

Board of County Commissioners

Discussion Item

**School Capacity, Capacity Enhancement
Agreements, and HB 7103**

July 7, 2020



Presentation Outline

- **Worksession Overview**
- **OCPS Declaration**
- **Comprehensive Plan Policy PS6.3.1**
- **School Capacity Options**
- **Next Steps**
- **Requested Action**



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Worksession Overview



2000

Martinez Doctrine

2004

Charter Amendment

2005

Mandatory School Concurrency

2006

Ordinance and Capacity Interlocal Agreement (ILA)

2008

Comp Plan Policy PS6.3.1

2011

Amended & Restated ILA

2012

Charter Amendment Reauthorized



Worksession Overview

- **HB 7103 (2019) - Amended Section 163.31801, Florida Statutes:**
*(4) The local government must credit against the collection of the impact fee **any contribution**, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees **on a dollar-for dollar basis** at fair market value.*
- **Requirement to provide full credit negates the dollar value of the capital contribution**
- **OCPS has taken the position that without the benefit of the capital contribution, they can no longer certify additional school capacity as required by Charter, Code, and ILAs.**



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OCPS Declaration

▪ June 23, 2020 - Declaration Relating to the HB 7103 Impact on School Overcrowding Mitigation

“NOW, THEREFORE, the School Board of Orange County, Florida does hereby declare that the impact of the 2019 HB 7103 on the CEA program makes it impossible to mitigate the impacts of school overcrowding from new development that would cause or exacerbate school overcrowding where the needed capacity will not be available within three (3) years. Accordingly, the School Board can no longer execute CEAs and developers must rely on, and the citizens of Orange County are entitled to, the process prescribed by the voters for joint approval of all FLUM and rezoning applications that cause or exacerbate school overcrowding.” (emphasis added)



Pending CEAs Submitted Since July 1, 2019

	Project ID#	Jurisdiction	Project Name
1	APK-19-018	Apopka	4011 Golden Gem Road
2	APK-20-003	Apopka	Clonts Farm Property
3	APK-20-004	Apopka	Binion Road Apartments
4	EDW-19-002	Edgewood	Holden Avenue PD
5	ETV-20-002	Eatonville	Lake Weston Property
6	MTL-20-001	Maitland	Gem Lake Water District PD
7	OC-19-054	Orange County	Artisan at Forest Summit
8	OC-19-069	Orange County	IDI PD
9	OC-19-075	Orange County	Nona West
10	OC-19-086	Orange County	Taft-Vineland Apts - Orangewood N-9 PD
11	OC-19-091	Orange County	Sustany
12	OC-20-001	Orange County	Kings Landing PD
13	OC-20-015	Orange County	Hoenstein Landing
14	OC-20-016	Orange County	J&S Apartments
15	OC-20-020	Orange County	Sadler Road Estates
16	OCE-19-006	Ocoee	Ocoee Village Center
17	ORL-20-007	Orlando	Lake Orlando Land Owner
18	OC-20-21	Orange County	Project LUH



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Comprehensive Policy Plan PS6.3.1 - current

▪ 2008 – Comprehensive Plan – Public School Facilities Element

PS6.3.1 - Orange County *shall not* approve a developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density on property that is not otherwise vested *until such time as OCPS has determined* whether sufficient capacity will exist concurrently with the development or a capacity enhancement agreement is executed that provides for the needed capacity to accommodate the proposed development.



Comprehensive Policy Plan PS6.3.1 - proposed

▪ Comprehensive Plan - Public School Facilities Element

PS6.3.1 - ~~Orange County shall not approve~~ When reviewing a developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density ~~on property that is not otherwise vested~~, Orange County shall seek input from, until such time as OCPS has determined as to whether sufficient school capacity will exist concurrent with the development, or a capacity enhancement agreement is executed that provides for If OCPS indicates there is insufficient capacity in the affected schools, Orange County may take into consideration the severity of the overcrowding and the timing of the availability of the needed capacity to accommodate the proposed development when deciding whether to approve or deny the requested Comprehensive Plan amendment or rezoning.



Comprehensive Policy Plan PS6.3.1 - proposed

▪ Comprehensive Plan - Public School Facilities Element

PS6.3.1 - When reviewing a developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density, Orange County shall seek input from OCPS as to whether sufficient school capacity will exist concurrent with the development. If OCPS indicates there is insufficient capacity in the affected schools, Orange County may take into consideration the severity of the overcrowding and the timing of the availability of the needed capacity to accommodate the proposed development when deciding whether to approve or deny the requested Comprehensive Plan amendment or rezoning.



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School Capacity Options

- 1. Modify the definition of “significantly affected local government,”**
- 2. Rescind the 2006 School Capacity Ordinance,**
- 3. Abate the 2006 School Capacity Ordinance, or**
- 4. Modify the 2006 School Capacity Ordinance to define the multi-jurisdictional approval process.**



School Capacity Options

1. Modify the definition of “significantly affected local government” (currently defined as 10% or more of student population)

- **PROS**

- Relatively easy fix (requires modifications to 2006 Interlocal Agreement and Chapter 30)
- May reduce number of projects affected by the school capacity approval process

- **CONS**

- Further research and data required to determine the appropriate definition (OCPS has not indicated a preference at this point); data may be difficult to acquire
- Projects that fall within the modified definition still trigger the school capacity approval process and, if school capacity approval process is triggered and municipalities do not comply, places County in position of allowing them to ignore our charter or being asked to challenge them in court
- Potential issues with undefined multi-jurisdictional approval process



School Capacity Options

2. Rescind 2006 School Capacity Ordinance

- **PROS**

- Quick resolution (change to Chapter 30)
- Streamlines school review process; rely on concurrency only

- **CONS**

- Eliminates the school capacity process entirely and, unless revived in another form, forecloses ability to implement charter amendment
- Requires amendments to Interlocal Agreements



School Capacity Options

3. Abate the 2006 School Capacity Ordinance

- PROS

- Quick resolution (change to Chapter 30); hits the pause button on the school capacity process and allows stalled projects to move forward as soon as Comp Plan Amendment is finalized
- Streamlines school review process while abated
- Allows staff time to work through specifics of multi-jurisdictional approval process with municipalities and stakeholders
- Option to reinstate ordinance at later date while giving staff ability to modify certain outdated and conflicting provisions in the ordinance
- Allows for potential future legislative fix



School Capacity Options

3. Abate the 2006 School Capacity Ordinance (cont.)

- **CONS**

- Abates the school capacity process while specifics are worked out; rely on school concurrency in the interim
- Legislative fix is not likely to be proffered
- Requires amendments to Interlocal Agreements
- Potential resistance from municipalities on amending 2011 Interlocal Agreement
- Uncertainty in the development community about if / when ordinance and process would be reinstated



School Capacity Options

4. Modify the 2006 ordinance to define multi-jurisdictional approval process

- **PROS**
 - Keeps school capacity process in place while terms of ordinance are drafted
- **CONS**
 - Requires projects to go through undefined, ad hoc, multi-jurisdictional approval process until ordinance finalized
 - Mandates a process via ordinance rather than collaborating with municipalities and stakeholders to amend Interlocal Agreement
 - Creates uncertainty in the development community and adds additional time to development approval process for certain projects that have been held up since last year
 - Opens County up to potential challenges on deferral of land use decisions without defined process until ordinance is adopted



School Capacity Options

Staff Recommendation:

Option 3. Abate the 2006 School Capacity Ordinance

- Staff would bring Ordinance back with abatement language
- Staff would begin to negotiate changes to define the multi-jurisdictional approval process in the 2011 Interlocal Agreement and 2006 Interlocal Agreement with OCPS, Municipalities, and stakeholders
- Staff will provide progress updates to Board



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Next Steps

- **Amendment 2020-2-C-PSFE-1**
 - LPA Transmittal Hearing - July 16, 2020
 - BCC Transmittal Hearing – July 28, 2020
 - LPA Adoption Hearing – September 17, 2020
 - BCC Adoption Hearing – September 22, 2020
- **Proceed with changes as directed by Board; begin discussions with municipalities and stakeholders**



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Requested Action

- **Approval to:**
 - process pertinent amendments to the Comprehensive Plan;
 - process amendments to Chapter 30 of Orange County Code; and
 - begin negotiations with municipalities and Orange County Public Schools on amendments to the school-related Interlocal Agreements for public school facility planning and implementation of concurrency.