

## **SPECIAL TOPICS**

### **3.1 AN ASSESSMENT OF THE SUCCESS OR FAILURE OF COORDINATING FUTURE LAND USES AND RESIDENTIAL DEVELOPMENT WITH THE CAPACITY OF EXISTING AND PLANNED SCHOOLS; ESTABLISHING WITH THE SCHOOL BOARD APPROPRIATE POPULATION PROJECTIONS; AND COORDINATING THE PLANNING AND SITING OF NEW SCHOOLS [163.3191(2)(k)]**

#### **BACKGROUND**

The passage of Senate Bill 360 now makes school concurrency and a public school facilities element a mandatory element of a County Comprehensive Plan. Volusia County will have to adopt a Public School Facilities Element by February 2008. Local governments who accept technical assistance from the Department of Community Affairs can move up their adoption date to September 2006. This is a major issue as well as a special topic. This special topic will cover land use and school linkage from a general perspective. The issue version of this topic will focus as an evaluation of schools, land use and the Volusia County Comprehensive Plan.

#### **Previous Efforts at a Public School Facilities Element and Concurrency**

At the time of the interlocal agreement (Senate Bill 1906) and before the passage of Senate Bill 360, a public school facilities element and school concurrency was an optional element of a comprehensive plan. Counties with a large number of municipalities had little incentive to do a concurrency element since it required an agreement with all of its municipalities. Of the 67 Florida counties, only Palm Beach County managed to create a public school facilities element that met concurrency. More counties that did optional school facilities element were non-concurrency based. As in the concurrency element of school facilities, the county still had to enter into an interlocal agreement with its municipalities. Local governments in the county with an optional non-concurrency school facility element had to be consistent with each other.

Requirements under the Optional Public Facilities Element Requirements - Formerly Chapter 163.31776 of the Florida Statutes:

- County had to enter an interlocal agreement with all of its municipalities. Ponce Inlet and Daytona Beach Shores met the criteria for exemption.
- The Public Education Facilities Element had to be based on data and analysis.
- Each local government Public Educational Facilities Element had to be consistent with each other.

Strategies for Public Improvements and Safety for Existing and Proposed Schools that an optional public school facilities element had to meet:

- Public Infrastructure necessary to support schools including fire service, sewer, potable water, stormwater, solid waste, and transportation.
- Safe access to schools including sidewalks, bicycle paths, signage, turn lanes and signalization.
- Co-location of schools with parks, libraries and community centers.

- Allow schools to locate close to residential areas and use schools as a focal point for residential neighborhoods. In Volusia County, schools were allowed in all zoning categories.
- Public schools serve as emergency shelters.
- School capacity had to be considered when reviewing Comprehensive Plan amendments and residential density and a 5-year Capital Improvement Plan adopted by the School Board.
- Uniform methodology for determining school capacity (covered by interlocal agreement).
- Future Land Use Maps must identify school sites in the educational facilities plan adopted by the County School Board. It must show the improvements to existing or new schools over a 5, 10 and 20 year time period.

The adopted optional public school facilities element was sent to the Department of Community Affairs, Office of Educational Facilities and Smart Schools Clearinghouse for review and comment. Approval of DCA for optional element was required before it was allowed to take effect. The optional element was not subject to the twice a year comprehensive plan amendment limits.

### **School Concurrency and Palm Beach County**

The only place in Florida that has a mandatory concurrency requirement for school facilities is Palm Beach County with 26 municipalities and the County as part of the concurrency process. The concurrency process requires all the local governments and schools to exercise authority jointly to establish adequate level of service standards. The process allowed concurrency to be tiered to allow time to achieve a desired Level of Service Standard (LOS) such as new schools built under an optional sales tax or a bond issue. LOS standards shall be applied district-wide to all schools of the same type (elementary, middle and high school).

SB 1906 in 2002 encouraged governments to judge school capacity on a county-wide basis although Palm Beach wound up using 21 zones on less than a district or county-wide basis. This option was chosen even though the less than district basis required that school capacity be maximized to the greatest extent possible. Transportation costs and court desegregation orders could be factored in for maximum school capacity determinations. Changes to any of the 21 concurrency area boundaries required a plan amendment but this amendment was exempt from the twice a year limitations.

The Palm Beach County interlocal agreement took over 3 years to accomplish. Schools could build up to 110 percent of capacity without denial of building permits. If capacity was not available in the concurrency service area, but the needed capacity was available in a contiguous service area, as adopted by Palm Beach County, the development order could be issued and mitigation measures were not to be exacted. No permits have been denied as a result of the school concurrency law in Palm Beach County.

The school concurrency plan had to be financially feasible and required plan amendments to the CIP to meet the financial feasibility requirements. As in the case of road concurrency, a local government may not deny a residential development for failure

to achieve its LOS when a school will be in place or actual construction initiated within three years after the permit issuance.

SB 360 that passed in 2005 encourages concurrency on a county-wide basis in 2008 but then gradually moves to a less than county-wide basis. The deadline for school concurrency in Volusia County is February 1, 2008.

### **The Martinez Plan**

The Martinez Plan is often mentioned in a discussion of Public School Facilities Element, school concurrency and land use linkage. While the Public School Facilities Element establishes the basis of the Martinez Plan in Orange County, it should not be confused with school concurrency. The Martinez Plan was a policy decision that operates as an exaction when a developer went for density above the existing allocation on the land use map or zoning category. Development that stayed within the existing zoning or future land use density did not pay a school mitigation fee or capacity enhancement agreement under the Martinez Plan. In addition, the School Board was under no obligation to accept the developer's capacity enhancement agreement. The Martinez Plan has been expanded to cover several municipalities in Orange County, including Orlando and Winter Garden. Most of the Martinez Plan Capacity Enhancement agreements have occurred in the unincorporated area (75 of the 80 agreements signed, according to a PowerPoint presentation, by Orange County in May 2005).

A concurrency system similar to Palm Beach County deals with all developments and not just developments that increase density. At the time of the policy passage in 2000, it was the only plan that produced revenue. The Palm Beach County concurrency system was designed for all jurisdictions to pass concurrency testing. Since the passing of the class size amendment, Palm Beach County's concurrency system has been adjusted to meet the capacity changes associated with the class size amendment.

## **PREVIOUS LINKAGE BETWEEN PUBLIC SCHOOL FACILITIES AND LAND USE**

### **Senate Bill 1906**

Land use and schools are linked through legislation and an interlocal agreement required by Senate Bill 1906 passed in 2002 that was signed by Volusia County and 14 municipalities by the 2003 deadline. The County and its 14 cities approved the interlocal agreement drafted by a committee of city, county and school board planners. This agreement made the Volusia County School Board an ex officio member on all local planning agency boards. Volusia County approved the interlocal agreement on February 20, 2003.

Senate Bill 1906 did not mandate a concurrency requirement. Instead, the school legislation required coordination and planning between local governments and schools. Twice a year, the County, its municipalities, and the School Board coordinate population projections, school enrollment, capacity improvements and development trends in its meetings in October and May. In addition the school facilities planner meets with the various municipal planning departments and Volusia County to look for prospective school sites among vacant land sites in the municipalities and unincorporated County.

Daytona Beach Shores and Ponce Inlet were exempted municipalities from the state legislation. Neither city is an appropriate location for a school because of its location in the Coastal High Hazard Area.

One of the early successes of this new legislation occurred with the “DDD” High School. Volusia County amended its 5-year Road Program to add the West Rhode Island extension to service the new high school planned in Orange City. This road connection to the high school site was not on the County’s 5-year road program as initially proposed. The coordination meeting, which notified Volusia County that the School Board might pick the Orange City site, allowed Public Works extra time to prepare in adding the thoroughfare to the County Capital Improvements Plan.

### **RECENT CHANGES IN LINKAGES BETWEEN PUBLIC SCHOOL FACILITIES AND LAND USE**

The School Board is a member of the Technical Review staff committee. As a result they see all subdivision, site and development plans prior to approval. As a result of Volusia County School Board Policy 613 passage in 2005, Volusia County will now send any increases in density for Future Land Use Map (FLUM) amendments and rezonings to the Volusia County School Board for review and comment. Recently the School Board attended the Volusia County Planning and Land Development Regulation Commission to voice its opposition to an increase in density for the Hontoon Island development. However, the School Board later reached a proportionate fair share mitigation agreement with the developers for the additional students generated.

School Board Policy 613 does not force local governments to mitigate for the impact that increased residential development has on the school system. Yet School Board Policy 613 offers the Volusia County School Board an opportunity to raise this issue of student overcrowding and mitigation as part of the land use decision-making process. The overcrowded situation of public schools has been an issue raised repeatedly by the citizens in hearings on rezonings and future land use amendments. School Board Policy 613 ensures the School Board and its representatives are heard in public hearings on all land use decisions that impact schools.

Senate Bill 360, which passed this legislative session, now requires all local governments (except Palm Beach County which has concurrency) to adopt a school concurrency facility element to their Comprehensive Plan by December 1, 2008. Volusia County’s school concurrency deadline will be February 1, 2008 under a phased schedule established by the Department of Community Affairs. The new law requires that adequate facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. In many ways the requirements of Senate Bill 360 resemble what Palm Beach County did in adopting its optional concurrency school element.

There are two major changes in Senate Bill 360. First, SB 360 requires assessment of a proportionate fair-share mitigation options for schools. This new requirement must be in the interlocal agreement and show that the developer addresses schools demands, programmed improvements and options to address capacity needs. Failure to adopt an interlocal agreement on school concurrency prohibits a local government from adopting plan amendments that increase residential density. Secondly, school boards that fail to

adopt the interlocal agreement, or address school concurrency, can be sanctioned by the Governor and Cabinet.

School concurrency in Palm Beach County was always on a less than district basis. The new legislation encourages county-wide school concurrency at first, then phased to a less than district basis within 5 years. As in Palm Beach County, developments in a school concurrency system on a less than district basis cannot be denied if there is capacity in a contiguous school zone.

Senate Bill 360 allows a binding developer's agreement to satisfy school concurrency through proportionate fair share payments. In return, the school board must program these developer agreement funds in a financially feasible capital improvement plan to show the mitigation improvements are being made. There is also an option to have school facilities concurrent through a long-term school capital improvement program of 10 to 15 years much like there is with the thoroughfare system under Senate Bill 360. Developers get credit for proportionate fair share mitigation above their existing impact fees.

## **ANALYSIS**

The Volusia County School Board will be the lead agency in forging the interlocal agreement and writing the new school concurrency element. The County is ready to assist with the school concurrency element. The goal is to have the proportionate fair share mitigation plan help assist with the construction of new schools. Capacity reservation fees might be encouraged. Whatever system is chosen, it has to be a system that the county, School Board, and municipalities can agree upon.

There will be a discussion whether there should be exemptions or discounts for downtown redevelopment or urban infill. An unintended consequence of Senate Bill 360 may be urban sprawl. In the long run, it would be in the best interest of the School Board, Volusia County and its municipalities to maintain its road network and school facilities within the urban core area. Proportionate fair share mitigation should not be utilized as an incentive to expand into rural areas.

## **RECOMMENDATION**

The School Board will take the lead role in this process. The County will assist the School Board in the interlocal agreement and the school facilities element.