

INTRODUCED BY: P. Brooks Banta
DATE INTRODUCED: June 13, 2006
LEVY COURT PUBLIC HEARING DATE: March 27, 2007
LEVY COURT PUBLIC HEARING TIME: 7:15 P.M.
ADOPTION DATE: March 27, 2007
EFFECTIVE DATE: June 13, 2006

ORDINANCE 07-08 (Roads)

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 §187-90.2 Adequate Public Facilities, is hereby amended by striking the existing definition of the term “Adequate Public Facilities” as it appears in Subsection B thereof and by substituting in lieu thereof the following:

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

Section 2. That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations §187-90.2 Adequate Public Facilities, is hereby amended by striking the existing definition of the term “Adequate Public Facilities” as it appears in subsection B thereof and by substituting in lieu thereof the following:

Level of Service – The performance standard adopted by Kent County Levy Court for the provision of roads, emergency medical services and 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.

Section 3. That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations §187-90.2 Adequate Public Facilities, Subsection B. (Definitions) is hereby amended by adding the following definition of the term “Traffic Analysis Zone (TAZ)” as follows:

Traffic Analysis Zone (TAZ) – A traffic analysis zone (TAZ) is a unit of geography used in transportation planning models. The spatial extent of the zones typically varies from very large in rural areas, to smaller areas in more urbanized places. The areas are defined based upon population and housing unit data derived from the most recent decennial Census data. For purposes of this Ordinance, the term “Traffic Analysis Zone” means and refers to those established and defined by the Delaware Department of Transportation.

Section 4. Amend That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations §187-90.2 Adequate Public Facilities, by adding a new subsection to the definition of the term “Capacity” as it appears therein to read as follows:

- C. For roads, capacity shall be measured by the maximum number of vehicles that can be accommodated at an intersection during peak hour periods while maintaining the Level of Service standard as set forth in this Ordinance and in accordance with Delaware Department of Transportation Rules and Regulations for Subdivision Streets and the Highway Capacity Manual as amended.

Section 5. Amend That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations §187-90.2 Adequate Public Facilities, by adding thereto a new subsection to §187-90.2 F to read as follows:

3. Roads

- a. Purpose. The Regional Planning Commission shall not approve any Major Subdivision or Site Plan proposal, and Levy Court shall not approve any Conditional Use Site Plan proposal if the proposed development can not achieve the Level of Service standards set forth in this Section except however, the Commission and/or Levy Court may approve such a project conditioned upon the applicant completing all required road improvements necessary to achieve the Level of Service Standards for adequacy of the facility. This ordinance shall apply only to minor arterial, major and minor collector, and local roadways as defined by the most recent version of DelDOT’s Functional Classification Map. Limited access roads shall not be subject to the provisions of this Ordinance.
- b. Capacity Calculation. The transportation capacity for a proposed development shall be determined by a traffic impact study or other method acceptable to DelDOT such as the Support Facilities Report. The applicant shall follow the methodology set forth in this section to determine the highway capacity within the area of influence of the site.

c. Need for Traffic Impact Study. If the Department of Planning Services or DelDOT find, based upon the information supplied in a sketch plan provided for a preliminary application meeting and the standards set forth in this Section, that a proposed subdivision or land development could generate significant traffic impacts which would require roadway improvements, the Department shall require the applicant to prepare and submit a traffic impact study to the Department and DelDOT. Significant impact shall be considered to exist and a traffic impact study shall be required for a subdivision or land development if any of the following conditions exist:

- (1) The proposal exceeds the projected average daily traffic warrants provided in DelDOT's "Rules and Regulations for Subdivision Streets", as amended.
- (2) The proposal is projected to generate more than fifty (50) peak hour trips, excluding traffic passing by the subject property, unless the project is located in a DelDOT Special Study Area or District as designated by mutual agreement between Kent County and DelDOT.
- (3) The area of influence of the subject property includes roadway segments and intersections currently operating below the Level of Service standard specified in Item j, Adequate Level of Service, below.
- (4) The proposed development causes the total number of dwelling units within the area Traffic Analysis Zone (TAZ) to exceed the projected totals set forth in the Dover/Kent County MPO Transportation Improvement Plan.

d. Traffic Impact Study Waiver. If a traffic impact study was completed for a proposed change in zoning of the subject parcel or, if, in the opinion of the Department of Planning Services and DelDOT, sufficient prior traffic impact studies of the area of influence have previously been conducted, the requirement for a new traffic study and the further evaluation of the Level of Service may be waived provided the Department of Planning Services finds that:

- (1) the Ordinance changing the zoning was adopted no more than three (3) years prior to the submission of the Major Subdivision, Site Plan or Conditional Use Plan application, that there has been no change in circumstances that would result in a 5% or greater increase in peak hour traffic volumes or in total average

daily traffic volumes above the volumes projected in the prior traffic impact study, and that the subdivision and/or land development activity within the area of influence is similar to the size and type of development evaluated in the traffic impact study conducted for rezoning; or

- (2) The proposed project is within a transportation improvement district or similarly defined area as designated by mutual agreement between Kent County and DelDOT, as identified by DelDOT, and trip generation numbers provided for the proposed subdivision or land development, as approved by DelDOT, do not change the projected traffic volumes upon which roadway improvements designed by or approved by DelDOT for the district or area have been based by more than 5%. The applicant shall contribute to transportation improvement costs within the district or area based upon a formula to be developed by DelDOT.
- e. Scoping Meeting. Within fifteen (15) days after the Department or DelDOT determines that a traffic impact study is necessary, the Department and DelDOT shall meet with the applicant to establish the area of influence and all traffic impact study parameters. The area of influence will be based upon comparisons of the anticipated site traffic to the existing traffic on roads in the immediate vicinity. Once established, no substantial modification to the area of influence and parameters shall be made by the applicant without the approval of the Department and DelDOT. Such approval shall only be given if the applicant can demonstrate to the satisfaction of DelDOT and the Department that the data relied upon to determine the area of influence and parameters is flawed or otherwise inaccurate.
- f. Area of Influence.
- (1) The area of influence shall extend beyond the site entrance(s) to include additional intersections to the extent that the total projected peak hour site traffic (peak hour Vehicle Trip Ends on an average weekday or weekend day, whichever is greater) exceeds:
 - (a). One (1) percent of the annual average daily traffic on the intersecting road if it is an arterial road,
 - (b). Five (5) percent of the annual average daily traffic on the intersecting road if it is a collector road, or

- (c). Ten (10) percent of the annual average daily traffic on the intersecting road if it is a local road.

(2) Subsection (1) notwithstanding, the following rules shall also apply:

- (a). The study area shall always include the site entrances.
- (b). If the site would have access on two (2) or more intersecting roads, the study shall include their intersections.
- (c). The study area shall extend at least to the nearest arterial or collector road but in no case less than three (3) intersections with state maintained roads from the site. Intersections with commercial entrances may be considered as part of the study at the discretion of the Department and DelDOT.
- (d). For the purposes of this section, average weekday vehicle trip ends generated by retail commercial uses shall be reduced to account for pass by trips based on the standards included in the ITE Trip Generation Handbook, as amended.
- (e). For uses that operate on an event basis, e.g., stadiums and arenas, the Department and DelDOT shall substitute professional judgment for subsection (1) in determining the area of influence.

g. Traffic Impact Study Requirements.

- (1) A traffic impact study shall be prepared by individuals or firms that perform traffic engineering which shall be reviewed and sealed by a Delaware registered professional engineer. The content and format of the study shall be as prescribed by DelDOT's "Rules and Regulations for Subdivision Streets", as amended.

h. DelDOT Report Required.

- (1) Upon receipt of a final traffic impact study, DelDOT shall review the traffic impact study pursuant to this Article and submit written comments to the Department. The review of the traffic impact study shall include review comments and

recommendations in accordance with DelDOT's "Rules and Regulations for Subdivision Streets", as amended.

i. Subdivision or Land Development Traffic Impact Study Plan Approval.

(1) Upon receipt of the traffic impact study and comments from DelDOT or individual or firm approved by the Department as provided above, the Department shall review the traffic impact study with regard to the following:

- (a). The accuracy, completeness, and thoroughness of the traffic impact study as well as whether the study was conducted in conformance to the study parameters set by the Department and DelDOT.
- (b). DelDOT's comments and recommendations.
- (c). The Level of Service standards of this Section.
- (d). Appropriateness and adequacy of all proposed mitigation measures as described in Item k below.
- (e). Compatibility with regional and State transportation plans and nearby development proposals currently under review by the Department of Planning Services.
- (f). Design principles and standards as described in this Chapter (e.g., interconnectivity, transit/pedestrian accessibility and street design).

(2) Based upon the above criteria, the Levy Court and/or Regional Planning Commission shall approve, approve with conditions or disapprove the recommendations set forth in the traffic impact study as part of the plan review process. The Levy Court and/or Regional Planning Commission may approve the roadway components of the project when the traffic impact study demonstrates that the Levels of Service standards set forth in this Section will be maintained or achieved for roadway segments and intersections within the area of influence of the project. The project shall not be approved if it will result in a substandard Level of Service for a roadway segment or intersection(s) within the area of influence of the project. If the traffic impact study is not approved the applicant may take one (1) of the following actions:

- (a). The applicant may request permission to revise the proposed plan and traffic impact study to include additional traffic mitigation measures necessary to achieve the specified Level of Service Standard within the project's area of influence. The proposed revisions shall be submitted by the applicant to the Department and DelDOT for review.
 - (b). The applicant may submit a revised plan that would generate fewer trips that does not exceed the Levels of Service standard.
 - (3) If the traffic impact study is approved or approved with conditions for a Major Subdivision Plan, the applicant may proceed with a Preliminary Subdivision Plan submission. If the traffic impact study is approved or approved with conditions for a Site Plan or Conditional Use Site Plan, the applicant may proceed with submission of those plans in accordance with the processes set forth in this Chapter pertaining to such plan types.
- j. Level of Service Standards.
 - (1) Within the Growth Zone Overlay District. The minimum acceptable Level of Service standard for roadway segments and intersections within the Growth Zone Overlay District shall be Level of Service C.
 - (2) Outside the Growth Zone Overlay. The minimum acceptable Level of Service standard for roadway segments and intersections outside the Growth Zone Overlay District shall be Level of Service C.
- k. Traffic Mitigation Measures.
 - (1) Traffic mitigation measures shall be required if a proposed subdivision or land development project would result in a non-compliance with the Level of Service standards as set forth above. To be considered, traffic mitigation measures must result in attainment of the Level of Service standards set forth above. Such traffic mitigation measures may include any one or some combination of the following:
 - (a). A reduction in the proposed trip generation of development;

- (b). The phasing of construction to coincide with the completion of programmed transportation construction projects which are identified within the first three (3) years of DelDOT's six (6) year capital transportation program; and/or
 - (c). The construction of off-site road improvements by the applicant or others that result in compliance with the Level of Service standards.
- (2) The specific traffic mitigation measures shall be chosen based on their ability to reduce the impact of traffic generated by the proposed subdivision or land development, in order to achieve and maintain the Level of Service standards for a minimum of two (2) years for roadway segments and intersections within the area of influence. All proposed traffic mitigation measures approved by the Levy Court or Regional Planning Commission through the plan approval process shall be conditions of plan approval. No building permits shall be issued for new construction unless approved traffic mitigation measures are under construction, and no Certificate of Occupancy for any building shall be issued unless and until all traffic mitigation measures are completed in phase sufficient to maintain the Level of Service standards.

Section 6. That the Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article XVII, Supplementary Regulations §187-90.2 Adequate Public Facilities is hereby amended by re-labeling the existing Subsection "G. (Appeals Procedure)" thereof as "Subsection H", and by inserting a new Subsection G in codified order to read as follows:

G. Advancement of Facilities

Except as otherwise provided, if the Level of Service Analysis Report required in Item E.4. above reveals that available capacity of a public facility is not adequate for the planned development, the Levy Court and/or Regional Planning Commission may permit the applicant to advance the public facilities which are deficient, subject to the provisions below.

1. No advancement of public facilities needed to avoid deterioration in the adopted Levels of Service shall be accepted by the Levy Court or Regional Planning Commission unless:

- a. The proposed public facility is a planned capital improvement or a non-funded capital improvement; and,
 - b. Appropriate conditions are included to ensure that the applicant will obtain all necessary approvals for construction of the public facilities from any agency having jurisdiction over the public facility prior to or concurrent with the Final Plan Approval, or issuance of a Building Permit from Kent County; and,
 - c. The applicant furnishes a bond or other financial assurance sufficient to guarantee the completion of construction of the public facility to be advanced.
2. A written statement of commitment to construct the public facility shall be provided by the applicant as a condition of plan approval, and shall contain, at a minimum, the following:
- a. An estimate of the total financial resources needed to construct the proposed public facility; and,
 - b. A schedule for commencement and completion of construction of the public facility with specific target dates for multi-phase or large-scale projects; and,
 - c. At the option of the Levy Court and/or Regional Planning Commission and only if the public facility improvement to be completed by the applicant would create capacity exceeding the demand generated by the proposed development, a Recoupment Plan that would enable the applicant to recoup the costs associated with creating excess capacity from future development proposals within the area of influence that would utilize the excess capacity. A Recoupment Plan shall quantify the availability of excess capacity in terms of equivalent dwelling units, the dollar costs incurred by the applicant in creating excess capacity, and the unit cost per equivalent dwelling unit that would be assessed to future development projects within the area of influence. All Recoupment Plan proposals require approval of Levy Court or Regional Planning Commission in accordance with the jurisdiction and authority of each body as set forth in this Chapter.
3. The construction or funding of only a portion of a public facility needed to meet the adopted Level of Service may be approved by the Levy Court or Regional Planning Commission only when:

- a. The proposed portion of the public facility would achieve the Level of Service standard for the public facility required to offset the impacts of the development proposal capacity, and would be executed and completed concurrently with the proposed development; and,
- b. The construction or funding of the balance of the public facility that is needed to meet the adopted Level of Service will be accomplished from other sources.

Section 7. Vested Rights and Exemption from provisions of the Adequate Public Facilities Ordinance, Section 187-90.2. et. seq.

- (a) Within 30 calendar days following the pre-application meeting set forth in Section 187-17, or 60 days after the adoption of the Ordinance whichever occurs last, 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.

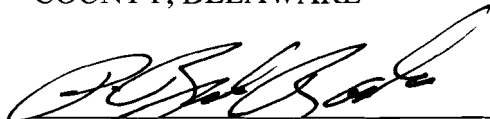
Section 8. Severability.

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 9. Effective Date.

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

ADOPTED BY THE LEVY COURT OF KENT
COUNTY, DELAWARE



President, Kent County Levy Court
This 27th day of March, 2007

ATTEST: James D. Moran
Clerk of the Peace, *Deputy*

SYNOPSIS:

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