

Board of County Commissioners

Work Session

School Capacity, Capacity Enhancement Agreements, and HB 7103

June 2, 2020



Presentation Outline

- **School Capacity**
- **Capacity Enhancement Agreements (CEAs)**
- **School Concurrency**
- **House Bill 7103 (HB 7103)**
- **School Impact Fees**
- **OCPS Worksession**
- **Next Steps**



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School Capacity


▪ 2000 – Martinez Doctrine

Staff should recommend denial of any Future Land Use Amendment or Rezoning which would increase residential densities and which OCPS indicates would aggravate school overcrowding

 Interoffice Memorandum

March 29, 2000

TO Board of County Commissioners

FROM: Mel Martinez, Orange County Chairman 

RE Land Use Approvals and School Overcrowding

In recent weeks and months, the Board has faced a number of requests for residential land-use approvals in areas of the county where public schools are seriously overcrowded. The Board's frustration over the apparent lack of options to address the problem has once again been evident, and I can assure you that I very much share the frustration.

I have been perplexed with the issue since shortly after taking office, when I realized that, as Mr. Wilkes explained at Board meeting last month, the Florida legislature has "turned school concurrency upside down." Unlike road concurrency, where counties and cities are *prohibited from issuing* certificates of occupancy in areas where roads are congested, under the "school concurrency" statute we may be *prohibited from denying* C.O.'s where schools are overcrowded unless we have gone through an extraordinarily onerous, perhaps impossible, obstacle course. Obviously, as we contemplate a new approach, we must be careful to strike a balance, taking into account the rights of property owners and the value that the development community adds to our local economy.

With the able assistance of the members of the Public Schools Task Force that I formed last year, I still intend to consider implementation of school concurrency. However, implementing school concurrency is so difficult that, I am told, not one county or city in Florida has succeeded in doing it. In my view, counties and cities in Florida are hardly indifferent to the issue of school overcrowding. Instead, counties and cities are stymied by a statute that seemingly turns a deaf ear to the educational needs of our children.

Because school concurrency has proven to be such an ineffective and illusory land-use tool, I directed our planning and legal staffs last year to review once again the state of the law in Florida and to determine where in the several stages of the land use approval process, if at all, school overcrowding legally can be considered in the Board's decisions to grant or deny approvals. I wanted to know whether the concurrency statute acts to preempt other sources of legal authority such as charter county home-rule powers. The analysis has been completed, and



School Capacity

▪ 2004 – Charter Amendment (Section 704.B.2.)

– County ordinances shall be effective within municipalities and shall prevail over municipal ordinances when...the county ordinances provide that the county's and any municipality's rezonings or comprehensive plan amendments (or both) that increase residential density are effective only upon approval by the governing boards of all *significantly affected local governments* when:

(a) The attendance zone for any public school to be affected by the increase in residential density lies only partly inside a municipality; and

(b) The *school district cannot certify* to the governing boards of all significantly affected local governments that the school, the attendance zone for which straddles a municipal boundary, can accommodate the additional students that will result from the increase in residential density.

– This provision was originally approved in 2004 by 74% of voters and was reauthorized by 66% of voters in 2012.



School Capacity

▪ 2006 – School Capacity Ordinance

- Definitions (De Minimis, Significantly Affected Local Government, etc.)
- Sets forth the multi-jurisdictional approval process
 - The basis for not approving a CPA or RZ shall be limited to school capacity and the time at which school capacity shall be available.
 - A local government...may, with written approval of OCPS and the applicant...defer consideration of school capacity from CPA to RZ. In such a case the CPA may become effective without approval of other significantly affected local governments
- Required the County, OCPS, and Orlando (if they chose to) to enter into an Interlocal Agreement to memorialize the detailed processes to deal with school overcrowding.
 - Approval by the school board of a CEA shall constitute certification that sufficient capacity will exist to handle the additional students generated by the proposed CPA or rezoning



School Capacity

▪ 2006 – School Capacity Interlocal Agreement

- Set forth the detailed process for County and OCPS review of comprehensive plan amendments or rezonings that increase residential density, including the CEA process.
- OCPS shall use additional funds...generated by CEAs in a timely manner to provide school capacity in areas where the rezonings or CPAs subject to the CEA are located
- Upon receipt of a final decision from OCPS, the local government will process the rezoning / CPA in accordance with its adopted procedures. *Decision by OCPS does not bind the local government to approve or deny the rezoning or CPA merely because school capacity is not available.*
- The Agreement must remain in effect in order for the Ordinance to be effective
- Remedy for breach of agreement limited to declaratory and injunctive relief



School Capacity

- **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.
- **City of Orlando has a virtually identical provision in their Comprehensive Plan (Public School Facilities Policy 1.3.1 – adopted July 7, 2008)**



School Capacity

- **2008 – 2011 - Interlocal Agreement for Public School Facility Planning and Implementation Of Concurrency**
 - Drafted by OCPS' consultant with input from County, municipalities, and stakeholders
 - Outlines the agreed-upon processes among the County, School Board, and signatory municipalities for dealing with concurrency and proportionate share mitigation.
 - Section 10 is a standalone section dealing with the CEA process
 - The provisions relating to capacity enhancement process supplement the provisions of the 2006 Interlocal; any conflicts shall be controlled by this agreement
 - Any capacity enhancement mitigation paid pursuant to a CEA, except for the cost of temporary classrooms needed to accommodate the development until permanent facilities are constructed, shall be credited toward any concurrency proportionate share mitigation.
 - Resolution of disputes – any disagreements under the Agreement shall be dealt with via statutory governmental conflict resolution procedures or Regional Dispute Resolution Procedures of the East Central Florida Regional Planning Council



Presentation Outline

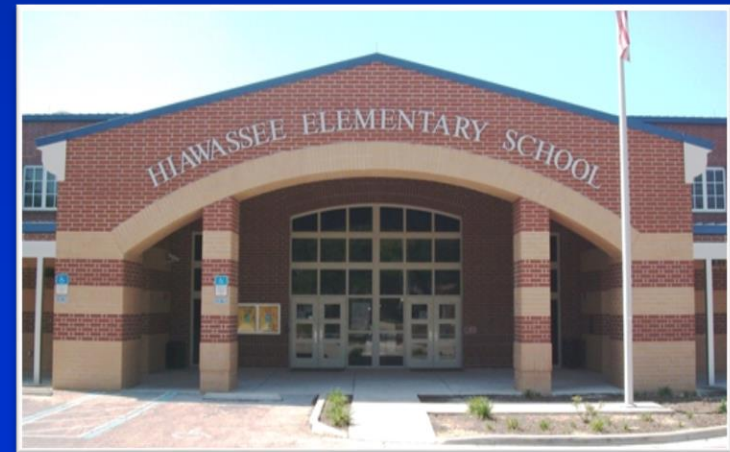
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Capacity Enhancement Agreements (CEAs)

▪ Review Process

- Comprehensive Plan amendments and rezonings that increase residential density are subject to review
- Reviews residential units allowed pre (“vested units”) and post (“new units”) RZ and / or CPA
- Reviewed for the impact of new units on individual schools
- If there is insufficient capacity, developer and OCPS can enter into a CEA





Capacity Enhancement Agreements (CEAs)

▪ Typical Provisions

- Identifies number of units (the impact assessment is based on new units only)
- Requires pre-payment of impact fees (no longer allowed by statute)
- May include other mitigation (**capital contribution**)
- Executed by property owner and OCPS only





Capacity Enhancement Agreements (CEAs)

▪ Timeline

- Application (\$600) – OCPS has 15 days to determine capacity, determination good for 6 mos.
- If no capacity, enter into CEA w/i 6 mos.
- Once CEA executed, 6 mos. to complete RZ or CPA
- Entire process of executing a CEA can take from 60 – 120 days or more





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School Concurrency

- **2005 - SB 360 – School concurrency was mandatory**
 - Required ILA & Comprehensive Plan Amendment
 - Required Level of Service (LOS)
 - Required Concurrency Service Areas (CSA)
 - Adjacency Review; determination required prior to plat
 - Failing projects provided opportunity to enter into concurrency mitigation agreement
 - Agreement approval by OCPS and BCC
- **2011 - HB 7207 – School concurrency became optional**



School Concurrency

	Step 1: Capacity Enhancement	Step 2: Concurrency
What?	Changing of Land Use Entitlements	Prior to Vertical Construction
	Land Rezoning & Future Land Use Map Amendments	Site Plan or plat (All Post-2008 Residential Projects)
	Covers “New” Units	All Units in Project
When?	Early in Development Process	Later in Development Process
How?	Local, Charter Amendment, Code, ILA	Optional/ State Statute, ILA



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House Bill 7103

- **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 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.**



House Bill 7103

▪ Last three years:

Total Collected	CEA
FY19	\$1,949,834.64
FY18	\$3,067,979.56
FY17	\$1,721,264.14

Source: Orange County Public Schools, Facilities Planning

▪ Total CEA Collections: \$23,155,496.79



House Bill 7103

- **Following 2019 Session, multiple attempts were made to find a solution:**
 - Meetings between County, OCPS, and stakeholders
 - Attempts at legislative fix during 2020 session
 - No solution or legislative fix available
- **OCPS has not approved any new CEAs since July 1, 2019**
- **Without a CEA, the county cannot, under our Comp Plan, approve any new developer initiated CPA or RZ that increases residential density and for which there is insufficient school capacity**





2019-2020 Pending CEAs 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 - Oranewood 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



2019-2020 Passing Projects Since July 1, 2019

	Project ID#	Jurisdiction	Project Name
1	APK-20-005	Apopka	Coke Property
2	OC-19-060	Orange County	Eastwood PD
3	OC-19-062	Orange County	Center Pointe Community Church
4	OC-19-063	Orange County	Alta Avalon
5	OC-19-064	Orange County	Silverleaf
6	OC-19-065	Orange County	Gem Groves PD
7	OC-19-066	Orange County	Waterstar Orlando
8	OC-19-078	Orange County	First Baptist Church of Windermere
9	OC-19-079	Orange County	Avalon Grove
10	OC-19-080	Orange County	Hamlin West
11	OC-19-081	Orange County	NRP (Village I)
12	OC-19-082	Orange County	Golden Keys Condo
13	OC-19-083	Orange County	The Little Nest
14	OC-19-085	Orange County	Horizon West Village I Cross PD
15	OC-19-089	Orange County	Hoffner Park
16	OC-19-090	Orange County	Serenade at Ovation
17	OC-19-092	Orange County	Chickasaw Creek
18	OC-19-100	Orange County	Valencia College Lane PD
19	OC-19-101	Orange County	Blue Diamond
20	OC-19-103	Orange County	Karr PD
21	OC-20-007	Orange County	Thompson Road Residential
22	OCE-19-004	Ocoee	VMG Estates
23	ORL-19-030	Orlando	6601 & 6609 Hoffner Avenue Apartments
24	ORL-19-039	Orlando	Hoffner Avenue Apartments
25	WG-19-003	Winter Garden	Tilden Road PUD



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School Impact Fees

▪ Impact fees

- Fire/Rescue Services
- Law Enforcement
- Roads
- Parks and Recreation
- Schools





School Impact Fees

- Residential uses only
- Required to be countywide
- Collected by the County and municipalities
- Fee redistributed to OCPS less administrative fee
- Required to be reviewed every 4 years
- Reviewed by SIFAG and not DAB
- 2016 Update required a 2 year review
- SIFAG Completed Review of 2018 study update
- OCPS Postponed processing update due to HB 7103



School Impact Fees

Current Impact Fees Assessed

Fee	Single Family 1 du	Multi-Family 1 du
Schools (100%)	\$8,784	\$5,919
Fire (100%)	\$325	\$227
Law Enforcement (100%)	\$494	\$191
Parks (100%)	\$1,660	\$1,123
Transportation (<i>non-AMA</i>) (56%)	\$3,898	\$2,524
Total	\$15,161	\$9,984



Fee Comparison

Residential Land Use	2011 Study Calculated Fee	2016 Study Calculated Fee	2019 Study Calculated Fee	Percent Change 2016 to 2019
Single Family (detached)	\$6,525	\$8,784	\$9,560	+ 9%
Townhouse	\$3,921	\$6,930	\$8,805	+ 27%
Multi-Family	\$3,921	\$5,919	\$6,610	+ 12%
Mobile Home	\$4,345	\$6,088	\$10,387	+ 71%



School Impact Fee

Total Collections Last Five Years

Year	Impact Fee Collection	CEA Collection
2015	\$56,532,081	
2016	\$45,961,820	
2017	\$78,927,033	\$1,721,264
2018	\$79,092,436	\$3,067,979
2019	\$64,641,612	\$1,949,834



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OCPS Worksession

- **May 28,2020 - CEAs and HB 7103**
- **Agenda**
 - **History of Orange County Approach to School Capacity**
 - **HB 7103 and Affect on Current Process**
 - **Post HB 7103 Approaches to Growth Management and School Capacity**
 - **Status of Current Post HB 7103 Capacity Determinations**



OCPS Worksession

- **Available Approaches Post HB 7103**
 - Update School Impact Fees
 - Targeted Rezoning
 - Borrowing from Capital Renewal Funds
 - Rely on County Charter Joint Approval Process



OCPS Worksession

▪ Impact Fee Review

- Update fee to recognize loss of CEA mitigation
- Review costs & credit component of the fee
- Issue of bringing higher impact fees during pandemic recovery

▪ Targeted Rezoning

- Address short term overcrowding in select schools by rezoning overcrowded schools to adjacent under-enrolled schools
- Does not increase revenues
- Controversial process and impacts families rezoned out of their current schools



OCPS Worksession

- **Borrowing of Capital Renewal Funds**
 - Using internal Capital Renewal Funds for relief schools
 - Funds must be paid back
 - May impact future needs and cost of renewal and rehabilitation



OCPS Worksession

▪ Joint Approval Process

- OCPS will only certify if capacity is available
- There are no available terms under which OCPS will recommend CEA's given the current situation
- Requires joint local government approval in multi-jurisdictional schools
- Requires local governments to decide to approve or not approve development when school(s) are over-capacity
- Process has not been used to date



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Next Steps

- **Continue discussion with OCPS**
 - Impact Fee Update and Alternative Methodologies
- **Bring forward to Board for Discussion**
 - Proposed Comprehensive Plan Policy Amendment(s)
 - Draft Amendments to Ch.30
 - Recommended Changes to the Interlocal Agreements