

674

ORDINANCE NO: 07-02
Liberty County, Florida

AN ORDINANCE ESTABLISHING A PROPORTIONATE FAIR-SHARE PROGRAM; IMPLEMENTING THE PROVISIONS OF SECTION 163.3180(16), F.S., ESTABLISHING CONDITIONS WHEREBY DEVELOPERS MAY SATISFY TRANSPORTATION CONCURRENCY REQUIREMENTS THROUGH PROPORTIONATE FAIR-SHARE CONTRIBUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE THEREIN.

I. PROPORTIONATE FAIR-SHARE ORDINANCE

Introduction

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), F.S.

B. Findings

- (1) The Liberty County Board of County Commissioners finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and the County Proportionate Fair-Share Program:
 - (a) Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
 - (b) Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of a transportation facility;
 - (c) Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
 - (d) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the CIE.
 - (e) Is consistent with §163.3180(16), F.S., and supports the following policies in the County Comprehensive Plan.

C. Applicability

The Proportionate Fair-Share Program shall apply to all developments in Liberty County that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the County, CMS, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section E. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in the concurrency ordinance, policies in comprehensive plan, and/or Chapter 163.3180, F.S., regarding exceptions and de minimis impacts.

D. Definitions

Definitions are as provided in Chapter 163 of the Florida Statutes.

(3) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the County for locally maintained roadways and those of the FDOT for the state highway system.

F. Intergovernmental Coordination

Pursuant to policies in the Intergovernmental Coordination Element of the County comprehensive plan and applicable policies in [reference adopted regional plan], the County shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

G. Application Process

(1) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of Section E.

(2) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the SIS, then the FDOT will be notified and invited to participate in the pre-application meeting.

(3) Eligible applicants shall submit an application to the County that includes an application fee of \$100.00 and the following:

- (a) Name, address and phone number of owner(s), developer and agent;
- (b) Property location, including parcel identification numbers;
- (c) Legal description and survey of property;
- (d) Project description, including type, intensity and amount of development;
- (e) Phasing schedule, if applicable;
- (f) Description of requested proportionate fair-share mitigation method(s); and
- (g) Copy of concurrency application.

(4) The [Concurrency Administrator] shall review the application and certify that the application is sufficient and complete within 10 business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program as indicated in Section E, then the applicant will be notified in writing of the reasons for such deficiencies within 10 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The Commission may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(5) Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(6) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the County or the applicant with direction from the County and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a SIS facility, no later than [60 days] from the date at which the applicant received the notification of a sufficient application and no fewer than [14 days] prior to the Commission meeting when the agreement will be considered.

(7) The County shall notify the applicant regarding the date of the Commission meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Commission, or pursuant to staff approval for agreements below a certain dollar amount.

H. 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 contribution of facilities. *[Note: This language is as provided in §163.3180 (16) (c), F.S.]*

(2) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted 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 Section 163.3180 (12), F. S., as follows:

"The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS."

OR

$$\text{Proportionate Fair-Share} = \sum \left[\left(\frac{\text{Development Trips}_i}{\text{SV Increase}_i} \right) \times \text{Cost}_i \right]$$

Where: Development Trips_i = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment "i" per section 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.

(4) For the purposes of determining proportionate fair-share obligations, the County shall determine improvement costs based upon the actual cost of the improvement as obtained from the CIE, the MPO/TIP or the FDOT Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:

(a) An analysis by the County of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the Commission or appropriate entity]. In order to accommodate increases in construction material costs, project costs shall be adjusted by [inflation factor]; or

(b) The most recent issue of FDOT *Transportation Costs*, as adjusted based upon the type of cross-section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program shall be determined using this method in coordination with the FDOT District.

(5) If the County has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.

(6) If the County has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at __ percent of the most recent assessed value by the County property appraiser 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 drawing 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 the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

I. Impact Fee Credit for Proportionate Fair-Share Mitigation

(1) Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the Proportionate Fair-Share Agreement as they become due per the County Impact Fee Ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the County pursuant to the requirements of the County impact fee ordinance.

(3) Major projects not included within the local government's impact fee ordinance or created under Section E. (2) (a) and (b) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government's discretion for impact fee credits.

(4) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the local impact fee ordinance.

J. Proportionate Fair-Share Agreements

(1) Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a County certificate of concurrency approval]. Should the applicant fail to apply for a development permit within 12 months or timeframe provided in the local CMS of the execution of the Agreement, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.

(2) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be non-refundable. If the payment is submitted more than 12 months from the date of execution of the Agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to Section H and adjusted accordingly.

(3) All developer improvements authorized under this ordinance must be completed prior to issuance of a development permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of building permits or certificates of occupancy.

(4) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.

- (5) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
- (6) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the County will be non refundable.
- (7) The County may enter into proportionate fairshare agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

K. 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 CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT TRIP.
- (2) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section E(2)(b).

Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., and then the County may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. Such coordination shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

- (3) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under Section H, the County shall reimburse the applicant for the excess contribution using one or more of the following methods:
- (a) An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the County.
- (b) An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fairshare payments from future applicants on the facility.

682

(c) The County may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the County and the applicant.

II. OPTIONAL PROVISIONS

A. Cross Jurisdictional Impacts

(1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the County may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.

(2) A development application submitted to the County subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:

(a) All or part of the proposed development is located within [fill in number] mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government; and

(b) Using its own concurrency analysis procedures, the County concludes that the additional traffic from the proposed development would use [five percent or more of the adopted peak hour LOS maximum service volume] of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and

(c) The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.

(3) Upon identification of an impacted regional facility pursuant to subsection 2(a)-(c), the County shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.

(a) The adjacent local government shall have up to ninety (90) days in which to notify the County of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Section 163.3180(16), F.S. Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the County.

(b) If the subject application is subsequently approved by the County, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. The County may require the adjacent

local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

B. Proportionate Share Program for TCEAs, TCMAs and MMTDs

Within all local TCMAs, and/or MMTDs, and/or TCEAs, County hereby establishes a proportionate fair-share assessment, based on the expected costs and transportation benefits of all the programmed improvements within that District, and based on the expected trip generation of the proposed development.

APPENDIX A: 2005 Proportionate Fair-Share Legislation

This Appendix contains the proportionate fair-share language from Senate Bill 360 as found in Chapter 163.3180(16) Florida Statutes.

(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12). (a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, FDOT shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b) In its transportation CMS, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the five-year schedule of capital improvements in the CIE of the local plan or the long-term CMS or if such contributions or payments to such facilities or segments are reflected in the five-year schedule of capital improvements in the next regularly scheduled update of the CIE. Updates to the five-year CIE which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) and 163.3177(3) if additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. The fair market value of the proportionate fair-share mitigation shall not differ based on the form

of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation.

(d) Nothing in this subsection shall require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

(e) Mitigation for development impacts to facilities on the SIS made pursuant to this subsection requires the concurrency of the FDOT.

(f) In the event the funds in an adopted five-year CIE are insufficient to fully fund construction of a transportation improvement required by the local government's CMS, a local government and a developer may still enter into a binding proportionate share agreement authorizing the developer to construct that amount of development on which the proportionate fair share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share component must be adopted into the five-year capital improvements schedule of the comprehensive plan at the next annual CIE update.

(g) Except as provided in subparagraph (b) 1. Nothing in this section shall prohibit the FDCA from finding other portions of the CIE amendments not in compliance as provided in this chapter.

(h) The provisions of this subsection do not apply to a multiuse development of regional impact satisfying the requirements of subsection (12).

APPENDIX B: METHOD FOR COST ESCALATION

This Appendix contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages.

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n ;

Cost_0 = The cost of the improvement in the current year;

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{-1} + \text{Cost_growth}_{-2} + \text{Cost_growth}_{-3}] / 3$$

Where:

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

Cost_growth_{-1} = The growth rate of costs in the previous year;

Cost_growth_{-2} = The growth rate of costs two years prior;

Cost_growth_{-3} = The growth rate of costs three years prior.

685

ENACTED AND ADOPTED by the Liberty County Board of County Commissioners on this 4th day of January, 2007.

**BOARD OF COUNTY COMMISSIONERS
LIBERTY COUNTY, FLORIDA**



**DEXTER BARBER
CHAIRMAN**

ATTEST:



**ROBERT HILL
CLERK OF COURT**