

<b>INTRODUCED BY:</b>	<u>P. Brooks Banta</u>
<b>DATE INTRODUCED:</b>	<u>June 13, 2006</u>
<b>LEVY COURT PUBLIC HEARING DATE:</b>	<u>October 17, 2006</u>
<b>LEVY COURT PUBLIC HEARING TIME:</b>	<u>7:15 p.m.</u>
<b>ADOPTION DATE:</b>	<u>October 17, 2006</u>
<b>EFFECTIVE DATE:</b>	<u>June 13, 2006</u>

**ORDINANCE 06-41**

An Ordinance to amend Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development effective June 10, 2003, as amended, by revising Article XVII, Supplementary Regulations to add a new §187-90.2 Adequate Public Facilities.

**NOW, THEREFORE, THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:**

**Section 1.** That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations is hereby amended by adding the following §187-90.2 Adequate Public Facilities, in numeric order:

**§187-90.2 Adequate Public Facilities**

**A. Purpose and Intent.**

The provisions of the Adequate Public Facilities Ordinance are intended to ensure that essential public facilities needed to support new development meet or exceed the Level of Service standards established herein. It is expressly intended that adequate public facilities needed to support new residential development are available concurrent with the impacts of such development, as defined in this Ordinance. It is further intended that no application for Major Subdivision, Conditional Use or Site Plan approval shall be approved which would cause a reduction in the Levels of Service for any public facilities below the adopted Level of Service established in this ordinance. To achieve the purpose and intent of this Ordinance, the provisions of this section establish uniform procedures for the review of development applications subject to the standards and requirements of this ordinance. In meeting this purpose, public facility and service availability shall be deemed sufficient if:

- 1) The public facilities and/or related services needed to support, and off-set, the impacts of new development already exist; or
- 2) The public facilities and/or related services needed to support, and off-set, the impacts of new development are constructed in conjunction with new development; or
- 3) The new development is phased, so that the public facilities and related services deemed necessary by Kent County, are available concurrently with the new development; or

- 4) The public facilities and/or services needed to support, and off-set, the impacts of new development are planned and funded for construction within two (2) years of final plan approval.

**B. Definitions.**

For the purpose of this Ordinance, the following terms and words are defined as follows:

**Adequate Public Facilities** – Facilities and services relating to water supply and distribution systems, meeting minimum acceptable Level of Service standards established by Kent County Levy Court.

**Level of Service** – The performance standard adopted by Kent County Levy Court for the provision of water supply and distribution. The adopted minimum acceptable Level of Service shall provide a basis for the establishment or expansion of a public facility or service, which is subject to this ordinance.

**Capacity** - The maximum demand that can be accommodated by a public facility or service without exceeding the adopted Level of Service.

- A. For water supply and distribution, capacity shall be measured in terms of the documented water supply and projected fire hydrant discharge rates in gallons per minute (GPM) to be provided within new development projects.

**Capacity, Available** – The existing capacity available from a facility or service to accommodate a new development project.

**Capacity, Planned** – The capacity to be created by programmed capital improvements.

**Area of influence** - a defined area within which a proposed development is presumed to create a demand for public services and facilities and so is evaluated for compliance with this ordinance.

**C. Applicability.**

All major subdivisions, conditional use site plans, site plans, and revised subdivision or site plans received for approval or re-approval by the Regional Planning Commission shall meet the requirements set forth herein prior to approval except as provided in Item D, Exemptions below.

**D. Exemptions.**

The following land use applications shall not be subject to the requirements of this Section:

1. Minor subdivisions;
2. Public or private educational institutions;

3. Public safety facilities;
4. Public utilities;
5. Land development plans involving an aggregate impervious cover of less than 5,000 square feet and not requiring formal site plan review by the Regional Planning Commission;
6. Revisions to recorded subdivision plans that do not result in the creation of additional lots; and
7. Minor changes or alterations to approved site plans in accordance with §187-42 of this Chapter.
8. Conditional Use applications not requiring Site Plan review.

**E. Administration.**

1. This Ordinance shall be administered by the Levy Court and/or the Regional Planning Commission in conjunction with the Department of Planning Services, in accordance with the jurisdiction and authority set forth for each of these entities with this Chapter. All applications, maps, and documents relative to Major Subdivision, Conditional Use Site Plan or Site Plan approval subject to the provisions of this Ordinance shall be submitted to the Department of Planning Services for review and consideration as part of the plan review process.
2. This Ordinance applies to all applications for Major Subdivision, Conditional Use Site Plan and Site Plan review for new construction filed after the effective date of this Ordinance. Except as provided in Item D above, all development proposals shall demonstrate compliance with the requirements set forth in this Ordinance through the Preliminary Conference Review Process set forth in §187-17 for major subdivisions, and §187-35 pertaining to land development applications for Site Plan and/or Conditional Use Plan Review prior to submission for consideration. The provisions of this section shall not apply to Minor Subdivision Plans, Conditional Uses not requiring Site Plan review, and Site Plans involving less than 5,000 Square Feet of building floor area.
3. Levels of Service for public facilities shall be evaluated during the Preliminary Conference review process described in §187-17 and §187-35. The applicant shall be required to demonstrate compliance with the Level of Service Standards set forth in Item F (Level of Service Standards) of this section prior to formal submission for all of the above-referenced land use applications. The applicant shall provide a Level of Service Analysis Report to the Department of Planning Services for review during the Preliminary Conference review process.

4. The Level of Service Analysis Report to be provided by the applicant as required in Item E.3. above shall document and include:
  - a. Existing Levels of Service and Available Capacity within the area of influence pertaining to the public facilities and services governed by this Ordinance;
  - b. Projected future Levels of Service within the area of influence pertaining to the public facilities and services governed by this Ordinance at the projected development completion date not including Level of Service impacts generated by the proposed development project;
  - c. Projected future Levels of Service within the area of influence pertaining to the public facilities and services governed by this Ordinance at the projected development completion date including Level of Service impacts generated by the proposed development project;
  - d. The impact of the proposed development on Available Capacity and the resultant Levels of Service; and
  - e. Proposal explaining how compliance with the Level of Service Standards would be achieved and/or maintained if the project is approved.
5. Based upon the Level of Service analysis performed under Item 4 above, the Director of Planning Services or designee shall report the findings and provide recommendations to the Regional Planning Commission and/or Levy Court pertaining to the maintenance or attainment of the Level of Service Standards through the applicable development plan review process set forth in this Chapter.
6. The Levy Court and/or Regional Planning Commission may grant plan approval when it is demonstrated that:
  - a. Level of Service standards set forth in this Ordinance will be achieved and/or maintained with the addition of the proposed development project; or
  - b. The developer agrees to provide the necessary improvements and/or contributions to mitigate for the diminution of public facility service capacity caused by the proposed development project; or
  - c. The developer reduces the residential density and/or building floor area, and/or intensity of use to reduce the impact on the capacities of public facility services to achieve compliance with the Level of Service standards of this Ordinance.

7. Subdivision plans, conditional use site plans, or site plans that will not maintain or achieve compliance with the Level of Service Standards set forth herein, shall not be approved.
8. Effect of Determination. The determination of adequacy of public facilities shall remain valid for as long as the subdivision or site plan is considered valid. The determination shall expire upon the expiration of the subdivision or site plan in accordance with §187-14, §187-21, and §187-41 of this chapter.
9. Proposals found to be in compliance with the Level of Service standards of this Ordinance shall not be construed to be exempted from standard Plan Review and Permit requirements (§187-24 and §187-42).

**F. Level of Service Standards.**

**1. Central Water Service**

All proposed residential subdivisions involving more than ten (10) lots shall be served by a central water system that includes fire hydrants located in accordance with Delaware State Fire Protection Regulations. Fire hydrant yields (gallons per minute) shall comply with the minimum requirements as set forth by the State Fire Marshal's Office. A plan showing the water distribution system including the location of fire hydrants shall be provided with all major subdivision applications involving more than ten (10) lots.

**G. Appeals Procedure**

Any applicant aggrieved by a determination by the Regional Planning Commission that adequate capacity is not available to serve a proposed development project and the subsequent denial of the project or conditions of approval intended to preserve capacity may follow the appeals procedure provided in Article XIV, Appeals of this Chapter.

**Section 2. Vested Rights and Exemption from provisions of the Adequate Public Facilities Ordinance, Section 187-90.2. et. seq.**

- (a) Not less than 30 calendar days following the pre-application meeting set forth in Section 187-17, an applicant may request exemption from any or all provisions of this Chapter based on good faith reliance on the state of law that existed prior to the enactment of this ordinance to his or her substantial detriment. Any request for exemption shall be in writing and submitted to the Planning Office.

- (b) Upon receipt of timely request, Kent County Levy Court shall provide a hearing to consider the request for exemption. At the hearing the applicant shall be permitted to appear and to show cause why an exemption should be granted. However, land cost alone does not qualify as an expenditure that would confer vested rights because the land is ordinarily usable under the new restrictions to the same extent as it was under the restrictions in place at the time of the pre-application meeting.
  
- (c) Kent County Levy Court shall apply a substantial reliance test to determine whether an applicant's development rights are vested due to good faith reliance on the subdivision ordinance under which he or she proceeded. Kent County Levy Court may approve or deny in whole or in part an application for exemption by weighing such factors as the nature, extent and degree of public interest to be served by the Adequate Public Facilities Ordinance amendment against the nature, extent and degree of the applicant's reliance on the state of the subdivision ordinance under which he or she proceeded. The nature and extent of applicant's reliance on the Subdivision Ordinance prior to the Introduction of the Adequate Public Facilities Ordinance may be established by various considerations, including but not limited to:
  - 1. Whether the applicant's reliance on the state of the ordinance was reasonable;
  - 2. Whether the applicant made extensive efforts to comply with the subdivision ordinance under which he or she proceeded.
  - 3. Whether the applicant expended substantial sums to comply with the ordinance under which he or she proceeded; and
  - 4. Whether the applicant's good faith reliance on the ordinance under which he or she proceeded was to his or her substantial detriment.
  
- (d) The provisions of this Section shall automatically terminate eighteen (18) months from the date of enactment.

**Section 3. Severability.**

The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Section 4. Effective Date.**

This Ordinance shall be effective upon enactment retroactive to the date of introduction.

ADOPTED BY THE LEVY COURT OF KENT  
COUNTY, DELAWARE

*David R. Bunn*

President, Kent County Levy Court

This 17<sup>th</sup> day of October, 2006

ATTEST: *Loretta L. Wooten*  
Clerk of the Peace

**SYNOPSIS:**

This ordinance establishes an Adequate Public Facilities Regulation limited to Level of Service standards for central water services associated with new residential and non-residential development within Kent County.