

ORDINANCE NO. 2001- 36

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, ESTABLISHING PROCEDURES AND CRITERIA FOR CALCULATING FAIR SHARE ASSESSMENT AMOUNTS AND ENTERING INTO FAIR SHARE ASSESSMENT CONTRACTS, INCLUDING A PROVISION REQUIRING NOTICE, PUBLIC HEARING AND APPROVAL BY THE COUNTY COMMISSIONERS PRIOR TO AUTHORIZING THE EXECUTION OF THESE CONTRACTS; PROVIDING PENALTIES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Nassau County, Florida, has found it to be in the best interest of the citizens of Nassau County, Florida, that there shall be an ordinance establishing procedures and criteria for calculating fair share assessment amounts and entering into fair share assessment contracts; and

WHEREAS, The Board of County Commissioners of Nassau County, Florida, finds as a matter of public policy that the implementation of Section 163.3180(11), Florida Statutes, is a public necessity and is important in the protection and enhancement of the quality of life in Nassau County; and

WHEREAS, this Ordinance shall be known as the Nassau County Fair Share Assessment Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Nassau County, Florida, this 24th day of September, 2001, as follows:

SECTION 1. PURPOSE.

The purpose of this Ordinance is to establish procedures by which "fair share" assessment contracts authorized pursuant to Section 163.3180(11), Florida Statutes, shall be considered, reviewed and approved by Nassau County, in a manner consistent with Section 163.3180(11), Florida Statutes, and which promotes a strong commitment to comprehensive facilities planning, ensures adequate environmental

protection and the provision of adequate public facilities, promotes certainty in the development approval process, and reduces the economic costs of development by providing greater regulatory certainty.

The Board of County Commissioners of Nassau County, Florida, finds as a matter of public policy that the implementation of Section 163.3180(11), Florida Statutes, is a public necessity and is important in the protection and enhancement of the quality of life in Nassau County.

SECTION 2. INTENT AND AUTHORITY.

- (a) In some instances, it may be necessary and desirable for the County to reduce the potential for liability which may exist as a result of takings claims due to insufficient transportation capacity by allowing a landowner or developer to proceed with a proposed development, notwithstanding a failure of transportation concurrency, when adequate provisions are made by the County to improve deficiencies in the transportation system, as authorized pursuant to Section 163.3180(11), Florida Statutes.
- (b) The fair share assessment payments collected pursuant to these procedures will provide an additional source of funds that is available to the County for the purpose of improving the transportation network and will allow the County to maximize the funds currently allocated for transportation improvements in the Capital Improvement Program, and in certain instances, to expedite the construction of those planned improvements.

SECTION 3. FAIR SHARE ASSESSMENT CONTRACT PROCEDURES.

- (a) A "fair share assessment contract" is a binding contract entered into between Nassau County and an owner or

developer of land wherein the owner or developer is authorized to proceed with a proposed development, notwithstanding a failure of transportation concurrency, when transportation projects have been included within the County's Five Year Capital Improvement Program ("CIP") which, when completed, will provide transportation facilities adequate to serve the proposed development, and wherein the County has assessed the owner or developer's fair share of the cost of providing transportation facilities necessary to serve the proposed development and a binding commitment has been made to pay that assessment to the County during the term of the agreement and prior to the issuance of any final development permit or final development order.

(b) There is hereby established a procedure to allow a landowner or developer to proceed with the development of a specific parcel of land, notwithstanding a failure of the development to satisfy transportation concurrency, as specifically authorized pursuant to Section 163.3180(11), Florida Statutes, if all of the following requirements have been met:

- (1) the comprehensive plan is in compliance as of the effective date of the fair share assessment contract;
- (2) the proposed development is consistent with the Comprehensive Plan;
- (3) the Five Year Capital Improvement Program ("CIP") provides for transportation projects which, upon completion, will provide transportation facilities adequate to serve the proposed development;

- (4) the County has calculated the fair share of the cost of providing of transportation facilities necessary to serve the proposed development according to the formula established in Section 4(a) herein and the assessment has a reasonable relationship to the transportation impact generated by the proposed development;
 - (5) the landowner or developer has executed a fair share assessment contract, and has agree to pay the County the amount assessed prior to the issuance of any final development order or final development permit in connection with the proposed development;
- (c) The Concurrency Coordinator shall establish guidelines and requirements to implement the fair share assessment procedures established herein, to include:
- (1) the term of agreements, which shall not exceed five (5) years;
 - (2) a form of application and supporting information and documentation required to be submitted with request for consideration, including, but not limited to, a performance schedule for any contract with a term of more than one (1) year;
 - (3) the schedules for amending the Schedule of Capital Improvements of the Comprehensive Plan and the CIP in order to permit regular and timely appropriations and expenditures from the fund balance of the Fair Share Sector Areas Transportation Improvements Special Revenue Fund.

- (4) a standardized fair share assessment contract in a form or forms approved by the County Attorney. Required attachments to the contract must include, at a minimum, a fair share calculation sheet and a listing of the future transportation projects listed in the CIP that will serve the proposed development, both of which must be prepared by the Concurrency Coordinator, and a legal description of the property upon which the development is proposed to be located. The Concurrency Coordinator shall also have prepared, as supplemental information to be included in the file for each contract, a map showing the boundaries of the proposed development, the transportation network impacted by the proposed development, the radius and the affected links classified as deficient, backlogged and constrained.
- (d) The Concurrency Coordinator, shall, with the consent of the County Attorney, present fair share assessment contracts which comply with the criteria, regulations, guidelines and procedures established pursuant to the Board of County Commissioners for approval.
- (e) Funds received pursuant to fair share assessment contracts shall be tendered to the Clerk to deposit into the Fair Share Sector Areas Transportation Improvements Special Revenue Fund. These funds shall be assigned to the appropriate account for the affected sector. When the proposed development lies in or affects more than one sector the Director of Public Works or his designee shall determine whether to allocate the funds into the account

for one sector or to allocate the funds between or among the accounts for the other affected sectors. The sector allocation(s) shall be included as an exhibit to the fair share assessment contract.

- (f) Appropriated expenditures from the fund balance for each account shall be made when there are sufficient funds which, either alone or in conjunction with other funding sources, equal the amount necessary to commence engineering, acquisition of necessary right-of-way or easements or construction of the specific transportation project(s) determined by the Director of Public Works or his designee to be adequate to serve the proposed development. The Director of Public Works shall cause the necessary amendments to the CIP and funding appropriation to be prepared and submitted to the Clerk for submittal to the Board of County Commissioners. Before the Board of County Commissioners takes final action concerning any CIP amendment(s) associated with a fair share assessment contract(s), public notice and a hearing shall be conducted.

SECTION 4. FAIR SHARE ASSESSMENT ADMINISTRATIVE PROCEDURES.

- (a) For the purpose of assessing a developer or landowner's fair share of the cost of providing transportation facilities necessary to serve a proposed development, the County shall use a quantitative formula wherein the fair share contribution (A) shall equal the total peak hour trips generated by the proposed development on each affected roadway link (B), divided by the increase in peak hour capacity created by the proposed improvement to be

constructed on the impacted road link (C), multiplied by the total cost of the proposed road improvement, including all associated right-of-way and easement acquisition, and drainage and utility costs (D).

$$\text{Landowner's fair share } A = \frac{B}{C} \times D$$

This calculation and formula shall be applied to all capacity deficient road links, including links classified as backlogged, that are identified with any part of the radius used for concurrency testing for the project. The amount of the fair share assessment shall be calculated prior to providing the contract to the Board of County Commissioners. After the \$500.00 application fee has been paid and the contract is on the Board of County Commissioners' agenda, no changes to cost amounts shall be made by the County due to updates to the formula factors. No cost changes whatsoever shall be made subsequent to the approval of the contract by the Board of County Commissioners.

- (b) The County shall use the most recent issues of the Florida Department of Transportation, Office of Policy Planning, Policy Analysis and Program Evaluation publication entitled *Transportation Costs* to calculate the value of (D) in this formula. Each year, in February, the Nassau County Public Works Department will provide written recent data compiled for completed roadway projects to assist with calculation of the associated acquisition, drainage and utility costs associated with the value of D.

- (c) The County shall use the most recent edition of the Institute of Transportation Engineer's Publication entitled *Trip Generation* to calculate the value of (B) used in this formula. The County shall use the most recent edition of the Florida Department of Transportation Level of Service Handbook, Generalized LOS Tables, to determine the value of (C).
- (d) After the fair share assessment contract has been fully executed, the Concurrency Coordinator shall revise the decision as to inadequate traffic capacity from "denied" status to "conditionally approved" status.
- (e) Upon receipt of payment of the fair share assessment amount, the Concurrency Coordinator shall further revise the status of the proposed development from "conditionally approved" status to "approved" status. No final development order or final development permit shall be issued until such time as the assessed amount has been paid to the County in accordance with the schedule which is a part of the fair share assessment contract, and in no event later than five (5) years from the effective date of the contract. In the case of a multi-phased development, the amount shall be paid to the County prior to the approval of the final development order or final development permit associated with each phase of the proposed development. At no time during the term of the fair share assessment contract shall the fair share assessment amount be increased or decreased, other than as specifically provided in the agreement in order to make adjustments for a change in the number of units or the density of the project.

SECTION 5. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR COUNTY APPROVAL OF FAIR SHARE ASSESSMENT CONTRACTS.

- (a) The purpose of the public hearing before the Board of County Commissioners is to provide the Board with the opportunity to consider public comments concerning the applicability of the formula to the proposed development and whether the formula has been correctly applied and calculated by the Department.
- (b) The notice of the public hearing shall: state the intent of the Board to consider a fair share assessment contract, specify the time, place and location of the public hearing, identify the location of the land subject to the proposed fair share assessment contract, the amount of the fair share assessment and the affected sector(s), the proposed uses, including the number of units and/or building square footage, specify a place where a copy of the proposed fair share assessment contract may be obtained.
- (c) Notice of the public hearing shall be advertised in a newspaper of general circulation approximately fourteen (14) days prior to the public hearing. The published notice shall be in the form prescribed by the Concurrency Coordinator and placed by the applicant at his expense. The applicant shall file proof of publication with the Clerk's Office prior to the public hearing.

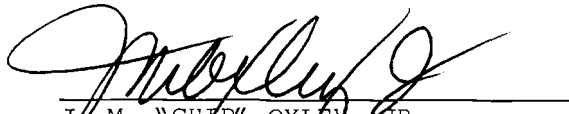
SECTION 6. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon its being filed in the Office of the Secretary of State.

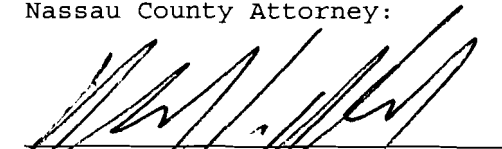
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


MARIANNE MARSHALL
Its: Chairman

ATTEST:


J. M. "CHOP" OXLEY, JR.
Its: Ex-officio Clerk

Approved as to form by the
Nassau County Attorney:


MICHAEL S. MULVAN