

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

[CONTINUED FROM THE 11/07/06 MEETING]

SUBJECT: Adoption of Proportionate Share Ordinance

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Dori L. DeBord **CONTACT:** Jeff Hopper EXT. 7377

Agenda Date <u>12/12/06</u> Regular <input type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input checked="" type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

1. Enact the Proportionate Share Ordinance; or
2. Deny the Proportionate Share Ordinance.

Countywide Jeff Hopper, Senior Planner

BACKGROUND:

The original Florida Growth Management Act of 1985 included a requirement that all local governments adopt "Concurrency Management" systems to ensure that necessary public facilities are available concurrent with the impacts of development. Concurrency required local governments to adopt "Levels of Service" for public services such as transportation (i.e., roadway capacity). As a part of development approval, a county or city was required to evaluate whether the service needs of a proposed development exceeded available capacity including any scheduled improvements. If adequate capacity was not available, local governments could not permit a development unless certain conditions applied.

Amendments to Florida's Growth Management legislation in 2005 directed local governments to revise their concurrency management ordinances to allow for "proportionate share" contributions from developers toward transportation concurrency requirements. This revision must be completed by December 2006. The intent of the proportionate share option is to allow applicants to proceed with a development when transportation service capacity is not available but the proposal is otherwise consistent with the Comprehensive Plan. This opportunity is created by allowing the developer to contribute his or her share of the cost of improving the deficient transportation facility.

In addition to the Proportionate Share Ordinance itself, amendments to the Comprehensive Plan revising concurrency management are required. The Comprehensive Plan amendments addressing

Reviewed by: _____ Co Atty: <u>KL</u> DFS: _____ OTHER: _____ DCM: <u>SH</u> CM: <u>Co</u> File No. <u>ph130pdp10</u>
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concurrency management are proceeding as part of the Fall 2006 amendment cycle and are scheduled for adoption on today's agenda. Along with the other agenda items related to the Fall 2006 cycle, this item was continued from the November meeting to permit staff to generate a response to the Florida Department of Community Affairs' Objections, Recommendations and Comments (ORC) Report.

LAND PLANNING AGENCY (LPA) RECOMMENDATION

On November 1, 2006, the LPA recommended APPROVAL of the ordinance.

STAFF RECOMMENDATION:

Staff recommends that the Board enact the Proportionate Share Ordinance.

Attachments: Executive Summary by Public Works Department
 Proposed Ordinance
 Property Rights Analysis
 Economic Impact Statement

Proportionate Share Ordinance – Executive Summary

The 2005 amendments to Florida's growth management legislation directed local governments to enact concurrency management ordinances by December 1, 2006, to allow for "proportionate share" contributions from developers toward concurrency requirements (see §163.3180(16), F.S., in Appendix A of statute). The intent of the proportionate share option is to provide applicants for development an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility or other appropriate transportation system improvements. The newly adopted proportionate share requirements would not apply until a deficiency is identified through the County's Concurrency Management System (CMS), which is currently in place.

As directed by the legislation, the Florida Department of Transportation (FDOT) created a model ordinance for proportionate share contributions for use by local governments. The final version of this ordinance was released on February 14, 2006. The proposed Seminole County Proportionate Share Ordinance is based on the model ordinance prepared by FDOT.

Even though Seminole County has not had a formal proportionate share ordinance in place as part of our CMS, we have been accepting voluntary proportionate share payments for developments that impact roadways and intersections where a deficiency has been identified. The procedures that are already in place to establish these proportionate share payments are consistent with the new proposed Seminole County Proportionate Share Ordinance.

Proportionate share contributions are different from transportation impact fees. The primary difference is that the proportionate share payment outlined in Section 163.3180(16), F.S., is intended as a means to address a specific transportation concurrency issue, such as a road segment or segments operating below the adopted level-of-service standard; whereas transportation impact fees are imposed on each new development to pay for that development's impact on the entire transportation system. The proposed Seminole County Proportionate Share Ordinance addresses transportation impact fee credit for proportionate share contributions under certain conditions as required by Section 163.3180(16), F.S.

Seminole County still has the responsibility to review a development to ensure that it is consistent with the Comprehensive Plan or land development regulations. This review process will occur regardless of a development's ability to meet concurrency through proportionate share, and will often result in improvements to the project's site access such as right-of-way dedication, turn lanes, or other improvements required by the development's impact.

AN ORDINANCE AMENDING CHAPTER 10 OF THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY; ~~ADDING SECTION 10.9~~ PROVIDING FOR A METHODOLOGY FOR ASSESSING PROPORTIONATE FAIR-SHARE MITIGATION FOR TRANSPORTATION CONCURRENCY MANAGEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Seminole County Government adopted a Concurrency Management System in its Land Development Code pursuant to the requirements of Chapter 163, Florida Statutes; and

WHEREAS, the Florida Legislature enacted Senate Bill 360 during its regular 2005 session, requiring revisions to local Concurrency Management Systems to enable developers to proceed with projects that are otherwise consistent with a local comprehensive plan but lack funding; and

WHEREAS, Section 163.3180(16)(a), Florida Statutes, requires local governments to adopt by ordinance a methodology for assessing proportionate fair-share mitigation options no later than December 1, 2006; and

WHEREAS, the County has prepared a private property rights analysis relating to this Ordinance and has made the analysis available for public review in accordance with the requirements of the Seminole County Comprehensive Plan; and

WHEREAS, the County has prepared an economic impact statement relating to this Ordinance and has made the statement available for public review in accordance with the provisions of the Seminole County Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Amendments to Chapter 10, Concurrency Management. Chapter 10, of the Land Development Code of Seminole County, is amended to add a new Section 10.9 as follows:

Sec. 10.9 Proportionate fair-share option

(A) Purpose and intent

The purpose of this ordinance is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with §163.3180(16), Florida Statutes.

(B) Applicability

The Proportionate Fair-Share Program shall apply to all developments in the County that impact a road segment in the County Concurrency Management System and have been notified of a failure to achieve transportation concurrency on a roadway segment or segments. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate share under §163.3180(12), Florida Statutes, developments meeting the de minimis standards under §163.3180(6), Florida Statutes or to developments exempted from concurrency as previously provided in section 10.5, as amended from time to time, of this chapter.

(C) General requirements

(1) An applicant may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair-share contribution, pursuant to the following requirements:

(a) The proposed development is consistent with the Comprehensive Plan and applicable land development regulations.

(b) The County five-year Capital Improvement Program includes transportation improvement(s) that, upon completion, will accommodate additional traffic generated by the proposed development, as determined by the County Engineer.

(2) The County Engineer may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will accommodate additional traffic generated by the proposed development, as projected by County staff using best available data and methodologies, but is not contained in the Capital Improvement Program where one of the following apply:

(a) The County adopts, by resolution or ordinance, a commitment to add the improvement to the five-year Capital Improvement Program no later than the next regular update. To qualify for consideration under this Section, the proposed improvement must be reviewed by the County Engineer and must be determined to be financially feasible. "Financially feasible" means that additional developer contributions or other funding sources are anticipated, during a period not to exceed 10 years, to fully mitigate the specified impact(s) on the identified transportation facility or facilities.

(b) If, in the opinion of the County Engineer, the funds in the adopted County five-year capital improvement program are insufficient to fully fund construction of a transportation improvement required by the Concurrency Management System, then a proportionate fair-share payment may be required for another improvement which will, in the opinion of the County Engineer, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share component must be adopted into the five-year CIP of the Comprehensive Plan at the next annual Capital Improvements Element update.

(3) Any improvement project proposed to meet the developer's fair-share obligation must meet generally accepted design standards for the State of Florida and the County.

(D) Application Process

(1) County staff shall notify an applicant in writing of a failure to satisfy transportation concurrency requirements. Upon receipt of such notice, applicants may submit a proposed proportionate fair-share calculation to the County Engineer or designee for review.

(2) Pursuant to §163.3180(16)(e), Florida Statutes, proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation (FDOT).

(3) The County Engineer shall determine whether a proportionate fair-share calculation is sufficient and

eligible. Upon a finding of sufficiency, a proportionate share agreement will be prepared between the County and the applicant. The stipulations of the agreement shall include but not be limited to the amount of payment, description of work and timing of payment. Proportionate share agreements shall be approved and executed by the Board of County Commissioners.

(E) Determining proportionate fair-share obligation

(1) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and/or contribution of transportation improvements.

(2) A development shall not be required to pay more than its proportionate fair-share. The calculated value of the proportionate fair-share mitigation for the impacted transportation facilities shall not differ regardless of the method of mitigation.

(3) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Chapter 163.3180 (12) Florida Statutes, as follows:

$$\text{Proportionate Share} = \sum [((\text{Development Trips}_i) / (\text{SV Increase}_i)) \times \text{Cost}_i] - \text{IMPACT FEE CREDITS}$$

Where:

Development Trips_i = Those trips from the development that are assigned to roadway segment i and have triggered a deficiency per the Concurrency Management System;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment i per Section 10.9(E);

Cost_i = Adjusted cost of the improvement to segment i. Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

IMPACT FEE CREDITS = See Section 10.9(f)(1) where applicable.

(4) For the purposes of determining proportionate share obligations, the County shall determine improvement costs based upon the projected future cost of the improvement as obtained from the Capital Improvements

Program or another method approved by the County Engineer.

(5) The County has the option to accept right-of-way dedication for all or a portion of the proportionate fair-share payment. Credit for the dedication of the non-site related right-of-way shall be assigned a value by appropriate County staff or, at the option of the applicant, by fair market value established by an independent appraisal approved by the County and at no expense to the County. The applicant shall supply a survey and legal description of the land and a certificate of title or title search of the land to the County at no expense to the County. If the estimated value of the right-of-way dedication proposed by the applicant is less than the County estimated total proportionate fair-share obligation for that development, then the applicant must also pay or provide for mitigation of the difference.

(F) Impact fee credit for proportionate fair-share mitigation

(1) Proportionate fair-share mitigation shall be applied as a credit against impact fees if the proposed improvement is on the list of approved projects in the most recent County Impact Fee Ordinance and Technical Report. Credits will be given for that portion of the impact fees that would have been used to fund the improvements on which the proportionate fair-share contribution is calculated. The portion of impact fees available for the credit will be based on the historic distribution of impact fee funds to the arterial roadways and collector roadways in the appropriate impact fee district. Impact fee credits shall be calculated at the same time as the applicant's proportionate share obligation is calculated.

(2) Any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other parcel or parcels of real property within the County.

(G) Appropriation of fair-share revenues

(1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the County Capital Improvements Program.

(2) In the event a scheduled facility improvement is removed from the Capital Improvement Program, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of Section 10.9 C(2)(b).

(3) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share

obligation calculated under Section 10.9(E), then the County shall reimburse the applicant for the excess contribution using impact fee credits. These credits will not be transferable as set forth in Section 10.9 (2) of this Section. Where excess contributions exceed impact fee credits, the County may reimburse such funds as cash or through other methods acceptable to the applicant and Planning & Development Director.

Section 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provision of this Ordinance are declared severable.

Section 4. Codification. It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Land Development Code of Seminole County, Florida and the word "Ordinance" may be changed to "Section," "Article," or other appropriate word or phrase and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; provided, however, that Sections 3, 4 and 5 shall not be codified.

Section 5. Effective Date. This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk to the Board of County Commissioners in accordance with Section 125.66, Florida Statutes.

ENACTED this 12TH day of December 2006.

BOARD OF COUNTY COMMISSIONERS
OF SEMINOLE COUNTY, FLORIDA

By: _____
CARLTON D. HENLEY,
Chairman

**Seminole County
PRIVATE PROPERTY RIGHTS ANALYSIS
Proportionate Share Ordinance**

Date:	9/12/06	Department/Division:	Planning and Development/ Planning Division
Contact:	Jeff Hopper	Phone:	407-665-7377
Action:	Ordinance amending the Concurrency Management provisions of the Land Development Code		
Topic:	Proportionate Share Ordinance		

Describe Project/Proposal

The county is proposing to amend the concurrency management section of the land development code in response to changes in state law. Recent amendments to Florida's Growth Management legislation directed local governments to allow for "proportionate share" contributions from developers toward transportation concurrency requirements. The intent of the proportionate share option is to allow applicants to proceed with a development when transportation service capacity is not available but the proposal is otherwise consistent with the Comprehensive Plan. This revision to the Code would allow the developer to contribute his or her share of the cost of improving the deficient transportation facility.

Estimated Economic Impact on Individuals, Businesses, or Government

This ordinance does not have an economic impact on individuals or government. However, it may have a beneficial impact on businesses by allowing certain developments to proceed in a faster time frame than would otherwise be permitted.

Anticipated New, Increased or Decreased Revenues

Although the County will receive and temporarily hold funds to be used in upgrading or expanding transportation facilities, it is not anticipated that this ordinance will affect the overall supply of revenue.

Method Used in Determining Analysis

The method of analysis involved the potential impacts from adopting the proposed amendments to the Land Development Code, the accompanying amendments to the Seminole County Comprehensive Plan (to support the code changes), and staff expertise.

Citation

All land development regulations shall be evaluated prior to their enactment to determine the extent and scope of their impact upon private property rights (Policy FLU 12.3 Evaluation of New Land Development Regulations, Seminole County Vision 2020 Plan, May 2001).

**Seminole County
ECONOMIC IMPACT STATEMENT
Proportionate Share Ordinance**

Date:	9/12/06	Department/Division:	Planning and Development/ Planning Division
Contact:	Jeff Hopper	Phone:	407-665-7377
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Describe the Direct Economic Impact of the Project/Proposal upon the Operation of the County

This ordinance will not have a direct economic impact upon the operation of the County.

Describe the Direct Economic Impact of the Project/Proposal upon the Property Owners/Tax Payers/Citizens who are Expected to be Affected

Little or no direct impact on property owners is anticipated as a result of this ordinance.

Identify and Potential Indirect Economic Impacts, Positive or Negative, Which Might Occur as a Result of the Adoption of the Ordinance

Indirect impacts are likely to be positive, as land values should rise due to new flexibility in County regulations to facilitate new development.

Citation

Seminole County Home Rule Charter.