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ON PROPOSED CHANGES TO CHAPTER 910,
CONCURRENCY MANAGEMENT SYSTEM; TITLE X,
IMPACT FEES; AND CHAPTER 912, SINGLE-FAMILY
DEVELOPMENT

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January 5, 2007

BOARD OF COUNTY COMMISSIONERS
PUBLIC WORKSHOP ON PROPOSED CHANGES TO
CHAPTER 910, CONCURRENCY MANAGEMENT SYSTEM;
TITLE X, IMPACT FEES; AND CHAPTER 912, SINGLE-
FAMILY DEVELOPMENT

The Board of County Commissioners of Indian River County, Florida, met in a Public Workshop at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Friday, January 5, 2007 at 9:00 a.m. to discuss proposed changes to Chapter 910, Concurrency Management System; Title X, Impact Fees; and Chapter 912, Single-Family Development current and future water resource issues that affect Indian River County. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowden, Commissioners Wesley S. Davis, Joseph E. Flescher and Peter D. O'Bryan. Also present were County Administrator Joseph Baird, Assistant County Attorney Bill DeBraal, Executive Aide to the Board Kimberly Massung and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Planning Director Stan Boling delivered the Invocation

3. PLEDGE OF ALLEGIANCE

Vice Chair Bowden led the Pledge of Allegiance to the Flag.

4. INTRODUCTIONS AND OVERVIEW

There were no introductions. Planning Director Stan Boling, announced the purpose of the workshop was to consider specific changes to Chapter 910, Concurrency Management System; and Title X of the Land Development Regulations. He said the proposals had been reviewed and approved with changes by the Professional Services Advisory Committee (PSAC) and the Planning and Zoning Commission (PZC). He wanted public input and direction from the Board regarding the specific changes to the proposals.

5. PRESENTATION FROM STAFF

Director Boling, through a PowerPoint presentation (copy on file in the Clerk's office), summarized the three main issues and their proposed changes (vesting, assignment threshold and rationing trips). He informed the Board that if the proposed changes were adopted they would supersede the "pending Ordinance".

The Board questioned Director Boling to learn more about Planned Developments (PDs), the site plan release process, vesting and concurrency imbalance.

Director Boling explained that multi-family projects required site plan approval and were governed by the site plan release building permit process. He informed the Board that the timeframe for vesting concurrency would soon be shortened from five years to three years, resulting in smaller phases of final plats.

There was a lengthy question and answer period between the Board and staff to learn more regarding vesting, issuance of concurrency certificates, the comprehensive plan with possible changes, and the comprehensive concurrency analysis process.

Director Keating explained that if a three-year certificate expired, the capacity assigned would become available again; and if that same project would come back, they would have to “get back in line” but at that point capacity might not be available. He also noted that the clock would start when the fees were paid. Director Keating clarified that at site plan release his staff would ensure all conditions have been met and all jurisdictional agency permits have been obtained before building permit.

Director Boling informed the Board that staff was going to allow a seven year concurrency vesting for developers who would enter into agreements to produce road and capacity producing projects.

Vice Chair Bowden wanted to know what the parameters were for schools.

Director Keating explained that staff looked at the schools that were in the first three years of the five-year work program as being able to count capacity. He noted that if schools were in the five-year work program (even in the fourth and fifth year) a developer could do a proportionate share mitigation application and then count that capacity.

Director Boling detailed the outcome of the two Committees then asked the Board to make a policy decision.

There was a lengthy question and answer period between the Board and staff regarding rationing trips and pulling building permits.

6. COMMENTS AND QUESTIONS FROM THE PUBLIC

Chuck Mechling, Pointe West, wanted the Board to consider leaving “preliminary plat” in the recommendations and he wanted to see consideration in the Ordinance for attainable housing. There was a brief discussion regarding Mr. Mechling’s concerns.

Joseph Paladin, 6450 Tropical Way, would like to see a cap with a ‘number’ for building permits. He said if the Board changed the pending Ordinance and incorporated a percentage into the new Ordinance, then people could vest at “LDP” and there would be fewer projects that would be stopped because of the 10 or 20 trip cap.

Discussion ensued as Commissioner Davis suggested reserving capacity and allowing time for the Board to make a decision then implement a remedy, but Director Keating thought it would become a logistical problem.

Chairman Wheeler summarized two potential objectives: (1) ration the amount of available capacity that could be vested for a development project and prevent large projects from obtaining the last portion of available capacity; and (2) where would the money come from to build roads. He explained the validity of both and said he would like to see a percentage or number at the “tail end” so the small builders would have an opportunity to participate in the system.

Chris Mora, Assistant Public Works Director, and Director Boling, explained rationing the “right number” of trips, and the establishment of smaller assignment thresholds.

Commissioner Davis wanted to know if it would be better to go with a number or a percentage. Assistant Director Mora explained that a number would be preferred because a set number would not be easy to comprehend or enforce.

Discussion ensued and Chairman Wheeler expressed that a number was not needed at that point because the Board would direct staff to come back with a specific number and he explained how it would work.

Joseph Shulke asked Director Bowling questions regarding the rationing process and expressed that he had neutral feelings.

There was a question and answer period where Director Boling clarified PSAC's recommendation, future final platting, site plan approval, time frames on commercial sites, vesting up front and platting.

Commissioner O'Bryan asked if there was a factor in counting commercial trips and Assistant Director Mora informed him that trips were based on square footage for commercial developments. He explained that the ten trips for a single-family residence were considered "new trips" yet commercial developments took credit for trips that were already on the road.

The Chairman called a recess at 10:36 a.m. and he reconvened the meeting at 10:49 a.m. with all members present.

Assistant County Attorney DeBraal cautioned the Board that when deciding what type of development could take the final trips left in a threshold, they needed to look at equal protection issues. He suggested using the Proportionate Share Agreement to solve some of the concurrency problems.

Jerry Swanson, 3001 Ocean Drive, had been working to eliminate commercial trips out of concurrency because he did not believe commercial developers wanted to eliminate trips for a homeowner. He expressed the importance of continuing to generate income from impact fees on commercial properties and suggested the Board not let it affect the residential trip counts.

Director Keating thought commercial development should be considered in concurrency. He expressed that concurrency is to maintain the level of service, therefore it had to be reflected and felt there needed to be a differentiation between trip and trip-end.

Commissioner Flescher commented that staff could not “blanket” commercial use because it needed to be broken down. He suggested having another workshop.

Chairman Wheeler asked Director Keating if there were meetings scheduled regarding impact fees and he replied that staff is currently collecting data and that it would be a couple months before they had any products.

Bruce Barkett represented Antilles PD, and supported staff’s recommendation as proposed. He requested that Antilles (and other projects which have already achieved final plat approval) be exempt or allowed to vest up to 25% of the balance of trips.

The Board indulged in a lengthy discussion with Director Keating and Mr. Barkett regarding trips.

Richard Bialosky, 940 Oyster Shell Lane, agreed with staff but did not see a reason for the rationing element. He said if there was going to be rationing, he wanted to let proportionate share kick-in when rationing kicks-in so the rationing would not be a problem. He asked for consideration to have a separate workshop to discuss issues regarding US1.

Commissioner Davis questioned Director Keating to see if proportionate share would work and he replied that he would have to research it to see if there were any conflicts with State law.

Assistant Attorney DeBral suggested giving the proportionate share agreement a trial run to see if it would help.

Gregg Burke, 1325 S. Village Square, did not think rationing, nor widening the roads was the answer. He thought better planning would take more trips off the roads.

There was a brief discussion regarding risk, capacity, proportionate share agreements and special impact fees.

Commissioner Davis suggested implementing a “concurrency suspension” which would allow the proportionate share to kick-in or allow a buffer (with up to ten or twenty trips), since Senate Bill 360 would not kick-in until later.

Andrew Bowler, President of Indian River Habitat for Humanity, expressed that it would have a serious impact on affordable housing, so he wanted to see a “split” from when they got vested to when they would actually pay. He suggested the Board ask themselves, “what impact would this have on the affordable housing market” before moving ahead.

Chairman Wheeler remarked he would like to see this happen and Administrator Baird said there was a legal way to give interest-free, economic, and incentive loans. Administrator Baird thought this could be an option if the board voted on it.

Spencer Simmons, 6435 Tropical Way, asked the Board to remember the small builder, not the deep-pocket builders and suggested re-evaluating the trips so capacity could be expanded on the roads.

David Ederer, Sea Hawk Lane, thought the concurrency risk should be at the developer's level. He wanted the "pending Ordinance" to be lifted or Chapter 910 to be put in place (as staff recommended) and without the rationing

Chairman Wheeler and Commissioner Davis both wanted the "soft landing with few casualties". Chairman Wheeler commented that if the Board went with staff's total recommendation (with nothing at the end) then it would not benefit the small builder.

Richard Bialoski urged the Board to have a workshop for US1. He wanted staff to find a way to give the Board a "soft landing" and not kill proportionate share. He told the Board that they needed to control quantity by controlling quality.

Jean Lacerte informed the Board that he had a project north of Antilles that was six weeks from final plat approval. He emphasized that he was not vested and expected a "soft landing".

Beverly O'Neill from Sebastian, said Fellsmere Medical Center had Federal funds to build a health clinic but they could not get a permit because of concurrency. She urged the Board to make the necessary provisions to get affordable health care.

The Chairman called a recess at 12:06 p.m. and he reconvened the meeting at 12:21 p.m. with all members present.

Joseph Paladin referred to the 25% balance of trips which Mr. Barkett spoke of, and explained that the last 25% of remaining capacity could be vested without a building permit.

Commissioner O'Bryan said they needed to get away from "diminish and return" and go with a hard number, using it in five-trip increments.

Assistant Attorney DeBral stated concerns that such an ordinance could have a discriminatory effect on commercial developments.

Peter Robinson, 315 Greytwig Road, wanted to leave the “pending Ordinance” in place and suggested having a workshop on what the concurrency situation was, such as roads, water and sewer plants.

Discussion ensued regarding traffic congestion on US1, impact fees, vesting, and capacity.

Commissioner Davis liked vesting at permit because of the affordability issue felt it would give the small builder more opportunities. He thought the answer to the situation would be to start addressing the road issues.

Administrator Baird told the Board that they needed to decide, get a consistent plan and not overreact to the economy.

After a long discussion, Commissioner Davis expressed that he supported staff’s recommendation and would like to take away the “scarcity issue of concurrency”. He added that when vesting early, if capacity was there, a percentage or a number needed to be assigned.

George Christopher, 945 Painted Bunting Lane, said there needed to be rationing and he did not think it mattered if a percentage or a “meaningful” number were used. He suggested varying it depending on the size of the road. He noted a few discrepancies in the Amendments to Chapter 910 and gave an analysis to links for concurrency and traffic. He suggested the Board continue with what they were doing, and have staff come back with a recommendation and provide examples of traffic reports.

7. WRAP UP

Chairman Wheeler asked Director Boling to prepare a synopsis on what he felt could be taken from this meeting and bring it back to the Board.

Director Boling felt that vesting at final plat needed to be changed. He recommended either:

- 1.) Adopting the Professional Services Advisory Committee's (PSAC) recommendation (if someone already had a preliminary plat approval then the requirement would not affect them) or
- 2.) Using Commissioner Davis' idea (drop the requirement altogether and not require people to vest at final plat). He requested direction from the Board.

Discussion ensued as to staff's proposals and the details of vesting.

Commissioner O'Bryan believed an Ordinance needed to be adopted which would address future concurrency management and be used as a planning tool. He liked the idea that vesting was required because it would eliminate problems down the road in regards to the lots which do not have vested concurrency. He suggested the Board look at a solution for the future and not build an ordinance to solve every little current problem.

Discussion ensued between Commissioner Davis and Vice Chair Bowden regarding student station programs and school concurrency. Commissioner Davis felt they would have to reserve capacity.

Director Keating affirmed that the advantage to implementing the proposed option would be to plan for students. Further, one of the advantages of requiring vesting at final plat would allow the loading of the trips into the system, reflecting the approved projects in the database.

Chairman Wheeler asked the Board for a consensus on “vesting”.

Vice Chair Bowman liked staff’s recommendations of changing vesting at final plat. She was, however concerned about the rationing issue and thought they needed to know the trips being loaded.

Commissioner Davis wanted to get rid of the requirement.

Commissioner O’Bryan and Chairman Wheeler agreed with staff.

Joseph Paladin asked for clarification as to whether it was with the exception of the preliminary plat or being able to move forward (if the plat was in place).

Chairman Wheeler explained it was staff’s recommendation to move forward.

George Christopher wanted to know why the Board was creating an exception when this was the final plat and they were beginning to sell. He also wanted to know why they were getting “fairer treatment” than the new guy.

Director Keating indicated it was an excellent point and explained there was a trade-off—“do you increase the problem or try to make it fair for the person who started the process with certain expectations”. He expressed there was no right or wrong, no black or white but an applicant who started the process can follow through on the same rules.

The Board and staff again discussed issues which included (1) sufficient preparation at preliminary plat, (2) rationing, and (3) whether it should be a number or a percentage.

Chairman Wheeler gave an overview stating there were five (5) options: (1) 25%, (2) 15%, (3) some number in between, (4) staff's recommendation of "no rationing" and (5) Mr. Christopher's idea using a number versus a percentage. He was in favor of "some type of rationing" and would like staff to come back with something they could work and live with.

Assistant Attorney DeBraul interjected that the level of service was set by the Comprehensive Plan and the applicable Statute required them to follow the standard that was set in the Plan. To change the existing capacity number would require a change to the Comprehensive Plan.

Administrator Baird felt that the Comprehensive Plan had already been changed, did not think this should be done, but if the Board wished, he would look into it. He also believed it should be a "small number" not a "percentage".

Commissioner Davis reiterated his support for rationing and wanted to see staff come back with what they think would work best.

Assistant Attorney DeBraul said the Proportionate Share Ordinance was just passed and thought it could be used in this particular case. He mentioned that rationing had never been used, and testimony showed it would not fit our concurrency system. He suggested "no rationing" at this point, then "watch it" for the next few years to see if there would be a need for rationing in the future.

Director Keating expressed that right now each road had one capacity number and with proportionate share there would be a different capacity number. He added there would be one capacity for people who have not done a proportionate share and one for people who have. If rationing were to be done, there would also be a rationing number for each road. He informed the Board that Mr. Mora and his staff were compiling information about the number of trips that

are approved but not vested. He felt that logistically, it would be very difficult to keep “all the balls” in the air, even with today’s sophisticated computer systems.

Chairman Wheeler asked for a consensus on “rationing”.

Commissioner Davis wanted to work with a number or percentage and requested staff come back with their input.

Commissioner O’Bryan wanted rationing with a number and he wanted to see if we could “tie the circuit breaker” into proportionate share. If it cannot be done, then he would change his vote to no rationing.

Commissioners Bowden and Flescher did not want rationing.

Chairman Wheeler agreed with Commissioners Davis and O’Bryan.

Director Boling said staff would come back with a number and look at the effects on prop-share for rationing. He asked the Board if they wanted him to devise a mechanism of rationing the ration.

Commissioner Davis said, “No, eventually we are going to run out.” The Board agreed.

Director Boling acknowledged the last issue to be discussed was the “trip assignment threshold” as proposed by McMahon Associates. The recommendation would allow fifteen (15) trips on a multi-lane project being the assignment threshold not showing trip assignments below that for multi-lane and eight (8) trips for two- (2) lane roads. He referenced Mr. Christopher’s presentation then asked the Board for direction.

Commissioner Flescher was in favor of staff's recommendation.

Vice Chair Bowden was in favor of hearing what Mr. Christopher had to offer.

Administrator Baird volunteered to get with Mr. Christopher and do a national project.

Commissioner O'Bryan wanted clarification, then announced he would like to take another look at it.

Commissioner Davis wanted to see what Mr. Christopher suggested but was leaning toward staff's recommendation.

Chairman Wheeler wanted to look at Mr. Christopher's ideas then come back with numbers.

Director Boling mentioned two pending issues outside this ordinance: (1) US1 workshop and (2) Impacts on Affordable Housing. He asked the Board if a workshop should be scheduled.

Discussion ensued between Commissioner Davis and Administrator Baird regarding a Developer's Agreement. Administrator Baird will bring options and updates to the Board at a later time.

There being no further business, the Board adjourned at 1:46 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

Public Workshop/LAA/2007Minutes