

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20041221

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve updated Interlocal Agreement between Lee County and School Board regarding the application of the Lee Plan and Land Development Code to site plan review for the construction and expansion of public educational facilities.

**WHY ACTION IS NECESSARY:** Delineates respective rights and obligations under the Florida Statutes, Lee Plan and Land Development Code.

**WHAT ACTION ACCOMPLISHES:** Implements procedures for site plan review for public educational facility construction.

**2. DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT County-Wide **A12B**

**3. MEETING DATE:**

**10-05-2004**

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC WALK ON
- TIME REQUIRED:**  
15 minutes

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE §1013.33
- ORDINANCE
- ADMIN. CODE
- OTHER Interlocal Agreement

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney/DCD
- C. DIVISION Land Use/Zoning and Development Services

BY: *Donna Marie Collins*  
Donna Marie Collins  
Assistant County Attorney and  
Mary Gibbs *M. Gibbs*  
Director, DCD

**7. BACKGROUND:** Since 1991 it has been the State policy to require the coordination of planning between the School Board and local governing bodies so that necessary services are available for new public educational facilities and that the site plans for those facilities are consistent with the local comprehensive plan and land development regulations. The first Interlocal Agreement between Lee County and the School Board was adopted later that year. The Interlocal established the process of implementing

(See Page 2)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>M. Gibbs</i>	N/A	N/A	N/A	<i>Simply</i>	QA <i>9/22/04</i>	QM <i>9/23/04</i>	RISK <i>9/10/04</i>	GC <i>9/22/04</i>	<i>2-23-04</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

*CO. ATTY*  
*9/22/04*

RECEIVED BY  
COUNTY ADMIN: *TD*  
*9-20-04*  
*3:20*  
COUNTY ADMIN  
FORWARDED TO:  
*9/23/04*  
*2:15pm*

**Subject: Approve updated interlocal agreement between Lee County and School Board regarding the application of the Lee Plan and Land Development Code to the construction and expansion of public educational facilities.**

the new statutory requirement and the School Board has been following the terms of that Interlocal Agreement by applying for local development orders for the construction of new and expanded facilities.

In 2002 the governing statutory provisions were amended to clarify and expand the scope and the details of the site plan review process. The proposed Interlocal Agreement delineates the respective rights and obligations of the County and the School Board under Florida Statutes, the Lee Plan and the Land Development Code. The Agreement specifically identifies the scope of the site plan review process and establishes time lines for plan review consistent with those established by the Florida Legislature. It also delineates the rights and obligations of each party under the Florida Statutes, the Lee Plan and the Land Development Code.

Lee County and the School Board staff have worked on the draft Agreement since Spring. Consensus has been reached on nearly all issues. Three outstanding issues remain: fees, time line for review and the potential for early work permits.

#### Fees.

As to the issue of fees, the decision whether to charge the School Board for site plan review is a policy decision. However, staff recommends that the School Board be charged for site plan review consistent with the fee schedule adopted by Administrative Code. The basis of this recommendation is that (1) there is no statutory prohibition against charging the School Board fees for site plan review, (2) the County has agreed to prioritize the review of School Board applications for development orders, (3) charter schools are subject to fees for site plan review (development order process) and, (4) the School Board can use impact fee revenue to pay for the development order review process.

The Division of Development Services researched the development order applications filed by the School Board since 1991. The average cost per application based on the current fee schedule would result in a fee of approximately \$4,200 per development order.

#### Time Line for Review.

The second outstanding issue pertains to the time frame for staff review of applications for development orders. The time frames set forth in the Interlocal Agreement are consistent with those established by the Florida Statutes. Because of the complexity of site plan review, County staff has confirmed that it would be difficult to process applications for development orders in less time. Staff has agreed to allow for the possibility of early work permits within 21 calendar days of submittal if pertinent issues are resolved.

#### Early Work.

As mentioned above, Lee County staff has agreed to allow for the possibility of early work permits to be issued within 21 calendar days of development order submittal if pertinent issues are resolved. The School Board desires the opportunity to commence "strip and fill" activity on the site and apply for a foundation permit as soon as they submit a development order application and receive a permit from the SFWMD. County staff is reluctant to allow for site work without the opportunity to first review the development order application and identify pertinent issues that should be addressed prior to any site work approval. Pertinent issues that would have to be addressed prior to early site work include:

1. protected species,
2. a Storm Water Pollution Plan for the site,
3. vegetation removal permit,
4. certificate to dig in archeological sensitivity zones.

**INTERLOCAL AGREEMENT BETWEEN  
LEE COUNTY AND THE LEE COUNTY SCHOOL BOARD**

This agreement is entered into on \_\_\_\_\_, 2004, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as "Lee County", and the Lee County School Board, a public agency of the State of Florida, hereinafter referred to as "School Board."

WHEREAS, Lee County and the School Board entered into an interlocal agreement pursuant to Florida Statutes, Section 163.01, the Florida Interlocal Cooperation Act of 1969, on October 23, 1991, in an effort to address the State policy expressed in Section 235.193(1), Florida Statutes (1990), which was to require the coordination of planning between the School Board and local governing bodies to ensure plans for construction and opening of public educational facilities are coordinated with other necessary services. The Statute also required that proposed educational facilities site plans and off-site impacts be consistent with the local comprehensive plan and land development regulations [See former 235.193(6)]; and

WHEREAS, Section 235.193, *et seq.*, was repealed by the Florida Legislature in 2002 and replaced by Section 1013.33; and

WHEREAS, pursuant to Section 1013.33, Florida Statutes (2003), it continues to be the policy of the Florida Legislature to require the coordination of planning between the School Board and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with the plans for residential development and concurrently with other necessary services [1013.33(1)]; and

WHEREAS, pursuant to Section 1013.33(1), Florida Statutes, this planning must include the integration of the educational facilities plan and applicable policies and procedures of a school board with the local comprehensive plan and land development regulations of local governments [See also 1013.33(3)(d), (10) and (13)]; and

WHEREAS, the School Board, Lee County, and the city or town council of the municipalities of Bonita Springs, Cape Coral, Fort Myers, Fort Myers Beach, and Sanibel entered into an interlocal agreement on August 20, 2002, that jointly established the specific ways in which the plans and processes of the School Board and the local governments are to be coordinated; and

WHEREAS, pursuant to Section 1013.33(10), Florida Statutes (2003), the location of educational facilities must be consistent with the Lee County Comprehensive Plan (Lee Plan) and consistent with the Lee Plan implementing land development regulations as set forth in the Land Development Code (LDC); and

WHEREAS, pursuant to Section 1013.33(12), (13), and 163.3161(5), the proposed education facility site plan must be consistent with the Lee Plan and LDC; and

WHEREAS, Lee County adopted the LDC, which addresses the development of real property in unincorporated Lee County; and

WHEREAS, the County and the School Board desire to further delineate their respective rights and obligations under the Florida Statutes, Lee Plan, and LDC as set forth below:

NOW, THEREFORE, IT IS AGREED as follows:

1. Authority and Intent. This agreement is made pursuant to Florida Statutes, Section 163.01, *et seq.*, the Florida Interlocal Cooperation Act of 1969. It is the intent to incorporate recitals set forth above into the terms of this agreement.
2. Notice of Site Acquisition. The School Board must provide written notice to the Planning Director, Lee County Division of Planning, 1500 Monroe Street, Fort Myers, FL 33901, at least 60 calendar days prior to acquiring or leasing property that may be used for a public educational facility. [1013.33(11)].
3. Consistency of Site Location with Lee Plan. Upon receipt of this notice, Lee County will notify the School Board within 45 calendar days if the site (location) proposed for acquisition or lease is consistent with the future land use categories and policies of the Lee Plan. This preliminary notice does not constitute Lee County's determination of consistency relative to the "site plan" pursuant to the paragraphs set forth below. [1013.33(11) and AGO 03-02].
4. Consistency of Site Plan with Lee Plan. As early in the design phase as feasible, but no later than 90 calendar days before commencing construction, the School Board must submit a written request to Lee County for a determination of consistency with the Lee Plan and LDC of the proposed public educational facility site plan [1013.33(12) and 163.3161(5)]. This request must be accompanied by an application for local development order (DO) in accordance with Chapter 10 of the LDC. [Note that Section 163.3161(5) provides that it is the State legislature's intent that adopted comprehensive plans have legal status and that no public or private development will be permitted except in conformity with the comprehensive plan].
5. Adequacy of Site Plan. Lee County and the School Board acknowledge and agree that Lee County may not deny a proposed site plan based on adequacy of the site plan as it relates solely to the internal site needs of a public educational facility such as building separation, internal pedestrian ways, location of parking areas, athletic field location and internal traffic plan. In addition, if the site location is consistent with the Lee Plan's policies

Site  
Plan  
Review

and future land use categories, Lee County may not deny the site (location) application. However, both parties agree that pursuant to Section 1013.33(13), Florida Statutes, Lee County may legally impose reasonable development standards and conditions and consider the proposed site plan and its adequacy as it relates to environmental concerns, health, safety, welfare, and effects on adjacent property. [1013.33(11) and (13)]. [See also AGO79-37 confirming that the comprehensive plan and LDC do not apply to or regulate the same subject as the State Building Code for Public Education Facilities.]

6. Review of Site Plan. Lee County will provide a written response within 21 calendar days after receiving the application for local development order approval. If Lee County fails to provide a written determination of the proposed site plan's consistency status with the Lee Plan and LDC within 90 calendar days after the School Board requests a determination of consistency, the application will be considered approved. [1013.33(12)]. The County's response must set forth whether the proposed development order for the educational facility is consistent with the Lee Plan and the LDC. [1013.33(12)]. If Lee County determines that the proposed development order application is consistent with the Lee Plan and LDC, the County will issue the DO approval. Once the DO is approved, the School Board may commence construction of those site improvements included in the DO without further County approval, except as provided herein.

7. Priority Review. The County will afford priority to School Board applications for the construction or expansion of public educational facilities. All submittals to the Development Services Division will be reviewed within 21 calendar days of submittal. The Development Services Division will offer assistance to the School Board in order to reduce the necessity for re-submittal of documents. Early work permits can be granted within 21 calendar days if all pertinent issues are resolved.

8. Fees. The parties agree that, while property owned by school districts used for educational purposes is constitutionally and statutorily exempt from taxation and special assessments, there is no analogous exemption from service charges or fees for the use of services. [AGO 91-27]. Accordingly, the School Board will be subject to the adopted fee schedule for local development order review.

9. Site Plan Review. In connection with its development order review, Lee County will specifically review the adequacy of site plans as they relate to the items set forth below:

- a. Adequacy of the fire flows and placement of hydrants for fire protection;
- b. Traffic Impact Statement/adequacy of site access;
- c. Off-site turn lanes and utility improvements;
- d. Site lighting;
- e. Proposed storm-water outfall;
- f. On-site and off-site (perimeter) sidewalk and bike-path improvements;
- g. Open space and indigenous preservation (per commercial standards);

- h. Site buffering (per commercial standards);
- i. Removal of exotic vegetation;
- j. Protected species survey and management, if applicable;
- k. Impacts on archeological and historic resources.
- l. Compatibility with adjacent land uses;

The County will impose reasonable development standards, provisions, and conditions as appropriate. The parties will meet to resolve Lee Plan and LDC consistency issues when they arise. [See AGO 79-37, wherein it is noted that under Section 163.3194(1), it is clear and unambiguous that all development undertaken by and all action taken in regard to development orders by school boards must be consistent with the plan.] [See also AGO 89-31 which states that to the extent the comprehensive plan and land development regulations do not regulate the same subject as the State Uniform Building Code for Public Education Facilities, a district school board is subject to the comprehensive plan and land development regulations when developing land in the county.]

10. Conflicts. Lee County will not impose standards and conditions that conflict with those established in Chapter 1013, Florida Statutes, or the Florida Building Code for Public Educational Facilities Construction, unless mutually agreed and consistent with the interlocal agreement adopted on August 20, 2002. [1013.33(13)]. [AGO 79-37 confirms that a local government comprehensive plan and land development regulations do not regulate the same subject matter as the State Building Code for Public Education Facilities.]

11. State and Federal Regulations. The School Board must comply with all State and Federal regulations pertaining to wetlands protection and endangered species. The School Board must submit copies of State and Federal permits applications with the DO application including a copy of the application for the SFWMD permit and the Storm Water Pollution Prevention Plan. No early work permits or final development order approval will be issued by the county until the State and Federal permits have been issued.

12. Parking. It is agreed by the parties that public educational facilities will not be subject to the on-site parking requirements of the LDC.

13. Waiver. The construction of new educational facilities, the expansion of existing facilities that increase the student population by more than 5 percent, stadiums, and construction that changes the primary use of a facility must obtain a development order pursuant to the LDC. The County will waive the following requirements:

- a. Assurance of completion for off-site improvements provided the School Board obtains appropriate assurance of completion sureties as part of the contracts for construction of off-site improvements; and

- b. Review of wetland impacts.

14. Exemptions/Limitations. Lee County review or approval is not required for the following activities:

- a. placement of temporary or portable classroom facilities.
- b. proposed renovation or construction on existing school sites to the extent the activity does not fall within the exceptions set forth below or in paragraph 15 hereto.

However, construction that changes the primary use of a facility, construction of stadiums, or construction activity that results in a greater than 5 percent increase in the student capacity is subject to the Lee County site plan review described in this agreement.

15. Existing Public Education Facilities Site Plans. The parties agree that existing facilities will be considered consistent with the Lee Plan. If the School Board submits an application to expand an existing school site, Lee County may impose reasonable development standards and conditions on the expansion only. Lee County will not impose standards and conditions that conflict with those established in Chapter 1013, Florida Statutes, or the Florida Building Code for Public Educational Facility Construction, unless mutually agreed. [1013.33(15)].

16. Application of the LDC to Building Construction. The parties acknowledge and agree that the Lee Plan and LDC (except Chapter 6) do not apply to conventional construction standards, but rather relate to zoning and land use development activity. Accordingly, those regulations, by law, apply to the development of public educational facilities. Chapter 6 of the LDC is not applicable to the extent it conflicts with the Florida Building Code. Therefore, it is agreed that the Florida Building Code has the force and affect of law and will supersede the provisions of Chapter 6 of the LDC.

17. Certificate of Compliance. The School Board project engineer and landscape architect must comply with the Certificate of Compliance (CC) process specified in LDC Chapter 10.

18. Impact Fees. Public education facilities are exempt from County impact fees.

19. Dispute Resolution. The adjudication of disputes and disagreements will be resolved in accordance with the governmental conflict resolution procedures specified in Chapters 164 and 186 of the Florida Statutes.

20. Governing Agreement and Future Amendments. This agreement is intended to supersede the interlocal agreement entered into on October 23, 1991. It will remain in full force and effect until the Florida Legislature amends Chapter 1013, Florida Statutes, to

exempt public educational facilities from compliance with local comprehensive plans and land development regulations, or until such time as the parties hereto mutually agree to amend the terms. This agreement is intended to supplement the interlocal agreement entered into on August 20, 2002.

IN WITNESS WHEREOF, this interlocal agreement has been executed by and on behalf of Lee County and the Lee County School Board of Lee County on \_\_\_\_\_, 2004. This agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be the agreement between the parties.

Attest:  
Charlie Green, Clerk

Board of County Commissioners  
Lee County, Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
John E. Albion  
Chairman

(SEAL)

Approved as to form

By: \_\_\_\_\_  
Donna Marie Collins,  
Lee County Attorney's Office

Attest:

The School Board of Lee County, Florida

By: \_\_\_\_\_  
James Browder  
Superintendent

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_



Approved as to Form

By: \_\_\_\_\_  
Keith Martin, Esq.  
Attorney for the School Board