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OF BOARD OF COUNTY COMMISSIONERS

MARCH 3, 2006

PROPOSED PROPORTIONATE SHARE ORDINANCE

SENATE BILL 360

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March 3, 2006

PUBLIC WORKSHOP OF THE BOARD OF COUNTY
COMMISSIONERS

PROPOSED PROPORTIONATE SHARE ORDINANCE TO
AMEND THE COMPREHENSIVE PLAN

The Board of County Commissioners of Indian River County, Florida, met in Special Session at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Tuesday, March 3, 2006, at 9:00 a.m. The purpose of this workshop was to discuss a proposed Proportionate Share Ordinance amending the Comprehensive Plan allowing developers to enter into agreements to improve roads and/or contribute toward road improvements and obtain concurrency. Present were Chairman Arthur R. Neuberger, Vice Chairman Gary C. Wheeler, and Commissioners Sandra L. Bowden, Wesley Davis and Thomas S. Lowther. Also present were County Administrator Joseph Baird, County Attorney William G. Collins II, Executive Aide to the Board Kimberly Massung, and Deputy Clerk Maria I. Suesz.

1. CALL TO ORDER

Chairman Neuberger called the meeting to order at 9:00 a.m.

2. INVOCATION

Planning Director Stan Boling delivered the Invocation.

3. PLEDGE OF ALLEGIANCE-

Vice Chairman Gary C. Wheeler led the Pledge of Allegiance to the Flag.

4. COMMUNITY DEVELOPMENT

Community Development Director Bob Keating, through a PowerPoint presentation (copy on file), discussed Senate Bill 360, the 2005 Growth Management Act, which modifies Chapter 163 of the Florida Statutes. It mandates school concurrency, changes concurrency requirements, and specifically mandates that all local governments in the State have to adopt a proportionate fair share concurrency ordinance by December 1, 2006. The intent of the Legislature is to provide a method by which the impact of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. To incorporate the proportionate fair share mitigation program into the County's concurrency management system, section 910.09(4)(a) of the LDRs must be amended, and a new section 910.12 must be added. Section 910.09(4)(a) of the County LDRs must be changed to make this section consistent with the recently adopted Comprehensive Plan Capital Improvement Element (CIE). He discussed the proportionate share concept, the draft proportionate share ordinance and its provisions and procedures. He presented a proportionate share example and illustrated formulas. Mr. Keating concluded his presentation by asking the Board to review the proposed/draft proportionate share ordinance to amend Chapter 910 of the LDRs, identify needed changes, and provide direction and comments to staff.

5. QUESTIONS AND COMMENTS FROM BOARD MEMBERS

Commissioner Davis felt Senate Bill 360 was going to make the County's current situation worse, and he saw it defeating the purpose of the County's pending ordinance.

Director Keating agreed with Commissioner Davis, but only in certain projects.

Commissioner Davis would like to see a “build-as-you-go,” rather than “pay-as-you-go,” format to alleviate a lot of concerns regarding inflation. He would like to see the County join the developer, let the developer build the road, and have the developer pay back the County with interest.

George Hamner, Vice Chairman of the Planning and Zoning Commission, posed several questions to staff regarding the cost inflation factor, the policy on limiting projects to the Capitol Improvement Plan (CIP), and concurrency.

Discussion continued regarding decisions the Board would be allowed to make under Senate Bill 360. The Board learned that the Department of Transportation would be involved in decisions regarding Strategic Intermodal System (SIS) roadways (I-95 and SR-60).

Discussion ensued and several members of the Planning and Zoning Commission asked for additional detailed information from staff regarding the procedures and requirements that would be mandated by Senate Bill 360 and the proportionate share ordinance.

Administrator Baird noticed the Impact Fee’s 15% discount was not factored into the formula used by staff and requested staff to rework the formula.

Commissioner Lowther commented that the Proportionate Share agreement would apply only to the developers with insufficient links, and the Board would have the opportunity to decide whether the 15% discount should be applied.

George Christopher, P&Z Commission member, wanted to see the Board wait until they heard from the Consultant before taking action because he was troubled with only one public hearing requirement and the 3-year period.

County Attorney Collins shared the same reservations as Mr. Christopher. He saw similarities to the way utilities’ extensions currently operated and suggested that the Board set up an analogous program, to add a link not on the CIP now, and structure an agreement where the developer pays for it and the cost recovery comes from other people entering into similar proportionate share agreements. Those costs go to repay the developer. If development stops,

and there is a recession, then those funds may be at risk. All of those costs will go through negotiation, but he said a method similar to what utilities use may be something to explore.

Commissioner Davis liked this idea a lot.

Administrator Baird said staff felt the developer should be on the line if the economy slows down.

Commissioner Wheeler felt to be fair the developer should build the road with no time limit to recoup his cost, and the County should not interfere.

Chairman Neuberger felt there has to be an end-point at some time.

Discussion ensued regarding why the County always used the 5-year end-point, which has nothing to do with the proportionate share agreement.

George Gross, Planning & Zoning member, wanted to know the rationale behind changing the definition of concurrency because of Senate Bill 360, and if staff used that definition to approve or reject projects. He learned this ordinance changes the current procedure from 3-years from Certificate of Occupancy to 3 years from obtaining a building permit.

6. PUBLIC COMMENTS

Developer **Mark Brackett** liked Attorney Collin's idea. He wanted to see additional language in the ordinance discussing a private sector percentage threshold that would mean automatic placement in the 5-year plan. He thought the formula used was fair, and he wanted to see consistency regarding public hearings.

(Clerk's note: The Chairman called for a recess at 10:29 a.m., and he reconvened the meeting at 10:34 a.m., with all members present.)

John Higgs, resident on Myrtle Way, wanted the Board to make sure that the public and the people are not saddled with a development they do not want. He agreed with Mr. Brackett who suggested they enter into a discretionary agreement and follow the process used to amend the 5-year plan. He felt it would eliminate a lot of dissension and any legal problem. **Mr. Higgs** expressed concerned that the Board may find themselves in a position to pre-approve a developer that has not gone through any process, but staff advised him it has to be financially feasible to go on the CIP, and the Board has complete discretion when a project is not in the 5-year plan. **Mr. Higgs** agreed with Mr. Christopher regarding waiting for the consultant's report and then consider the two ordinances.

Chairman Neuberger announced that they would not be taking action today.

Joseph Paladin, Chairman of the Growth Awareness Committee, a private sector group, felt our County would be less affected by Senate Bill 360 because we have taken on a management plan. He thought staff took a conservative approach to Senate Bill 360 in wording the ordinance, and he sees the proportionate share as another tool to getting roads built where normally they could not. He felt it was important to point out that part of the model ordinance was not included in the draft ordinance. He read "...under this process development may proceed despite a lack of adequate capacity or impact of the transportation system." **Mr. Paladin** concluded stating that the developer can always pay more than his impact fee allowance, but he can never pay less.

Director Keating explained that there is a provision in Senate Bill 360 that actually allows local government to approve a development project where the applicant is entering into a proportionate share agreement, even if he does not fix all the existing deficiencies. It has some qualifying wording that the proportionate share improvements have to supply some significant benefit to the impact of the transportation system. Staff did not feel it needed to be in the ordinance and felt it was not consistent with the County's philosophy.

Attorney **Ernie Cox's** stated his Firm has been engaged with staff to suggest some improvements to the ordinance, as follows:

1. define any of the terms that do not have a natural meaning;
2. include a long term concurrency management system;
3. hold a workshop or meeting regarding projects that have capacity and do not need the proportionate share, modifying the ordinance to “at the stage of PD” to pay the impact fees from “at the stage of the building permit.”

Discussion ensued by the Commissioners regarding item 3, listed above.

Director Keating explained that the County has not adopted a long-term concurrency management system and that is why it was not included in the ordinance.

Bob Swift, 2145 14th Avenue, a local developer, liked Mr. Cox's suggestions. He was hoping the proportionate share ordinance and the pending ordinance could be linked, because there is a lot of contradiction between the two. He saw the proportionate share ordinance as a very effective tool to give the County a way to solve some of the existing issues and he urged the Board to stay on track and move forward.

There was a lengthy discussion regarding linking the two ordinances.

Jerry Swanson, 2300 Ocean Drive, a commercial developer, felt the proportionate share ordinance would eliminate the problem that he had, of a developer not being able to build because of a deficient link. He said staff misleads the public when they state most roads are taken care of in the CIP when US 1 is not in the program. He was concerned that the Board is loosing the common sense aspect, because a commercial developer needs to pay the impact fees now, not later.

In response to Commissioner Neuberger's question, Director Keating said to put insufficient links on the CIP now they would have to show a written commitment and agreement in place and this would be discussed in detail later.

Bob Johnson, Coral Wind subdivision, thought the state is imposing a situation that does not exist in our County. He recommended that the County ask the State to be exempt from Senate Bill 360. He would like to see staff take examples existing in the County, such as 27th Avenue, and show exactly what the impact would be.

Nancy Offutt, representing the Treasure Coast Builders Association, made some observations regarding the proportionate share ordinance. The Builders Association encouraged the Board to go forward with collecting impact fees in advance of the project going on the road and they want them to continue in a vicious fashion. She commended Commissioner Wheeler for recognizing initial infrastructure costs and for suggesting a longer period, provided initial infrastructure can be paid back. She liked Mr. Cox's suggestion that when you have a project and you can get support to get it approved, that is when you should vest.

Joseph Paladin commented that he supports the pending ordinance admitting that it was a reaction to what was happening in the County at that time. With the adoption of Senate Bill 360 he thinks it does not keep anyone from going forward, it just keeps one from vesting. It protects a vast amount of people in the County. He just did not want the Board to feel that they went in the wrong direction.

David Etter, Castaway Cove, said it was impossible for him to justify the expense of hiring a consultant, negotiating with the County, hiring a lawyer, and paying the impact fees as a single developer, and he thought it would be great if there could be diminimus provisions.

Director Keating said one the components that the traffic consultant is looking at is a project's overall impact and how far out it will go. It will be discussed when the traffic consultant reviews his report. He has advertised and scheduled this to go to the P&Z Commission on March 9, 2006, and he was looking at mid-April to bringing back his report to

the Board. He encouraged comments and recommendations to be submitted until then through email or by contacting him or Stan Boling.

Discussion continued regarding Mr. Etter's concurrency problem.

(Clerk's Note: Commissioner Wheeler exited the meeting at 11:50 am.)

Richard Vialoski questioned if the proportionate share agreement gave the developer the right to move forward before dealing with the impact fees.

Director Keating responded that he would be dealing with impact fees first, especially if he has a deficient link.

Ray Fletcher, P&Z member, wanted to know what triggers a deficient link, and felt the most important factor was to have a fixed math formula.

Commissioner Davis disagreed.

(Clerk's note: Commissioner Lowther and Commissioner Bowden exited the meeting at 11:55 am.)

Traffic Engineer Chris Mora added that the traffic consultant was looking at other counties' models throughout the State, and he will have recommendations by April 17th, which is the end of his contract.

7. ADJOURNMENT.

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 11:56 a.m.

ALL BACKUP DOCUMENTATION ARE ON FILE IN THE OFFICE OF
THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

ATTEST:

Jeffrey K. Barton, Clerk

Arthur R. Neuberger, Chairman

Minutes Approved: _____

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