ITEM #_____

SEMINOLE COUNTY GOVERNMENT
LAND PLANNING AGENCY / PLANNING AND ZONING COMMISSION
AGENDA MEMORANDUM

SUBJECT: Amendments to the Land Development Code regarding establishment of a Uniform School Concurrency Process

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

AUTHORIZED BY: Alison Stettner AS **CONTACT:** Jeff Hopper EXT. 7377

Agenda Date 8/5/2009 **Regular** ☐ **Work Session** ☐ **Briefing** ☐
Special Hearing – 6:00 ☐ **Public Hearing – 7:00** ☒

MOTION/RECOMMENDATION:

1. **RECOMMEND APPROVAL** of the proposed amendments to the Land Development Code regarding establishment of a uniform School Concurrency process; or
2. **RECOMMEND DENIAL** of the proposed amendments to the Land Development Code regarding establishment of a uniform School Concurrency process; or
3. **CONTINUE** the item to a time and date certain.

Countywide Jeff Hopper, Senior Planner

BACKGROUND:

Recent changes in state law require that schools be included among the public facilities subject to concurrency management, an administrative process that tracks available capacity and identifies deficits in such facilities. The purpose of concurrency is to ensure that when new development occurs adequate capacity is available to meet the needs of the development. Facilities and services currently subject to concurrency management include sanitary sewer, potable water, transportation, and drainage.

Under the Comprehensive Plan, the County must maintain a system for review of all development applications which, if granted, would affect the levels of service of the designated public facilities. Such a system of review must ensure that the County does not issue a final development order or development permit which results in a reduction in the levels of service below the standards adopted in the Comprehensive Plan.

Reviewed by:
Co Atty: KCT
DFS:
OTHER:
DCM:
CM:
File No.

Section 163.3180(13), Florida Statutes, calls for local governments to create a uniform school concurrency system based on an adopted Public School Facilities Element as part of its Comprehensive Plan that establishes level of service standards, creates concurrency

service areas and provides for a number of other related intergovernmental coordination and implementation processes established by interlocal agreement.

The intent of school concurrency is to create a link between development and school capacity, and to require greater coordination between local governments and school districts.

In 2007, the County, the School Board, and the municipalities developed an interlocal agreement in addition to a Public School Facilities Element, as required by Section 163.31777, 163.3180(13) and 163.3177(12), Florida Statutes (F.S.).

Beginning in 2007, the County and its municipalities began coordinating with the School Board in preparing, amending, and jointly approving financially feasible public school facilities programs and adoption of these programs into County and municipal comprehensive plans, as required by Section 163.3180(13), F.S.

The attached ordinance addresses the new state requirements and implements Objective PSF 2 of the Public Schools Element of the Comprehensive Plan by establishing the required review process.

STAFF RECOMMENDATION:

Staff recommends approval of amendments to the Land Development Code regarding establishment of a uniform School Concurrency process.

Attachments:

Ordinance
Economic Impact Statement
Private Property Rights Statement

ORDINANCE NO. 2009-____ **SEMINOLE COUNTY, FLORIDA**

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY, FLORIDA; AMENDING CHAPTER 2, SECTION 2.3 BY ADDING DEFINITIONS FOR CONCURRENCY SERVICE AREA (CSA), EDUCATIONAL FACILITY, FLORIDA INVENTORY OF SCHOOL HOUSES (FISH), PERMANENT SCHOOL CAPACITY, PERMANENT STUDENT STATION, PROPORTIONATE SHARE MITIGATION, SCHOOL CAPACITY AVAILABILITY LETTER OF DETERMINATION (SCALD), SCHOOL IMPACT ANALYSIS (SIA), AND STUDENT STATION; AMENDING CHAPTER 10 TO REVISE SECTION 10.2 THROUGH 10.6 WITH CLARIFICATIONS AND UPDATES TO GENERAL CONCURRENCY REQUIREMENTS; AND ADDING SECTION 10.10, UNIFORM SCHOOL CONCURRENCY PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Seminole County Comprehensive Plan adopted by the Board of County Commissioners on December 9, 2008 establishes a Public School Facilities Element and requires incorporation of such facilities into the Concurrency Management process; and

WHEREAS, Section 1013.33, F.S., requires that the location of public educational facilities must be consistent with the Comprehensive Plan and implementing land development regulations of the appropriate local governing body; and

WHEREAS the Board of County Commissioners has entered into an Interlocal Agreement with the Cities of Longwood, Altamonte Springs, Oviedo, Winter Springs, Lake Mary, Sanford, Casselberry, and the Seminole County School Board for public school facility planning and school concurrency; and

WHEREAS, the County, Cities and the School Board recognize their mutual obligation and responsibility for the education, nurturing and general well-being of the children within their community; and

WHEREAS, an economic impact statement has been prepared and is available for public review in accordance with the provisions of the Seminole County Home Rule Charter; and

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

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

Section 1. Amendments to Chapter 2, Definitions. Chapter 2, of the Land Development Code of Seminole County, is amended as follows (underlines are additions, strikethroughs are deletions, and remaining text is unchanged):

Sec. 2.3. Definitions.

Concurrency Service Area (CSA): A geographic unit promulgated by the School Board and adopted by local governments within which the level of service is measured when an application for residential development is reviewed for school concurrency purposes.

Educational Facility: The buildings, equipment, structures, ancillary and special educational use areas that are built, installed or established to serve public school purposes.

Florida Inventory of School Houses (FISH): Data, inventory and numbering system used by the Florida Department of Education, Office of Educational Facilities for parcels of land, buildings and rooms in public educational facilities (hereinafter referred to as "FISH).

Permanent School Capacity: The optimal number of students that can be housed for instruction at an educational facility as prescribed in SBE Rule 6A-2.0010, F.A.C. in permanent and modular type classroom spaces designated in FISH.

A. Permanent capacity of an elementary school is equal to the sum of student stations assigned to permanent and modular classrooms at the school.

B. Permanent capacity of a middle school is 90% of the sum of student stations assigned to permanent and modular classrooms at the school.

C. Permanent capacity of secondary level [high] schools is less than the sum of student stations assigned to permanent and modular classrooms at the school. The amount less is prescribed in SBE Rule 6A-2.0010, F.A.C. For high schools exceeding 1500 satisfactory student stations, the school capacity is 95% of the sum of student stations assigned to permanent and modular classrooms at the school.

Permanent Student Station: A designated space contained within a permanent building or structure that can accommodate a student for an instructional program and is designated satisfactory in FISH data. The total number of permanent student stations at an educational facility is determined by the sum of individual permanent student stations at the facility. Permanent buildings or structure types are designated by the School Board and include permanently constructed buildings having a life expectancy of 50 years or more and modular buildings as identified in FISH, having a life expectancy exceeding 35 years or more.

Proportionate Share Mitigation: A developer improvement or contribution identified in a binding and enforceable agreement between the Developer, the School Board and the local government with jurisdiction over the approval of the development approval to provide compensation for the additional demand on educational facilities created through the residential development of the property, as set forth in Section 163.3180(13)(e), F.S.

School Capacity Availability Letter of Determination (SCALD): A letter prepared by the School Board of Seminole County, identifying if school capacity is available to serve a residential project, and if capacity exists, recommending whether the proposed development should be approved or has been vested.

School Impact Analysis (SIA): A formal description of a residential project subject to school concurrency review provided by the developer for School Board review in accordance with Section 10.10(a).

Student Station: A satisfactory space contained within a building or structure as designated in FISH that can accommodate a student for an instructional program.

Section 2. Amendments to Chapter 10, Concurrency Management. Chapter 10 of the Land Development Code of Seminole County is amended as follows:

Sec. 10.2. Findings, authority and intent.

(a) The Board of County Commissioners of Seminole County hereby finds that the requirements and standards of this chapter for transportation facilities are necessary to ensure the public benefit of safe and convenient travel as well as providing other public benefits relating to the health, comfort, safety and welfare of the citizens of Seminole County. ~~The Board of County Commissioners further finds that the number of traffic accidents involving property damage and injuries increase as congestion increases on the county's roads and that fire, rescue and law enforcement response times increase as traffic congestion increases.~~ The Board of County Commissioners further finds that the standards and requirements in this chapter for parks and recreation, potable water, sanitary sewer, solid waste, stormwater management, public schools, and mass transit

are necessary and appropriate to protect the health, safety, comfort and welfare of the citizens of the county and to protect the sensitive environmental and natural resources of the county.

(b) The ~~1991~~ Seminole County Comprehensive Plan was adopted by the Board of County Commissioners of Seminole County, pursuant to the requirements of Section 163.3184, Florida Statutes, by means of Seminole County Ordinance No. ~~91-13~~ 2008-44. The county is required, by the provisions of Section 163.3202, Florida Statutes, to adopt land development regulations within one (1) year of the Comprehensive Plan's submission to the Florida Department of Community Affairs that provide that public facilities and services meet or exceed the standards established in the ~~1991~~ Seminole County Comprehensive Plan. Section 163.3202, Florida Statutes, further provides that the county shall not issue any development orders or permits which result in a reduction in the level of services for the affected public facilities below the level of service standards established in the ~~1991~~ Seminole County Comprehensive Plan. Rule 9J-5.0055, Florida Administrative Code, further defines the parameters for evaluating development orders and permits and includes the minimum requirements for a concurrency management system.

Sec. 10.3. Concurrency; general provisions.

(a) No final development order shall be issued by the county ~~after March 31, 1992~~ and no previously approved development may cause a change in use upon a parcel of property unless there is sufficient available capacity of concurrency public facilities to meet the standards for levels of service as established in the ~~1991~~ most recently adopted Seminole County Comprehensive Plan for the existing population, vested development as projected by the Planning and Development Director and for the proposed development according to the following time requirements:

(1) As to potable water, sanitary sewer, solid waste and drainage concurrency public facilities, the ~~necessary concurrency public facilities must be available and in place at the time the development is authorized in accordance with the 1991 Seminole County Comprehensive Plan or the development order or permit is issued subject to the condition that the necessary concurrency public facilities will be in place when the impacts of the development occur or the necessary concurrency public facilities are under construction at the time the development is authorized or the necessary concurrency public facilities are guaranteed in an enforceable development agreement that requires that the necessary facilities will be in place when the impacts of development occur. All final development orders shall be conditioned on the requirement that building permits shall not be issued for the subject property until the capacity of the public facility or facilities set forth in this subsection meet the adopted levels of service standards for said concurrency public facility or facilities.~~ services shall be in place and available to serve a new development no later than the issuance of a certificate of occupancy or its equivalent. In addition, prior to approval of a building permit or its functional equivalent, the County shall consult with the applicable water supplier to determine whether adequate water supplies, including private on-site wells, to serve the new development will be available no later than the anticipated date of issuance by the

County of a certificate of occupancy or its functional equivalent. The County is also allowed to meet concurrency requirements for sanitary sewer through the use of on-site sewage treatment and disposal systems approved by the Department of Health to serve a new use, where consistent with the County Plan. As to solid waste, the level of service standard shall be a countywide standard. As to stormwater management, the level of service standard shall be a site specific standard. As to potable water and sanitary sewer, the level of service standard shall be based upon the appropriate service areas as set forth in the ~~1991~~ Seminole County Comprehensive Plan.

(2) As to arterial and collector roads and mass transit bus service, said concurrency public facilities must be available or programmed or contracted to be under construction within three (3) years of the subject final development order or consistent with provisions of Rule 9J-5.0055(2)(c), Florida Administrative Code, as same may be amended from time to time. The impact thresholds and spheres of influence as to arterial and collector roads shall be as follows:

~~Land Use (6)~~	~~Dwelling Units (DUs) or Square Feet (SF)~~	~~Radius (3)~~	~~Analysis (7)~~
~~*Residential (Single and Multi-Family:*~~	~~0 <= 50 DUs~~	~~NA~~	~~Daily(Access Points)~~
~~—~~	~~>51 <= 500 DUs~~	~~1 mile~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>501 <= 1,000 DUs~~	~~2 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>1,001 <= 1,500 DUs~~	~~3 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>1,501 <= 2,000 DUs~~	~~4 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~DRI~~	~~Open~~	~~Daily, Peak Hour (1), (2)~~
~~*Retail:*~~	~~0 <= 2,000 SF~~	~~NA/ (4)~~	~~Daily (Access Points)~~
~~—~~	~~>2,001 <= 50,000 SF~~	~~1 mile~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~> 50,001 <= 200,000 SF~~	~~2 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>200,001 <= 400,000 SF~~	~~3 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>DRI~~	~~Open~~	~~Daily, Peak Hour (1), (2)~~
~~*Office:*~~	~~0 <= 20,000 SF~~	~~NA/ (5)~~	~~Daily, (Access Points)~~
~~—~~	~~>20,001 <= 200,000~~	~~1 mile~~	~~Daily, Peak Hour (1),~~

	~~SF~~		~~(2)~~
~~—~~	~~>200,001 <= 300,000 SF~~	~~2 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>DRI~~	~~Open~~	~~Daily, Peak Hour (1), (2)~~
~~*Industrial Manufacturing/Warehouse:*~~ ~~—~~	~~0 <= 50,000 SF~~	~~N/A~~	~~Daily, (Access Points)~~
~~—~~	~~> 50,001 <= 250,000 SF~~	~~1 mile~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>250,001 <= 500,000 SF~~	~~2 miles~~	~~Daily, Peak Hour (1), (2)~~
~~—~~	~~>=500,001 SF or DRI~~	~~Open~~	~~Daily, Peak Hour (1), (2)~~

~~Note:~~

~~(1) Analysis: Daily - Add total daily generation to county average daily counts.~~
~~(2) Analysis: Peak Hour - Analysis of traffic distribution on roadway segments and all signalized intersections within the radius. Includes analysis of site entrance or access point onto the arterial/collector system.~~
~~(3) Radius measured from site entrance(s).~~
~~(4) Excludes small high generators (i.e., convenience stores, gasoline stations, fast food restaurants, banks).~~
~~(5) Excludes small high generators (i.e., doctors' and veterinarians' offices or clinics).~~
~~(6) Impact thresholds and spheres of influence for uses not specified shall be determined by the County Engineer.~~
~~(7) A traffic impact study shall be required of any applicant for any land use with an impact threshold and sphere of influence greater than the access point.~~

Land Use	**Unit**	**Radius** **N.A. – Traffic Study Not Required**	**1 mile**	**2 mile**	**3 mile**
Residential – Single-Family	DU	0 - 50	51 - 500	500 – 1,000	> 1,000
Residential – Apartments	DU	0 - 100	101- 800	801 – 1,600	> 1,600
Residential – Condos	DU	0 - 100	101- 1,000	1,001 – 2,000	> 2,000
Residential – Mobile Homes	DU	0 - 100	101- 1,000	1,001 – 2,000	> 2,000
Hotel	Room	0 - 100	101- 800	801 – 1,600	> 1,600
Church	TSF	0 – 75,000	> 75,000	N/A	N/A
Daycare	TSF	0 – 4,000	> 4,000	N/A	N/A
Office: General	TSF	0 – 35,000	35,001 – 350,000	350,001 – 700,000	> 700,000
Office: Medical	TSF	0 – 15,000	15,001 – 150,000	150,001 – 300,000	> 300,000
Retail Shopping Center	TSF	0 – 10,000	10,001 – 135,000	135,001 – 270,000	> 270,000
Quality Restaurant	TSF	0 – 7,500	> 7,500	N/A	N/A
High Turnover Restaurant	TSF	0 – 5,000	> 5,000	N/A	N/A
New Car Sales	TSF	0 – 20,000	> 20,000	N/A	N/A
Furniture Store	TSF	0 – 125,000	> 125,000	N/A	N/A
Industrial - Manufacturing	TSF	0 – 75,000	75,001 – 750,000	> 750,000	N/A
Industrial - Warehouse	TSF	0 – 100,000	100,001 – 1,000,000	> 1,000,000	N/A
Industrial – Mini-Warehouse	TSF	0 – 200,000	> 200,000	N/A	N/A

DU = Dwelling Unit TSF = Total Square Feet

(1) Radius measured from site entrance(s).

(2) For uses not listed in the table above, traffic studies will be required within a 1 mile radius for developments that generate 50-500 net new peak hour trips, a 2 mile radius for developments that generate 501-1000 net new peak hour trips and a 3 mile radius for developments that generate over 1000 net new peak hour trips.

(3) Traffic studies shall be required for all small high generators (i.e., convenience stores, gasoline stations, fast food restaurants, banks, etc).

(4) The traffic study must be signed and sealed by a registered Professional Engineer.

As to Public School capacity, the needed facilities are required to be in place or under actual construction within three years after the issuance of final subdivision or site plan approval or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development and consistent with the provisions of the 2007 Interlocal Agreement for Public School Facility Planning and School Concurrency as amended in January 2008.

(c) Approved plans of development which are specifically exempted from or specifically determined to be vested from the concurrency requirements of the ~~1991~~ Seminole County Comprehensive Plan by the county pursuant to applicable ordinances shall not be subject to concurrency review unless the exemption or vesting has been eliminated, waived, expired or withdrawn pursuant to law or has otherwise lapsed and thereby having become of no further force nor effect. Notwithstanding the foregoing, the county may use the concurrency review process to account for the impacts upon and utilization of concurrency public facilities by vested developments.

Sec. 10.4. Concurrency base line statement and monitoring system.

(a) On or before ~~July~~ October 1 of each year, the Planning and Development Director shall develop a concurrency public facility base line statement which shall be effective for one (1) year after its issuance. Nothing herein precludes, however, the issuance and effectiveness of more frequent amendments to the concurrency base line statement by the Planning and Development Director.

(b) The available capacity reported for each concurrency public facility on each concurrency base line statement should be determined by using calculations from the concurrency management monitoring system data base and projections of facility demand for vested developments that are multi-year, phased development proposals or projects (including, but not limited to, developments of regional impact, development agreements and other development approvals). The demand calculations for vested projects shall be based upon a reasonable projection for the progress of each proposal or project, population growth projections and such other considerations such as the practices and assumptions utilized in the ~~1991~~ Seminole County Comprehensive Plan and its support documentation.

(c) The Planning and Development Director shall establish and maintain a concurrency management monitoring system for purposes of monitoring the status and available capacity of concurrency public facilities which consists of an inventory of concurrency public facility capacity and a demand accounting system that will reflect the current status and availability of concurrency public facilities. ~~An annual status report on the~~

~~concurrency management monitoring system shall be provided to the Board of County Commissioners by the Planning and Development Director.~~

Sec. 10.5. Concurrency review procedures, concurrency management system and certificates of concurrency.

(a) Final development orders which permit or approve the following are exempt from concurrency review if the Planning and Development Director ~~or his or her designee~~ finds that no additional impact on concurrency public facilities is created:

(b) As to final development orders which will create a de minimis impact, said development approvals shall be exempt from the requirement to directly mitigate and address a finding of insufficient capacity resulting from the concurrency review provisions of this Code relating to roads; provided, however, that, unless the Planning and Development Director finds that a possible taking of property rights would occur if a development application were denied, the cumulative total transportation impact from the approval of de ~~minimum~~ minimis exemptions to the concurrency requirements of this Code shall not exceed three (3) percent of the maximum service volume of the subject roadways at the level of service standard adopted in accordance with the provisions of the Seminole County Comprehensive Plan and this Code; provided, further, however that, as to other public facilities the Planning and Development Director may conclude that the impacts of the proposed development are so nominal as to have no significant impact on public services and that the denial of development approval would result in the property owner having no reasonable economic use of his or her property and further exempt the development proposal from the requirement to directly mitigate and address other concurrency review findings of insufficient availability of public facility capacity.

(e) ~~In response to the filing of a deferral affidavit as set forth in subsection (d) or, at an applicant's request,~~ An applicant may request a general/non-binding facility capacity evaluation shall be performed by the county for any preliminary development order or permit or final development order or permit prior to submission of final site plan, single-family residential final subdivision plat or waiver of platting requirements, and/or final engineering plans. The evaluation document merely provides the applicant with the county's best estimate of public facility capacity availability in the general vicinity of the proposed development as identified in the application and pertaining only to the time period at which the evaluation is issued. The evaluation does not operate as a guarantee of facility capacity nor does it operate as an encumbrance or reservation of capacity. ~~The evaluation is merely a statistical computation using the best available data to the county which is provided to the applicant without warranty for such purposes as the applicant may deem desirable~~. The issuance of an evaluation does not relieve the applicant from complying with the provisions of this chapter with respect to capacity encumbrance and capacity reservation. ~~A deferral affidavit or an~~ An application for an evaluation shall be submitted to the ~~Planning~~ Development Review Division together with the applicable evaluation fee.

(f) If an application for development is ~~found to be exempt from the concurrency review or~~ vested against the concurrency management system review requirements of the

~~1991~~ Seminole County Comprehensive Plan, this chapter and state law, then, consistent with the provisions of this chapter, a certificate of vesting shall be issued without conditions being attached thereto; provided, however, that such properties may be subject to divestiture as set forth in this chapter.

(g) The concurrency review shall be performed by the county on a first come first served basis based on when applications for development orders or permits are received by the county. The Planning and Development Director ~~or his or her designee~~ shall ascertain the completeness of the documentation in a timely manner ~~to ensure that the required information is sufficient to accept the development application for review~~. If the application for development is not reviewable as submitted, then ~~the application for development shall be returned to the applicant~~ the applicant will be notified with correspondence clearly stating what the deficiencies are and why the application for development cannot be further reviewed.

(h) After an application for development is accepted and passes procedural review, it will undergo concurrency review. Concurrency review shall consist of an objective test based upon all available data to determine if there is adequate available capacity in each of the concurrency public facilities to accommodate the impacts of the proposed new development at or above the level of service standards adopted in the ~~1991~~ Seminole County Comprehensive Plan.

(j) The county shall use standard demand estimates data as follows:

(3) Parks. The residential level of service standards pursuant to the ~~1991~~ Seminole County Comprehensive Plan, ~~or its successor~~.

(4) Solid waste. The solid waste contribution factors specified in the Solid Waste element of the ~~Vision 2020~~ Seminole County Comprehensive Plan, as amended.

(5) Drainage. The level of service standards pursuant to the ~~1991~~ Seminole County Comprehensive Plan, ~~or its successor~~.

(6) Mass transit. The translation of the overall per capita level of service standard into demand factors set forth in the Mass Transit element of the ~~1991~~ Seminole County Comprehensive Plan, as amended.

(7) Schools. The County and the School Board shall ensure that the level of service standard established for each school type is maintained

This data will be the basis for all concurrency reviews unless the applicant submits, in accordance with the provisions of this chapter and the ~~1991~~ Comprehensive Plan, alternative data for consideration. The county shall, in accordance with the provisions of this chapter, accept or reject the alternative data.

(k) ~~Applicants may provide the county engineer with mitigation proposals and/or alternative methods of analyses relating to roads which may not have sufficient available capacity to support approval of the application. Providing excess capacity on a particular road segment; studies showing an atypical number of diverted motor vehicle trips or the atypical internal capture of motor vehicle trips; improvements to turn lanes, stacking lanes, signalization, intersections and similar improvements; alternative transportation modes such as bus or light rail transit; studies based upon travel time and delay methodology and data or other studies relating to motor vehicles trip generation (if~~

~~conducted using methodologies and data accepted by the county engineer) shall be encouraged. Proposals that provide for improvements to roads that are not operating or expected to operate below the level of service standard adopted in the 1991 Seminole County Comprehensive Plan; carpools; staggered work hours and the provision of constrained parking facilities shall not be generally acceptable. Proposals that provide for a system analysis instead of a segment by segment link analysis shall not be reviewed or considered~~. Applicants may request that the Planning & Development Director allow alternative methods of analysis relating to roads which may not have sufficient available capacity to support approval of the application.

(m) In the event an applicant for a development order applies for concurrency review and concurrency public facilities are not available such that the application would be denied, the following levels of entitlement densities shall be approved by the county in order to provide the applicant with the reasonable and beneficial use of the subject real property and in order to encourage infill development and discourage urban sprawl:

(2) Ten (10) percent of the maximum authorized density or intensity, ~~as provided in this section, for each lawfully subdivided parcel, lot or tract within designated infill zones described in Attachment 1 to this chapter which is incorporated herein by this reference thereto as if fully set forth herein verbatim and which are assigned the following zoning classifications:~~ based on the most recent version of the Seminole County Comprehensive Plan. This determination shall be made by the Planning & Development Director.

~~(A) PCD;~~
~~(B) PUD (nonresidential);~~
~~(C) C-1;~~
~~(D) C-2;~~
~~(E) C-3;~~
~~(F) CN;~~
~~(G) CS;~~
~~(H) M-1A;~~
~~(I) M-1;~~
~~(J) OP;~~
~~(K) R-3;~~
~~(L) R-3A;~~
~~(M) R-4;~~
~~(N) RP (professional use).~~

~~(3) The maximum allowable density or intensity shall be based on the zoning classification assigned to a particular parcel of real property on September 11, 1991 if in conformity with the 1991 Seminole County Comprehensive Plan or the zoning classification later assigned to bring the parcel, lot or tract into compliance with the plan. In the absence of a specific maximum density or intensity authorized by a zoning classification or by the board's action in assigning a zoning classification, the maximum allowable density or intensity shall be the maximum feasible determined by the Planning and Development Director based upon historical approvals or similar properties consistent with the requirements of the Seminole County Comprehensive~~

~~Plan and this Code. The applicant shall have the right to submit additional information regarding the maximum feasible density or intensity for review by the Planning and Development Director.~~

(u) If the parcel of real property is vested against the ~~1991~~ Seminole County Comprehensive Plan, this chapter and state law, the certificate of vesting shall be valid as long as the development commences and is continuing in good faith. Said development must comply with the time limitations set forth in the definition of statutory vesting. ~~If the parcel of real property is not vested against the concurrency provisions of the 1991 Seminole County Comprehensive Plan, this chapter and state law, a certificate of concurrency or conditional statement of concurrency shall be valid for so long as the underlying development order relating to the subject real property or a subsequent development order which is issued during the good faith continuation of the development is valid, unexpired and unrevoked; provided, however, that under the standard reservation option, unless otherwise set forth in a conditional development order or development agreement, the facility reservation period for a conditional statement of concurrency is limited to a two (2) year non-extendable time period.~~

Sec. 10.6. Phasing of vested developments.

(d) Developments which have been approved as planned ~~commercial developments and planned unit~~ developments shall be presumed to be phased. All other developments shall be presumed not to be phased.

Sec. 10.8. Concurrency review fees.

(c) Housing projects that qualify as low or very low income housing projects in accordance with the provisions of the ~~1991~~ Seminole County Comprehensive Plan and this Code shall be exempt from concurrency test processing fees and may defer payment of facility reservation fees until the time of payment of water and sewer capacity reservation fees and impact fees as may be required pursuant to this Code.

Section 10.10 Uniform School Concurrency Process

(a) General Provisions. The County and the School Board shall ensure that the level of service standard established for each school type is maintained.

(1) No site plan, final subdivision, or functional equivalent for new residential development may be approved unless the residential development is exempt from these requirements as provided in Section 10.10(a)(3), or until a School Capacity Availability Letter of Determination (SCALD) has been issued by the School Board indicating that adequate school facilities exist.

(2) The County may place conditions on the approval of the residential development to ensure that necessary school facilities are in place.

(3) The following residential uses shall be considered exempt from the requirements of school concurrency:

a. All residential lots of record as of January 1, 2008.

b. Any new residential development that has a site specific development approval prior to the commencement date of the School Concurrency Program.

c. Any amendment to any previously approved residential development, which does not increase the number of dwelling units or change the type of dwelling units (single-family, multi-family, etc.).

d. Any age restricted community with no permanent residents under the age of 18. An age restricted community shall be subject to a restrictive covenant on all residential units limiting the age of permanent residents to 18 years and older.

(4) Upon request by a developer submitting a land development application with a residential component, the School Board shall issue a determination as to whether or not a development, lot or unit is exempt from the requirements of school concurrency and submit a copy of the determination to the County within 10 days.

(5) The Seminole County School Board shall maintain concurrency service area (CSA) maps, as referenced herein, at the Board offices for public inspection.

(b) *School Concurrency Application Review*

(1) Any developer submitting a development permit application (such as site plan or final subdivision) with a residential component that is not exempt under Section 10.10(a)(3) of this Agreement is subject to school concurrency and shall prepare and submit a School Impact Analysis (SIA) to the School Board for review.

(2) The SIA shall indicate the location of the development, the number of dwelling units by unit type (single-family detached, single family attached, multi-family, apartments), a phasing schedule (if applicable), and age restrictions for occupancy (if any). The School Board concurrency test shall follow the following steps:

a. *Test Submittal.* The developer shall submit a SIA to the School Board with a copy to Seminole County. The completed SIA must be submitted a minimum of five working days but not more than 30 days prior to submittal of a development application to the County. The School Board shall perform a sufficiency review on the SIA application. An incomplete SIA application will be returned to the applicant without processing. The School Board will have 20 working days to determine sufficiency and complete the Test Review. The School Board may charge the applicant a non-refundable application fee payable to the School Board to meet the cost of review in accordance with Florida Statutes.

b. *Test Review.* Each SIA application will be reviewed in the order in which it is received by the School Board.

c. *Passing the Test.* If the available capacity of public schools for each type within the CSA, or contiguous CSAs as provided for in Section 10.10(a)(3) below, containing the proposed project is equal to or greater than the proposed project's needed capacity, the concurrency test is passed. The School Board will issue a School Capacity Availability Letter of Determination (SCALD) identifying the school capacity available to serve the proposed project and that said capacity has been encumbered for the proposed project for a period of one year. A capacity encumbrance fee will be established during the regulatory phase of this process.

d. *Failing the Test.* If the available capacity of public schools for any type within the CSA (or contiguous CSAs as provided for in Section 10.10(a)(3) below) containing the proposed project is less than the proposed project's needed capacity, the concurrency test is failed. The School Board will issue a SCALD and inform the developer. If capacity is not available, the School Board will advise the developer of the following options:

1. Accept a 30 day encumbrance of available school capacity, and within the same 30 day period, amend the development application to balance it with the available capacity; or

2. Accept a 60 day encumbrance of available school capacity, and within the same 60 day period, negotiate with the School Board and the County on a proportionate share mitigation plan as outlined in Section 10.10(c) below; or

3. Appeal the results of the failed test pursuant to the provisions in Section 10.10(a) below; or

4. Withdraw the SIA application.

e. Test Abandonment. If no option under Section 10.10(b)(2)(d) above is exercised by the developer within 45 days, then the application shall be deemed abandoned.

(c) *Methodology.* The methodology for performing the concurrency test shall follow the steps outlined below:

(1) To determine a proposed development's projected number of students, the proposed number and type(s) of residential units shall be converted into projected students for all schools of each type within the specific CSA using the adopted Student Generation Multiplier, as established by the Seminole County School Board.

(2) New school capacity within a CSA which is in place or under actual construction in the first three years of the School Board's Capital

Improvement Plan will be added to the capacity shown in the CSA, and is counted as available capacity for the residential development under review.

(3) If the projected student growth from a residential development causes the adopted LOS to be exceeded in the CSA, an adjacent CSA which is contiguous with and touches the boundary of, the concurrency service area within which the proposed development is located shall be evaluated for available capacity. An adjacency evaluation review shall be conducted as follows:

a. In conducting the adjacency review, the School Board shall first use the adjacent CSA with the most available capacity to evaluate projected enrollment impact and, if necessary, shall continue to the next adjacent CSA with the next most available capacity.

b. Consistent with Rule 6A-3.0171, F.A.C., at no time shall the shift of impact to an adjacent CSA result in a total morning or afternoon transportation time of either elementary or secondary students to exceed 50 minutes or 1 hour, respectively. The transportation time shall be determined by the School Board transportation routing system and measured from the school to which the impact is to be assigned, to the center of the subject parcel/plat in the amendment application, along the most direct improved public roadway that is free from major hazards.

(d) *Development Review Table.* The School Board shall create and maintain a Development Review Table (DRT) for each CSA, and will use the DRT to compare the projected students from proposed residential developments to the CSA's available capacity as programmed within the first three years of the current five-year capital planning period.

(1) Student enrollment projections shall be based on the most recently adopted School Board Capital Facilities Work Program, and the DRT shall be updated to reflect these projections. Available capacity shall be derived using the following formula:

Available Capacity = School Capacity[1] – (Enrollment[2] + Approved[3])

Where:

[1]School Capacity = Permanent School Capacity as programmed in the first three (3) years of the School Board's Five-Year CIP.
[2]Enrollment = Student enrollment as counted at the Fall FTE.
[3]Approved = Students generated from approved residential developments after the implementation of school concurrency.

(2) Using the Fall FTE, the vested number of students on the DRT will be reduced by the number of students represented by the residential units that received certificates of occupancy within the previous 12-month period.

(e) *Proportionate Share Mitigation.* In the event there is not available school capacity to support a development, the School Board shall entertain proportionate share mitigation options and, if accepted, shall enter into an enforceable and binding agreement with the developer to mitigate the impact from the development through the creation of additional school capacity.

(1) When the anticipated student impacts from a proposed development cause the adopted LOS to be exceeded, the developer's proportionate share will be based on the number of additional student stations necessary to achieve the established LOS. The amount to be paid will be calculated by the cost per student station for elementary, middle and high school as determined and published by the State of Florida.

(2) The methodology used to calculate a developer's proportionate share mitigation shall be as follows:

Proportionate Share = ([1]Development students - Available Capacity) x [2]Total Cost per student station

Where:

[1]Development students = those students from the development that are assigned to a CSA and have triggered a deficiency of the available capacity.

[2]Total Cost = the cost per student station as determined and published by the State of Florida.

(3) The applicant shall accept a 90 day encumbrance of available school capacity, and within the same 90 day period enter into negotiations with the School Board in an effort to mitigate the impact from the development through the creation of additional capacity. Upon identification and acceptance of a mitigation option deemed financially feasible by the School Board, the developer shall enter into a binding and enforceable development agreement with the School Board.

a. A mitigation contribution provided by a developer to offset the impact of a residential development must be directed by the School Board toward a school capacity project identified in the School Board's Five-Year Capital Improvement Plan. Capacity enhancing projects identified within the first 3 years of the Five-Year Capital Improvement Plan shall be considered as committed.

b. If capacity projects are planned in years 4 or 5 of the School Board's Five-Year Capital Improvement Plan within the same CSA as the proposed residential development, the developer may pay his proportionate share to mitigate the proposed development in accordance with the formula provided in Section 10.10(e)(2).

c. If a capacity project does not exist in the Capital Improvement Plan, the School Board will add a capacity project to satisfy the impacts from a proposed residential development, if it is funded through the

developer's proportionate share mitigation contributions. Mitigation options may include, but are not limited to:

1. Contribution of land or payment for land acquisition suitable for and in conjunction with, the provision of additional school capacity; or

2. Mitigation banking based on the construction of an educational facility in exchange for the right to sell capacity credits; or

3. Provide modular or permanent student stations acceptable for use as educational facilities; or

4. Provide additional student stations through the remodeling of existing buildings acceptable for use as an educational facility; or

5. Construction or expansion of permanent student stations at the impacted school within the CSA; or

6. Construction of an educational facility in advance of the time set forth in the School Board's Five-Year Capital Improvement Plan.

(4) For mitigation measures (1) through (6) above, the estimated cost to construct the mitigating capacity will reflect the estimated future construction costs at the time of the anticipated construction. Improvements contributed by the developer shall receive school impact fee credit.

(5) Developer shall receive an impact fee credit for the proportionate share mitigation. 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 was calculated. The portion of impact fees available for the credit will be based on the historic distribution of impact fee funds to the school type (elementary, middle, high) in the appropriate CSA. Impact fee credits shall be calculated at the same time as the applicant's proportionate share obligation is calculated. Any school impact fee credit based on proportionate fair share contributions for a proposed development cannot be transferred to any other parcel or parcels of real property within the CSA.

(6) A proportionate share mitigation contribution shall not be subsequently amended or refunded after final site plan or plat approval to reflect a reduction in planned or constructed residential density.

(7) Impact fees shall be credited against the proportionate share mitigation total.

(8) Any proportionate share mitigation must be directed by the School Board toward a school capacity improvement identified in the School Board's Five-Year Capital Improvement Plan.

(9) Upon conclusion of the negotiation period, a second Determination Letter shall be issued. If mitigation is agreed to, the School Board shall issue a new Determination Letter approving the development subject to those mitigation measures agreed to by the County, developer and School Board. Prior to development plan approval, the mitigation measures shall be memorialized in an enforceable and binding agreement with the County, School Board and Developer that specifically details mitigation provisions to be paid for by the developer and the relevant terms and conditions. If mitigation is not agreed to, the Determination Letter shall detail why any mitigation proposals were rejected and why the development is not in compliance with school concurrency requirements. A SCALD indicating either that adequate capacity is available, or that there is not a negotiated proportionate share mitigation settlement following the 90-day negotiation period as described in Section 10.10(e)(3), constitutes final agency action by the School Board for purposes of Chapter 120, F.S.

(f) *School Concurrency Approval.* Issuance of a SCALD by the School Board identifying that adequate capacity exists indicates only that school facilities are currently available, and capacity for the proposed development has been encumbered. Capacity will not be reserved until the local government issues a Development Approval.

(1) A local government shall not issue a development approval for a residential development until receiving confirmation of available school capacity in the form of a SCALD from the School Board. The development approval shall include a reference to the findings of the SCALD indicating that the project meets school concurrency.

(2) Local governments shall notify the School Board within 10 working days of any official change in the validity (status) of a development approval for a residential development.

(3) The County shall not issue a building permit or other form of final development approval for a non-exempt residential development until receiving confirmation of available school capacity from the School Board in the form of a SCALD. Once the County has issued a final development approval, school concurrency for the residential development shall be valid for the life of the final development approval.

(f) *Reserved Capacity.* School capacity will be reserved when there is a final disposition of the development application by the County. If the County approves the development application by means of a development approval, or its equivalent, the School Board shall move the school capacity from encumbered status to reserved status for the proposed project. When the County issues a

development approval for a residential project, it shall notify the School Board within 10 working days. The duration for which capacity is reserved shall not exceed two years from the date of approval or the issuance of a building permit, whichever occurs first. If the building permit expires, the project will lose its reserved capacity. Should a development approval for a residential development expire, the County shall notify the School Board. A capacity reservation fee will be established during the regulatory phase of this process.

(g) *Appeal Process.* A person substantially affected by a School Board's adequate capacity determination made as a part of the School Concurrency Process may appeal such determination through the process provided in Chapter 120, F.S.

Section 3. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such section, paragraph, sentence, clause, phrase or word may be severed from this ordinance and the balance of this Ordinance shall not be affected thereby.

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

Section 5. Effective Date. This Ordinance shall become effective upon filing a copy of this ordinance with the Department of State by the Clerk of the Board of County Commissioners.

ENACTED this ___ day of ___, 2009.

BOARD OF COUNTY COMMISSIONERS

SEMINOLE COUNTY, FLORIDA

By:_____

BOB DALLARI, CHAIRMAN