

ORDINANCE 2015- 24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA REPEALING ARTICLE 2 OF THE LAND DEVELOPMENT CODE; IN RESPONSE TO THE ADOPTED MOBILITY PLAN, RECENT COMPREHENSIVE PLAN AMENDMENTS, AND THE COMMUNITY PLANNING ACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in June 2011 the Community Planning Act, which substantially revised Part II of Chapter 163, Florida Statutes, was approved by the Governor and became law; and

WHEREAS, the Community Planning Act notably made transportation concurrency optional for local governments; and

WHEREAS, Nassau County adopted amendments to the 2030 Comprehensive Plan pursuant to Section 163.3180(1)(a) eliminating transportation concurrency; and

WHEREAS, On February 13, 2012, an Interim Adequate Public Facilities Ordinance (Ord. 2012-06) was adopted to comply with the corresponding amendments to the 2030 Comprehensive Plan, while the Board of County Commissioners pursued a permanent replacement to the concurrency system to maintain transportation levels of service; and

WHEREAS, the Impact Fee and Concurrency Task Force and the Board of County Commissioners recognized this Interim Ordinance as a temporary measure; and

WHEREAS, on August 25, 2014, Board of County Commissioners adopted a new Mobility Plan and Mobility Fee Ordinance (Ord. 2014-16); and

WHEREAS the Board of County Commissioners has determined that the passage of the Mobility Plan and the existence of other State and local rules has rendered Article 2 redundant.

WHEREAS, public notice of this Ordinance has been provided in accordance with Chapter 125, F.S.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA:

SECTION 1. FINDINGS

This Ordinance is consistent with and furthers the goals, objectives and policies of the 2030 Nassau County Comprehensive Plan, as amended, in particular Policies, T.01.01, T.01.03, T.01.05, T.01.06, T.06.03, CI.02.01, CI.02.04, CI.05.01.

SECTION 2. AMENDMENT

Article 2 of the Nassau County Land Development Code is hereby repealed in its entirety.

ARTICLE 2. ADEQUATE PUBLIC FACILITIES (APF) ORDINANCE RESERVED

Section 2.01. Applicability.

~~To ensure the provision of adequate public facilities and services identified in Section 2.06 of the Nassau County Land Development Code, this Article shall apply to any application for Classes II, III, and IV site plan review, according to 5.07 LDC.~~

Section 2.02. Effect on other ordinances and regulations.

~~This Article shall not affect, in any manner, any other aspect of development and improvement standards or requirements, or any other aspect of the development of land or provision of public improvements subject to this Land Development Code and the Nassau County Comprehensive Plan, or other regulations of the County, which shall be operative and remain in full force and effect without limitation with respect to all such development. The density, intensity and character of all development authorized in a APF Letter must be consistent with the Comprehensive Plan and Land Development Code.~~

Section 2.03. APF review process.

~~A. *APF Planner.* The person, as designated by the Growth Management Director, responsible for receiving APF applications and for coordinating the findings and preparation of the requests for information, and APF Letters.~~

~~B. *Application and review.*~~

- ~~1. *Completeness review.* Within ten (10) working days of receiving an APF application, the APF Planner shall determine whether the application is complete. A letter shall be sent to the applicant within the ten (10) day period identifying if the application is complete or the additional or revised information~~

~~required. The County shall take no further action on the application until all requested information is received. The review process and applicable timetables shall also stop until the planner finds the application complete. Unless a longer time period is agreed to by the APF Planner, the applicant shall have thirty (30) calendar days from the date the letter requesting additional information is sent to provide the requested information to the County. At a minimum, the application shall include:~~

- ~~a. A full legal description of the site of the proposed development;~~
- ~~b. Site area (acreage), location or address, tax parcel identification numbers, and existing uses;~~
- ~~c. A description of proposed uses, identified by the appropriate Trip Generation Land Use Category code designated for such use in the adopted Nassau County Mobility Fee Ordinance Mobility Fee Schedule, or if an appropriate Trip Generation Land Use Category code is not included in the Mobility Fee Ordinance Mobility Fee Schedule, the proposed uses shall be assigned the most similar land use listed in the most recent edition of the Institute of Transportation Engineers, Trip Generation;.~~
- ~~d. Phasing or construction schedule for the proposed development;~~
- ~~e. Identification of potable water and sanitary sewer provider(s) and letter(s) of availability from said provider(s) as applicable;~~
- ~~f. Calculations of demand for solid waste disposal, as specified in the application form;~~
- ~~g. Calculations of demand for parks and recreation land, as specified in the application form (residential development only); and~~
- ~~h. Signed statement from owner/agent agreeing to comply with all applicable drainage regulations.~~

- ~~2. APF review. When the application is deemed to be complete, the County shall have fifteen (15) working days to determine whether it will grant an APF letter, issue a notification of deficiency or request additional information. If additional or revised information is required, the planner shall notify the applicants identifying all additional or revised information that is required. Unless a longer time period is agreed to by the APF Planner, the applicant shall have thirty (30) calendar days from the date the letter is sent to provide the requested information to the County.~~

~~Upon submittal of the additional information within the time limit specified herein or otherwise provided by the APF planner, the APF planner shall review the response within fifteen (15) working days and determine whether it will grant an APF letter, issue a notification of deficiency or request additional information. In accordance with section 166.033, Florida Statutes, prior to a third request for information on a particular application, the County shall offer the applicant a meeting to attempt to resolve any outstanding issues.~~

3. ~~APF Determination.~~ Upon a determination that public facilities and services covered by this Article are available at the adopted levels of service in effect at the time of the APF application submittal, the County shall issue an APF approval letter. The APF approval will not result in vesting until a building permit is issued and remains active and valid. Vesting will only be achieved for those phases, portions, or units for which a building permit is active and valid. However, Class II, III and IV projects that receive Preliminary Binding Site Plan (PBSP) approval will be conditionally vested. This conditional vesting will expire concurrently with the PBSP of the Site Engineering Plans as scheduled by Section 5.07 of the Nassau County Land Development Code. Unless vested, any increases in the adopted levels of service for those public facilities and services covered by this Article will require the applicant to apply for and receive a new APF determination. The APF approval letter will include:
- a. ~~A description of the location, size and use(s) of the proposed development;~~
 - b. ~~Notification that the public facilities and services covered by this Article are available at the adopted levels of service.~~
 - c. ~~Notification that a building permit will not be issued until the applicable Impact Fees or Mobility Fees for the project have been paid in full for the uses as described exactly in the APF letter.~~
 - d. ~~Notification that an APF letter will not result in vesting until a building permit is issued and remains active and valid. Vesting will only be achieved for those phases, portions, or units for which a building permit is active and valid. However, Class II and IV projects that receive Preliminary Binding Site Plan (PBSP) approval will be conditionally vested. This conditional vesting will expire concurrently with the PBSP of the Site Engineering Plans as scheduled by Section 5.07 of the Land Development Code.~~
 - e. ~~A statement incorporating by reference all factual representations in the application for APF determination~~
4. ~~Deficiency.~~ Upon a determination that any of the public facilities and services covered by this Article, except transportation infrastructure, are not available at the adopted levels of service in effect at the time of the APF application submittal, the County will issue a deficiency determination. Notification of a deficiency determination will include:
- a. ~~A description of the location, size and use(s) of the proposed development;~~
 - b. ~~Identification of the reason(s) for deficiency;~~
 - c. ~~An outline of the procedures required to be followed in order to appeal the decision;~~
 - d. ~~A statement regarding the option of requesting a development agreement with the County.~~
- C. ~~Withdrawal of application.~~ The applicant may withdraw an application for an APF determination at any time by submitting a written request to the department. Failure to comply with requests for additional information within the time periods noted above or failing to properly file an appeal pursuant to D. below will result in an application

being deemed withdrawn. The withdrawal of an application for an APF determination shall result in the forfeiture of all administrative fees paid by the applicant for the processing of the application.

~~D. Appeals.~~

- ~~1. General requirements. An applicant who has received a determination of deficiency may file an appeal with the Board of County Commissioners within fifteen (15) calendar days of receipt of such deficiency determination. This procedure supersedes any other appeal process set forth within this Code.~~
- ~~2. Form. The applicant shall file the appeal form established for such purpose by the department. Nothing herein shall be construed as a limitation on the authority of the board to require additional relevant information to be provided by the applicant.~~
- ~~3. Grounds for appeal to the Board of County Commissioners. An appeal may be taken to the board in a de novo hearing only where the applicant claims the criteria for evaluating the impact of the proposed project on public facilities and services as set forth in this Article were incorrectly applied, or that the deficiency determination of an application for APF was based upon incorrect data. The filing of an appeal on the basis of one of the grounds for appeal set forth herein shall not preclude the consideration of any additional grounds for appeals as prescribed in this section.~~
- ~~4. Completeness of application. Within ten (10) days after initial submission of an appeal, the growth management department shall determine whether it is complete and shall notify the County Attorney. The County Attorney shall notify the applicant within five (5) days of receipt of the determination of the department. If the County Attorney disagrees with the department, he/she shall notify the department in writing and the department and the County Attorney shall meet within five (5) days of the County Attorney's notification to resolve any differences. If there is no agreement, the entire package will be sent to the Board of County Commissioners and a copy to the appellant.~~
- ~~5. If the appeal is found to be complete, the County Attorney shall schedule the appeal for consideration by the Board of County Commissioners. If the appeal is determined to be incomplete, written notice shall be sent by the County to the applicant identifying all additional or revised information required, which shall be submitted by the appellant within sixty (60) calendar days from the date of mailing of the notice. Within ten (10) working days after receipt of such additional information, the Growth Management department shall determine whether the additional information submitted by the applicant allows for a determination of completeness and submit the determination to the County Attorney. If determined to be complete, the department shall so notify the applicant and the County Attorney shall schedule the appeal for a hearing by the Board of County Commissioners. If determined to be incomplete, the department shall send notice in writing to the appellant identifying all additional or revised information still required. The applicant may, within thirty (30) calendar days from the date of mailing of the notice, elect to submit additional information and/or respond to questions, or to direct the department to submit the appeal to the Board of County~~

~~Commissioners without the required information. If the applicant chooses to submit additional information, the department shall review the information for completeness within ten (10) working days after receipt of the additional information and notify the County Attorney and he/she shall then schedule the appeal for a hearing by the Board of County Commissioners. If the applicant chooses to submit the appeal to the Board of County Commissioners, the County Attorney shall schedule the appeal for a hearing.~~

- ~~6. Decision of the Board of County Commissioners. The Board of County Commissioners shall approve, in whole or in part, or deny the appeal, in whole or in part, based upon the criteria set forth in this Article; or the Board of County Commissioners may postpone the matter for submission of additional information. If the matter is postponed for the submission of additional information, the applicant shall have sixty (60) calendar days from the date of postponement to submit all additional or revised information specified by the County Attorney. A decision shall be made by the Board of County Commissioners within the thirty (30) working days of the hearing. The decision of the Board of County Commissioners shall be in writing, shall contain findings of fact and conclusions of law, and shall refer specifically to the property or portion of property to which it applies. The decision may contain reasonable conditions necessary to affect the purposes of this ordinance and the APF requirements of the plan. The decision shall state that it is subject to expiration in accordance with this or subsequent ordinances. The decision shall be filed with the department and a copy shall be provided to the applicant. The decision of the Board of County Commissioners shall be considered final for purposes of judicial appeal. Review of the decision or order of the Board of County Commissioners shall be initiated by filing a petition for writ of certiorari with the clerk of courts in accordance with applicable Rules of Appellate Procedures.~~

~~F.—~~

~~Section 2.04. — Special Requirements (off-site improvements) for Planned Developments (Sector Plan, DRI, PUD, etc.)~~

- ~~A. East Nassau Employment Center DSAP. Pursuant to the DSAP Development Order (DO) (Ord. 2013-11, as it may be amended) and the ENCPA Mobility Plan (Ord. 2013-12, as it may be amended);~~
- ~~B. Three Rivers Development of Regional Impact (DRI). Pursuant to the DRI Development Order (DO) (Reso. 2006-126, as amended)~~

~~Section 2.06. — Measurement of available capacity.~~

~~A. — Transportation.~~

- ~~1. — Level of service standards. The adopted level of service standard shall be the standards identified in the Transportation and Capital Improvements Elements of~~

~~the Comprehensive Plan. However, in accordance with 163.3180(5)i F.S. "Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government." The county adopted an alternative mobility funding system in 2014, therefore 163.3180(5)i applies to a finding of APF compliance~~

- ~~2. *Availability of adequate facilities.* The County shall monitor LOS by employing the requirement in the Mobility Plan ordinance that the Mobility Plan be updated according to the schedule contained in the latest Mobility Plan ordinance.~~
- ~~3. Prior to a permit being issued, the applicable Mobility Fees for the project must be paid in accordance with the County's Mobility Fee ordinance.~~
- ~~4. Notwithstanding 2.06(A)1 above, Development Order conditions regarding transportation shall be observed for the East Nassau Community Planning Area's (ENCPA) Detailed Site Area Plans (DSAPs). Staff shall review the conditions of DSAP Development Orders to ensure that development proceeds according to the Development Order conditions.~~

~~C. Potable water.~~

- ~~1. *Level of service standard.* The adopted level of service standard shall be the standards identified in the Public Facilities and Capital Improvements Elements of the Comprehensive Plan. The adopted level of service standard shall not preclude the placement of conditions on development orders regarding potable water service including, but not limited to, fire flow standards, sizing of distribution and transmission lines, requirements for grey water use, and peak capacity.~~
- ~~2. *Availability of adequate facilities.* Applications for APF determinations shall be analyzed with respect to the availability of adequate potable water which shall be determined pursuant to the following information provided by the applicant and subject to verification:~~
 - ~~a.~~
 - ~~b. Project data pertaining to the proposed development under consideration which shall be provided by the applicant, subject to verification by the County and which shall, at a minimum, contain the following:~~
 - ~~i. The specific location of the project, including the identification of the entity expected to provide service to the project; and~~
 - ~~ii. Total potable water demand and peak demand projected to be generated by the proposed development; and~~
 - ~~iii. Project phasing information, if applicable.~~

- ~~c. Written documentation shall be provided prior to the issuance of a certificate of APF providing evidence from the applicable public water supply provider that adequate water supplies will be available to serve the new development no later than the anticipated date of the issuance of a certificate of occupancy.~~

~~D. Sanitary sewer.~~

- ~~1. Level of service standard. The adopted level of service standard shall be the standard identified in the Public Facilities and Capital Improvements Elements of the Comprehensive Plan~~
- ~~2. Availability of adequate facilities. Applications for APF determinations shall be analyzed with respect to the availability of adequate wastewater transmission, treatment and disposal capacity, which shall be determined pursuant to the following information provided by the applicant and subject to verification:~~
 - ~~a. —~~
 - ~~b. Prior to the issuance of a certificate of APF by the County, written documentation shall be provided from the applicable sanitary sewer provider that adequate wastewater collection and treatment capacity will be available to serve the new development no later than the anticipated date of the issuance of a certificate of occupancy.~~
 - ~~c. Projects served by septic tanks or package treatment plants. Projects served by septic tanks or package treatment plants shall, prior to the issuance of construction plan approval or building permit, comply with and provide all applicable permits or approvals from the Nassau County Health Department or a Florida Department of Environmental Protection (FDEP) Domestic Wastewater Treatment Plant permit.~~

~~E. Parks/open space.~~

- ~~1. Level of service standard. The adopted level of service standard shall be those standards identified in the Recreation and Open Space and Capital Improvements Elements of the Comprehensive Plan.~~
- ~~— Availability of adequate parks/open space acreage. Adequate capacity of parks and recreational facilities shall apply only to residential development (one and two family, multi family, condominiums and town homes, etc.). Applications for APF determinations shall be analyzed with respect to the demand for parks/open space acreage which shall be determined by multiplying the number of dwelling units by the average household size established by the latest Decennial Census and multiplying that product by the adopted LOS standard to arrive at an estimated acreage demand for the proposed development.~~

~~At a minimum, a proposed project shall meet the following standards to satisfy the APF requirement:~~

- ~~a. Prior to the issuance of a certificate of occupancy, the acreage required for the necessary facilities and services is dedicated to, or acquired by, the County; or~~

- b. ~~The development order or building permit(s) is issued subject entering into an enforceable development agreement or development order issued pursuant to Section 380.06, F.S., which provides that the necessary facilities and services to serve the proposed project are in place or under actual construction no later than one year after the issuance of the certificate of occupancy or its functional equivalent and completed to the satisfaction of the County within three (3) years from the date of issuance; or~~
- c. ~~For residential projects generating less than 15 acres of recreational impact, the applicant shall have the option, in lieu of dedicating land and facilities, to satisfy the APF requirements through one or a combination of the following options:: a transfer of development rights, and/or a payment of recreational impact fees.~~
- d. ~~Notwithstanding a c above, payment of recreational impact fees can only be an option if such impact fees are currently active and employed by the County.~~

~~F. Solid waste.~~

- 1. ~~Level of service standard. The adopted level of service standard shall be the standard identified in the Public Facilities and Capital Improvements Elements of the Comprehensive Plan for per capita solid waste landfill disposal in unincorporated Nassau County, expressed in pounds per day, and tons per year. This LOS is based on historical data obtained from the County Solid Waste Management Department. Using this information, the Comprehensive Plan projects the solid waste disposal needs (in tons per year) to serve the population of the unincorporated area over the planning timeframe.~~
- 2. ~~Availability of adequate facilities. Applications for APF determinations shall be analyzed with respect to the availability of adequate solid waste collection and disposal system capacity, pursuant to the following information provided by the applicant and subject to verification:~~
 - a. ~~The applicant shall submit information with the application providing an estimate of solid waste generation for the project based upon the adopted level of service in the Comprehensive Plan described above.~~
 - b. ~~The County shall monitor and review on a regular basis (at least once annually) data obtained from the County Solid Waste Management Department and review interlocal agreements for solid waste disposal especially when these interlocal agreements are renewed, amended or terminated, in order to ensure that the County can properly address the need for solid waste disposal in the unincorporated areas.~~

~~G. Drainage.~~

- 1. ~~Level of service standard. The adopted level of service standard shall be the standard identified in the Public Facilities and Capital Improvements Elements of the Comprehensive Plan, the adopted County Master Drainage Plan and in the~~

~~Nassau County Roadway and Drainage Standards (Ordinance 99-17, as amended).~~

- ~~2. Availability of adequate facilities. For drainage, the following standards must be met to satisfy the APF requirement and to receive a certificate of APF:~~
 - ~~a. The necessary facilities and services are in place at the time a development permit is issued; or~~
 - ~~b. The necessary facilities are under construction at the time a development permit is issued or will be in place prior to the issuance of the first certificate of occupancy; or~~
 - ~~c. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to:~~
 - ~~i. Development agreements pursuant to Section 163.3220, Florida Statutes, or~~
 - ~~ii. An agreement or development order issued pursuant to Chapter 380, Florida Statutes. Any such agreement must guarantee that the necessary facilities and services are in place prior to the issuance of the first certificate of occupancy.~~

SECTION 3. CODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall be included and incorporated into the Land Development Code (LDC) of Nassau County, Florida. The codifier may re-letter or renumber sections to conform to the uniform numbering and style of the LDC.

SECTION 4. SEVERABILITY

It is the intent of the Board of County Commissioners of Nassau County, Florida, and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

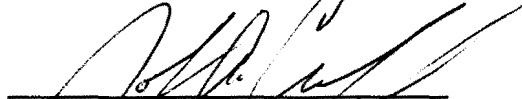
ADOPTED THIS 14th DAY OF December, 2015 BY THE BOARD OF
COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



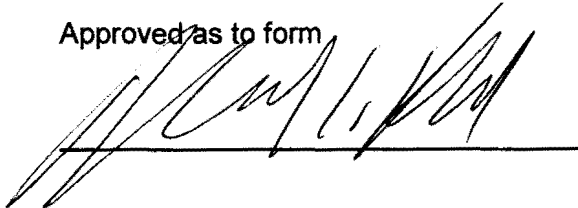
PAT EDWARDS
Its: Chair

ATTEST as to Chairman's Signature:


JOHN A. CRAWFORD
Its: Ex-Officio Clerk

MES
12-16-15

Approved as to form



County Attorney