

Two city developments moving forward after failing schools tests three times

By Mallory Panuska mpanuska@newspost.com Nov 24, 2018



Some Butterfly Ridge Elementary School parents are worried that their children will walk more than one mile to and from school.

Staff file photo by Dan Gross

On the surface, two residential developments planned for opposite sides of the city's Golden Mile have no real connection.

Summers Farm, annexed into the city in 2009, is slated to welcome 310 single-family houses and town houses and 3.5 acres of nonresidential development to 100 acres off Butterfly Lane.

The Caidlyn Property, annexed in 2013, includes plans for 456 new homes, 8.5 acres of public parks and 9.3 acres of private open space on 92.8 acres along Kemp Lane north of Shookstown Road.

While the basic plans contain similarities, they have each moved forward separately and independently, and faced different challenges along the way. Until it came to testing for school capacity.

For any development slated to potentially add students to area schools, the city's

Adequate Public Facilities Ordinance, or APFO, requires a test to determine how the development would affect capacity. The formula is complicated, based primarily on annual enrollment numbers and projected number of dwelling units, and is designed to prevent school crowding.

If a planned development fails its tests, the developer must hold off on construction plans, and wait until the next year's enrollment numbers are released to test again. In the city, where elected officials have no control over where school funds are spent, the ordinance contains an element that allows developers to move forward with projects after failing three tests. The Board of Aldermen approved the three-test wait period in 2011 as part of a school construction fee ordinance that allows developers to pay mitigation fees if the projects fail the tests because it would push enrollment above 120 percent capacity.

Now, seven years after the school construction fee ordinance went on the books, the planned Summers and Caidlyn developments are the first projects allowed to move forward after failing the tests for the third time this October, fusing a connection between them that has little to do with anything more than timing and circumstances.

More than three years

Bruce Dean, a local land use attorney who represents the owners of Summers Farm, said a common misconception of the three-test wait period is that dirt will begin moving within three years of failing the first test.

"Everybody thinks that the three-year option means you get delayed three years, but it doesn't," he explained. "The way the city interpreted the APFO, you need to have three October school tests and fail all of those. We thought we would be ready to go

Testing for school capacity

When a residential development is set to have an impact on area schools, the city's Adequate Public Facilities Ordinance, or APFO, requires tests to determine its impact on area schools, which Frederick County Public Schools Facilities Planner Holly Nelson said begins with information from members of the government agency that is approving the development.

"Each municipality and the County have their own individual APFO ordinances, which vary slightly," Nelson explained via email. "I complete the APFO test at the direction of each agency and they interpret the results of the test."

She said the submittal, which comes from city planning officials, begins with the number and type of housing units the project proposes and the timeframe for build out. She said officials also provide information on other approved developments in the school attendance area the development is set to impact. From there, Nelson uses school enrollment data to determine the projected impact.

"We have pupil yield rates (the number of students expected per housing unit

by type) for each elementary, middle, and high school," she explained in the email. "Using these rates and the number of approved, unbuilt units in each development, I calculate the number of students at each age level. The total number for each development is then divided up by the approval period so that we have a number of new students expected during each year."

She also factors in existing increase or decrease rates for each school.

"For example some schools are growing or shrinking even if there is no development happening in the attendance area. We use the most recent three years of September 30 enrollments to determine the average background growth," she said.

Finally, the test tallies the existing enrollment and adds the background growth for each school level, which Nelson said could be a negative number, as well as the number of students the project is set to generate and the other approved housing developments in the attendance area. The process is repeated for each year of the approval period for

the project, which Nelson said is typically three, five, or seven years depending on the size. The total for each year is then compared to the school's state-rated capacity.

"If a school goes above 100 percent in any of the years of the test, the project is said to have failed the APFO school standards at that level (elementary, middle, or high). The interpretation of the results is up to the City," Nelson explained in the email.

As part of the APFO in the city, in 2011, the Board of Aldermen enacted a school construction fee ordinance. The ordinance established a fee structure developers could pay if the tests fail by less than 120 percent, or allowed them to move forward with their project after failing the tests three times. Currently, the planned Summers and Caidlyn developments near the city's Golden Mile are the first to take advantage of the option. Gabrielle Collard, the city's division manager of current planning, said that no more developments are on the horizon to follow in their footsteps.

last year, but no, we had only two of three October tests. We technically failed the APFO four times."

And just because the plans can move forward now, it does not mean the houses are coming anytime soon.

"We are still a couple of years away from moving dirt and building anything," Dean said.

The project is in the planning phase, with approvals needed for the master and site plans.

Because Summers failed tests at all school levels — elementary, middle and high — by more than 120 percent the first year, the developers did not have the option to pay

the mitigation fee. In turn, they were forced to wait until they passed the tests, or until they failed three times, which Dean said was atypical.

"This is the only one I've ever been involved with where we did not have the option where we could pay the school construction fee," he said.

Dean pointed out that the spirit of the ordinance, to give county officials enough time to provide school capacity for development on the horizon, is working.

"That is why they built Butterfly Ridge [Elementary School] on Hargett farm," he explained. "The APFO actually worked. We

were delayed, but the county was told we were coming and they built the school."

Even still, Dean added that the delay has been inconvenient for the developer and the Summers family, who own the property and are anxious to move forward.

"This property was annexed over nine years ago," he said. "It has been a long, long time coming and the family has been very patient, but they are not getting any younger."

Currently, the land is used for an annual fall festival, which Dean said the family will no longer host on the property once the development gets underway. He said the development plans include a smaller, permanent farmer's market on the property.

Just The Facts

Enacted in 2007, the city's Adequate Public Facilities Ordinance, or APFO, is a legislative method that ties public infrastructure to growth for proposed development. Frederick County and several other municipalities have similar ordinances.

The purpose is to ensure that development projects are not completed until facilities that serve it are in place or assured. It tests a development's projected impact to water line capacity,

sewer line capacity, schools, roads, water treatment capacity, and sewer basin treatment capacity. For each of the facilities, the APFO establishes tests to determine whether they are adequate to serve the proposed project. If not, the developer must make efforts to obtain adequacy, which they can accomplish in a variety of ways, according to the details of the ordinance.

For schools, the city's ordinance, unlike the county's, contains an option that

allows the developer to pay a fee and move forward if the tests fail by less than 120 percent. Or, the developer can wait until the project fails a test three times — which will take at least three years as the test is given annually in October — and move forward with the development as proposed. In 2016, the option to pay the mitigation fee, or school construction fee, was set to expire, but the aldermen opted to remove the expiration date.

A tough decision

While the Summers project could not move forward after failing the first school tests, the Caidlyn project was in a different scenario.

In the first test, based on school enrollment data for the fall October 2015 school year, Caidlyn passed at the high school level but failed the other two school levels. In order to move forward, the development had to pass the tests at all three levels. The results gave developers the option to pay a school mitigation fee for the failed tests and move forward. However, developers opted instead to wait, a decision that Ausherman Properties Vice President Jeremy Holder said was not an easy one.

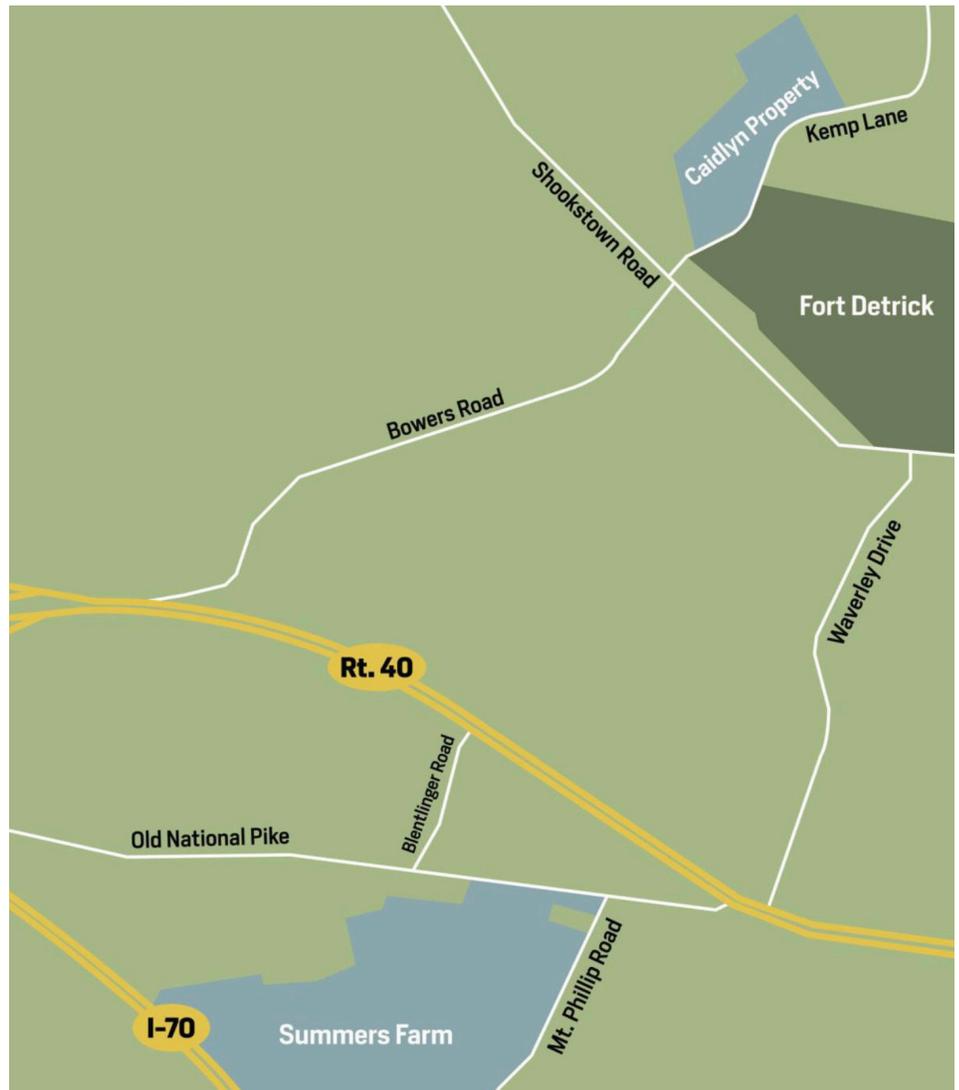
"You will want to keep in mind that the choice of projects to use the delay provision does open them to a myriad of risk including market decline and changing regulations so it's not an easy choice to make for most land owners/developers," Holder said via email.

Ausherman Properties serves as the development manager for the Caidlyn project, which Holder said has been in the works since the 1980s. After the annexation went through in 2013, developers were ready to dive into the planning phase, but the school test failure held them off. Yet despite the risk, and the long wait, Holder said the best choice was to wait it out and not pay the fee, as the developers could not justify imposing extra costs onto the homebuyers.

"Basically this is workforce level housing that is available to first-time homebuyers, millennials," Holder explained. "Candidly, those people cannot afford to have fee after fee. You hear all the time from the public perspective, political perspective, we need more affordable housing for those sectors of the community, and we agree. Given the option of [additional fees] it made sense that we waited that long. It made sense to keep being patient."

Even though the aim is to provide workforce level housing, Holder said via email that it's still too early in the process to give specific pricing for what homes in the Caidlyn development will cost.

Holder added that the Caidlyn development is already on the hook for nearly \$7 million in county impact fees for schools, which he pointed out is not required to go to the schools or the districts the development is set to impact.



Two planned residential developments on opposite sides of Frederick's Golden Mile recently received approvals to move forward with construction after failing schools tests three times via the city's Adequate Public Facilities Ordinance. The developments, as depicted on the map, are known as the Caidlyn Property and Summers Farm.

News-Post graphic

"The county collects those fees and uses them to leverage money to build schools or pay for schools that have been built to fund the debt service," he explained. "They are not required to spend it all where they collected it. That's a \$7 million revenue stream that will be coming in and they can choose to put it toward school construction that generates capacity in the city of Frederick. Maybe they do, maybe they don't, but it's not something the developer or the city can control."

He added that the goal to try and slow or stop development with the APFO in both the city and the county may not be the best way to meet the goal, as the development fees are paying for many of the costs to build and maintain schools.

"If they keep their APFO in place and don't find a way to let projects to move forward,

at some point in time, that cash cow dries up," Holder said.

Like the Summers development, Caidlyn is in the planning phase. The developers recently had the first of two required public hearings before the Planning Commission for approval of the master plan and will move next to the second hearing. Also like Summers, even if everything progresses as smoothly as possible, dirt will not begin moving on the property for a few years.

"The earliest you're going to see houses come out of that project to generate students will be late 2020, early 2021," Holder said.

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