

**Agenda**  
**City of Winter Haven Planning Commission- Special Meeting**  
**October 19, 2006, 5:00 P.M.**  
**John Fuller Auditorium - City Hall**  
**451 Third Street, NW, Winter Haven, Florida**

1. Call to Order and Roll Call
2. Invocation and Pledge of Allegiance
3. New Business
  - A. Case Number P-06-125:** Administrative request to adopt an ordinance allowing the use of proportionate fair share mitigation to mitigate the impacts of new development on local transportation facilities.
4. Adjournment

All interested parties who decide to appeal any decision made by the Commission, Board, or Agency with respect to the matter considered at such meeting or hearing will need a record of the proceedings, and that, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105). Please be advised that you must make your own arrangements to produce this record. The Planning Division may be reached at (863) 291-5600, or at **City Hall, 451 Third Street, NW, Winter Haven, Florida, 33881.**

**CITY OF WINTER HAVEN FACT SHEET**  
**PLANNING COMMISSION- SPECIAL MEETING**  
**October 19, 2006**

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**DATE:** October 10, 2006

**TO:** Winter Haven Planning Commissioners

**VIA:** David Dickey, Community Development Director *DD*

**FROM:** Sean Byers, Senior Planner *SB*

**SUBJECT:** Case Number P-06-125: Administrative request to adopt an ordinance allowing the use of proportionate fair share mitigation to mitigate the impacts of new development on local transportation facilities.

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**BACKGROUND:**

Senate Bill 360, adopted by the Florida Legislature during the 2005 session, enacted significant changes to the State's growth management laws adopted in 1985. These changes enacted school facility planning, financial feasibility requirements for capital improvement programs, and made provisions for local governments to adopt proportionate fair-share ordinances. The new requirements are to be implemented in stages with the first being the Proportionate Fair-Share Mitigation for Transportation facilities due on December 1, 2006.

Proportionate fair-share mitigation allows a developer to pay a fee to mitigate impacts caused by their development on transportation facilities operating below adopted level of service (LOS) standards in the Comprehensive Plan. By paying this fee, the developer is allowed to move forward with their project on the condition that the deficient transportation facility is scheduled for construction in the 5-year Schedule of Capital Improvements. Should the deficient facility not be on the current 5-year Schedule of Capital Improvements, the City will be required to add the project at the next regular update.

The ordinance sets forth application requirements, review timelines, conditions, and the formula for calculating a developer's proportionate share obligation. Upon determination that all of the application requirements have been met, the City Commission may enter into an agreement with a developer. The developer will have 60 days from the approval of the agreement to make the proportionate fair-share payment. Upon receipt of the payment, and meeting of all other

concurrency requirements, the developer shall receive a certificate of concurrency approval from the City. Additionally, as a condition of the proportionate fair-share mitigation agreement, the developer will be eligible to receive impact fee credits based upon the amount of their contribution.

This ordinance has been developed in cooperation with the Transportation Planning Organization (TPO) and other cities in Polk County. The intent is to have a proportionate fair-share mitigation ordinance that is common to all of the jurisdictions in Polk County.

**NOTIFICATION:**

This request was advertised by placing a legal ad in the October 5, 2006, edition of the News Chief.

**RECOMMENDATION:**

Staff recommends the Planning Commission recommend approval of this request.

**ATTACHMENT:**

Proportionate Fair-Share Ordinance

## I. RECOMMENDED PROPORTIONATE FAIR-SHARE ORDINANCE

### 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), Florida Statutes.

### B. Findings

- (1) The City Commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and the City 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 City to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element (CIE) of the City's Comprehensive Plan.
  - (e) Is consistent with §163.3180(16), Florida Statutes, and supports Transportation Objectives 1.0, 2.0, 3.0, 4.0, 5.0, 8.0, and Capital Improvements Policy 1.2(e) of the City's Comprehensive Plan.

### **C. Applicability**

The Proportionate Fair-Share Program shall apply to all developments in the City that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the City's Concurrency Management System (CMS), including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section D of this ordinance. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), Florida Statutes. The Proportionate Fair-Share Program does not preclude applicants from funding transportation improvements pursuant to a development agreement to meet concurrency requirements.

### **D. General Requirements**

- (1) An applicant may choose to satisfy the transportation concurrency requirements of the City by making a proportionate fair-share contribution, pursuant to the following requirements:
  - (a) The proposed development is consistent with the comprehensive plan and applicable land development regulations.
  - (b) The five-year schedule of capital improvements in the City's CIE or the long-term schedule of capital improvements for an adopted long-term CMS includes the construction phase of a transportation improvement(s) that, upon completion, will satisfy the requirements of the City's transportation CMS.
- (2) The City may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by adding an improvement (construction phase) to the CIE or adopted long-term CMS that will satisfy the requirements of the City's transportation CMS. For the purposes of the Proportionate Fair-Share Program, no capacity road project shall be added to the CIE unless any required alignment study or a Project Development and Environmental (PD&E) Study has been completed with an endorsed build alternative.

To implement this option, the City shall adopt, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the City Manager or his/her designee, and determined to be financially feasible

pursuant to §163.3180(16) (b) 1, Florida Statutes, consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Any improvement project proposed to meet the developer's fair-share obligation must meet the design standards of the jurisdiction with maintenance responsibility for the subject transportation facility.

#### **E. Memorandum of Understanding on Proportionate Fair-Share Program**

The City shall coordinate with the Florida Department of Transportation, Polk Transportation Planning Organization, Central Florida Regional Planning Council and other local governments to implement the provisions of the Proportionate Fair-Share Program. Appropriate provisions for intergovernmental coordination will be detailed in a Memorandum of Understanding on the Proportionate Fair-Share Program (MOU), and the City shall coordinate with the signatory parties to ensure that mitigation to impacted facilities is based on comprehensive and consistent transportation data.

#### **F. 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 D of this Ordinance.
- (2) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, e.g., project status in CIE, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the SIS, or any state transportation facility, then the FDOT will be notified and invited to participate in the pre-application meeting.
- (3) Eligible applicants shall submit an application to the City that includes an application fee that will be established by Resolution of the City Commission and on file with the City Clerk's Office. Any fees shall be indexed to inflation and increase each October 1 by three percent (3%). The following information shall be included with the application:
  - (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);
  - (g) Copy of concurrency application;
  - (h) Copy of the project's traffic study or traffic impact analysis; and
  - (i) Location map depicting the site and affected road network.
- (4) The City 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 D of this Ordinance, 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 City Manager or his or her designee may, in his or her 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), Florida Statutes, proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrence 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 City, or the applicant with direction from the City, 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, or any state transportation facility, no later than 90 days from the date at which the applicant received the notification of a sufficient application and no fewer than 45 working days prior to the City Commission meeting when the agreement will be considered.

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

**G. 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 as provided in §163.3180 (16) (c), Florida Statutes.
- (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 based on the form of mitigation as provided in §163.3180 (16) (c), F.S. (contributions of private funds, land or facility construction).
- (3) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), Florida Statutes, as follows:

The cumulative number of peak hour, peak direction trips from the complete build-out of the proposed development, or build-out of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated cost of the proportionate share project. In this context, cumulative does not include project trips from previously approved stages or phases of development.

This methodology is expressed by the following formula:

Proportionate Fair Share =

$$\sum_i [(Development\ Trips_i) / (SV\ Increase_i)] \times Cost_i$$

Where:

$\sum_i$  = Sum of all deficient links proposed for proportionate fair-share mitigation for a project;

Development

- Trips<sub>i</sub> = 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 concurrency management system (CMS);
- SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment “i”;
- Cost<sub>i</sub> = Adjusted cost of the improvement to segment “i”. Cost shall include the cost of all project phases (preliminary engineering or alignment study, design, rights-of-way acquisition and construction) in the years said phases will occur with all associated costs.

- (4) The cost of the proportionate fair-share project shall be determined by the maintaining jurisdiction.
- (5) The value of right-of-way dedications used for proportionate fair-share payment shall be subject to the approval of the maintaining jurisdiction. No value shall be assigned to right-of-way dedications required under ordinance or as a condition of development approval.

#### **H. Impact Fee Credit for Proportionate Fair-Share Mitigation**

- (1) The City shall maintain a list of transportation projects funded by applicable road impact fees under the CIE. If the subject improvement is contained in the current CIE and funded in whole or in part by road impact fees, the proportionate fair-share contributions shall be applied as a credit against road impact fees.
- (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 City’s 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 City pursuant to the requirements of the City’s impact fee ordinance.
- (3) 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.

- (4) The amount of traffic impact fee credit for a proportionate fair-share contribution may be up to, but shall not exceed, the project's proportionate fair-share amount and will be determined based on the following formula:

$$\text{Credit} = [(\text{Cost of Proportionate Share Project}) \div (\text{Total Cost of All Projects in Applicable Impact Fee District})] \times (\text{Total Project Traffic Impact Fee Liability})$$

Where:

Cost of projects shall include the cost of all project phases in the year said phases will occur with all associated costs. Credit shall be calculated based on multiple Proportionate Share Projects, if applicable.

## **I. Proportionate Fair-Share Agreements**

- (1) Upon execution of a proportionate fair-share agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive a City certificate of concurrency approval. Should the applicant fail to apply for building permits within the timeframe provided for in the City's concurrency certificate, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate fair share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.
- (2) Payment of the proportionate fair-share contribution for a project and other road impact fees not subject to an impact fee credit shall be due and must be paid within 60 days of the effective date of the proportionate fair share agreement. The effective date shall be specified in the agreement and shall be the date the agreement is approved by the City Commission or its designee.
- (3) All developer improvements accepted as proportionate fair share contributions must be completed within three years of the issuance of the first building permit for the project which is the subject of the proportionate fair share agreement and be accompanied by a security instrument as approved by the City Manager and City Attorney that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed

within three years of the issuance of the first building permit for the project which is the subject of the proportionate fair share agreement.

- (4) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to the effective date of the proportionate fair share agreement.
- (5) Any requested change to a development project subsequent to issuance of a development order shall 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 City will be nonrefundable.

#### **J. 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 City's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government having jurisdiction over the relevant transportation facility subject to the proportionate fair share agreement, and with the concurrence of the local government issuing the development order, 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. These operational improvements shall consistent with, and sustainable through, the construction of the capacity project. Proportionate fair-share revenues may also be used as the 50% local match for funding under the Florida Department of Transportation (FDOT) Transportation Improvement Program (TRIP) (5-year work plan).
- (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.