

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Interlocal Agreement with City of Casselberry/Adult Entertainment Sites

**DEPARTMENT:** County Manager      **DIVISION:** \_\_\_\_\_

**AUTHORIZED BY:** J. Kevin Grace      **CONTACT:** J. Kevin Grace      **EXT.** 7211  
County Manager

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|---|
| <b>Agenda Date</b> <u>12/10/02</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input checked="" type="checkbox"/> |
| <b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>   |

**MOTION/RECOMMENDATION:**

Request Board direction regarding proposed Interlocal Agreement with the City of Casselberry regarding adult entertainment sites.

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**BACKGROUND:**

Several years ago, the County and the City of Sanford entered into an agreement regarding adult entertainment (AEE) sites. Essentially, the agreement allows either governmental entity to consider the AEE sites located in the other jurisdiction when calculating whether the available number of potential AEE sites meets constitutional requirements. At that time, the Board was briefed on the pertinent law and the yardsticks used by courts to determine whether efforts to control the number or location of AEE businesses meet all legal requirements. At that time, the County also asked the City of Casselberry to join in making the agreement a three-party arrangement. Casselberry declined and the County and Sanford proceeded without them. Casselberry went on to deal with protracted litigation regarding their efforts to control the number and location of such sites, recently winning their case; the Court concluded that the number of currently available sites is sufficient.

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| <b>Reviewed by:</b>          |
| <b>Co Atty:</b> _____        |
| <b>DFS:</b> _____            |
| <b>Other:</b> _____          |
| <b>DCM:</b> _____            |
| <b>CM:</b> <u>JKG</u>        |
| <b>File No.</b> <u>BCM01</u> |

Despite their victory, the City of Casselberry is concerned that new challenges may arise and that there may be some future requirement to designate new AEE sites within the City. To avoid any such possibility, the City has approached the County and requested an agreement similar to that between the County and the City of Sanford. Attached is a draft agreement which is virtually identical to that with the City of Sanford, the main difference being the adoption process (the Sanford agreement was adopted by ordinance, the proposed Casselberry agreement is not).

Casselberry's benefit from the proposed agreement is the ability to offer the sites in the unincorporated area without having to identify any new sites within the City should the question ever arise again. There are several benefits to the County. First, should Casselberry be forced to designate new sites, they would likely be adjacent to or near residential areas in the unincorporated area, adversely impacting our constituents. Second, jurisdictional boundaries are of no significance when dealing with AEE issues.

Staff is seeking the Board's direction regarding this proposed agreement.

Attachment – Proposed Interlocal Agreement

SEMINOLE COUNTY/CITY OF CASSELBERRY  
JOINT PLANNING INTERLOCAL AGREEMENT RELATING TO  
ADULT OR SEXUALLY ORIENTED USES

THIS JOINT PLANNING INTERLOCAL AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, FL 32771, hereinafter referred to as the "COUNTY," the CITY OF CASSELBERRY, a Florida municipal corporation, whose address is 95 Triplet Lake Drive, Casselberry, FL 32707, hereinafter referred to as "CITY."

W I T N E S S E T H:

**WHEREAS**, the CITY desires to participate in a Joint Planning Interlocal Agreement relating to adult entertainment establishments and sexually oriented uses with the COUNTY, because the city has recently successfully litigated a case involving whether the city provides sufficient reasonable alternative avenues of communication, and because of that case, the city is sensitive to the need to provide for sufficient sites to satisfy legal requirements in the future; and

**WHEREAS**, by virtue of the CITY being included in this Agreement, the COUNTY will have additional protection from any legal challenges based on allegations that the COUNTY has insufficient adult entertainment sites; and

**WHEREAS**, with the CITY included in this Agreement, the COUNTY will obtain additional protections for COUNTY residents residing in areas adjacent to the CITY, since this Agreement will enable the CITY to retain its adult entertainment separation requirements; and

**WHEREAS**, in the absence of this Interlocal Agreement the city would be forced to consider repealing the CITY's currently existing separation requirements for adult entertainment, which separation requirements protect both COUNTY and CITY residents; and

**WHEREAS**, in the absence of this Interlocal Agreement, the City would be forced to consider allowing adult uses in the few industrial zones located in the CITY, and due to the primarily residential nature of the CITY, these industrial zones are located directly adjacent to residential areas, creating a great deal of concern among the nearby residents; and

**WHEREAS**, the CITY and the COUNTY constitute the same relevant market for the adult entertainment businesses; and

**WHEREAS**, there have been no applications filed for new adult entertainment locations in Casselberry in over six (6) years; and

**WHEREAS**, in *Boss Capital v. City of Casselberry*, 6:96-cv-463-Orl-22DAB, U.S District Court, Middle District, Order dated January 31, 2002, the Court found it is difficult to tell where the Casselberry City limits begin and end, and that adult entertainment businesses located outside the City provide adequate opportunities for adult expression, and that the City's existing sites were well within accepted limits for adult entertainment sites based on the City's size and primarily residential nature; and

**WHEREAS**, the sites identified in this Interlocal Agreement are also well within acceptable limits and provide reasonable alternative avenues of expression; and

**WHEREAS**, it is beneficial to the public for local governments to work together in

a spirit of harmony, collaboration and cooperation, and the CITY and the COUNTY have worked together in the past as evidenced by numerous interlocal agreements such as, for example, the Intergovernmental Planning Coordination Agreement of 1997, dated February 22, 1997, between the CITY and the COUNTY, and the Seminole County School Board Interlocal Agreement of 2001, which shall remain in effect subsequent to the effective date of this Agreement; provided, however, that the terms of this Agreement shall prevail as to adult and sexually oriented land uses; and

**WHEREAS**, the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act (Part II, Chapter 163, Florida Statutes), the Rules of the Florida Department of Community Affairs (in particular Rule 9J-5.015, Florida Administrative Code), and other applicable law provide for intergovernmental coordination in the comprehensive planning process; and

**WHEREAS**, the provisions of this Agreement are consistent with the State Comprehensive Plan (Chapter 187, Florida Statutes); the Strategic Regional Policy Plan adopted by the East Central Florida Regional Planning Council and the land development regulations, comprehensive plans and charters of the CITY and the COUNTY; and

**WHEREAS**, it is desirable, to the maximum extent practicable and conditioned upon a land use and legal analysis by both the COUNTY and the municipalities located within the jurisdictional limits of the COUNTY, for the land areas of Seminole County, both within incorporated municipalities and in the unincorporated areas of the COUNTY, to have essentially uniform regulation of establishments which provide what is commonly referred to as "adult entertainment" and businesses which are sexually oriented in nature; and

**WHEREAS**, Seminole County Ordinance Number 97-28, as amended by Seminole County Ordinance Numbers 98-3 and 98-13, as well as City of Casselberry Ordinances Numbers 98-922, 99-934 and 99-968 detail the general types of establishments and businesses which are considered “adult entertainment establishments” and “sexually oriented businesses” (also referred to as “adult and sexually oriented businesses” herein) although the definitions of those terms are not necessarily identical or static and may evolve from time to time; and

**WHEREAS**, the identification of multi-jurisdictional parcels at which adult or sexually oriented uses could be located with regard to the CITY’S and the COUNTY’S constitutional obligations to provide adequate alternative avenues or channels of communication or expression would be in the best interests of the citizens of Seminole County; and

**WHEREAS**, the legislative findings set forth in Seminole County Ordinance No. 97-28, as amended by Seminole County Ordinance Numbers 98-2 and 98-13, as well as City of Casselberry Ordinance Nos. 98-922, 99-934 and 99-968, are hereby adopted as if set forth fully herein; and

**WHEREAS**, the provisions of Section 163.3171(3), Florida Statutes, provide for the joint exercise of land use planning and regulatory powers under the Local Government Comprehensive Planning and Land Development Regulation Act and the parties to this Agreement desire to cooperate relative to land use and regulatory jurisdiction over adult entertainment establishments and sexually oriented businesses; and

**WHEREAS**, it is the intent of the parties that developers of adult uses be treated equally with other developers in terms of site plan and other approvals that may be

considered when an application is made for such use on land which is assigned the appropriate zoning classification; and

**WHEREAS**, it is the intent of the parties to insure that all State laws relative to concurrency requirements are adhered to relative to the provisions of adequate facilities and infrastructure; and

**WHEREAS**, it is hereby found and determined by the parties that the Joint Sites have accessible water and sewer service or can be served by wells and septic systems, have a roadway system that can serve development subject to standard land development regulations to which all other development activities are subject, have adequate solid waste services available, have fire and public safety services reasonably available, and otherwise have the adequate capability to be served with all necessary public facilities requisite for a development to be approved and to move forward and through the development processes; and

**WHEREAS**, Section 163.01, Florida Statutes, authorizes the exercise by agreement between two (2) or more public agencies of any power common to them and each of the parties hereto have the power and authority to regulate adult entertainment establishments and sexually oriented businesses; and

**WHEREAS**, this Agreement is authorized by the provisions of Chapters 125, 163 and 166, Florida Statutes, and other applicable law,

**NOW, THEREFORE**, in consideration of the premises, mutual covenants, and agreements, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties do

hereby covenant and agree as follows:

SECTION 1. RECITALS. The foregoing recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. PURPOSE/INTENT/JOINT PLANNING AREA.

(a) The COUNTY and the CITY have reviewed their respective comprehensive plans and land development regulations relative to the provisions of adequate alternative avenues or channels of communication or expression with regard to siting adult or sexually oriented uses in their respective jurisdictions. It was found by the parties that, at the time of this Agreement, their comprehensive plans, codes and ordinances and land development regulations are consistent with the requirements of law as set forth in authoritative judicial precedent. It was also found, however, that it would be in the best interests of all jurisdictions to provide for a number of adult and sexually oriented business uses sites that are available for the jurisdictions and to be developed with adult and sexually oriented uses in both the COUNTY and the CITY regardless of the actual jurisdictional location of the sites.

(b) The purpose of this Agreement is to provide for multi-jurisdictional siting of adult and sexually oriented land uses with sites that are part of the relevant real estate market, and to thereby be compliant with the requirements of law relative to protection of what may be constitutionally protected expression as determined by the courts of this nation. Likewise, the purpose of this Agreement is to provide for the seamless movement of adult and sexually oriented use sites from unincorporated Seminole County into jurisdictional limits of the CITY through annexation without the COUNTY's available sites

being reduced in number as a result of such change in land use jurisdiction.

SECTION 3. JOINT SITES.

(a) The real property pertinent to this Agreement are those lots, tracts or parcels of real property located in either the CITY or the COUNTY, and consistent with the appropriate party's land development regulations, permissible for adult and sexually oriented uses, or lots, tracts or parcels currently used for adult entertainment as lawfully existing non-conforming uses (hereby designated as the "Joint Sites" and be referred to as such herein).

(b) The Joint Sites shall be eligible for the issuance of development permits consistent with the comprehensive plan and land development regulations of the jurisdiction wherein the Sites are located; provided, however, that, if a Site currently in the COUNTY is annexed into a CITY, it shall be subject to the comprehensive plan and land development regulations of the COUNTY.

(c) It is the intent of the parties to renegotiate the terms of this Agreement if those sites that are part of the Joint Sites, but which are currently located within unincorporated Seminole County, are annexed into the CITY. It is the intent of the CITY to not annex said sites.

(d) It is also the intent of the parties that another city or cities may participate in the benefits and burdens of this Agreement.

(e) It is the CITY's intent that all existing adult entertainment establishments located in the City at the time of this Agreement are lawfully existing non-conforming uses, as defined and regulated by the Casselberry Land Development Regulations.

SECTION 4. COMPREHENSIVE PLANNING, FUTURE LAND USES AND PROVISION OF INFRASTRUCTURE.

(a) The parties agree that the undeveloped Joint Sites may be developed in accordance with the applicable land development regulations and associated case law, (consistent with Section 3(b)) as adult entertainment establishments or sexually oriented businesses, as defined by Seminole County Ordinance Number 97-28, as amended by Ordinance Numbers 98-2 and 98-3.

(b) The parties agree to cooperate and collaborate to the maximum extent practicable to ensure that adequate infrastructure is available to the Joint Sites in order to ensure that the Joint Sites are included in the relevant real estate market applicable to the permitted uses on the Joint Sites subject, however, to the obligations of a developer under State law (and applicable local codes and ordinances) to provide for adequate public facility infrastructure. It is the intent of the parties to treat developers of adult and sexually oriented uses in a way, fashion and manner; under such terms and conditions; and with such practices and procedures that are typical and normal to development review and approval processes made applicable to other forms of development. Locational decisions aside relative to land use designations and zoning classifications assigned to particular parcels of property, it is the intent of the parties to allow for the permitting and approval of adult and sexually oriented uses consistent with the practices and procedures that are applicable to other forms and types of development.

(c) With regard to any proposed amendment to either the comprehensive plan or the land development regulations of the parties which pertains to adult and sexually

oriented uses, and during the development and drafting phases of the respective comprehensive plans, plan amendments and land development regulations of the CITY and the COUNTY, CITY and COUNTY staff shall transmit respective draft planning or regulation documents to the other as part of the intergovernmental coordination mechanisms. Each staff shall compare each other's plan or plan amendments to determine whether proposed objectives, goals and policies and regulatory provisions are consistent with the other party's plan and regulatory provisions.

(d) Notwithstanding the legal effect of annexations, the adult and sexually oriented use sites located in the CITY shall continue to be deemed and constitute Joint Sites and shall be subject to the provisions of this Agreement.

(e) Nothing herein is intended to confer standing on either party to challenge the other's land development regulations. Standing is to be determined by a court of law.

SECTION 5. CONFLICT RESOLUTION. The parties agree that any disputes arising under this Agreement shall be subject to the provision of the "Interlocal Agreement on Mediation and Intergovernmental Coordination," dated January 24, 1995.

SECTION 6. TERM. This Agreement shall be in effect for a five (5) year period. This Agreement shall be automatically renewed for a subsequent five (5) year period unless one (1) of the parties thereto gives the other ninety (90) days advance notice, in writing, of intention to not renew the Agreement.

SECTION 7. NOTICE. Contact persons for this Agreement shall be the City Manager and the County Manager.

CITY OF CASSELBERRY

Jack Schluckebier, City Manager  
City of Casselberry  
95 Triplet Lake Drive  
Casselberry, FL 32707

SEMINOLE COUNTY

Kevin Grace, County Manager  
Seminole County Services Building  
1101 East First Street  
Sanford, FL 32771

SECTION 8. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

SECTION 10. TIME. Time is of the essence of this Agreement.

SECTION 11. CONFLICT OF INTEREST. The parties agree that the conduct of their offices and employees are subject to the provisions of Part III, Chapter 112, Florida Statutes.

SECTION 12. EFFECTIVE DATE. This Agreement shall take effect on the date that this Agreement is fully executed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day, month and year above written.

ATTEST:

\_\_\_\_\_  
Thelma McPherson, City Clerk

CITY OF CASSELBERRY

By: \_\_\_\_\_  
Bruce A. Pronovost, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Maryanne Morse  
Clerk to the Board of County  
Commissioners of Seminole County,  
Florida

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

By: \_\_\_\_\_  
Daryl G. McLain, Chairman

Date: \_\_\_\_\_

For use and reliance  
of Seminole County only.  
Approved as to form and  
legal sufficiency.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_,  
regular meeting.

\_\_\_\_\_  
County Attorney