summary

SOURCE	APPROVED
General Fund*	\$ 107,071,377
General Fund Bonds/Lease	303,384,913
Recordation Taxes - Parks	8,740,838
Recordation Tax Bonds - Parks	11,170,015
Recordation Taxes - Schools	3,000,000
Recordation Tax Bonds - Schools	4,500,000
Impact Fees - Library	2,150,000
Impact Fee Bonds - Library	2,180,000
Mitigation Fees - Schools	3,090,000
Enterprise Fund Pay-go	804,300
Enterprise Fund Bonds	56,374,987
Grants - State	75,906,740
Grants - Federal	4,170,820
City of Frederick	11,020,009
Other	4,553,000
Total	\$ 598,116,999

*Includes \$11.2 million from reserve funds

SOURCE: FY15 CIP Budget, page 2

<https://www.frederickcountymd.gov/DocumentCenter/View/290901/FY2015-FY2020-Adopted-Capital-Improvements-Program>

... and Again for FY14

I will highlight this fact using the last six years of approved general fund (from 2014 to 2019).

General Fund Approved with Fees

Mitigation	School impact	Record tax/school	Record tax/bonds	
2019	\$18,729,424	42,693,903	16,926,992	10,500,000
2018	\$30,226,555	29,416,346	12,298,682	4,500,000
2017	\$17,500,000	24,280,755	5,150,000	
2016	\$3,500,000	16,400,000	4,900,000	4,500,000
2015	\$ 3,090,000		3,000,000	4,000,000
2014	\$ 2,923,878		4,500,000	3,000,000
Totals	75.9 mil	112.7 mil	46.7 mil	26.5 mil

FY14 CIP Revenue Summary

SOURCE	APPROVED
General Fund*	\$ 75,555,368
General Fund Bonds	285,359,869
Short Term Lease	8,000,000
Recordation Taxes - Parks	9,300,838
Recordation Tax Bonds - Parks	10,717,682
Recordation Taxes - Schools	4,500,000
Recordation Tax Bonds - Schools	3,000,000
Impact Fees - Library	2,150,000
Impact Fee Bonds - Libraries	2,180,000
Mitigation Fees - Schools	2,923,878
Enterprise Fund Pay-go	559,500
Enterprise Fund Bonds	44,126,045
Grants - State	91,195,419
Grants - Federal	4,059,620
City of Frederick	9,007,605
Other	2,500,000
Total	\$ 555,135,824

SOURCE: FY14 CIP Budget, page 3

<https://www.frederickcountymd.gov/DocumentCenter/View/290902/FY2014-FY2019-Adopted-Capital-Improvements-Program>

*Includes \$4.8 million from reserve funds

By all means, have your debate on whether or not to support this bill, support my proposed amendments, or support another option for addressing the School Construction Mitigation Fee. When you debate, however, I hope that you'll do it based on sound data and not hollow accusations built off of faulty and misleading analysis.