

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 I

have sought input from a number of stakeholder groups, such as the Home Builders Association of Mid Florida, the Orange County PTA, the Board of Realtors, and the Orange County Homeowners Association. Based on our staff's analysis and input from these groups, I have directed several changes be undertaken with respect to our land use approval process.

First, on all requests for amendments to the Future Land Use Map in the comprehensive plan, and on requests for residential re-zonings (including PD's and PD amendments), where the map amendment or the requested re-zoning will have the effect, if approved, of increasing residential densities, the request will be sent to the Orange County Public Schools for review. If the review and analysis by OCPS determines that the affected schools are seriously overcrowded and that the increased residential densities will substantially aggravate the overcrowded conditions, our staff will render a recommendation of denial of the map amendment or re-zoning.

The foregoing will also apply to requests for approval of any "development of regional impact," as well as requests for amendments to development orders for any previously approved DRI's.

However, with respect to approvals of preliminary subdivision plans for single-family residential projects, approvals of residential plats, approvals of apartment construction plans, and issuance of building permits, I am persuaded by our staff that any attempt to deny approval should be postponed for now. Under current law the likelihood that denials of these types of applications would be overturned by the courts is much higher than for re-zonings. Our ostensible recourse at those late stages in the land use process is to implement school concurrency -- a task that, as I said, is onerous and perhaps impossible under the requirements and constraints imposed in recent years by the legislature.

Actually, with respect to PSP's, plats, apartment construction plans, and building permits, our real recourse might be to convince the legislature to revise school concurrency laws so that they are similar to the much more workable and effective concurrency rules governing roads, utilities, stormwater drainage, and other infrastructure. I have directed our staff to pursue the school concurrency portion of our legislative priorities with those changes in mind.

Of course, school overcrowding is not affected by commercial, office, or industrial development, so there will be no changes with respect to the processing of nonresidential land-use applications.

Our staff is completing its discussions with OCPS staff regarding the types of information and analysis that OCPS will provide for residential FLUM amendments, residential DRI approvals and amendments, and residential re-zonings. I expect that these types of staff recommendations of denial will begin to appear on the Board's agenda within the next several weeks.

Recognize that there may be exceptions. For example, in areas where developers are willing or are required by our regulations to donate school sites, our staff may opt not to recommend denial. However, as a general rule, school overcrowding will be a major factor in the Board's decision making in the future.

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I am optimistic that, if the Board elects to deny FLUM amendments or residential re-zonings or DRI approvals or amendments based on school overcrowding, we can defend our decisions against the inevitable court challenges. However, the County Attorney advises that the state of the law does not provide certainty regarding the outcome. If it happens that the courts won't support us, we will then turn to the Legislature for relief. For now, however, we will take this most difficult and frustrating of issues and do what we can.

I invite you to support this new approach to this long-standing issue. By working together and making tough decisions we can make a difference in this important area. If you have questions, please contact Bruce McClendon or Tom Wilkes.

MM :wcc

cc: Members, Orange County School Board
Members, Orange County Planning and Zoning Commission
Dennis Smith, Superintendent, Orange County Public Schools
Ajit Lalchandani, Orange County Administrator
Dan Murphy, Chief of Staff, Orange County Chairman's Office
Byron Brooks, Deputy County Administrator
Tom Wilkes, Orange County Attorney
Bruce McClendon, Director, Growth Management & Environmental Resources Dept.
Bill Baxter, Director, Public Works Department
David Heath, Manager, Planning Division
Mitch Gordon, Manager, Zoning Division
Oscar Anderson, Director of Public Affairs