

ORDINANCE NO.: 2009-03

FILED  
2009 MAY 11 PM 3:53  
CLERK OF COUNTY COMMISSIONERS  
HERNANDO COUNTY FLORIDA

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2  
3 **AN ORDINANCE ADOPTING REMEDIAL PLAN AMENDMENTS TO**  
4 **CPAM-07-08 AND WHICH AMENDS THE PUBLIC SCHOOL FACILITIES**  
5 **ELEMENT AND THE CAPITAL IMPROVEMENTS ELEMENT**  
6 **(PERTAINING TO PUBLIC SCHOOL FACILITIES) OF THE HERNANDO**  
7 **COUNTY COMPREHENSIVE PLAN PURSUANT TO A STIPULATED**  
8 **SETTLEMENT AGREEMENT (DOAH CASE NO. 08-1041GM) BETWEEN**  
9 **HERNANDO COUNTY AND THE FLORIDA DEPARTMENT OF**  
10 **COMMUNITY AFFAIRS ENTERED INTO THIS DATE; PROVIDING FOR**  
11 **SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

12  
13 **WHEREAS**, in 1985, the Florida Legislature adopted the Local Government Comprehensive  
14 Planning and Land Development Regulation Act as set forth in §§ 163.3161 through 163.3215  
15 Florida Statutes (the “Act”); and,

16  
17 **WHEREAS**, on June 7, 1989, the Board of County Commissioners adopted Ordinance 89-9  
18 which adopted the Hernando County Comprehensive Plan, as such Plan or portions thereof have  
19 been subsequently amended (“Comprehensive Plan”); and,

20  
21 **WHEREAS**, the Hernando County Board of County Commissioners (“BOCC”), following  
22 a public hearing, approved amending the Future Land Use Element, amending the Intergovernmental  
23 Element, amending the Capital Improvements Element, and creating the Public School Facilities  
24 Element, of the County’s adopted Comprehensive Plan relating to goals, objectives and policies  
25 necessary to implement school concurrency and referred to as CPAM-07-08; and,

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27 **WHEREAS**, the County subsequently transmitted CPAM-07-08 to the Florida Department  
28 of Community Affairs (“DCA”) for review pursuant to the Act and was assigned DCA No.07-2; and,

29  
30 **WHEREAS**, the DCA reviewed CPAM-07-08 and, thereafter, issued its Objections,  
31 Recommendations and Comments (ORC) Report concerning same; and,

32  
33 **WHEREAS**, the County responded to and addressed the Objections, Recommendations and  
34 Comments (ORC) Report for DCA No. 07-2; and,

35  
36 **WHEREAS**, the BOCC conducted a second public hearing on December 12, 2007 and  
37 adopted CPAM-07-08 as an amendment to the County’s adopted Comprehensive Plan and  
38 transmitted same to DCA; and,

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40 **WHEREAS**, upon further review, DCA issued its Statement and Notice of Intent to find  
41 CPAM 07-08 ‘Not In Compliance’; and,

42  
43 **WHEREAS**, DCA referred the matter to the Florida Division of Administrative Hearings  
44 (“DOAH”) where it was assigned DOAH Case No. 08-1041GM; and,

45  
46 **WHEREAS**, the County and DCA entered into a Stipulated Settlement Agreement this date  
47 and which requires the adoption of certain listed remedial plan amendments to CPAM 07-08 (the  
48 “Remedial Plan Amendments”); and,

1 WHEREAS, on May 12, 2009, the BOCC conducted a public hearing and adopted the  
2 Remedial Plan Amendments as an amendment to the County's adopted Comprehensive Plan.

3  
4 **NOW THEREFORE:**

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6 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**  
7 **HERNANDO COUNTY, FLORIDA:**

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9 **SECTION 1. Adopting Remedial Plan Amendments to CPAM-07-08 (DOAH 08-**  
10 **1041GM).** The Remedial Plan Amendments to CPAM-07-08 (DOAH 08-1041GM), collectively  
11 attached as **Exhibit "A"** hereto, are hereby approved and adopted and the Hernando County  
12 Comprehensive Plan is amended accordingly, subject to Section 6 below.

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14 **SECTION 2. Execution.** The Chairman of the Hernando County Board of County  
15 Commissioners is hereby authorized to execute this ordinance.

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17 **SECTION 3. Transmittal to Florida Department of Community Affairs.** County staff  
18 shall transmit an executed copy of this ordinance to the Florida Department of Community Affairs  
19 within ten (10) working days of adoption hereof.

20  
21 **SECTION 4. Publication.** This ordinance has been published in accordance with law.

22  
23 **SECTION 5. Severability.** It is declared to be the intent of the Board of County  
24 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this  
25 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the  
26 validity of the remaining portions of this ordinance.

27  
28 **SECTION 6. Effective date.** This Ordinance shall take effect upon filing with the Florida  
29 Secretary of State; however, the adopted Remedial Plan Amendments shall take effect, and be  
30 considered an amendment to the Hernando County Comprehensive Plan, upon DCA issuing a final  
31 order finding same to be in compliance pursuant to § 163.3189(2), Florida Statutes.

32  
33 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**  
34 **HERNANDO COUNTY** in Regular Session this 12th day of May, 2009.

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36 **BOARD OF COUNTY COMMISSIONERS**  
37 **HERNANDO COUNTY, FLORIDA**

38  
39  
40 Attest:

41   
42 KAREN NICOLAI, CLERK

43 By:

  
DAVID D. RUSSELL, JR., CHAIRMAN



APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY


 4/25/08  
County Attorney's Office

Exhibit "A"  
Hernando County Comprehensive Plan  
Remedial Amendments to CPAM 07-08  
May 12, 2009

**Capital Improvements Element**

**POLICY 9.01A(9):** ~~Hernando County hereby adopts by reference the Hernando County School Board Five Year Work Program for FY 2008-2009 to FY 2012-2013, which was adopted on November 18, 2008. Hernando County will adopt by reference each subsequently adopted work program by the Hernando County School Board into the Capital Improvements Element.~~

Hernando County hereby adopts by reference the Hernando County School Board Five Year Work Program for FY 2008-2009 to FY 2012-2013, which was adopted on November 4, 2008, and amended March 23, 2009. Hernando County will adopt by reference each subsequently adopted work program by the Hernando County School Board into the Capital Improvements Element. NOTE: Any project listed as unfunded in the Five Year Work Program will not be considered for determining whether the adopted level of service is met in the five years of the work program.

**POLICY 9.01E(1):** For purposes of public facility planning, the County shall use the following Level of Service Standards in reviewing impacts of new development and redevelopment upon public facilities:

- a. **ROADS.** For County maintained roadways within the area bordered by U.S. 19 on the west, SR 50 on the north, U.S. 41 on the east and the County line on the south, the level-of-service standard shall be "D" urban for peak-hour traffic volume. For all other County maintained roadways, the level-of-service standard shall be "D" rural, for peak-hour traffic volume. The 1995 FDOT generalized LOS, tables or other methodologies approved by FDOT shall be used in the determination of service levels.

- b. **PARKS.** The level of service standard for parks is 4.00 acres of parks, recreation areas and open spaces per 1,000 population. This standard shall be further subdivided into two categories: 2.00 acres per 1,000 population shall be the standard for user-oriented park facilities; 2.00 acres per 1,000 shall be utilized for open space.
- c. **POTABLE WATER.** This standard relates only to those units provided potable water service. The standard for service is 350 gallons per equivalent residential unit per day.
- d. **WASTE WATER.** This standard relates only to those units provided waste water service. The standard for service is 280 gallons per equivalent residential unit per day.
- e. **SOLID WASTE.** The standard for solid waste disposal shall be 4.75 pounds of solid waste per person per day.
- f. **DRAINAGE.** Until standards are developed based upon a county-wide drainage plan, the interim level of service standard shall be: post development runoff shall be no greater than pre-development runoff based on 25-year frequency, 24-hour duration; Rainfall Intensity curve-zone 8, Florida Department of Transportation (DOT) Drainage Manual, 1979.
- g. **AVIATION.** The standard for aviation is the adequacy of the physical facilities to safely accommodate the projected levels of future air traffic.
- h. **PUBLIC SCHOOLS.** ~~The LOS standards to implement school concurrency shall be calculated as a percentage of Florida Inventory of School Houses ("FISH") as follows:~~

- 
- (a) ~~Elementary: 100% of permanent FISH Capacity based on the Core Facilities of the particular~~

elementary school:

~~(b) Middle: 100% of permanent FISH Capacity based on the Core Facilities of the particular middle school.~~

~~(c) High: 100% of permanent FISH Capacity based on the Core Facilities of the particular high school.~~

~~(d) K-8: 100% of permanent FISH Capacity based on the Core Facilities of the particular middle (K-8) school [note: the Florida Department of Education presently treats a K-8 school as a middle school for purposes of FISH].~~

The LOS standards to implement school concurrency shall be as follows:

~~(a) Elementary: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.~~

~~(b) Middle School: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.~~

~~(c) High School: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.~~

~~(d) Magnet schools will maintain the level of service standard for the type of school for which it is constructed whether an elementary, middle, or high.~~

- (e) Core Facilities shall mean Permanent Cafeteria Capacity based on FISH standards.

**Public Schools Facilities Element**

**POLICY 11.01A(1):** The LOS standards to implement school concurrency shall be calculated as a percentage of Florida Inventory of School Houses ("FISH") as follows:

- (a) Elementary: 100% of permanent FISH Capacity based on the Core Facilities of the particular elementary school.
- (b) Middle: 100% of permanent FISH Capacity based on the Core Facilities of the particular middle school.
- (c) High: 100% of permanent FISH Capacity based on the Core Facilities of the particular high school.
- (d) K-8: 100% of permanent FISH Capacity based on the Core Facilities of the particular middle (K-8) school [note: the Florida Department of Education presently treats a K-8 school as a middle school for purposes of FISH].
- (e) Magnet schools will maintain the level of service standard for the type of school for which it is constructed whether an elementary, middle, high, or K-8.

The Level of Service (LOS) standard set forth herein shall be applied consistently by the County and the School Board district-wide to all schools of the same type. The LOS standards to implement school concurrency shall be as follows:

- (a) Elementary: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.

- (b) Middle School: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.
- (c) High School: 100% of Permanent FISH Capacity for Permanent Student Stations and 100% of Permanent FISH Capacity for Core Facilities. Whichever is the greater number will be used for calculating student capacities for LOS.
- (d) Magnet schools will maintain the level of service standard for the type of school for which it is constructed whether an elementary, middle, or high.
- (e) Core Facilities shall mean Permanent Cafeteria Capacity based on FISH standards.

**POLICY 11.01A(2):** For the purposes of the level of service standard for public school capacity, FISH capacity shall refer to the Florida Inventory of School Houses (FISH) report of permanent capacity of existing public school facilities. The FISH Capacity is the number of students that may be housed in a facility (school) at any given time based upon a percentage by school type (i.e. elementary, middle, high and K-8) of the total number of existing student stations and a designated size for each program. In Hernando County, permanent capacity does not include temporary classrooms unless they meet the standards for long-term use pursuant to s. 1013.20, Florida Statutes.

**POLICY 11.01A(7):** The Level of Service standard is also measured to account for programmatic changes, which means changes to the operation of the school that has consistent and measurable capacity impacts including, but not limited to, double sessions, floating teachers, year-long schools, and special educational programs.

- (1) To determine available capacity as a result of programmatic changes, there must be student stations at each grade level for the particular schools in the CSA's affected.
- (2) Available capacity is based on no students being bussed to any contiguous CSA farther than the average bussing

travel distance throughout the District.

**POLICY 11.01A(8):** In order to determine if the available adjacent capacity can be utilized, the following additional criteria shall apply:

- (1) Travel time and distance. School bus route from the school to the site of the proposed development should not exceed 50 minutes;
- (2) Where school capacity is reserved for a specific academic or magnet program(s) at a particular school or for establishing student diversity, then such capacity cannot be claimed in a contiguous concurrency service area for purposes of determining available capacity.
- (3) If the boundary is adjacent based on its connection by the Withlacoochee State Forest, it should not be deemed adjacent;

**POLICY 11.01B(1):** Concurrency service areas (CSA) shall be established to determine whether there is adequate school capacity available based on the adopted level of service standards, and so that a proper analysis can be conducted to examine the availability of capacity in adjacent CSA's if capacity is not available in the primary CSA.

**POLICY 11.01B(2):** ~~Concurrency Service Areas will be based upon the attendance zones for elementary, middle, high and K-8 schools and the best available data and methodology.~~

Hernando County will create Concurrency Service Areas that are based on school attendance zones so that there is school capacity available in each concurrency service area or contiguous concurrency service areas to meet the adopted level of service standard within the five year time frame contained in the Florida Statutes.

**POLICY 11.02B(3(2)):** Within thirty (30) days of receipt of the initial transmittal the County, the School Board District will review the school concurrency application and, based on the standards set forth in this Element and the Interlocal



Agreement between Hernando County, the City of Brooksville and the Hernando County School Board, dated August 7, 2006, as may be amended from time to time, and report in writing to the County:

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(a) whether adequate school capacity exists for each level of school, based on the standards set forth in this Element and the Interlocal Agreement between Hernando County, the City of Brooksville and the Hernando County School Board, dated August 7, 2006, as may be amended from time to time, and report in writing to the County; or

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(b) if adequate capacity does not exist, whether appropriate mitigation can be accepted, and if so, acceptable options for mitigation, consistent with this Element and the Interlocal Agreement between Hernando County, the City of Brooksville and the Hernando County School Board, dated August 7, 2006, as may be amended from time to time, and report in writing to the County

**POLICY 11.02B(4)(3):** The School Board District shall conduct a concurrency review that includes findings and recommendations of whether there is adequate school capacity to accommodate students generated by the proposed development for each type of school within the affected CSA consistent with the adopted LOS standard and will take into consideration that:

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i. Adequate school facilities will be in place or under actual construction within three (3) years after the issuance of the subdivision plat or site plan (or functional equivalent); or,

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ii. Adequate school facilities are available in an adjacent CSA and the impacts of development can be shifted to that area; or,

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iii. 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 of the property subject to the final plat or site plan (or functional equivalent) pursuant

to this Interlocal Agreement and the adopted School Concurrency Ordinance.

POLICY 11.02B(5)(4): If the impact of the proposed development will not occur until years 2 or 3 of the School Board's financially feasible work plan, then any relevant programmed improvements in those years shall be considered available capacity for the project and factored into the level of service analysis. If the impact of the project will not be felt until years 4 or 5 of the work plan, then any relevant programmed improvements shall not be considered available capacity for the project unless funding of the improvements is assured through School Board funding to accelerate the project, through proportionate share mitigation, or some other means.

POLICY 11.02B(6)(5): If the School Board District determines that adequate capacity does not exist but that mitigation is an acceptable alternative, the development application will remain active pending the conclusion of the mitigation negotiation period described in Objective 11.02C and associated policies.

POLICY 11.02B(7)(6): The County will issue a School Concurrency Determination only upon:

(a) the School Board's District's written determination that adequate school capacity will be in place or under actual construction within three (3) years after the issuance of final subdivision or site plan approval for each level of school without mitigation; or,

(b) the execution of a legally binding mitigation agreement between the applicant, the School Board and the Hernando County/City pursuant to this the Interlocal Agreement.