Managing Growth: Infrastructure Concurrency

Implementation Barriers and Ways to Overcome Them

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DELAWARE VALLEY REGIONAL PLANNING COMMISSION

MANAGING GROWTH: INFRASTRUCTURE CONCURRENCY

IMPLEMENTATION BARRIERS AND WAYS TO OVERCOME THEM

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Created in 1965, the Delaware Valley Regional Planning Commission (DVRPC) is an interstate, intercounty and intercity agency that provides continuing, comprehensive and coordinated planning to shape a vision for the future growth of the Delaware Valley region. The region includes Bucks, Chester, Delaware, and Montgomery counties, as well as the City of Philadelphia, in Pennsylvania; and Burlington, Camden, Gloucester and Mercer counties in New Jersey. DVRPC provides technical assistance and services; conducts high priority studies that respond to the requests and demands of member state and local governments; fosters cooperation among various constituents to forge a consensus on diverse regional issues; determines and meets the needs of the private sector; and practices public outreach efforts to promote two-way communication and public awareness of regional issues and the Commission.

Our logo is adapted from the official DVRPC seal, and is designed as a stylized image of the Delaware Valley. The outer ring symbolizes the region as a whole, while the diagonal bar signifies the Delaware River. The two adjoining crescents represent the Commonwealth of Pennsylvania and the State of New Jersey.

DVRPC is funded by a variety of funding sources including federal grants from the U.S. Department of Transportation's Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the Pennsylvania and New Jersey departments of transportation, as well as by DVRPC's state and local member governments. The authors, however, are solely responsible for its findings and conclusions, which may not represent the official views or policies of the funding agencies.

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EXECUTIVE SUMMARY

Concurrency is a growth management tool that ties development to the availability of public facilities, assuring that growth can occur only where the infrastructure needed to support it exists. Concurrency ordinances have been adopted in various parts of the United States, with a mixed record of success. In some states, like Maryland, they have worked well; in others, like Florida, they have failed to achieve their purpose.

To be successful, concurrency requires a considerable planning structure to already be in place. Concurrency ordinances are based on comprehensive plans and capital improvements plans and programs, and require that these documents are financially feasible and internally consistent. In addition to these basic planning documents, intergovernmental cooperation, positive public-private relationships, and a carefully drafted concurrency ordinance are necessary for this planning tool to be implemented. Finally, concurrency requires a supportive political environment to be successful. Much of the success or failure of concurrency ordinances nationwide can be attributed to the presence, or lack, of these important components.

During the summer and fall of 2001, Delaware Valley Regional Planning Commission (DVRPC) staff conducted a survey in Pennsylvania and New Jersey to explore whether concurrency might be a feasible growth management technique in these states. In Pennsylvania, concurrency enabling legislation (state-level legislation that empowers local governments to adopt concurrency ordinances) had been considered during revisions to the state's Municipalities Planning Code in the summer of 2000, but was eventually not included in the legislation that was passed. According to the respondents to the DVRPC survey, similar efforts to enable concurrency in either Pennsylvania or New Jersey face two major barriers.

- The primary obstacle to the successful use of concurrency is the limitations of local planning in Pennsylvania and New Jersey. Few local governments have the planning structure necessary to support a concurrency ordinance, which is a complex tool to implement. In addition, the less tangible requirements of concurrency, such as willingness to cooperate between neighboring jurisdictions, between levels of government, and between the public and private sectors, are also not often present.

- A second barrier is the opposition of the development community to the concept. Although the purpose of concurrency is to direct growth to appropriate areas at appropriate times, local governments often use it to limit or prevent growth, and developers in both Pennsylvania and New Jersey fear that concurrency would be misused by local governments if it were enabled. In either state, it may not be politically possible to enact concurrency legislation if the development community actively opposes it.

These barriers are significant, but not insurmountable. While concurrency does not appear to be feasible in the DVRPC region at present, this study recommends steps that can be taken to overcome these two major barriers, to create a more positive climate for concurrency in Pennsylvania and New Jersey in the future.

CHAPTER 1 – BACKGROUND

Introduction – Why Study Concurrency?

Concurrency is a land use planning and implementation technique designed to allow government to manage the location and timing of growth. In some states, such as Maryland, concurrency is termed "adequate public facilities," abbreviated APF. These terms can be used interchangeably; there is no real difference between them. In this report, the term concurrency is used, because it is more common nationwide. Also, when the Commonwealth of Pennsylvania recently considered enabling this technique as an amendment to the Municipalities Planning Code (MPC), it was referred to as concurrency.[1]

Horizons, the Delaware Valley Regional Planning Commission's (DVRPC) adopted Year 2025 Land Use and Transportation Plan, includes a key policy concept of encouraging growth and development in areas already served by sewer and water facilities and other supporting infrastructure systems. Concurrency is one way to implement this policy, and is therefore an important concept for further study and analysis.

Report Contents

Chapter 1 provides a definition of concurrency, explaining what it is and how it is commonly used. Key components of concurrency are discussed, and some common misconceptions about concurrency are addressed. Also, the legal background of concurrency is covered in this chapter, and one particular landmark case in the history of concurrency is examined.

Chapter 2 contains case studies from around the United States that support the generalizations about concurrency made in Chapter 1. It contains an analysis of the use of concurrency at the state level, focusing on Florida and Maryland, and also describes its use at the county and local levels. Transportation concurrency, one of the most common forms of concurrency, is addressed in detail, and several case studies are examined. Also, some other types of concurrency, involving schools and utilities (water and sewer), are briefly discussed.

Chapter 3 describes a survey conducted by DVRPC of organizations that were knowledgeable about concurrency. This survey gathered the opinions of representatives of these various organizations about concurrency, and about its feasibility in Pennsylvania and New Jersey.

Chapter 4 summarizes the findings of this report and draws general conclusions from these findings. Also, recommendations for future use of concurrency as a plan implementation technique are provided.

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[1] Since its establishment in 1968, the MPC has undergone several revisions. The most recent revision occurred in 2000, with amendments made by Acts 67 and 68, which stress multi-municipal comprehensive planning and intergovernmental cooperation. These revisions were made possible in part by the "Growing Greener" initiative, designed to improve environmental protection in Pennsylvania, begun in December 1999 by an executive order of former Governor Tom Ridge. The proposed revisions to the MPC initially included provisions enabling concurrency. However, after several revisions, these provisions were eliminated from the amendments finally enacted in 2000. For more details on this, see *Municipalities Planning Code 1990-2000: A Decade of Amendments to the Pennsylvania Municipalities Planning Code*, published by the Local Government Commission of Pennsylvania in 2000.

Purposes of Concurrency

Concurrency requirements have become popular growth management techniques in some parts of the United States. The theory behind concurrency is simple: before new development in an area occurs, that area must be provided with certain public services, such as roads, schools, and sewer service. If these public services are not available, development may not occur before they are provided or brought up to a certain level of adequacy. In other words, sufficient public infrastructure must be provided concurrently (i.e. simultaneously) with development.

When implemented correctly, concurrency can mitigate congestion, school overcrowding, and the overburdening of other infrastructure. However, these benefits come with a cost. Under most concurrency regulations, local governments are required to draft detailed comprehensive plans, specifying where and when growth in the area will occur. In addition, they must draft capital improvements plans, which explain where, when, and how the infrastructure needed to support the expected growth will be constructed. Most concurrency ordinances also contain a purposeful "loophole," which allows developers to construct necessary infrastructure at their own expense, within guidelines set by the local government.

The effects of a concurrency requirement on local jurisdictions may be mixed. While concurrency allows a local government more power in shaping the future of growth within its boundaries, deciding the location and timing of future growth, this added power comes with added responsibility and accountability. The local government is *required* to live up to what its comprehensive and capital improvements plans promise, constructing facilities to accommodate new developments. Failure to make a good faith effort to provide these facilities – which can be prohibitively expensive and often politically unpopular – can result in legal action, which may result in concurrency ordinances being overturned in court. Most basically, this is simply not good government.

Concurrency does not allow government total control over growth, and the approach is certainly not appropriate in all situations. However, if used correctly, concurrency "addresses a community's need to accommodate, manage, and direct growth, and ultimately to prevent any moratoria on development due to inadequate facilities."[2] It also adds more local government accountability to the development process, as well as a higher degree of predictability for the developer. A closer examination of the theory of concurrency follows.

Key Characteristics – What Concurrency Requires

As will be discussed later in this chapter, concurrency ordinances are subject to legal challenge by developers or other citizens, and making them legally viable is crucial. A few characteristics of concurrency are especially important to making an ordinance legally defensible. Throughout this report, these key characteristics will be revisited, and their importance will be continually emphasized. A brief description of each and an explanation of its role is contained below.

[2] Weaver, Ronald L. and Mark D. Solov. 1998. "Current Developments in Public School Concurrency." *The Florida Bar Journal* (Feb 1998), p. 48.

Concurrency must be based upon a comprehensive plan and a capital improvements plan that serves as the basis for a capital improvements program. These plans must show the location and timing of future growth and provide specifics on the necessary infrastructure for achieving the desired development pattern. An important characteristic of the capital improvements plan is **financial feasibility**. According to one of the earliest writings on the theory behind concurrency:

> ...the local plan must contain a capital improvements element and a five year capital improvement schedule which, in addition to meeting all of the other statutory rule requirements, is financially feasible. It cannot simply be a wish list of facilities that the local government puts forward without any real hope or expectation of being able to fund or implement during the five-year capital improvements program.[3]

This feasibility is the foundation of concurrency; it is the responsibility that local governments must accept in exchange for the power that they are granted. As an earlier analysis by DVRPC concluded, concurrency ordinances require cooperation between the public and private sectors,[4] and the role of the government in this relationship is to provide the promised facilities at the promised times.

Another important aspect of concurrency is planning **consistency**. Consistency between the comprehensive plan and the capital improvements plan is necessary – if an area is shown in the comprehensive plan to be the location of growth, the capital improvements plan must provide details, including a financing schedule, for providing roads, schools, and other public facilities to support this growth. In many cases, concurrency regulations require these two plans to be part of the same document, as an overall plan for growth. If the comprehensive plan and capital improvements plan are consistent, showing that the community has seriously considered where and when it wants growth, the power of each is greatly reinforced. Not only will a consistent plan for growth be more legally defensible, it will be more understandable to potential developers, sending a clear message about what is permitted, where, and when.

A third major aspect of concurrency involves **timing**. As David Powell defines it, "concurrency is land use regulation which controls the timing of property development and population growth. Its purpose is to ensure that certain types of public facilities and services needed to serve new residents are constructed and made available contemporaneously with the impact of new development."[5] Concurrency is unusual among planning tools in that it considers timing of development. Also, as will be discussed in the Legal Background section of this chapter, the fact that development restrictions in concurrency ordinances are not permanent makes a major difference in their legal soundness.

Level of service standards are another important consideration in drafting a successful concurrency ordinance. Under most concurrency regulations, development is not permitted unless performance standards for infrastructure and services are met, such as road congestion

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[3] Henry Fagin, quoted in Powell, David L. 1999. "Back to Basics on School Concurrency." *Florida State University Law Review*, p. 16.
[4] Delaware Valley Regional Planning Commission. 1994. "Planning Tool #8: Adequate Public Facilities Ordinances." In *Linking Land Use and Transportation Planning: Case Studies of Successful Implementation*, Publication No. 94020, p. 60.
[5] Powell, "Back to Basics on School Concurrency," p. 2.

at peak hours, parkland per person, and police department response time. Setting inappropriate level of service standards can doom a concurrency ordinance to failure. For example, if level of service standards are set too low, the concurrency ordinance will basically have no effect; if they are set too high, they may effectively prevent all development and be subject to legal challenge.

Key Misconceptions – Concurrency and Growth Control

The purposes of concurrency regulations have often been misinterpreted. Throughout the country, concurrency requirements have often not worked as planned, sometimes even having the opposite effect as was originally intended. Drafting a concurrency requirement with flawed assumptions in mind can cause it to be later found invalid in court, or even to end up causing more problems than it solves. Thus, this section of the report is devoted to discussing what concurrency is not.

The most common misconception about concurrency, and probably the most significant, is that it is a tool for **growth control**, in contrast to **growth management**.[6] It is not. As the legal director of 1,000 Friends of Florida – an environmental group in the state with possibly the most comprehensive concurrency system in the country – wrote in 1994, "…the concurrency management system should not be looked at as a growth control program."[7]

There is commonly a good deal of confusion between concurrency and **impact fees**, which are fees charged to a developer to cover the costs that his or her development will place upon the infrastructure of an area. A concurrency ordinance does not necessarily include impact fees, although some concurrency ordinances allow developers to pay local governments for the costs of construction of needed facilities, instead of constructing these facilities themselves. There is a significant difference between these two planning tools, as concurrency is predicated on government paying for needed infrastructure, after a certain amount of time, while impact fees require developers to pay their share immediately. Therefore, relying on a concurrency ordinance to free the local government from the financial burden of infrastructure improvements is dangerous – if developers do not cooperate, the government will be required to provide the needed infrastructure in accordance with the capital program schedule.

There also is a major difference between requiring concurrency and placing a **moratorium** on growth. As the Maryland Office of Planning reports, concurrency laws are designed to plan for future growth, while moratoriums are used to control growth in emergency situations.[8] Moratoriums are often vulnerable to lawsuits, and can usually be applied only temporarily. In a way, the purpose of concurrency is to structure growth so that a moratorium, with the expensive legal challenges and probable political unpopularity that it brings, will be unnecessary.

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[6] Growth control and growth management, while they sound quite similar, are not identical. Growth control refers to efforts by local governments or citizens to restrict the amount of growth that their area receives. Growth management, on the other hand, does nothing to limit the amount of growth, but does attempt to shape the way in which it occurs or its timing.

[7] Arline, Terrell K. "Primer on Florida's Growth Management System." Delivered August 1998 at Smart Growth Conference in Atlanta by Legal Director of 1,000 Friends of Florida. Accessed online at: http://www.state.fl.us/fdi/fscc/news/state/9804/fgme.htm

[8] Maryland Office of Planning. 1996. "Adequate Public Facilities." *Managing Maryland's Growth: Models and Guidelines.* Maryland Office of Planning Publication #96-06, p. 2.

In general, relying on concurrency to serve as a growth control measure is a mistake. As this section has shown, concurrency actually does the opposite of prohibiting growth – it affirmatively promises that growth will occur in designated areas in the near future, and even promises to fund the infrastructure necessary for this growth. However, although concurrency is not really designed as a growth control tool, that is usually how it is used and perceived. Most places that enact concurrency ordinances do so in the face of rapid, uncontrolled growth, as the examination of case studies in the next chapter will show.

According to Robert Harris and John Carman, in a 1999 article in *Urban Land* magazine, the use of concurrency for growth control has become the norm, rather than the exception:

> Although adequate public facilities [concurrency] began as a way for government to identify inadequate infrastructure early enough in the development approval process for the government to address any problems through capital improvements programs, they actually have provided an excuse for prohibiting development when those facilities are not funded or are opposed by existing residents.[9]

The city of Columbus, Ohio, recently enacted a rare example of a concurrency ordinance not designed to slow or limit growth. Columbus is one of the few Midwestern cities that has not lost population in the last few decades, mostly because of an aggressive annexation policy and an extremely pro-growth mentality. In this city, "the adequate public facilities [concurrency] ordinance is not intended to fetter the city's growth. Instead, it is intended to promote planned, rational, and affordable growth for Columbus so that the city will no longer have to play catch-up with needed public facilities and services."[10]

Implementing Concurrency

Drafting an effective, legally viable concurrency ordinance is no small task. Perhaps even more difficult, though, is implementing it. There are a number of key considerations in making sure that concurrency laws are enforced in an effective way.

One of these important considerations is **intergovernmental cooperation**. As with most planning tools, neighboring municipalities must have comparable concurrency standards for them to be effective, and concurrency works best if adopted on a regional level. Also, it is important that each local government's comprehensive plan and capital improvements plan are consistent with regional plans to manage growth and control sprawl. Also, the ability of a concurrency ordinance to redirect growth into developed areas, where infrastructure already exists, requires coordination at the regional level.

In addition, cooperation between different levels of government is necessary, to ensure that municipal capital improvements plans for improving or expanding infrastructure match with county or state plans for infrastructure improvement. Conflicts between the enabling level of government (in many cases, the state) and the implementing level of government (usually the

[9] Harris, Robert R. and John H. Carman. 1999. "Battling the American Dream." *Urban Land*, September 1999.
[10] DeRodes, Deneen M., Beth Clark, and Stephen R. McClary. 1997. "Columbus Adequate Public Facilities Ordinance: A New Use for an Established Technique." Paper presented at 1997 National Planning Conference at Arizona State University. Online at: http://www.asu.edu/caed/proceedings97/derodes.html

municipality) are frequent. In some states, like Florida, the state takes an active role in enforcing concurrency. In others, local governments are given the option to enact concurrency, but are not required to. Even in these latter situations, where state involvement is low, states often go beyond simply passing enabling legislation, and may "include requirements for reasonable and effective capital improvements programming, for appropriate measures of capacities and impacts on capacities, and for provision of reasonable options to meet capacity needs."[11] In other words, the enabling legislation at the state level needs to prevent local governments from abusing the power of concurrency, by making sure they set reasonable standards and live up to their end of the compact.

Additional conflicts between levels of government frequently arise over funding. In some situations, local governments do not have the power or the responsibility to provide the infrastructure needed to support planned growth. This is especially true in the case of transportation. For example, if it becomes necessary to expand a state highway to support development in a designated growth area, a local government is powerless to do this, and must rely on action by the state.

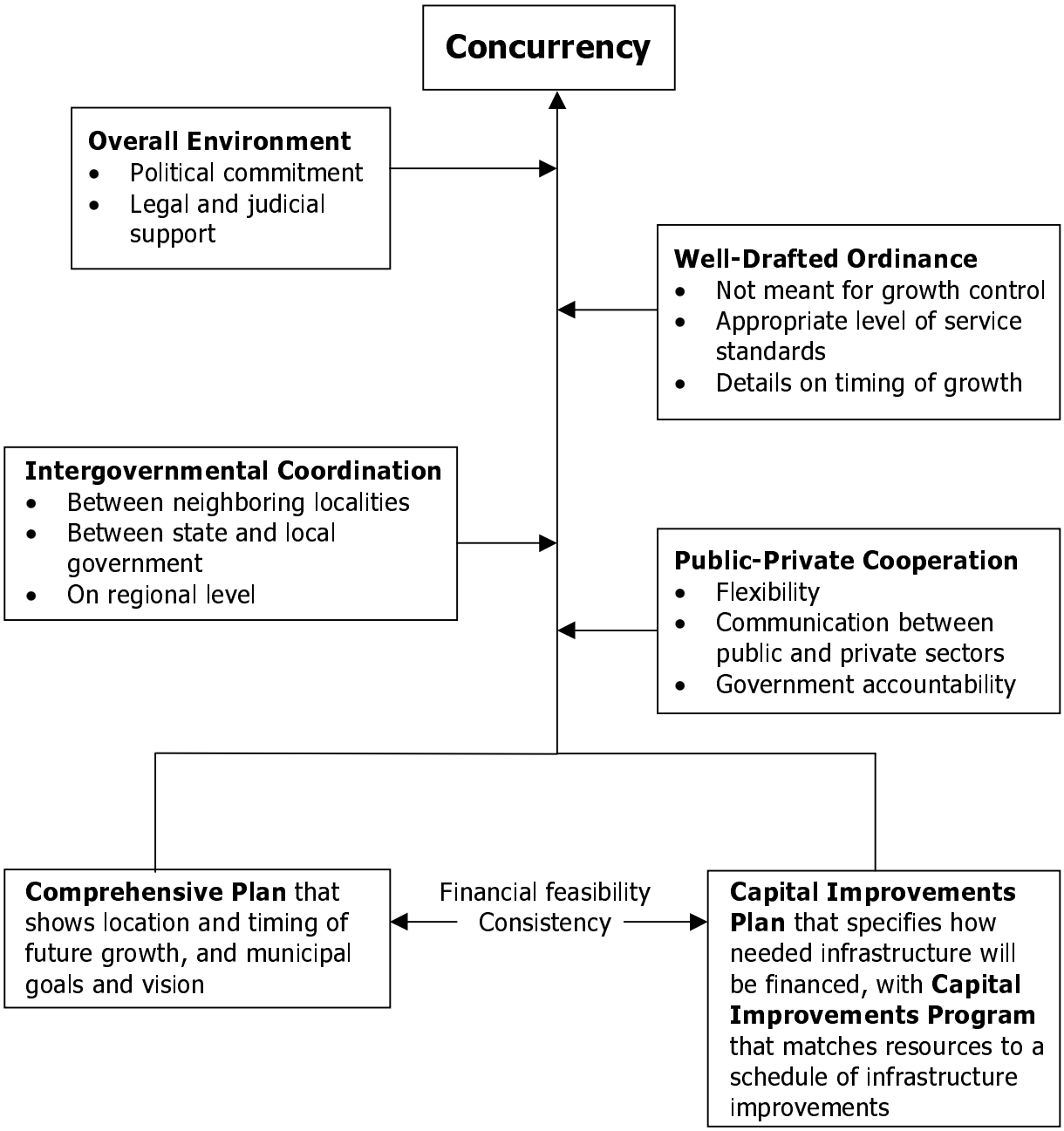
Another necessity for the successful implementation of concurrency is forging **public-private relationships**. Concurrency ordinances are usually opposed by developers, who see these ordinances (often correctly) as attempts at growth control. From some developers' perspectives, though, a fair concurrency ordinance, rather than one designed to indirectly prevent growth, "provides a more predictable, supportive, and from all accounts, fair public framework for development."[12] This can lead to collaboration between government and the private sector in providing and maintaining necessary infrastructure, encouraging desired growth, and other goals that serve the public interest.

Concurrency Flowchart

The flowchart in Figure 1 shows necessary steps to achieve concurrency, summarizing this section of the chapter. As it shows, the success of concurrency rests on the comprehensive plan and the capital improvements plan, already discussed at length in this chapter. Moving up the flowchart, the next major component of concurrency is public-private cooperation, which can allow flexibility in meeting concurrency requirements and ensure government accountability to provide promised infrastructure. Also, intergovernmental coordination, including cooperation between neighboring jurisdictions as well as between different levels of government, is necessary for concurrency to be successful. In addition, an ordinance must be carefully drafted in order to be worthwhile; many poorly-written concurrency ordinances can be found in the United States, and often have serious negative impacts.[13] Finally, even with all of these components in place, concurrency requires a strong policy commitment with legal and judicial support. If any of the components shown in the flowchart are not in place, the effectiveness of a concurrency ordinance will be severely compromised.

[11] Porter, Douglas R. 1990. "The APF Epidemic." *Urban Land*, November 1990.
[12] Porter, Douglas R. 1992. "Facing Growth With a Plan: Tracy and Carlsbad Show How It Can Be Done." *Urban Land*, June 1992.
[13] For example, see the well-documented case of Florida, described in Chapter 2.

Figure 1. Concurrency and Its Components



Source: Delaware Valley Regional Planning Commission, 2001

Legal Background

The constitutional right of a local government to enact a concurrency ordinance is basically uncontested. During Pennsylvania's recent local planning reform, the Policy Development and Research Office of the Local Government Committee of Pennsylvania's State Senate concluded, after a review of legal documents, that concurrency was legally defensible:

> A municipality may condition development on the existence of necessary infrastructure, including roads, water and sewer…[and] may constitutionally refuse to approve development until the necessary infrastructure [including offsite infrastructure] is in place…So long as the condition is not permanent, and the municipality has a plan for infrastructure improvement, such conditions will be upheld.[14]

Key Characteristics of Legally Viable Concurrency

As mentioned above, three key characteristics of a legally viable concurrency ordinance include **financial feasibility**, **consistency**, and **timing**. Concurrency requirements have been defeated in a number of cases for lacking financial feasibility. Also, consistency with a comprehensive plan is important, as court decisions in California and Minnesota during the 1980s showed that development proposals that were inconsistent with comprehensive plans could be legally rejected by local governments.[15]

A major issue in land use law involves takings case law, which protects landowners from seizure of their property by the government by requiring that the government pay compensation. Under some interpretations of the law, if government regulation goes too far, causing property to become unusable and its value to decrease, this also constitutes a taking. For a private citizen to win a takings case, it is usually necessary that "the property owner could show that either (1) the regulation did not 'substantially advance legitimate state interests' or (2) the regulation denied the property owner 'all economically viable use' of the land."[16]

Most concurrency ordinances have avoided takings issues because of their impermanence, and because they do not prohibit development, but merely postpone it. However, the legal record is rather patchy. In one California case, a court forced a town to pay damages for temporary takings, judging that the town's regulation was excessive. In several other similar cases, though, courts found that the regulation had a legitimate government interest, determining that temporary concurrency regulations were not, in fact, takings. Thus, the record is mixed, and the takings issue varies on a state-by-state basis, and even within states.

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[14] Local Government Committee. 1999. Unpublished memorandum from K. Lee Derr to Senator James Gerlach on Concurrency and Development Exactions.
[15] Davidson, Jonathan M. 1991. "Concurrency, Cost Allocation, and Comprehensiveness in Adequate Public Facilities Regulations." *Zoning and Planning Law Report*, May 1991, p. 126.
[16] Boggs, H. Glenn II, and Robert C. Apgar. 1991. "Concurrency and Growth Management: A Lawyer's Primer." *Journal of Land Use and Environmental Law*, 7: 1, p. 20.

Landmark Case: *Golden v. Town of Ramapo, New York*

The landmark case in concurrency (although the term was not widely used at the time of the case) is *Golden v. Town of Ramapo*, heard in 1972 by the State Supreme Court of New York and decided in favor of the Town. In 1966, the Town of Ramapo developed a master plan, its first real planning efforts beyond simple zoning. A few years later, in 1969, it adopted an ordinance requiring adequate public facilities to be in place before new development could occur. This came in response to a period of tremendous growth; during the 1950s, the unincorporated areas of the Town grew in population by 130%, and population projections showed continued high growth in the near future. The infrastructure of Ramapo was overwhelmed by this rate of growth, and at the time the ordinance was enacted, its facilities were not sufficient to serve its current residents, let alone any future ones.

Overview of Ordinance Requirements

In response to its facility shortages, the Town prohibited any residential subdivision without a special permit or variance. The issuance of one of these variances was tied to the availability of five basic services: sewers, drainage facilities, public parks and schools, roads, and firehouses. A developer received a certain amount of points based on the availability of each of these, and was not permitted to build until accumulating a number of these points. The developer was able to acquire more points by providing infrastructure, but was not required to do so. Also, improvements scheduled to be completed within one year of the proposal were regarded as completed.

The plans for sewer and water service laid out in this plan were justified in a capital budget, adopted soon after the plan, that provided for the development of all of the infrastructure mentioned in the master plan within the next six years. The Town also adopted a capital program that covered the twelve years after this, providing for the location and sequence of capital improvements during this time. Between them, these capital improvement plans "detail the capital improvements projected for maximum development and conform to the specifications set forth in the master plan, the official map and the drainage plan,"[17] and covered the eighteen years after their adoption.

Key Characteristics – Legal Defensibility

The Ramapo case is significant, not only because it was one of the first to deal with concurrency, but because the judgment set the standard for the key characteristics of a legally defensible concurrency ordinance. In the court's judgment, mention was made of **financial feasibility**, **consistency** with established plans, and the importance of **timing**, as well as the association of concurrency programs with government's already established zoning powers.

According to concurrency expert Douglas Porter, Ramapo's concurrency ordinance passed a legal challenge mainly because "…the Ramapo provisions were set within the framework of various plans including a capital facilities program."[18] Not only the existence of a financing program, but its feasiblity, was crucial in the court's decision:

[17] *Golden v. Town of Ramapo*, 30 NY 2d 359 (1972), p. 7.
[18] Porter, "The APF Epidemic," p. 36.

> ...in passing the validity of the ordinance on its face, we must assume not only the Town's good faith, but its assiduous adherence to the program's scheduled implementation...we would be remiss not to consider the substantial risk that the Town may eventually default in its obligations. Yet, those are future events, the staple of a clairvoyant, not a court in its deliberations. The threat of default is not so imminent or likely that it would warrant our prognosticating and striking down these amendments as invalid on their face.[19]

Also, the full consistency between the concurrency ordinance and the comprehensive plan was a major factor in its being upheld. The court pointed out that the capital improvements plan and comprehensive plan meshed, and demonstrated that the concurrency ordinance was in line with a larger plan for the town. Also, the fact that the concurrency program was not exclusionary of any use, and that it did permit growth at a specified later date, convinced the court to uphold it.

A major issue debated by the court was whether the ordinance constituted a taking. It was eventually determined that it was not, for a number of reasons. For one:

> ...the fact that the restriction may result in a depreciation of market value does not render the underlying scheme unconstitutional, absent a showing that the measure is unreasonable...or the diminution in value is tantamount to a confiscation. Diminution ...does not, of itself, constitute a taking.[20]

This affirms the right of the Town to place restrictions on growth, as long as they are reasonable, and in this case, their consistency with all relevant plans caused them to be considered reasonable. These concurrency requirements were treated as the equivalents of zoning regulations. The impermanence of the ordinance was also key, as the court determined that the restrictions would end in the foreseeable future, allowing the landowner full use of his land at that point.

<u>Purpose of Ordinance – Growth Control?</u>

One of the major arguments in this case concerned the purpose of the concurrency ordinance. As the court stated:

> The owners of the subject premises argue...that the primary purpose of the amending ordinance is to control or regulate population growth within the Town and as such is not within the authorized objectives of the zoning enabling legislation. We disagree.[21]

In fact, the court decided that the concurrency ordinance was a "bona fide effort to maximize population density consistent with orderly growth...[and] to maximize growth by the efficient use of land."[22]

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[19] *Golden v. Town of Ramapo*, p. 10-11.
[20] Ibid, p. 4.
[21] Ibid, p. 8.
[22] Ibid, p. 13.

However, given subsequent events, it is not clear whether the court was correct. The Town abandoned its concurrency ordinance several years after its adoption, finding that its lack of control over public utilities limited its ability to actually implement its phased growth plans. The capital facilities plan also turned out to be less financially feasible than the court determined, and was not able to meet the town's needs according to schedule. Concurrency expert Douglas Porter opined that this should not come as a surprise, as the original purpose of the ordinance was to slow development, rather than to maximize it, as the Town claimed in court.[23] At any rate, the legal success of Ramapo's concurrency program, followed by its implementation failure, may demonstrate that drafting a legally defensible concurrency ordinance is not the end of the process.

Other Examples of Concurrency in the Courts

In a related case, *Belle Harbor Realty Corp. v. Town of Kerr*, heard by State Supreme Court of New York in 1973, a building permit was revoked when the town realized that the sewage system in an area proposed for development was already problematic and could not handle further growth. Even though this was a real problem, there was no capital improvements plan to address it, and the court ordered that the permit be reissued. The court also stated that if the Town drafted a plan for infrastructure improvement, that provided a budget for the construction of a new sewer system, that the permit could again be revoked.[24] Thus, this opinion reinforced the need for a sound plan linked to the capital program.

Maryland's adequate public facilities ordinance, one of the country's most successful (described in Chapter 2), has been tested by numerous legal challenges. According to the Maryland Office of Planning, the case of *Montgomery County v. Greater Colesville Citizen's Association*, in 1987, have established that:

> …requirements [for adequate public facilities ordinances] must be reasonably and rationally related to a valid governmental interest. Approval can be made contingent on the local government's ability to provide services, or on a developer's agreement to furnish or finance the needed improvements. The standard in Maryland requires that adequate public facilities be reasonably probable of fruition in the foreseeable future.[25]

Also, identifiable and well-defined standards were found necessary by Maryland courts for adequate public facilities ordinances to be legally defensible.

An ongoing, hotly contested concurrency case involves school concurrency in Broward County, Florida. While certain types of infrastructure concurrency are mandatory in Florida (discussed further in Chapter 2), school concurrency is optional. In 1996, Broward County, with the support of the School Board, added a public school facilities element to its concurrency ordinance, which required adequate capacity in nearby public schools before residential developments could be approved. This was challenged by Florida's development community, and was judged by the state Department of Community Affairs to be unsatisfactory in several respects, such as the lack of a financially feasible capital improvements program for the construction of new schools, and coordination problems between Broward County and the

[23] Porter, "The APF Epidemic," p. 36.
[24] Pennsylvania State Association of Township Supervisors, p. 4.
[25] Maryland Office of Planning, p. 7.

School Board. After this, the School Board began to lose interest in pushing public school concurrency, and the result of the effort is still not determined.[26]

Conclusions

Using these court cases as examples, it seems clear that a legally viable ordinance must have several characteristics. A **comprehensive plan**, and a **capital improvements plan and program**, must be in place. The **financial feasibility** of the Town of Ramapo's capital improvements plan helped it to be approved by the New York Supreme Court. Similarly, the **consistency** between plans in Ramapo's case was a major factor in its success, while the Town of Kerr's lack of a clear plan for growth caused its failure. Also important in the Ramapo case was the consideration of **timing**, as the impermanence of the restrictions, and the fact that they would be lifted in the near future, was discussed by the court in its decision.

Other conclusions can be gained from these cases as well. For example, in some states, state legislation enabling concurrency may not be necessary. The Town of Ramapo issued a legally viable concurrency ordinance without enabling legislation at the state level – a fact that was brought up by the developer in the case, but not considered important by the court. In Maryland, concurrency (termed adequate public facilities) was in existence in several jurisdictions before state enabling legislation was passed in 1978. However, whether concurrency is permitted without state-level legislation largely depends on the courts in that particular state. In general, it is more defensible to have the legal backing of state enabling legislation.

In addition, state-level enabling legislation is important in other ways. Often, standards for level of service are set at the state level, to ensure that there is consistency between local governments implementing concurrency. Having a state framework may also legitimize concurrency ordinances, to an extent, making them more likely to stand up to legal challenges. Also, the right of the state to enable or to require concurrency has so far been uncontested; "it appears that no courts have questioned the power of the state to impose a duty on, or grant the right to, municipalities to implement a concurrency requirement of some form."[27]

This chapter has provided an introduction to the concept of concurrency, identifying key components of this land use planning technique and explaining its legal background. The next chapter, Case Studies, explores a number of locations around the United States where concurrency has been used, and supports the conclusions about concurrency that were made in this chapter.

[26] Stroud, Nancy. 2000. "School Concurrency: Lessons Learned from Broward County, Florida." p. 21.
[27] Pennsylvania State Association of Township Supervisors, p. 3.

CHAPTER 2 – CASE STUDIES

Approaches to concurrency vary significantly between states. Some states take a direct approach, requiring local governments to adopt concurrency ordinances. In most cases, though, states have enabled local jurisdictions to enact concurrency, rather than requiring them to. In still other cases, local governments have pursued concurrency without any mandate or support from the state level. In this chapter, case studies of concurrency are presented at a number of levels, including state, county, and local.

There are also considerable differences in the types of facilities or services that are considered in a concurrency program. Transportation concurrency, or development permits based on the capacity of nearby roads, is probably the most common. Another important type of concurrency involves schools, and requires that school capacity be considered in permitting development. Other facilities and services that are often considered include sewer and water service, stormwater management, parks and recreation facilities, and police, fire, and emergency services.

This chapter begins with a discussion of general concurrency use nationwide, which includes a description of concurrency laws at the state level and at the county or local level, where strong state-level concurrency laws do not exist. Transportation concurrency programs, including case studies from the state and county level, are then discussed in detail, followed by short descriptions of water, sewer, and school concurrency.

General Concurrency Use Nationwide

As concurrency has become an established land use planning technique, an increasing number of states have passed enabling legislation to encourage local governments to use this tool. In Florida and Washington, the state requires that certain counties or local governments enact concurrency ordinances to better manage their growth. In others, such as Maryland, counties are strongly encouraged, but not required, to use concurrency. California, in which about one-third of the cities have adopted concurrency, presents an interesting case. Although there is some state-level coordination of land use planning, there is no state law requiring or enabling concurrency.

Although concurrency may be more effective if implemented at the state level, there are numerous examples of its successful use by other levels of government. For example, counties in Oregon and North Carolina and local governments in Ohio, New York, Nevada, and North Carolina have experimented with concurrency ordinances. A survey of growth control techniques by land use planning expert Rolf Pendall found that "a high proportion of jurisdictions in the San Diego, Dallas, San Francisco, Houston, and Denver metro areas also have AFPOs [concurrency ordinances],"[28] as well as many in Florida and Maryland. In general, according to the results of the survey, concurrency is more frequently used in the Sunbelt than in the Northeast and Midwest.

[28] Pendall, Rolf. 1995. "Growth Controls and Affordable Housing: Results from a National Survey." *PAS Memo*, July 1995, p. 2.

State-Level Concurrency – Florida

Florida's statewide concurrency laws were initiated in 1985, at which point they were heralded as the solution to Florida's planning problems. However, hindsight makes concurrency look less attractive, as "the practical implications of this seemingly simple and politically seductive policy were not fully understood when it was enacted in 1985."[29] Since its passage into law, concurrency in Florida has had mixed results, and in many ways its effects have been more negative than positive.

History

In Florida, a statewide growth management act, termed the Florida State Comprehensive Planning Act, was enacted in 1972. This act mandated that large developments be reviewed by regional planning councils. For each large development, a regional planning council was required to prepare a report on the effects of the development, and give recommendations to local governments. The concept of concurrency was introduced as part of these reviews, with regional councils considering available public facilities when making their recommendations. However, during the 1980s, after high rates of uncontrolled growth and land consumption continued, the growth management program in Florida was widely considered to have failed.

In 1985, the state legislature amended the Florida State Comprehensive Planning Act, and also passed a new set of growth management laws, titled the Growth Management Act. The 'teeth' of this act dealt with the adequacy of public facilities, and "mandated that local governments choose a specific LOS for water, sewer, solid waste, drainage, conservation, recreation and open space…[and] additionally ordered 'concurrency,' requiring that facilities and services needed by new development be in place in time to serve that development."[30] However, it is interesting to note that the word 'concurrency' was not used in the 1985 Act (though it was used in amendments and clarifications passed in 1986), and that the adoption of this planning requirement was not politically controversial at all.[31]

Over the ensuing years of its implementation, the text of the concurrency laws has been somewhat modified, with additions more clearly codifying the requirements of concurrency and making them more legally sound. However, the basic principle of the 1985 Act's concurrency requirements have remained basically unchanged, and these are still among the most powerful planning tools in Florida.

Key Characteristics

Florida's concurrency program is mandatory. Local governments "may not issue building permits until they can demonstrate that the necessary infrastructure improvements can be

[29] Powell, "Back to Basics on School Concurrency." p. 2.
[30] Dawson, Mary. 1996. "The Best Laid Plans: The Rise and Fall of Growth Management in Florida." *Journal of Land Use and Environmental Law*, p. 3. LOS stands for level of service, which is a measure of how well a specified infrastructure serves the demand on that facility (Highway Capacity Manual 2000). Usually, level of service standards are used for transportation infrastructure facilities, such as an intersection or roadway segment, but can also apply to other infrastructure. A favorable LOS implies that the facility analyzed serves the demand well, while an unfavorable LOS implies that the facility serves the demand poorly.
[31] Boggs and Apgar, "Concurrency and Growth Management," p. 7.

funded and constructed in time for the new development."[32] To ensure compliance, Florida has placed strict guidelines on the content of local governments' comprehensive plans, which are mandatory under state law.

Each local government is required to include a **concurrency element** in its comprehensive plan, under which local governments are required to adopt level of service standards for public facilities and services, and to ensure that these standards are continually met as development occurs. Level of service standards must be established for seven facilities: roads, water, sewer, solid waste, drainage, parks and recreation, and mass transit (if applicable).

Local governments also must include a five-year **capital improvements element** in their comprehensive plans, along with requirements for its implementation. This element of the plan is required to "evaluate the need for public facilities, estimate the cost of improvements, analyze the local government's fiscal capability to fund and construct improvements, adopt financial policies for the funding of these improvements, and schedule the funding and construction of these improvements."[33] These improvements serve three types of needs: to remedy existing deficiencies, to accommodate desired future growth, or to replace obsolete facilities.

For concurrency plans to be constitutionally sound, the plans are required to be **financially feasible**. In addition, the growth management law requires that comprehensive plans be **consistent with the State Comprehensive Plan**. Local governments are required to indicate areas planned for growth.

Implementation and Intergovernmental Conflict

In general, Florida's concurrency ordinances have left a considerable amount of power in the hands of local governments. Although they were required to enact concurrency, they had considerable flexibility in adopting level of service standards, and were required only to provide the services that they listed in their comprehensive and capital improvements plans. Since its adoption, "the cardinal implementing principle of Florida's concurrency system has been that each local government is largely free to determine the quality of public facilities and services that should be provided to its citizens."[34]

Despite this, local governments have often had difficulty complying with concurrency laws. When the 1985 plan was signed into law, the deadlines for adoption of detailed comprehensive plans were set for seven years later, and the adoption of these plans "turned out to be an expensive, time-consuming effort, for which few locally elected officials were adequately trained or experienced."[35] According to one observer, the state growth laws set local governments up for failure; they "forced local governments to adopt complex plans based on policies, such as concurrency, that had never been tried before."[36]

[32] Growth Management Study Commission (Florida). 2000. "Growth Management Programs – A Comparison of Selected States," p. 13. Online at: http://www.floridagrowth.org/
[33] Boggs and Apgar, "Concurrency and Growth Management," p. 9.
[34] Weaver and Solov, p. 51.
[35] Dawson, p. 4.
[36] Ibid, p. 17.

Also, concurrency requirements in Florida leave little room for **public-private collaboration** with developers. There was no provision in Florida's original concurrency regulations that would allow a developer to pay fees to the local government to mitigate the impacts that the development would have on public facilities and services. The developer was permitted to fully construct the needed facilities, but in most cases, the cost of doing this far exceeded the extra burden that the development would place on the facilities.

Florida Concurrency and Growth Control

In Florida, numerous land use experts have warned local governments not to treat concurrency as a way to limit growth. For example, Terrell Arline, the legal director of 1,000 Friends of Florida, has said that "while many local governments collect impact fees to offset the cost of providing new services, or require dedication or exactions, and development generally cannot occur if infrastructure is not in place, the concurrency management system should not be looked upon as a growth control program."[37]

However, the context of Florida's concurrency laws ensures that some local governments will view concurrency as a growth control anyway. There is little doubt that statewide land use planning in Florida began as a response to rapid population growth, as the state's population more than quadrupled between 1950 and 1990.

Effects of Concurrency

Probably the most serious problem with concurrency in Florida has been the government's failure to fund its concurrency requirements. According to John DeGrove, "with adequate funding, growth management can be a useful tool for guiding growth. Without it, growth management threatens to become merely an obstacle to new development."[38] Without state-level funding for infrastructure improvements, the level of service standards placed upon these facilities cannot be met. As a result, development is prohibited, and concurrency functions as a moratorium.

Additionally, affordable housing has had problems coexisting with concurrency. Despite efforts to improve housing affordability in Florida, concurrency may be having the opposite effect, driving prices higher as moratoriums occur. However, if concurrency were used properly – that is, not as a growth control tool, but as a way to provide needed infrastructure – this would not be a problem.

State-Level Concurrency – Maryland

The state of Maryland is among the nation's leaders in growth management. In part, this is due to a successful adequate public facilities program.[39] This program, coupled with the state's willingness to direct funding to areas that comply with its Smart Growth initiative, and to

[37] Arline.
[38] Koenig, John. 1990. "Down to the Wire in Florida." *Planning*, October 1990, p. 4.
[39] Maryland refers to concurrency programs as "adequate public facilities ordinances," sometimes abbreviated APFOs. For the sake of accuracy, this section will also use this terminology, which as stated previously, is identical to concurrency.

withhold it from areas that do not, has been quite successful – providing a foil to the failure of concurrency in Florida.

History

State enabling legislation for adequate public facilities was passed by the Maryland General Assembly in 1978. This allowed municipalities and some counties to enact adequate public facilities ordinances if they so desired. Even before this, though, as in New York State, "Maryland courts upheld the ability of local jurisdictions to adopt ordinances that condition development approval on a finding that infrastructure exists to sustain a project's anticipated impacts."[40] In 1992, the scope of the enabling legislation was expanded to include all counties and municipalities. In Maryland, county governments have the main responsibility for local planning, and are able to review and approve development proposals.

Thus far, twelve counties and eleven municipalities have adopted adequate public facilities ordinances. Most of these are located in the rapidly suburbanizing areas near Baltimore and Washington, DC. All twelve of the counties have adequate public facilities laws concerning roads and schools, most have them for sewer and water, and a few have other things. Most municipalities use their adequate public facilities laws to strengthen the county's regulations, and typically address schools, roads, water, sewer, and stormwater.

Key Characteristics

In Maryland, adequate public facilities ordinances require **capital improvements plans**. It is important that these capital improvements plans are **financially feasible** and capable of accommodating expected growth. Maryland's enabling legislation and legal history "requires that adequate facilities be reasonably probable of fruition in the foreseeable future."[41] If this is not the case, or if standards for judging level of service are not clear, the ordinances are often found invalid by courts.

Implementation

Intergovernmental coordination between counties and municipalities is also a necessary part of Maryland's adequate public facilities program. In Maryland, cities or towns are capable of annexing unincorporated parts of adjacent counties. If this occurs, county requirements for adequate public facilities may be replaced by whatever requirements the town or city has.

Maryland also has fairly positive **public-private relationships**. With flexible standards for developer responses to adequate public facilities requirements, it is possible for developers to get fairly creative with mitigation in Maryland. Instead of waiting for facilities to be constructed by the government, or constructing them themselves, developers have a number of other options. For example, Montgomery County allows "a variety of mitigating actions, including ride sharing programs, developer contributions for road improvements or construction of improvements and funding of transit."[42] In Charles County, developers may pay impact fees,

[40] Maryland Office of Planning, p. 7.
[41] Ibid.
[42] Ibid, p. 24.

participate in public/private partnerships, dedicate property to the county, or provide various other off-site improvements.

Exemptions from adequate public facilities ordinances are also fairly common, varying by county. Exemptions range from housing for the elderly to places of worship to affordable housing to industrial development, depending on the particular county and what its goals are. Baltimore County may have the most comprehensive exemptions, including exempting any development in a designated center (that is, a place where development is encouraged) as long as the site plan is approved by the Planning Board.

County- or Local-Level Concurrency

A number of counties and local governments have experimented with concurrency outside of the framework of state mandates or enabling legislation, mostly within the last few years. These concurrency programs have a few common characteristics. First, many are based on existing concurrency laws in a number of other states, notably Florida and Maryland. Because of this, they have often been able to learn from the mistakes of others, choosing carefully from what works and what does not. On the other hand, the resources that a local government or even a county government can expect to be able to commit to researching and drafting a concurrency ordinance are often much lower than for a state government. Thus, there is a wide range of effectiveness among concurrency ordinances at the local and county levels.

Clackamas County, Oregon

In Oregon, Clackamas County recently (in June 2000) studied a concurrency option for the county. They took a novel approach, deciding that concurrency had to be seen in two ways, as demand-side and supply-side. Demand-side approaches would attempt to reduce the need for public services by intelligent growth, and supply-side would include expanding infrastructure to meet growth.

Oregon land use law requires that jurisdictions must develop a "public facilities plan", basically the equivalent of a **capital improvements plan**, that covers infrastructure needed to support its comprehensive plan. Facilities are required to include sewer, water, and transportation. Also in Oregon's law is a clause that requires jurisdictions that engage in a "pattern or practice of denial or delay of permits or authorizations"[43] to take remedial action, which would probably be in the form of a moratorium. Alternatively, according to a new provision in the 1999 legislation, the jurisdiction could enact a Public Facilities Strategy, which must show how development will be sequenced and current facility deficiencies will be dealt with. The county's investigation of concurrency was inspired by these state laws.

To date, the status of Clackamas County's ordinance is not clear. A working group that studied concurrency recommended that it be adopted for certain facilities, including transportation, water and sewer, and land. More details on each of these are provided later in this chapter, in the sections on transportation concurrency and other concurrency types.

[43] Clackamas County Concurrency Task Force. 2000. "Report to the Board of County Commissioners," p. 24.

Columbus, Ohio

The city of Columbus, Ohio recently enacted its first growth management legislation, which included a variation on concurrency. The city has been very pro-growth for most of its history, continually annexing surrounding land, and making extension of sewer services to nearby land conditional on being able to annex it. During the 1990s, the city realized that this was inefficient. By extending sewer lines without coordinating with any other city agencies, the city added value to the newly served land, making the acquisition of land for parks and roads much more expensive. Also, planning and funding for streets and highways was often not adequate, as no budgeting foresight occurred.

To deal with this problem, Columbus set standards for several public facilities (sewage, water, stormwater drainage, electricity, transportation, trash collection, parks, law enforcement, and fire and emergency medical services), and required that these standards be achievable before sewer lines may be extended. A collaborative process with members of the city government responsible for each of these services established these standards. For each area where development was proposed, a plan had to be drawn up, showing what services would be needed and estimating the costs of providing them at the specified level of service. Then, "council resolutions will open specific territories to development as part of the city of Columbus upon a finding that all adequate public facilities ordinance [concurrency] standards have been properly and appropriately addressed by approved city plans, timetables, and budgets."[44]

Columbus is relatively rare among local governments that have adopted concurrency, in that the purpose of its program is to promote growth. Most other states, counties or cities that consider concurrency requirements do so in the face of uncontrolled growth, and are searching for a way to control or manage it. By contrast, as a Midwestern city, Columbus is not in a high-growth part of the country, and its historical promotion of growth and aggressive approach to annexation have probably been the only reasons that the city's population has not declined. Thus, its view of concurrency as a tool for growth promotion, rather than growth control, is rare if not unique.

Carlsbad, California

Carlsbad, California has standards for 11 facility types including water and sewer, parks, schools, libraries, open space, and traffic circulation.[45] In Carlsbad, there is a requirement that adequate facilities must be available for development to occur. Since the law's passage in 1986, a phasing and financing plan has been required for each facility zone – the unit at which concurrency is judged – in the city, and development may not occur until this plan is completed. The required facilities in Carlsbad are based on projected buildout, although facility zone plans often revise this downward as they list expected developments.

Financing these improvements has been a challenge for the city. Carlsbad has tried imposing various fees (pay-as-you-go) on developers, allowing developers to build infrastructure but waiving some later development fees, and various debt financing techniques. Also, a "local facilities management fee" has been imposed, "to pay for any facilities attributed to development that are not funded by developers as part of their projects or by any other funding

[44] DeRodes, Clark, and McClary, p. 8.
[45] Salveson, David and Craig Richardson. 1999. "Keeping Up with Growth." *Urban Land*, September 1999.

source."[46] Thus, this growth management system seems to be a cross between a concurrency program and an impact fees requirement.

Other Local-Level Concurrency

Other individual municipalities have also experimented with concurrency, mostly for the purposes of growth management. The towns listed below are by no means an exhaustive list, but merely those for which information was readily found. In general, these towns' interest in concurrency has been very recent; possibly indicating that concurrency is on the rise as a planning tool nationally.

The Town of Cary, in North Carolina, recently enacted a combination concurrency and impact fees for transportation infrastructure and schools. Support for this ordinance came from the realization that its transportation system was overburdened, more from through traffic rather than local traffic. Thus simply stopping growth would not solve the problem, and would actually reduce needed tax revenues. The town therefore projected travel demands, determined adequate levels of service, identified necessary road improvements and their costs, and identified "specific transportation fees."[47] It is not entirely clear whether this program is closer to concurrency or impact fees, as a capital improvements plan may not be necessary. Also in North Carolina, the city of Chapel Hill recently "decided against adopting an adequate public facilities [concurrency] ordinance since key facilities – water and sewer, roads, and schools – are not controlled by the town."[48]

A local government whose concurrency experience is much less recent is the Town of Ramapo, New York. Discussed in more detail in the legal background section of Chapter 1, Ramapo provided the first example of concurrency in the country. However, it later ended up removing its concurrency ordinance, as it did not provide the type of control which the town wanted. Lacking direct control over privately-owned water and sewer service, it found it difficult to use standards concerning these services to plan for growth.[49]

Transportation Concurrency

Transportation concurrency, which predicates development on adequate road capacity, is among the most common types of concurrency. According to an analysis of concurrency types by the State of Maryland, roads are "one of the primary reasons for APF laws to be enacted, but the most difficult to reach agreement on adequacy standards, fairness of application, and impact of the regulation."[50] Although transportation concurrency may be the most common type of this tool, it also may be the most problematic.

One consistently recurring problem concerning transportation concurrency involves control of transportation infrastructure. "Most instances in which traffic is so congested that capacity

[46] Porter, "Facing Growth With a Plan," p. 20.
[47] Duncan Associates. 1999. "Cary, NC: Transportation APF Study."
[48] Salveson and Richardson.
[49] Ibid.
[50] Maryland Office of Planning, p. 23.

standards cannot be met involve state and federal highways, not local streets."[51] These facilities are beyond the control of local governments to maintain or improve. Unless there is active county or state participation, then, these roads may never achieve their needed capacity, and concurrency requirements can become de facto moratoriums.

In some cases, transportation concurrency laws are blamed for having caused sprawl. Congestion is usually more serious in areas that are already developed, in or near existing cities or towns. By contrast, rural roads often receive little traffic, and have adequate road capacity. Thus, with transportation concurrency, development is encouraged to move to less-developed areas, because that is where road capacity can be found.

This section contains several case studies of transportation concurrency ordinances in action. It includes examples from states and counties, and includes some programs that have been relatively successful and some that have been outright failures. It is important to note, though, that no examples of transportation concurrency programs have been completely free from problems. Although road capacity seems to be a logical basis for a concurrency ordinance, the following case studies show that it can also create serious problems.

Florida

The State of Florida adopted a statewide concurrency ordinance in 1985, as detailed above. Roads were among the seven facilities that were considered in the concurrency requirements, and are the only one of these original seven facilities that has caused any real controversy.

In Florida, local governments are required to adopt a level of service standard that applies to all roads in their jurisdiction. If this is exceeded at any intersection, development in that immediate area is prohibited until an acceptable level of service could be achieved. However, unlike all other public facilities in Florida, the transportation improvements required to provide this level of service do not have to actually be in place to meet concurrency requirements. Instead, if a transportation improvement is included in a realistic capital improvements program, if its funding is feasible and based on currently available revenue sources, and if construction on the improvement will begin within a certain number of years (originally three, now fifteen), it is considered to be in place.[52]

Originally, the level of service standard was required to be the same for all roads, whether they were urban, suburban, or rural. Because of this, according to one Florida transportation planner, "Concurrency has been the death of Florida cities. The density permitted under concurrency will never enable public transit and walkability."[53] Although new laws are remedying this problem, serious damage has already been done.

Transportation Concurrency's Problems

A conflict that arose immediately with Florida's transportation concurrency system involved the state Department of Transportation and Florida's local governments. Local governments were required to "'adopt LOS standards for state roads that are compatible with the LOS standards

[51] Porter, "The APF Epidemic," p. 37.
[52] Boggs and Apgar, "Concurrency and Growth Management," p. 10. Also, Salveson.
[53] Florida Sustainable Communities Center. 2000. "Truth or Consequences: Planning as if Tomorrow Mattered."

established by the [DOT] for such roads.'"[54] This controversy continues to the present day. An additional problem has been the state's unwillingness to fund transportation improvements, while holding local governments to concurrency requirements. This has essentially halted development in some areas, and has not been appreciated by local governments. As Thomas Pelham writes:

> Transportation has been the bane of concurrency's brief existence…Establishing appropriate LOS for traffic is and has been a matter of great controversy, and the state and local governments have vigorously disagreed over whether the responsibility for setting those standards and funding transportation should be a state or local responsibility.[55]

An additional problem involved the road conditions when concurrency was first established. Due to decades of underfunding, congestion on roads was so bad in 1985, when the concurrency ordinance was enacted, that there was projected to be a $53 billion infrastructure shortfall by 2000.[56] In response, some counties have been permitted by the state to allow some leeway for existing deficiencies – that is, roads that were already badly congested in 1985 are allowed to have a lower level of service than those that were not. Still, without funding to correct existing deficiencies, concurrency has in many places halted growth.

Because of this, congested downtown roads have prevented revitalization or new development in many existing cities and towns, and have pushed development into undeveloped countryside in a search for roads with adequate capacity. Thus, concurrency is often blamed for causing sprawl to become more widespread, as well as making investment in downtowns or developed areas less feasible. This idea has resonance with many, including Florida planner John DeGrove, who writes that "concurrency without funding equals urban sprawl" and "concurrency drives development out into the countryside because that's where roads have capacity."[57]

Concurrency Remediation

On the state level in Florida, there has been a recognition that transportation concurrency does not work, and some legislation has been passed to attempt to mitigate its impacts. For example, a long-term transportation concurrency management amendment, which extended the time frame for building roads, was passed in 1993. In the original 1985 legislation, transportation improvements had to be funded and under construction within three years to be considered in calculating adequacy standards. The 1993 amendment pushed that limit back to fifteen years. In addition, another exception to transportation concurrency, known as pipelining, was recently adopted at the state level. Pipelining allows developers to pay a fee to local governments, and in exchange to be able to ignore concurrency requirements. Under earlier regulations, this had not been permitted.[58]

[54] Boggs and Apgar, "Concurrency and Growth Management," p. 8.
[55] Pelham, Thomas G. 1992. "Adequate Public Facilities Requirements: Reflections on Florida's Concurrency System for Managing Growth."
[56] Koenig, p. 6.
[57] Ibid.
[58] Florida Sustainable Communities Center. 1999. "What's in the New 'Growth Policy Act'?"

Although there have been some state-level efforts to "fix" transportation concurrency, most new ideas have come from the local level, where the negative effects of the program are strongly felt. In several places in Florida, transportation concurrency exception areas have been adopted. In areas given this designation, typically in cities, towns, or other already developed areas, transportation concurrency requirements do not apply. The success of transportation concurrency exception areas has not yet been assessed, but they were in use in about 20 cities in 1999. For example, all of downtown Orlando, which "couldn't have achieved LOS standards without destroying neighborhoods,"[59] has been designated an exception area.

An interesting aspect of the effort to correct transportation concurrency has been the introduction of varied ways to measure level of service. For example, "providing multi-modal options and connections, reducing vehicle miles traveled, and ensuring access to basic services also become valid goals."[60] In this way, local governments hope that demand for roads will hopefully be lessened, allowing more development in more congested areas.

Despite the amendments to the transportation concurrency program, "a 1999 report…suggested that concurrency may encourage sprawl and discourage redevelopment and infill of urban areas. If roads are congested in urban areas, developers simply go where capacity exists, usually rural areas."[61] Thus, rather than deal with complex requirements and exceptions, many developers have chosen to simply move farther into the countryside, where low-traffic country roads mean that concurrency requirements do not apply. Overall, the number of tools that have arisen to mitigate the effects of transportation concurrency may indicate how badly it has failed. This provides an important lesson for those interested in adopting a concurrency requirement: in the worst-case scenario, this technique is not merely ineffective, it is actively negative.

Washington

In 1990, the State of Washington adopted a Growth Management Act, which included local transportation concurrency requirements that were adapted from Florida's program. In Washington, "each jurisdiction must adopt a concurrency ordinance that establishes a level of service standard on all arterials in its jurisdiction and monitor their performance; transit routes have yet to be addressed."[62] Not all local governments are required to adopt transportation concurrency, though; it is mandatory only for those in high growth areas or near major cities. Like Florida, transportation improvements in Washington do not have to be in place to meet concurrency requirements. Instead, they must have a feasible funding source and be under construction within six years.

The State of Washington's attempt at transportation concurrency has had its share of problems. Local governments have been resistant to including state-owned highways in their concurrency ordinances, because they have neither the means nor the legal ability to solve problems on these highways. Also, local governments have not coordinated their means of measuring level of service, sometimes leading to conflicting standards between neighboring jurisdictions. In addition, transit is not included in the concurrency ordinance, probably because the state copied

[59] Salveson and Richardson.
[60] Florida Sustainable Communities Center. 1999. "Cities Get New Tool for Taming Autos."
[61] Salveson and Richardson.
[62] Frank, Lawrence D. and Robert T. Dunphy. 1998. "Smart Growth and Transportation."

Florida's flawed program. "Broadening the transportation measures beyond traditional LOS measures could give planners a wider range of choices to serve the needs of new development, including public transit and pedestrian and bicycle routes rather than road improvements only."[63]

The City of Vancouver has taken a more innovative approach to transportation concurrency. It recently adopted a transportation concurrency program that measures level of service for a corridor, rather than for individual intersections. This provides "a more holistic review of entire system performance…[because] (1) this methodology can be measured at any given time and is more readily understood than complicated intersection analyses; and (2) corridor travel times more accurately reflect the true operation of the roadway."[64] Vancouver is also trying to incorporate alternative transportation modes, such as mass transit or walking, into its concurrency standards, as "basing transportation improvements solely on vehicular mobility is not consistent with the direction of the comprehensive plan. Excessive transportation improvements for vehicles often carry unwanted environmental, social, and financial costs."[65] This innovative approach to transportation concurrency may make Vancouver more successful than most Washington cities in implementing this tool.

Montgomery County, Maryland

Montgomery County has the longest-running adequate public facilities program[66] in the country, initiated in 1973. Road capacity is the primary measure of adequacy in this ordinance, although other facilities, such as schools, sewer and water, and police stations and firehouses are also considered.

As discussed previously, Maryland's adequate public facilities program is voluntary, rather than mandatory, but has been accepted by several counties and local governments. All counties with adequate public facilities ordinances take road capacities into consideration when granting development permits. Many of these counties have rather advanced road adequate public facilities laws, allowing "a higher level of congestion (lower LOS) in designated growth areas in an effort to accommodate new development or redevelopment in these areas."[67] Montgomery County is among these, also joined by Harford and Calvert Counties.

Ordinance Details – Montgomery County

In Montgomery County, development proposals must pass two tests of transportation facilities adequacy. The first of these, the Policy Area Transportation Review, analyzes the effect of growth on the overall road system of the policy area (there are 22 of these in the County) in which it is located. If the growth in population or jobs will cause the roads to use up their excess capacity, the development will not be permitted. The second, the Local Area Transportation Review, measures level of service at local intersections, and requires certain standards to be met before development is approved. These standards are lower in areas with greater transit availability, and ensure that nearby intersections will not be overwhelmed. The

[63] Frank and Dunphy.
[64] Wallace, Kevin. 1999. "Corridor-based concurrency management in Vancouver."
[65] Wallace.
[66] This is the same as concurrency, as already noted – see footnote 39.
[67] Maryland Office of Planning, p. 21.

Policy Area review allows roads that will be constructed within four years to be considered in compliance for the purposes of adequate public facilities, and the Local Area review allows roads that will be constructed within two years.[68] As this brief description may hint, Montgomery County's adequate public facilities program "is so complex that it's essentially untransferable."[69] This is unfortunate, as it seems to have worked relatively well.

Implementation

Under Montgomery County's program, if roads will become overburdened, a moratorium is imposed. However, this moratorium does not prevent all new development, as developers can compensate in other ways. In this compensation, developers are allowed a certain amount of flexibility. They may pay for the full cost of transportation facilities necessary to return roads to an adequate level of service, which may include road construction, transit service, or ride-sharing program sponsorship. They may also get exceptions, or be required to pay less, if their project will provide certain types of employment, encourage mixed-use development or transit use, or is located in a designated area. In some policy areas with high congestion, developer participation in funding is the only way projects can get approved. Because of this, the adequate public facilities ordinance is sometimes just an extra impact fee, or "a device to generate exactions."[70]

In 1997, the Montgomery County Council voted to weaken its adequate public facilities ordinances, by allowing developers to pay a one-time building fee and ignore transportation adequacy standards. This action prompted the belief that it would "free developers from long-standing regulations that require them either to pay for transportation improvements that their projects require or to put their plans on hold until the government picks up the costs."[71] The outcome should increase the rate of development in the county, but will also increase the amount of tax revenues the county receives, which adequate public facilities requirements do nothing to augment.

Clackamas County, Oregon

In 2000, Clackamas County appointed a working group to study the possibility of adopting a transportation concurrency ordinance. In its report to the County, this working group identified a number of obstacles to adopting transportation concurrency. The complexity of the highway system is one of these, with different jurisdictions controlling different roads. Also relevant is the fact that growth is not the only cause of congestion – about two-thirds of traffic increases in recent years has come from pass-through drivers, rather than growth in the county.

Also, under Oregon state law, a county or local government that consistently denies development permits on the basis of inadequate infrastructure is required to take remediating action. This action can take either the form of a moratorium on development or a capital improvements plan to bring these to a satisfactory level. The County, therefore, preferred adopting its own concurrency program, with a long-range comprehensive and capital improvements plan, to being forced to adopt one by the state.

[68] DVRPC, p. 58-9.
[69] Salveson and Richardson.
[70] Salveson and Richardson.
[71] Washington Post. October 29, 1997. "Developers Win One in Montgomery."

The working group recommended that the County have transportation concurrency requirements extend to all sorts of development, from residential to commercial and industrial. It also recommended that a lower level of service be used in regional centers and near mass transit, apparently learning from the mistakes of Florida. Exceptions would be permitted if the proposed development would make some special transportation contribution. Also, transportation improvements scheduled to be under construction within three years would be considered for the purposes of concurrency compliance.

New development in Clackamas County is already subject to transportation impact fees. However, these impact fees will not even approach the cost of needed highway improvements in the near future. Thus, one of the working group's main recommendations was that more funding sources be identified, to allow transportation plans to be financially feasible. The working group also recommended that the capital improvements plan and the comprehensive plan be consistent, so that they "could be administered as complementary aspects of one unified County plan, not separate plans that might or might not be compatible."[72]

Other Types of Concurrency

Aside from transportation concurrency, school, water, and sewer concurrency are the most common types. There are numerous other facilities that are sometimes considered in concurrency ordinances, such as parks, stormwater, and police and fire service, but these are relatively uncommon. A brief discussion of school concurrency and of water and sewer concurrency, and their application in various places, follows.

School Concurrency

Proponents claim that schools are "generally the easiest facilities to reach a consensus on and to have strong public support for. State standards on school capacities (which are the foundation for funding priorities), provide a good basis for the adequacy standards."[73] However, due to jurisdictional conflicts, implementing school concurrency can be very difficult. As the experience of Florida shows, coordinating local governments and school boards can be a serious stumbling block to the implementation of concurrency.

Florida

For years, there has been discussion in Florida as to whether the state concurrency requirement should be extended to schools. In mid-2001, school concurrency remained optional for local governments in Florida, and no examples of a local government or county successfully implementing a school concurrency ordinance could be found.

One of the major problems in school concurrency in Florida is intergovernmental coordination. No single government body has the powers to enact school concurrency by itself. Instead, this power is shared by local and county governments, and also by school districts. In Florida, each county contains its own school district, which is controlled by the county school district's school

[72] Clackamas County Concurrency Task Force.
[73] Maryland Office of Planning, p. 16.

board but which must meet state minimum standards. Cities and counties "plan for and regulate the development of land within the parameters of Florida's integrated planning and growth management system,"[74] while school district boards "design, construct, and operate the public schools that serve new development within the confines of a statewide educational system."[75]

Because of this, school concurrency requires coordination between the school district, the county, and local governments. These governmental bodies must coordinate population projections, projections of school-age children, and the location of new schools, "to ensure that the school district planned enough schools to serve new development projected in *all* local comprehensive plans."[76] School boards set level of service standards in Florida, and must do this in conjunction with local governments.

As with all other forms of concurrency, the financial feasibility of the plan is key. Public school capital facilities programs must be financially feasible, held to the same standards as other capital improvements plans. School concurrency requires an amendment to the capital facilities element of the comprehensive plan that indicates where and when the local government will provide the new schools, and contains assurances of their financing and date of completion, and consistency with all other elements.

Water and Sewer Concurrency

Water and sewer facility standards are "based on very clear engineering standards and physical limitations, and as a result are the easiest to justify,"[77] but require regular and complete recording of facility usage. In addition, a recurring problem with water and sewer concurrency is that the improvement or extension of water and sewer lines is often the decision of the water or sewer company. While government can influence these utilities in various ways, it usually does not control them directly, and in most states, "a governmental entity may not establish a binding level of service standard for a facility it does not provide for, finance, operate, or regulate."[78]

Also, water and sewer service is unique in many ways. First, Federal and State regulations guide water provision, so "de facto concurrency standards already exist for water service: in the urban and urbanizable areas [at least in Oregon], an applicant cannot get a building permit without assurance of a safe water supply, sanitary sewer and surface water management."[79] Second, the cost of water and sewer service also depends, to a greater extent than other facilities, on topography (pumping water uphill is expensive). Third, the cost of supplying water and sewer service is the cost of installing anything, as installing large pipes costs about the same as installing small pipes. Water services are also more conducive to individual user fees, as usage is easy to gauge.

[74] Powell, "Back to Basics on School Concurrency," p. 2.
[75] Ibid, p. 3.
[76] Ibid, p. 9.
[77] Maryland Office of Planning, p. 15.
[78] Powell, "Back to Basics on School Concurrency," p. 12.
[79] Clackamas County Concurrency Task Force, p. 5.

Florida

In Florida, the lack of control that local governments have over private utilities has been a serious problem. These utilities are not required to be consistent with local comprehensive plans, as they are not regulated by a planning agency. Although local governments often establish urban service boundaries, the state has not held private utilities to these, allowing them to provide service to whatever they want to and decreasing the ability of local governments to manage growth. Thus, despite efforts to contain growth, "the state has allowed private utilities to serve the areas beyond this boundary, thereby losing the ability to effectively manage growth."[80]

Conclusions

As these case studies of concurrency indicate, the history of this land use planning technique has been mixed. In most places where it has been used, it has experienced serious problems in implementation, including intergovernmental conflict, poor cooperation between the public and private sectors, and lack of control of key facilities by the jurisdiction. Another common problem nationwide concerning concurrency is its continual use as a growth control tool, which is not what it is designed for. As the case studies show, all of the components of concurrency shown in the flowchart in Figure 1 (on page 7) are necessary for concurrency to succeed.

The next chapter, Concurrency in Pennsylvania and New Jersey, describes a survey concerning the use of concurrency in each state, and analyzes the results in the context of the findings of the first two chapters of this report.

[80] Arline.

CHAPTER 3 – CONCURRENCY IN PENNSYLVANIA AND NEW JERSEY

This chapter describes the results of two similar surveys conducted by DVRPC during the summer and fall of 2001. The purpose of these surveys was to further identify key issues surrounding concurrency and elicit specific information about concurrency in Pennsylvania and New Jersey. Information collected specific to Pennsylvania included why concurrency was deleted from the 2000 Municipalities Planning Code (MPC) revision, whether or not there is organizational or political support for enabling concurrency, and the impact that enabling concurrency may have on development, particularly in southeastern Pennsylvania. The survey in New Jersey collected similar information, but was undertaken at a smaller scale, because there had not been a similar recent attempt to enable concurrency at the state level.

To recruit survey participants, DVRPC staff compiled a list of organizations in Pennsylvania that were involved in the 2000 MPC revision, along with other organizations in both states that may be knowledgeable about concurrency. The organizations were contacted and their participation was requested. Upon agreement to participate in this survey, an introduction to the concurrency study, general background information about concurrency and survey questions were mailed or faxed. The introductory description, background information and survey questions, can be found in Appendix A of this report, and a list of organizations contacted in both Pennsylvania and New Jersey can be found in Appendix B.

Responses to the survey questions were collected from the participating individuals in two ways. Most were contacted via telephone by DVRPC staff and provided their responses orally, while a few responded in writing. The responses to the survey questions are provided in the remainder of this chapter.

Concurrency in Pennsylvania

The Pennsylvania survey was conducted during the summer of 2001. Each part of each survey question is presented below, followed by a synthesis of the responses to this question.

Question 1

Before reading the introductory material, how familiar were you with the concept of concurrency, especially in the context of Pennsylvania?

All respondents had some familiarity with concurrency, although understanding of the concept varied. In general, those respondents that had direct experience with the proposed legislation enabling concurrency (state-level organizations) were more familiar with the concept. The respondents from counties in the region had theoretical knowledge of the planning technique, but less recent experience with it.

Based on your knowledge of concurrency, what are the key issues that you believe DVRPC should address in our study?

Most of the respondents agreed that DVRPC had addressed some of the most important aspects of concurrency, including the importance of comprehensive and capital improvements plans that 1) were financially feasible and internally consistent, and 2) considered the timing as well as location of infrastructure provision. However, some respondents also recommended that the study address the following issues.[81]

Additional Consistency Requirements

Several respondents recommended expanding DVRPC's conception of consistency. While it is necessary that local comprehensive and capital improvements plans be internally consistent, as the report had stated, it is also important that these local plans be consistent with plans made at a broader level. Local comprehensive and capital improvements plans must be consistent with efforts at the county and regional levels to manage land use and contain sprawl, and the primary goal of concurrency must be to fit within the framework of these plans.

A related issue that was mentioned involved the power of local government to restrict development that was not consistent with comprehensive plans, either local or regional. All respondents agreed that builders had a right to develop within designated growth areas, and most agreed that it was the responsibility of the government to provide the infrastructure to support this planned growth. One aspect of concurrency that several respondents mentioned is its inability to prevent growth outside of these designated growth areas. If the plans of a developer are not consistent with a comprehensive plan or concurrency ordinance, but the developer is willing to provide the necessary infrastructure anyway, concurrency ordinances can do nothing to change this. With private financing, concurrency cannot affect the location or timing of growth. Several respondents saw this lack of control as a limitation or weakness of concurrency, which is accurate. As noted in Chapter 1, concurrency is not designed to allow local governments to restrict growth.

Public Funding

A number of respondents expanded on the concept of financial feasibility. Often, the facilities and infrastructure detailed in a capital improvements plan are too expensive for a local government to provide without assistance from a higher level of government. Thus, support from the state or the county is often necessary for the schedule of capital improvements to be realized. Some observers blame the failure of concurrency in Florida primarily on the state's unwillingness (or inability) to fund necessary transportation improvements, such as expansions of state highways, that were its financial responsibility.

Role in Encouraging Infill

An important aspect of concurrency is that it can indirectly or directly encourage redevelopment and infill in municipalities that are already developed. Several respondents recommended that the DVRPC report give more specific attention to the ways in which

[81] Please note that several key issues were identified in the responses to this question that had not previously been included in DVRPC's initial conception of concurrency (described in the one-page introduction in Appendix A). After receiving these responses, Chapter 1 was modified to include many of these important issues.

concurrency can do this. In addition to its function as a growth timing tool, concurrency can be used to direct growth to areas where infrastructure already exists, such as older towns and inner-ring suburbs. This aspect of concurrency is often not addressed, overshadowed by concurrency's use in rapidly developing areas. Concurrency can be especially useful in redevelopment efforts if it is tied to priority funding areas for infrastructure provision and maintenance, as it is in Maryland. By focusing infrastructure investment in designated growth areas where some infrastructure already exists, concurrency can be supported by state-level investment.

Government Responsibility

A number of respondents addressed the larger issue of government responsibility to provide infrastructure, reaching a level of abstraction somewhat beyond the original intent of this report. According to one view, the provision of infrastructure and services is the responsibility of the government, and is the reason (ideally) for the existence of government. Thus, forcing developers to pay for their infrastructure needs is a shirking of government responsibility, or, in the context of the development process, almost a form of "extortion." According to this view, concurrency is a positive thing, as it requires government to fulfill this responsibility to provide infrastructure and services according to a set schedule.

However, an opposing view holds that new development places extraordinary demands on infrastructure, and that the provision of this infrastructure in response to extraordinary development pressure is beyond the resources of most local governments. Thus, this new development should be required to either provide its own infrastructure, pay for the extra infrastructure that it consumes, or at least contribute. This is particularly the case where needed infrastructure can be accelerated with private sector funding from the developer. Not surprisingly, most local governments hold this view. The theory behind concurrency – that government should pay for infrastructure in designated areas – is somewhat at odds with this viewpoint. Since concurrency, if enabled, would be implemented by local governments, this is an important conflict. Without support for the actual ideals of concurrency, this tool might simply be used as a delaying tactic by local governments, who would have no intention of supplying infrastructure.

Question 2

Were you involved in the revisions to the Pennsylvania Municipalities Planning Code that occurred in the summer of 2000?

State-level organizations were highly involved in the recent revisions to the MPC. None of the respondents from counties in the region were involved, as these revisions were made without much input from the counties.

Were you aware that language to enable concurrency was proposed to be included in these revisions, but was deleted prior to passage?

Each of the respondents was at least somewhat aware of this, and some were actively involved in the political struggle that resulted in deleting concurrency from the legislation.

If so, do you have any insights as to why concurrency was deleted?

Most respondents agreed that the main reason for the deletion of concurrency was the opposition of the development community. The main political struggle, according to several respondents, featured municipalities on one side and the development community on the other. The municipalities hoped to gain more control over infrastructure, and also wanted a mechanism by which they could delay development, as well as some leverage over the builders. The builders, on the other hand, wanted no restrictions on their activities, but did want state-level funding of infrastructure to support new development. To this end, the building community wanted a public infrastructure bank to be established, which would serve as a lending institution for municipalities and insure that the infrastructure identified in the capital improvements plans would be built on time.

According to some respondents, utility companies, sewer authorities, and similar groups also opposed concurrency, to some extent. The original concurrency document tried to tie expansion of sewer and water facilities to local comprehensive plans, which reduced the freedom of these utility companies to operate as they wished. Some of the larger utility companies may have had a role in deleting the concurrency provisions.

Also, many members of the planning community were not especially supportive of the legislation. Some planners felt that transportation concurrency has caused sprawl in most places it has been tried, such as Florida. Also, the unwillingness of municipalities to place concurrency within a regional framework – giving up a share of their local autonomy – also limited the support that concurrency received from planners and environmental groups statewide.

Question 3

Aside from the recent revisions to the Municipalities Planning Code, are you aware of any successful or unsuccessful attempts to implement concurrency at the local level in Pennsylvania? What about attempts to enable concurrency at the county or state level?

None of the respondents were aware of any previous concurrency legislation in Pennsylvania at any level, and several were quite certain that there never had been.

Question 4

As the introductory material pointed out, successful use of concurrency requires a financially feasible capital improvements plan and program which is consistent with the comprehensive plan. It also requires coordination with nearby municipalities, other levels of government, and the private sector. Do you believe many municipalities (or counties) would undertake the necessary planning to implement a sound concurrency system?

Answers to this question were highly variable. Most respondents thought that municipalities would not undertake the necessary planning, or that a major change in the planning culture

of Pennsylvania was necessary before they would. Capital improvements plans, which are necessary before concurrency can even be considered, are very uncommon in municipalities across the state. They are especially rare in the undeveloped townships that are experiencing the most rapid growth, where concurrency would be the most useful. Also, even in those municipalities that do have a capital improvements plan, they are often not enforced.

Several respondents compared the difficulty of implementing concurrency with the difficulty of implementing transportation impact fees. Conceptually, transportation impact fees are a far simpler planning tool, and local governments have been permitted to enact them in Pennsylvania since 1990. However, according to one respondent only 32 municipalities statewide – out of more than 2,500 total – have actually implemented transportation impact fees. It is important to note, though, that the impact fee provision in Pennsylvania is very complicated and cumbersome, which has deterred its more widespread use. Nevertheless, a more complex tool like concurrency might have even a lower chance of being adopted at the local level, even if it were enabled at the state level.

Also, according to some respondents, more planning is unlikely to occur on the local level without significant incentives or disincentives. Local governments in Pennsylvania have generally resisted development pressure rather than planning for it, and have often tried to get developers to pay for needed infrastructure. Planning for infrastructure with a capital improvements plan requires more planning and has a longer-term focus on matching resources with needed improvements, while also reducing pressure on developers to pay for system expansion. An additional important aspect of concurrency, regional coordination, is also rare among Pennsylvania municipalities.

Other respondents were considerably more positive. Planning is becoming more important in the state, with many state-level organizations forming planning sections to deal with planning issues. The "Growing Greener" initiative may be a significant step in changing the planning environment in Pennsylvania. According to some respondents, municipalities are more responsive than ever before to addressing the negative consequences of growth. Some local governments, including several in the DVRPC region, have begun to plan and coordinate with neighboring municipalities. Thus, even though concurrency and similar planning tools may not be feasible now, the planning environment in Pennsylvania is improving, and support for these types of tools may increase in the near future.

Question 5

Based on your prior knowledge about concurrency, or from reading the introductory material, would you support future efforts to add enabling legislation for concurrency in Pennsylvania? Why or why not?

Most respondents would conditionally support concurrency if it were proposed again. Some recommended that it includes stronger provisions to encourage developers to finance their own infrastructure, but not all respondents agreed with this. Others focused on the necessity of regional consistency if concurrency is to be effective, and would only support concurrency if regional consistency was a requirement. A few respondents added that

enabling concurrency was basically futile, as few local governments would implement it even if given the option.

One respondent also mentioned that it might not be necessary, from a strictly legal perspective, to enable concurrency on the state level. Concurrency can basically already be implemented through standard, existing planning tools (zoning, comprehensive plans, official maps, capital improvements plans, and others) without any new planning tools needed to be added. Also, in other states, local governments have succeeded in adopting concurrency ordinances even without state enabling legislation. However, in Pennsylvania, it is common for additional legislation to be necessary to buttress the legal support for new implementation approaches.

Do you think there is political support for concurrency in Pennsylvania?

Responses to this question were highly varied, ranging from an unqualified "no" to a tentative "yes." Some respondents felt that concurrency could never succeed, as the development community is firmly against it and most other growth controls. According to these individuals, the developers are too strong for legislation such as this to be passed over their direct opposition. Concurrency could be used as a bargaining chip to support other planning legislation, but is not sincerely supported politically.

One respondent opined that the key issue is to address the concerns of the development community, since concurrency cannot be passed over their unified opposition. As Chapter 1 of this report has explained, if drafted correctly, concurrency is not an anti-growth planning tool, but actually can serve to rationalize the development process and add government accountability. However, it is clear that a version of concurrency that satisfies developers may not satisfy local governments.

According to other respondents, political support at the state level is crucial. If the "Growing Greener" initiative progresses, or if the next administration takes a more active role in land use planning, concurrency legislation may be considerably more feasible. However, it is important to note that enabling concurrency does not dictate that it will be successful. A poorly drafted or overly complicated law, or unwillingness to adopt concurrency at the local level, would make any enabling of concurrency rather meaningless.

Question 6

Please speculate on the effects of enabling concurrency at the state level. Do you believe it would affect the amount or timing of development in Pennsylvania?

Answers to this question were mixed. Some respondents believed that it would cause smarter growth, leading to downtown revitalization, infill, and less sprawl on the urban fringes. Others were less hopeful, believing that the laws would be ineffective, either poorly implemented or easily circumvented by developers. Also, some other respondents predicted that concurrency would be used by local governments to delay growth, rather than to direct it to growth areas.

What might the effects be in southeastern Pennsylvania (including Bucks, Chester, Delaware, and Montgomery counties, and the City of Philadelphia)?

Most respondents agreed that concurrency would have greater effects where development pressure is highest, and that its usefulness in Philadelphia and inner ring suburbs and boroughs is extremely limited. In more rural areas of the region, opinions on concurrency's effectiveness were mixed, as described in the previous question.

Concurrency in New Jersey

During the fall of 2001, DVRPC staff surveyed organizations in New Jersey. The same methodology and survey instrument that was used to survey representatives in Pennsylvania was used, except the questions were re-phrased to focus on New Jersey (see Appendix A). Too few responses were received to justify organizing them by question, as was done above for Pennsylvania, so they are summarized in paragraph form below.

Survey Results

The New Jersey respondents were familiar with the concept of concurrency, including the West Windsor Township timed-growth ordinance case (described below), and the succeeding proposed legislation to amend the Municipal Land Use Law. Aside from this case, none of the respondents were aware of any other attempts to enable concurrency at the state, county, or local level in New Jersey.

Responses to most of the questions were very similar to those for Pennsylvania. The respondents agreed that key features of concurrency include the importance of updated comprehensive plans and feasible capital improvements plans, the necessity of intergovernmental cooperation, and the threat of concurrency being used as a growth control tool. Also, the respondents agreed that local governments in New Jersey would be reluctant to undertake the necessary planning steps, which include adopting a capital improvements plan, to implement a successful concurrency ordinance. However, providing financial incentives for adopting concurrency may make municipalities more willing to provide the necessary planning base.

Support for concurrency in New Jersey followed similar patterns as in Pennsylvania. The development community generally opposed it, based on its potential use as an anti-development tool, while the public sector was generally in favor of it. At the state level in New Jersey, there is some support for concurrency, but also substantial resistance from the development community.

West Windsor Township and the Timed-Growth Ordinance

There is neither concurrency legislation nor known attempts of enabling concurrency in New Jersey. However, there was an attempt of implementing a timed-growth ordinance[82] at the

[82] Timed-growth ordinances are very similar to concurrency. The overall goal of a timed-growth ordinance is to enable municipalities to coordinate new development with their ability to make improvements in the local infrastructure to accommodate the new development. As with concurrency, a current comprehensive plan and

local level, along with succeeding proposals to incorporate a timed-growth ordinance in the state's Municipal Land Use Law.

In 1994, West Windsor Township, which is located in Mercer County east of Trenton, adopted a timed-growth ordinance. In 1997, several developers sued the township and the ordinance was ruled invalid by the New Jersey Supreme Court as being in conflict with the state law. Since this decision, several bills (such as Senate Bill No. 550) have been introduced to the state legislature to amend the Municipal Land Use Law and enable municipalities to enact timed-growth ordinances. Thus far, none of the bills have been approved by the state legislature, maintaining that timed-growth ordinances are invalid.

Conclusions

As the responses to the DVRPC survey show, concurrency in Pennsylvania and New Jersey faces two major barriers: the opposition of the development community to enabling legislation, and the inability of local governments to implement concurrency even if it were enabled. Concurrency, like other growth management techniques, cannot be successful until these problems are dealt with. The next chapter, Conclusions and Recommendations, provides a further discussion of the barriers to concurrency, and recommendations for ways in which these barriers can be overcome.

capital improvements plan are essential components of a timed-growth ordinance. For more detailed information regarding timed-growth ordinances, see Assembly Bill No. 2167 and Senate Bills No. 307 and 550 of the New Jersey State Legislature (which can be found on-line at http://www.njleg.state.nj.us/).

CHAPTER 4 – CONCLUSIONS AND RECOMMENDATIONS

The previous three chapters have provided a general introduction to concurrency, an examination of case studies that give examples of concurrency in action, and a basic survey that gauged the support for concurrency in Pennsylvania and New Jersey. This chapter draws conclusions from this research, and makes recommendations concerning the future of concurrency in these states.

Overall Conclusions

As this report has made clear, implementing a concurrency ordinance is a difficult task. In some places, such as Florida, concurrency has failed, for reasons discussed in depth in Chapter 2. In other states, such as Oregon and California, concurrency has not been enabled at the state level, but has been tried, with varying degrees of success, by individual counties or cities. However, it is undeniable that concurrency is, theoretically, a valuable planning tool, and its merits should be more carefully examined.

Maryland's concurrency laws (termed APF in Maryland) are possibly the most successful in the nation. However, according to a 1996 publication by the Maryland Office of Planning, "the experience in Maryland (as well as other States) has been that implementing an effectual, consistent, streamlined, and fair set of regulations is not as easy as it might seem."[83] Thus, Maryland does not recommend that every jurisdiction within the state adopt concurrency, but that it carefully consider whether concurrency is an appropriate tool. The Office of Planning provides the following list of questions to determine whether concurrency is appropriate:

1. *Does the disease justify the cure?*
   Carefully examine the nature and severity of the problem before embarking on what will undoubtedly be an arduous and controversial effort…Are there other, simpler means to achieve the same result?

2. *Is the overall growth management plan in order?*
   If you don't have a clear idea of the facility demands of the proposed growth in your jurisdiction, and further, if you don't have any plan or policy for meeting these demands, then an APFO is probably a premature response.

3. *Do you have community support for this effort?*
   It is important that the effort involve citizens, developers, and other community and business leaders to maintain a balanced approach and a clear understanding of the objectives and probable outcomes of the effort.

4. *Can you afford the staff effort?*
   Develop a clear work program and schedule, and determine the staff resources available for preparing, enacting, and especially, implementing the APF law.

[83] Maryland Office of Planning, p. 5.

> *5. Can you afford the results?*
> Take the time to test the outcomes of proposed regulations on different types of developments (e.g. residential, commercial, institutional), in a variety of specific areas around your jurisdiction…An APFO can have the inadvertent effect of making it easier to develop in rural areas. Also, it will definitely be the case that an APF law may stall or prevent an economic development project that is otherwise attractive and desirable.[84]

While this list of questions was drafted for jurisdictions in Maryland, the same basic questions can be asked of any level of government that considers enabling or requiring concurrency.

Viability of Concurrency in Pennsylvania and New Jersey

According to most responses to the DVRPC survey, detailed in Chapter 3, concurrency is not very likely to be successfully implemented in Pennsylvania or New Jersey at this time. This is because of two separate sets of difficulties. First, enabling concurrency at the state level will require overcoming strong resistance from the development community, and second, even if concurrency is enabled, few local governments will take advantage of its potential. The latter of these two difficulties is more serious, and will be examined first.

Implementing Concurrency Locally

As the responses to Question 4 of the DVRPC survey indicate, most respondents do not believe that many municipalities in Pennsylvania and New Jersey are ready to adopt concurrency ordinances. The level of planning that exists among local governments in most municipalities in the region is generally low, and few municipalities adopt planning tools that they are not required to (and many, particularly in Pennsylvania, do not even have such basic planning tools as zoning ordinances and current comprehensive plans).

Concurrency requires a municipality to have an updated, accurate comprehensive plan and a financially feasible capital improvements plan and program, and also requires consistency between these documents. While many municipalities in the DVRPC region have comprehensive plans, these are often outdated and not used as part of the development process. Capital improvements plans and programs are even less common. According to a 1994 DVRPC survey, in the five Pennsylvania counties in the DVRPC region, one of the most developed parts of the state, only 24% of municipalities that responded to the survey had a Capital Improvements Plan. In the four New Jersey counties in the region, this figure was only 14%.[85] Among these, it is not clear how many of the plans were financially feasible.

Concurrency is a fairly complex planning tool, requiring the adoption of level of service standards and the constant monitoring of infrastructure and community facilities to ensure that these standards are not exceeded. Many municipalities in Pennsylvania and New Jersey, particularly the suburbanizing townships where growth management is most needed, may not have enough staff or other resources to initiate and maintain a concurrency program. Because of local limitations, these states may have a similar concurrency experience to that of Florida, where "concurrency has largely failed [because] 'small communities just don't do it.'"[86]

[84] Maryland Office of Planning, pp. 15-16.
[85] DVRPC, p. 6.
[86] Salveson and Richardson.

Before adopting a concurrency ordinance, the Maryland Office of Planning suggests asking whether there are "other, simpler means to achieve the same result."[87] In Pennsylvania, transportation impact fees have been enabled at the state level since 1990. While these are different in many ways from concurrency (see discussion, Chapter 1), they can have the effect of helping local governments to deal with the costs of providing infrastructure to support new development. Impact fees are also a less complex planning tool to implement than concurrency, and are easier to understand. However, as the responses to Question 4 of the DVRPC survey indicate, only about 1% of Pennsylvania municipalities have adopted impact fee ordinances. It is likely that the use of concurrency, a more complex tool, would be even lower than this.

Enabling Concurrency at the State Level

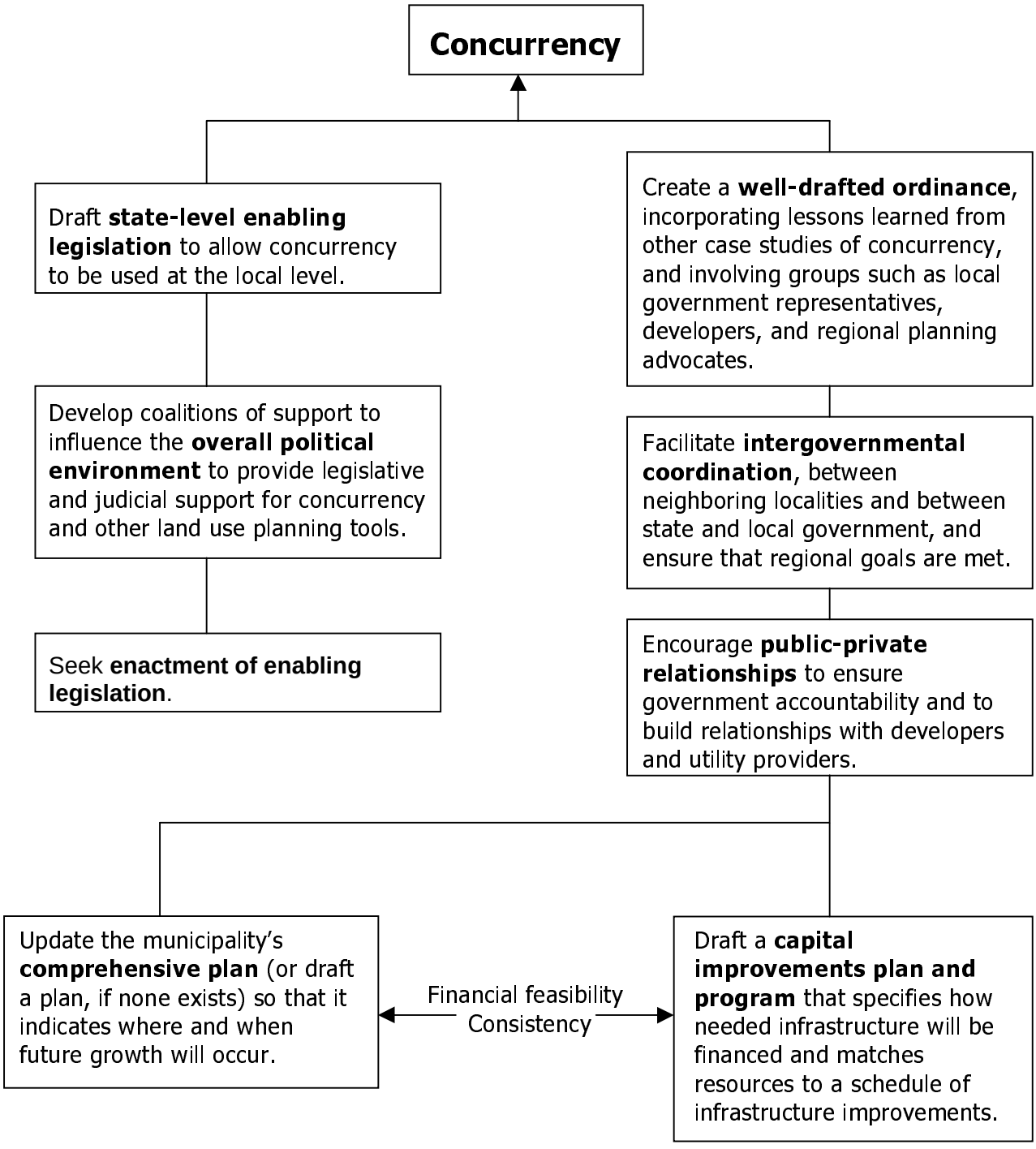
As the previous section shows, it appears, from examining the case studies of the use of concurrency and discussing the concept with knowledgeable persons in Pennsylvania and New Jersey, that local governments are not ready to implement a concurrency ordinance, even if it were enabled at the state level. However, the planning environment in the region is changing. For example, the four suburban Pennsylvania counties are currently working with various groups of municipalities to update their comprehensive plans, and are encouraging multi-municipal planning. In New Jersey, the Office of State Planning has developed a state plan that encourages growth management, and the four New Jersey counties in the DVRPC region also play an active role in advising local government. Thus, many local governments may be significantly more prepared to use concurrency in the near future.

According to many of DVRPC's survey respondents, it would be very difficult to pass enabling legislation for concurrency in Pennsylvania, because of the strength of the development community, as detailed in Questions 2 and 5 of the survey. A similar situation is found in New Jersey, according to the respondents to the brief New Jersey survey. However, while this opposition would present difficulties, it would not preclude a reasonable concurrency ordinance from being passed. Some respondents recommend involving developers in the drafting of the enabling legislation, to ensure that concurrency does not become a growth control tool. Also, greater support for land use planning from all branches of the state government would make enabling concurrency or other land use planning tools considerably easier, and this support has recently been increasing.

In conclusion, the successful use of concurrency in Pennsylvania and New Jersey is constrained more by the limitations of local planning than by the opposition of the development industry. Even if a concurrency ordinance were passed with the support or over the opposition of the development community, its implementation at the local level is still the responsibility of local government. Based on the current level of planning in the DVRPC region, implementation would be spotty at best.

[87] Maryland Office of Planning, p. 15.

Figure 2. Steps to Implement Concurrency



Source: Delaware Valley Regional Planning Commission, 2001

Recommendations

As the conclusions above make clear, the successful use of concurrency in Pennsylvania and New Jersey requires two critical steps: enabling concurrency at the state level, and implementing it at the local level. Listed below are a number of activities that are necessary to complete these steps. Many of these activities may occur simultaneously; the order in which the activities are presented does not correspond to the order in which they might actually occur.

State Activities – Enabling Concurrency

Before concurrency can be used in either Pennsylvania or New Jersey, it must be enabled by the state legislature. Several activities are necessary before this can occur:

Seek enactment of enabling legislation.

For enabling legislation for concurrency to be considered at the state level, groups in favor of it must actively push for its enactment. In Pennsylvania, these groups might include **10,000 Friends of Pennsylvania**, the **Pennsylvania Environmental Council** and the **Pennsylvania Planning Association**. In New Jersey, groups such as **New Jersey Future**, as well as the **New Jersey Office of State Planning**, should be involved in seeking enabling legislation for concurrency. In both states, **DVRPC** can also play a role in advocating for concurrency to be considered by the state legislature.

An important consideration in seeking enactment of concurrency enabling legislation is the level of readiness among local governments. As this report's conclusions have stated, even if concurrency is enabled, few local governments in Pennsylvania are presently ready to implement it. Thus, groups in favor of concurrency may wish to delay their advocacy for concurrency until there is a greater chance of successful implementation at the local level.

Build support for concurrency at the state level.

Support for concurrency must come from all branches of government to be successful. The enabling legislation must be passed by the State House or Assembly and State Senate, so establishing support in the legislature is crucial. Also, the cooperation (and even leadership) of the Governor will be essential. If future administrations in Pennsylvania continue to support land use reform, as the current administration has, the political environment for concurrency in Pennsylvania will be considerably more supportive. In New Jersey, the political environment for planning is more positive than that in Pennsylvania, and building support for concurrency may be less difficult. Finally, if there is a legal challenge, the judiciary in both states must also support concurrency for it to succeed.[88]

[88] The Pennsylvania Supreme Court recently ruled that municipalities are not permitted to impose a development moratorium, as this power is not specifically granted in the Municipalities Planning Code. This reinforces the need for clear enabling legislation if concurrency is to be permitted in Pennsylvania. See the November 2001 issue of *Pennsylvania Township News*, pp. 24-27.

Equal in importance to building support for concurrency is reducing opposition to it. Much of the possible resistance to concurrency can be overcome by involving the development community and local government associations in discussions concerning the purpose of concurrency and the actual drafting of the enabling legislation.

Draft enabling legislation for concurrency.

Once the groundwork is in place to support concurrency, the specific legislation can be drafted. Before this occurs, more research on concurrency around the United States is necessary, examining both successful and unsuccessful case studies. Appropriate level of service standards and other guidelines should be specified within the enabling legislation, and varied participants (such as local government representatives, the development community, and regional planning advocates) must be involved in the drafting process.

Most of the work involving the drafting of the legislation will probably take place in the state capitols. For example, in the attempts to enable concurrency in Pennsylvania in the summer of 2000, key organizations included the **Pennsylvania State Association of Township Supervisors**, **Pennsylvania State Association of Boroughs**, **10,000 Friends of Pennsylvania**, and the **Pennsylvania Homebuilders Association**. As the largest Metropolitan Planning Organization in the state, **DVRPC** should also be involved, using its experience with regional planning and its role in facilitating public-private cooperation to assist in drafting enabling legislation that is politically viable. In New Jersey, DVRPC can play a similar role, working in partnership with pertinent statewide organizations and the **New Jersey Office of State Planning**.

Local Activities – Implementing Concurrency

While enabling concurrency at the state level will be a significant step toward its successful use, implementing this planning tool locally may be a more serious challenge. The activities below can lead to a more positive environment for concurrency at the local level, greatly increasing its chances of being successfully implemented. Many of these activities will not occur right away, and it may be years before widespread local planning capacity, public-private relationships, and intergovernmental coordination reach a point where broader implementation of concurrency will be feasible. However, case-by-case efforts can proceed in the short-term, if the following steps are followed and supportive enabling legislation is in place.

Improve planning capacity at the local level.

Jurisdictions that will be affected by the concurrency ordinance must have an adequate base, in terms of planning documents. This will require:

(a) an up-to-date, accurate comprehensive plan that shows the location and timing of future growth, and that provides a well-thought-out vision for the future of the municipality;
(b) a financially feasible capital improvements plan and program that specifies what infrastructure will be necessary to support the growth described in the comprehensive plan, analyzes the costs of providing this infrastructure, and describes how it will be financed; and

(c) consistency between these two planning documents, as well as others, such as the municipal zoning ordinance.

A key technical support role for this step can be played by **county planning agencies**, many of which are already engaged in these types of activities. Few municipalities in the region have financially feasible capital improvements plans, and the counties should encourage the increased use of this planning tool, especially in rapidly growing townships. Also, **DVRPC** can play an important role in improving planning capacity, by highlighting best practices, facilitating communication between the counties, participating in selected capacity-building projects managed by the counties, and assisting in the development of capital improvements plans, programs, and enabling legislation or proposed concurrency ordinances.

Build public-private relationships.

The development community must be involved in discussions concerning concurrency from an early stage. State-level lobbying groups, such as the Pennsylvania Association of Township Supervisors and the Pennsylvania Homebuilders Association, and similar organizations in New Jersey, must discuss the purpose of concurrency, ensuring that it will not be used as a tool for growth control. Also, cooperation between these groups is necessary to ensure that local governments are willing to take on the additional responsibility and accountability that a concurrency ordinance requires, and that the development community is willing to abide by the limitations on timing of development that concurrency creates.

Within the region, much of the responsibility for bringing these groups together can be taken by the **county planning agencies**, working in partnership with **DVRPC**. DVRPC has created a forum in which **developers** and **local government representatives** could discuss concurrency and other growth management techniques, clearly defining the purpose of concurrency, and hopefully leading to a compromise concerning its use. The Land Use and Development Committee meets quarterly to review a variety of land use and development-related issues affecting implementation of DVRPC's long-range land use and transportation plans. An expansion of the responsibilities of this group could allow it to be used as a valuable coordinating agency for concurrency.

Increase intergovernmental coordination and cooperation.

Concurrency also requires coordination and cooperation between different government bodies, both between neighboring jurisdictions and between different levels of government. Multi-municipal comprehensive plans and other planning efforts would increase the effectiveness of concurrency ordinances. Also, local government plans for infrastructure improvement must correspond with infrastructure improvement plans at higher levels of government, such as the expansion of state highways.[89] Quasi-public entities, such as sewer and water providers and other utility companies, must also have plans for service

[89] According to some writers, one of the major reasons for concurrency's failure in Florida is the lack of coordination between state highway expansion projects and local plans for infrastructure improvement. See Chapter 2 for discussion.

expansion that are consistent with the municipality's comprehensive plan and capital improvements plan and program.

In the DVRPC region, multi-municipal planning should be supported by the **county planning agencies** at every opportunity, within a regional framework for growth management provided by **DVRPC**. Also, state-level agencies like **PennDOT** and **NJDOT** should make their long-range and short-range plans for highway improvements known to municipalities, so that these improvements can be taken into account when drafting comprehensive plans and capital improvements plans. Regional **utility companies** also should become more involved in the local planning process, allowing municipalities to take their plans for expansion into consideration when planning for future growth.

Draft a model concurrency ordinance for local adaptation.

Once concurrency can be implemented locally, it is necessary to provide local governments with a draft concurrency ordinance that can be adapted for their use. Sample ordinances from other states should be reviewed and modified based on local circumstances. Key players in the drafting process are the county and municipal planning commissions and the local solicitor, and outreach to the development community is also desirable. This activity should occur at the end of the process, and should not be undertaken until all other components of concurrency are in place.

To be effective, a concurrency ordinance should include several components. It must:

- Discuss the purpose of the concurrency ordinance.
- Establish a public review process.
- Identify the infrastructure and public facilities that are covered by the ordinance (e.g. transportation, schools, sewer, or others).

Additionally, specific components are required for each facility that is subject to the concurrency ordinance. According to a list developed by the Maryland Office of Planning, for each facility, the ordinance must:

- Establish a process for collecting the information on facility use, capacity standards and projected growth.
- Set the standards for adequacy [level of service standards].
- Determine the stage of development approval where this will apply.
- Determine applicability (residential/nonresidential), exemptions (elderly housing).
- Determine the appeals process (if not already covered by zoning or subdivision provisions).
- Establish a queuing process, or a 'waiting list' for developments that could be approved if the APF standards were met.[90]

Much of the responsibility for drafting model concurrency ordinances will lie with the **county planning agencies** or the **New Jersey Office of State Planning**, who can guide municipalities through the process of implementing concurrency. Other aspects of implementing concurrency, such as coordinating efforts throughout the region and encouraging cooperation with developers, are the responsibility of agencies like **DVRPC**.

[90] Maryland Office of Planning, p. 18.

Also, nonprofit advocacy organizations such as **10,000 Friends of Pennsylvania** can be involved in this stage, by researching concurrency in other states and drafting a model ordinance.

Conclusions

Completing these activities can create the possibility for effective enabling legislation and local ordinances for concurrency in Pennsylvania and New Jersey, which will be supported at the state level and implemented at the local level. Implementing concurrency successfully will be a difficult task. Lack of preparedness on the local level, opposition from various interests, and a poor record of success in other states, will have to be overcome through sustained, coordinated effort on the part of planning advocates in both Pennsylvania and New Jersey. However, by considering this study's conclusions and following its recommendations, a supportive environment for concurrency can be created, and concurrency may become a useful planning tool in the future.

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APPENDIX A - DVRPC Survey

This appendix contains three documents used in DVRPC's survey: the background summary of concurrency that was sent to survey participants for their comments, the discussion questions used to conduct the survey in Pennsylvania, and the discussion questions used in New Jersey.

The Pennsylvania survey was conducted in summer 2001, and the New Jersey survey in fall 2001. More information on the survey, as well as the responses to the discussion questions, can be found in Chapter 3.

Concurrency Background Summary - Pennsylvania and New Jersey

Concurrency requirements have become a popular growth management technique elsewhere in the United States. The theory behind concurrency is simple: before new development in an area occurs, that area must be provided with certain public services, such as roads, schools, and sewer and water service. If these public services are not available or are not of sufficient scale to support the proposed development, no development may occur until they are brought up to a certain level of adequacy. In other words, sufficient public infrastructure must be provided concurrently, or simultaneously, with proposed development.

What Concurrency Is – Some Important Characteristics

For concurrency to be successful, it requires a number of features:
1. a **comprehensive plan** that specifies where future growth may occur;
2. a **financially feasible capital improvements plan and program** that specifies when, where, and how the infrastructure to support this growth will be put into place (as well as the estimated cost to provide the infrastructure);
3. **consistency** between the information in the comprehensive plan and in the capital improvements plan and program;
4. **intergovernmental cooperation** between neighboring municipalities or between different levels of government; and
5. **public-private partnerships** between the development community and government.

What Concurrency Is Not – Some Misconceptions

The purposes of concurrency regulations have often been misinterpreted. Drafting a concurrency requirement with flawed assumptions may cause it to be invalidated in court, or even to cause more problems than it solves. The most common and significant misconception about concurrency is that it is a tool to **stop growth**. Actually, concurrency does the opposite of prohibiting growth – it promises that growth may occur in designated areas in the near future, and even promises to fund the infrastructure necessary for growth. Thus, it is a **growth management** tool. Many places that enact concurrency ordinances do so in the face of rapid, uncontrolled growth, and see concurrency as a way to provide a more orderly pace of development.

There is often confusion between concurrency and **impact fees**, which are fees charged to a developer to cover the costs that his or her development will place upon the infrastructure of an area. There is a significant difference between these two planning tools – concurrency is predicated on government paying for infrastructure (in accordance with a capital program), while impact fees are predicated on the developer paying for their share of transportation or other impacts caused by his or her development. However, concurrency allows (but does not require) developers to improve or contribute to improving infrastructure if they choose, thus enabling them to speed up the development process. However, the consequences of not providing private sector infrastructure or financing support may be a multi-year delay, until the capital program can be implemented through scheduled public funding.

Discussion Questions - Pennsylvania

1. Before reading the introductory material, how familiar were you with the concept of concurrency, especially in the context of Pennsylvania? Based on your knowledge of concurrency, what are the key issues that you believe DVRPC should address in our study?

2. Were you involved in the revisions to the Pennsylvania Municipalities Planning Code that occurred in the summer of 2000? Were you aware that language to enable concurrency was proposed to be included in these revisions, but was deleted prior to passage? If so, do you have any insights as to why concurrency was deleted?

3. Aside from the recent revisions to the Municipalities Planning Code, are you aware of any successful or unsuccessful attempts to implement concurrency at the local level in Pennsylvania? What about attempts to enable concurrency at the county or state level?

4. As the introductory material pointed out, successful use of concurrency requires a financially feasible capital improvements plan and program which is consistent with the comprehensive plan. It also requires coordination with nearby municipalities, other levels of government, and the private sector. Do you believe many municipalities (or counties) would undertake the necessary planning to implement a sound concurrency system?

5. Based on your prior knowledge about concurrency, or from reading the introductory material, would you support future efforts to add enabling legislation for concurrency in Pennsylvania? Why or why not? Do you think there is political support for concurrency in Pennsylvania?

6. Please speculate on the effects of enabling concurrency at the state level. Do you believe it would affect the amount or timing of development in Pennsylvania? What might the effects be in southeastern Pennsylvania (including Bucks, Chester, Delaware, and Montgomery counties, and the City of Philadelphia)?

Discussion Questions - New Jersey

1. Before reading the introductory material, how familiar were you with the concept of concurrency, especially in the context of New Jersey? Based on your knowledge of concurrency, what are the key issues that you believe DVRPC should address in our study?

2. Are you aware of any proposed or adopted legislation enabling concurrency in New Jersey (if so, please provide specifics about the legislation)? If the proposed legislation was not adopted, do you have any insights as to why it failed?

3. As the introductory material pointed out, successful use of concurrency requires a financially feasible capital improvements plan and program which is consistent with the comprehensive plan. It also requires coordination with nearby municipalities, other levels of government, and the private sector. Do you believe many municipalities (or counties) would undertake the necessary planning to implement a sound concurrency system?

4. Based on your prior knowledge about concurrency, or from reading the introductory material, would you support future efforts to add enabling legislation for concurrency in New Jersey? Why or why not? Do you think there is political support for concurrency in New Jersey?

5. Please speculate on the effects of enabling concurrency at the state level. Do you believe it would affect the amount or timing of development in New Jersey?

APPENDIX B - Study Participants

The individuals listed below responded to the DVRPC survey, included in full in Appendix A. Other individuals and organizations were contacted, but declined to participate.

Pennsylvania

Eugene Briggs, Policy Planning	Delaware County Planning Department
Lynn Bush, Director	Bucks County Planning Commission
Elam Herr, Director of Legislation	Pennsylvania State Association of Township Supervisors
Philip Klotz, Community Planner	Pennsylvania Senate Local Government Commission
Janet Milkman, Executive Director	10,000 Friends of Pennsylvania
Brian O'Leary, County Planning	Montgomery County Planning Commission
Phil Robbins, Planner	Department of Community and Economic Development
Patrick Starr, Director	Pennsylvania Environmental Council
Ed Troxell, Director of Government Affairs	Pennsylvania State Association of Boroughs
David Ward, Land Use Planner	Chester County Planning Commission

New Jersey

Charles Newcomb	New Jersey Office of State Planning
Rick Van Osten	Builders League of South Jersey

APPENDIX C - Concurrency Enabling Legislation

The following language was proposed for addition to Pennsylvania's Municipalities Planning Code. This language was eventually deleted from the legislation, which became Acts 67 and 68, enacted during the summer of 2000.

One entirely new section was proposed:

Section 503.2. Sufficiency of Public Facilities

(a) Subject to the requirements of this section, a municipality shall have the power to delay approval of a land development or subdivision application by conditioning approval on the completion of off-site public facilities sufficient to provide an adequate level of service for the requested land development or subdivision.

(b) A municipality may not delay approval of a land development or subdivision application pursuant to subsection (a) unless the municipality has:
(1) adopted ordinances, in accordance with Article V-B, imposing impact fees and water and sewer connection, facilities and tapping fees; and
(2) made reasonable provision for growth by planning for off-site public facilities in accordance with the following:
(i) an adopted transportation capital improvements plan covering the area in which the land development or subdivision will be located;
(ii) an official sewage facilities plan approved by the Department of Environmental Protection of the Commonwealth of Pennsylvania in accordance with the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the "Pennsylvania Sewage Facilities Act;" and
(iii) plans for water supply and distribution in accordance with Section 301(a) and for the reliable supply of water as authorized by Section 301(b).

(c) The effect of delaying the approval of a land development or subdivision application in accordance with this section, by conditioning approval on the completion of off-site public facilities, may not be exclusionary as to the proposed use and may not result in the discriminatory treatment of the applicant.

(d) A municipal determination of the sufficiency of public facilities to provide adequate levels of service for a proposed subdivision or land development shall:
(1) be generally consistent with the adopted plans set forth in subsection (b); and
(2) bear a reasonable relationship to the off-site impact of the proposed subdivision or land development.

(e) Consistent with the public health, safety, and welfare, a municipality may waive the requirement that, as a condition to the approval of an application, there be in place public facilities sufficient to provide adequate levels of service, other than water and sewer facilities, if:

(1) the public facilities will be in place or under actual construction within three years of the approval of the subdivision or land development;
(2) the subdivision or land development will occur in a geographical area defined in the municipal, multimunicipal or county comprehensive plans as: (i) a downtown development or redevelopment area; (ii) an area where urban infill is to be encouraged, or (iii) an area where higher densities are to be encouraged in order to utilize public transit; or
(3) alternative and permissible means, as determined by the municipality, of providing adequate levels of service will be provided by the applicant.

(f) The provision of public facilities in accordance with this section may occur in phases which are concurrent with a municipally approved phased completion of the subdivision or land development.

(g) As used in this section, "public facilities" shall mean public highways, roads, bridges, and streets, and public water and sewage disposal facilities.

In addition, an additional subsection (c) to Section 608 (Enactment of Zoning Ordinance) was proposed, as follows:

(c) If a municipality has adopted a zoning ordinance that has been certified to be generally consistent with either the municipal comprehensive plan or, where there is no municipal comprehensive plan, with the multimunicipal comprehensive plan or the county comprehensive plan, in accordance with this section, a "local authority," as defined in 1 Pa.C.S. 1991 (relating to definitions), which desires to provide service within the municipality, shall certify by resolution that its annual plan or, if no annual plan is adopted by the local authority, that each decision to expand the service within the municipality is generally consistent with the municipal zoning ordinance; but the requirement of this subsection shall not apply to an expansion of service by a local authority which is ordered by a court, or a federal or state agency.

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Geographic Area Covered: nine-county Delaware Valley region, including the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia in Pennsylvania, and Burlington, Camden, Gloucester and Mercer in New Jersey.

Key Words: concurrency, adequate public facilities, growth management, infrastructure, land use, development.

ABSTRACT

This report explores the concept of infrastructure concurrency, a growth management tool that ties development to the availability of public facilities. It examines the background of this planning technique, including several case studies of its use, and describes the results of a survey conducted by DVRPC to gauge support for concurrency within the region. Finally, it concludes that concurrency is not presently a feasible technique in the region, and provides recommendations for steps that can be taken to increase its viability.

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