



MEMORANDUM
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GOE

Agenda Item No. 6(B)

TO: Honorable Chairwoman Natacha Seijas
and Members of the Governmental
Operations and Environment Committee

DATE: **September 9, 2008**

FROM: Kay M. Sullivan, Director
Clerk of the Board

SUBJECT: Approval of Commission
Committee Minutes

The following Clerk's Summary of Minutes are submitted for approval by the Governmental Operations and Environment Committee:

- June 19, 2008 Special Meeting

KS:jt
Attachment



Stephen P. Clark
Government Center
111 N.W. 1st Street
Miami, FL 33128

CLERK'S SUMMARY OF
Meeting Minutes
Governmental Operations and Environment
Committee

Natacha Seijas (13) Chair; Jose "Pepe" Diaz (12) Vice Chair; Commissioners Audrey M. Edmonson (3), Carlos A. Gimenez (7), Joe A. Martinez (11), and Dorrin D. Rolle (2)

Special Meeting

Thursday, June 19, 2008

9:30 AM

COMMISSION CHAMBERS

Members Present: Jose "Pepe" Diaz, Carlos A. Gimenez, Joe A. Martinez, Dorrin Rolle, Natacha Seijas.

Members Absent: Audrey M. Edmonson.

Members Late: None.

Members Excused: None.

Members Absent County Business: None.

1 MINUTES PREPARED BY:

Report: *Jill Thornton, Commissioner Reporter
(305) 375-2505*

1A ROLL CALL

Report: *The following staff members were present:
Assistant County Manager Susanne Torriente;
Assistant County Attorney Joni Armstrong-Coffey,
and Deputy Clerk Jill Thornton.*

2 REMARKS FROM CHAIRPERSON SEIJAS

Report: *Chairwoman Seijas called the meeting to order and provided opening remarks. She expressed appreciation to her colleagues for agreeing to participate in another session to discuss very difficult and important issues regarding the interlocal agreement between the County and Miami-Dade Public Schools. She noted the difficulty of several governing bodies having to agree on one concurrency agreement.*

Commissioner Martinez asked that his memorandum, dated June 18, 2008, addressing concerns with the Interlocal Agreement for Public School Facilities Planning, be incorporated into today's discussions.

Chairwoman Seijas expressed appreciation to the School Board for considering the concerns of the County Commissioners and for giving direction to staff. She noted the process was near completion with many issues addressed, and she hoped that after considering all of the versions, the County Commission could adopt a concurrency agreement that could be forwarded to the Department of Community Affairs (DCA).

Chairwoman Seijas stated she felt all parties to the Interlocal Agreement would agree the document was not perfect but a work in progress that might have some flaws; however, she noted the importance of adopting an agreement that contained an amendment provision for considering changes in the future. She recognized certain issues unique to the School Board that only the School Board had jurisdiction over, but she noted the agreement must have reasonable provisions to allow room for disagreement. Chairwoman Seijas noted each party to this agreement had the right to register their objection, but must be reasonable in accommodating, rather than controlling one another. She stated she believed the proposed amendment provision in Special Item No. 1 Supplement provided that flexibility and she asked Assistant County Attorney Joni Armstrong-Coffey to read it into the record. She noted she would later ask for a motion to incorporate the proposed amendment provision into the Interlocal Agreement document.

Assistant County Attorney Joni Armstrong-Coffey read into the record, the proposed amendment

provision, as noted on typed pages 35 and 36 of Special Item No. 1 Supplement to the resolution, for the Committee's discussion.

Chairwoman Seijas asked Ms. Armstrong-Coffey to also read into the record, some proposed minor revisions to the Interlocal Agreement.

Assistant County Attorney Armstrong-Coffey noted staff prepared a list of substantive revisions raised by this Committee that staff and the County Attorney's Office (CAO) worked to put forth for consideration. She noted a list of revisions was contained in the Supplemental report to the foregoing resolution, handwritten page 9, along with the typed page numbers where they appear in shaded print throughout the Interlocal Agreement. In addition, she noted some minor revisions were made to correct scrivener's errors and to delete references to cities within Miami-Dade County since the version of the Agreement, before the Committee today, was technically an agreement between the County and Miami-Dade County Public Schools only, although to take effect, all the cities would need to get on board with their provisions.

Chairwoman Seijas noted the possibility of future issues arising as a result of this document. She noted should future reasonable debate occur within the framework of the agreement approved today, than the Committee did a good job. She stated she felt confident the School Board and all the cities would agree the reasonable thing to do would be to adopt the proposed Agreement as amended. Chairwoman Seijas asked Assistant County Attorney Armstrong-Coffey to set the agenda.

Assistant County Attorney Joni Armstrong Coffey advised that Agenda Special Item No. 1 contained the original resolution authorizing execution of the Interlocal Agreement between the County and Miami-Dade County Public Schools for public school planning; and Special Item No. 1 Supplement contained a proposed revised resolution, along with the supplemental information she previously mentioned and matrixes that provide background information for the Committees consideration.

It was moved by Commissioner Diaz that the agenda be approved as presented. This motion was seconded by Commissioner Gimenez, and

upon being put to a vote, passed unanimously by those members present.

3 DEPARTMENT

SPECIAL ITEM NO. 1

081731 Resolution

RESOLUTION AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING BETWEEN MIAMI-DADE COUNTY AND MIAMI-DADE COUNTY PUBLIC SCHOOLS (Department of Planning & Zoning)

Amended

Report: *(See Special Item No. 1 Amended; Legislative File No. 082003 for the amended version)*

SPECIAL ITEM NO. 1 AMENDED

082003 Resolution

RESOLUTION AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING BETWEEN MIAMI-DADE COUNTY AND MIAMI-DADE COUNTY PUBLIC SCHOOLS [SEE ORIGINAL ITEM UNDER FILE NO. 081731] (Department of Planning & Zoning)

Forwarded to BCC with a favorable recommendation with committee amendment(s)

Mover: Martinez

Seconder: Gimenez

Vote: 5-0

Absent: Edmonson

Report: *Chairwoman Seijas opened the floor for discussion.*

Commissioner Gimenez noted he would like to see a future study on the creation of additional impact zones or different zones to provide incentives for infill development. He noted it seemed to him as if there were three very large impact zones, and he was aware of capacity that existed in the Intercity and some infill areas. He stated he did not understand why developers were required to pay impact fees for developing areas with capacity and available student stations, which only increased the cost of the units and made them less affordable.

Assistant County Attorney Armstrong-Coffey noted staff could contact the experts that devised the impact fees for Florida, and provide a preliminary report on what could be done by the next Committee meeting.

Commissioner Gimenez asked staff to bring back a preliminary report by the July 8 Committee meeting with information on whether different zones other than impact zones could be created with different fees. Commissioner Gimenez offered an additional amendment to the proposed amended Interlocal Agreement, typed page 30, Section 12 entitled "Effective Date and Term" to provide the Interlocal Agreement would become effective upon the approval of the County, the School Board and two-thirds of the cities, rather than all the cities having to agree. He expressed concern with the agreement as written, could cause delays of the Comprehensive Development Master Plan (CDMP) applications if all the cities were not in agreement.

Assistant County Attorney Armstrong-Coffey stated she believed that if the County, the School Board and two-thirds of the municipalities were in agreement, it would be feasible to implement the

concurrency standards as unanimous. She explained what required the cities to come on board was the agreement version those cities adopted, which required unanimous approval. She noted the County could say how they would comply.

Commissioner Martinez questioned whether the real effective date was July 1, 2008 if the date to begin imposing penalties was December 1, 2008, pursuant to State law. He also questioned why CDMP applications would be held hostage if the County was complying with the December 1, 2008 deadline.

Assistant County Attorney Armstrong-Coffey noted the State law required the Interlocal Agreement be in place by December 1, 2008, but authorized the Department of Community Affairs (DCA) to create a scheduling process.

Chairwoman Seijas noted she believed the CDMP applications were not being held hostage. She explained that some Commissioners and the Administration traveled to Tallahassee and had conversations with the DCA Secretary who said nothing about applications being held hostage, but said the DCA wanted a solution by no later than July 1, 2008.

Commissioner Gimenez requested to hear the information relayed to him yesterday (06/18) by the CAO regarding some CDMP applications.

Assistant County Attorney Armstrong-Coffey noted she recently received a copy of a letter from the DCA returning the Board of County Commissioners (BCC) adopted ordinance approving three (3) infill amendments for residential development, which was adopted in the County's April 2008 CDMP cycle. She noted it was the DCA's opinion that this ordinance was invalid because school concurrency had not been adopted.

Commissioner Martinez questioned how the DCA could violate State law and deny CDMP applications by this Interlocal Agreement not being in place, if the State law penalties would not become effective until December 1, 2008.

Assistant County Attorney Armstrong-Coffey noted that was a valid argument and one that the CAO was exploring in defending the three (3)

returned CDMP applications.

Following Chairwoman Seijas' comments regarding why this issue had been ongoing for some time and the County's responsibility to ensure a good product, the Committee moved forward to consider Commissioner Gimenez' proposed amendment for an effective date.

It was moved by Commissioner Gimenez that Section 12 of the proposed amended Interlocal Agreement listed in the Supplement report, entitled "Effective Date and Term," typed page 30, be further amended to provide the Agreement would become effective upon approval by the County, the School Board and two-thirds of the cities. This motion was seconded by Commissioner Diaz, and upon being put to a vote, passed unanimously by those members present.

Commissioner Martinez expressed concern that by approving this agreement would allow only one person (the School Superintendent) to control the County's entire CDMP, which he felt would be a disservice to the citizens of this community. He noted from his point of view, the School Superintendent ran the School Board and District and was not required to inform the County of school sites or closings. Commissioner Martinez recognized this document was a work in progress that he would support forwarding to the full BCC for discussion, but he would maintain his objection to allowing one person to control the CDMP. He asked Committee members to please consider incorporating his memorandum dated June 18, 2008 into this agreement.

Chairwoman Seijas noted she was appalled by the actions of some School Board members, the School Superintendent, and their Attorney at yesterday's (08/18) School Board meeting. She noted the importance of the County ensuring its best efforts regarding this Interlocal Agreement, whether the School Board agreed with it or not. She noted when the DCA received the County's portion; it would be an example of a good faith effort. She stated although she had empathy for some School Board members, the County had a responsibility, by law, to move this agreement forward.

Commissioner Diaz stated this was not an easy issue, and very confusing to him and seemed to be a flip-flop of governments. He noted he did not see

this agreement as a perfect solution, but the County was mandated to find one, and he felt the County needed to move forward. He questioned the status of the Charter School provision.

Assistant County Attorney Armstrong-Coffey advised there were no references to Charter Schools in either the original document or the supplemental report presented before the Committee today.

Commissioner Diaz commended Commissioner Martinez for illustrating some valid points in his memorandum. He expressed concern with no Charter School provision in this document, and noted the end result should be about the children and their future. Regarding mitigation, he asked why it was so difficult for the School Board to recognize Charter Schools as a good source for mitigation since Charter Schools were learning facilities with good ratings and should be recognized.

Assistant County Attorney Armstrong-Coffey noted whether Charter Schools would be permitted as a form of mitigation was a policy choice between the parties to this agreement.

Commissioner Diaz questioned whether funding was the real reason for the School Board not recognizing Charter Schools. He noted the real issue should be having school stations available for children to study. He noted the outcome of the charter school issue would be a big factor in determining his decision for this agreement. He pointed out a Commission District with overcrowded schools, where a school was needed and a charter school stepped up to assist the situation.

Chairwoman Seijas noted the words "Charter Schools" were not referenced in this report but rather a provision that allowed for changes. She noted the CAO suggested a provision on how to expand and provide that type of mitigation, as well as other types. She stated the intent was to have this agreement be a response to the community, and not be developer driven.

Commissioner Martinez offered a friendly amendment to Agenda Special Item No. 1 Supplement, Attachment C, Section 2, handwritten page 7, to add language providing that in the event the School District Facilities Work Program

was not financially feasible, the first Interlocal Agreement version originally adopted by the BCC on February 05, 2008 (Agenda Item 2C Substitute Amended) would become the County's approved version of this agreement.

Assistant County Attorney Armstrong-Coffey noted she did not believe the School District Facilities Work Program was any different now than what it was in February 2008 when the first version of the Interlocal Agreement was approved by the Board.

Commissioner Martinez clarified he was referring to whether the work program was financially feasible.

Assistant County Attorney Armstrong-Coffey noted she was unsure whether the prior version of the Interlocal agreement, adopted by the Board, had a provision that would address the issue any better. She noted both versions relied on the same district work program, and if not financially feasible now, it was not financially feasible then. She noted ultimately there was a provision where if the work program was not functional, then the agreement was void, although the language was not expressed, it was implied. She clarified, in her opinion the entire agreement hinged on whether the work program was financially feasible, and there could not be a concurrency program unless the work program was functional.

Commissioner Martinez noted if the attorney was comfortable that it was implied and understood, than he would support it; however, he asked how the document could state it that way.

Assistant County Attorney Armstrong-Coffey advised that the language could be added in the termination provision.

In response to Commissioner Diaz question whether the term "financially feasible" was defined in this agreement, Assistant County Attorney Armstrong-Coffey noted it was defined by State law.

Commissioner Martinez pointed out a November Election to vote on whether to replace school taxes with sales tax, was scheduled to take place twenty six days before the state law would become effective regarding penalties, should this agreement not be in place. He questioned what

would transpire at that late date, if the work plan became financially non-feasible and this interlocal agreement was not in place. Commissioner Martinez noted that eliminating the school taxes could cause a huge deficit in the School System funds and pointed out the school system was already in a financial mess.

Commissioner Rolle concurred with Commissioner Martinez comments. He noted at the June 10th Committee meeting, he asked the CAO to review the language contained in Agenda Item 2F of that meeting, last paragraph, handwritten page 1, pertaining to the State law not providing a remedy for the County in the event the Miami-Dade County Public Schools (MDCPS) failed to comply. He noted the County was not in any position to absorb the shortfalls of the School System, and asked what kind of remedy the County would have should the work plan become financially non-feasible.

Assistant County Attorney Armstrong-Coffey explained the provisions outlined in Section 9.3 on typed pages 27 and 28 of the Supplement, entitled "Updates to Public School Concurrency," which provides that the School Board shall not amend the District Facilities Work Program to modify, delay or delete any project that affects student capacity in the first three (3) years of the Five Year Plan unless the School Board provides written confirmation of the four conditions listed on handwritten page 28. She noted if the County found itself defending a lawsuit filed by a developer or had concerns with moving forward should a serious reduction in the Work Program occur, the County would rely on the following two provisions: 1) if the Work Program, the County relied on to enter into concurrency agreement, was no longer valid, than the agreement would be breached and to no effect; and 2) a provision clause pertaining to a certain constitutional protection for private properties, that if it gets to the extraordinary situation in which a property owner faced a taking or a deprivation of vested rights, than the agreement would not apply to affect an unconstitutional or illegal act.

Commissioner Rolle stated he received the agenda packet yesterday (02/18), and would like the opportunity to review it, but planned to say more when this item goes before the full BCC.

Chairwoman Seijas noted this was such a

complicated piece of legislation that needed to be further explored and discussed. She commended Assistant County Joni Armstrong-Coffey for being very patient in explaining this complicated process to the Committee members, and asked that she meet with each Committee member again before this item goes before the July 1 BCC meeting.

Commissioner Rolle requested an explanation of Commissioner Martinez statement that all powers seem to rest on one person-the School Superintendent.

Commissioner Martinez clarified he perceived the School Superintendent as the one person who ran the School District and School Board; therefore, he basically controlled the entire County CDMP. He explained that if the School Board Concurrency and Facilities Work Plan did not coincide with the County's CDMP, or the School Board decided not to build any schools or close schools, it could affect the County's entire CDMP. He noted the powers vested in the Superintendent gave him the votes to close schools.

Assistant County Attorney Armstrong-Coffey noted if the agreement worked as intended, the School Board's financially feasible Work Program plan would be adopted into the CDMP by the BCC, and the Board would know the progress of the development. In addition, she noted the school system was obligated to submit their new school sites to the BCC for review for consistency with the County's CDMP and approval, which would include a projection of school site locations and serve as a control on where school sites would be. She noted this plan was intended to be quite collaborative.

In response to Chairwoman Seijas' question whether the School Board had ever submitted their plans on a consistent basis, Assistant County Attorney Armstrong-Coffey noted they were required to submit every plan, and the County Commission authorized the DIC to review individual site plans for consistency with the CDMP.

In response to Chairwoman Seijas' question whether a time frame was provided in this agreement for which to submit their site plans, Assistant County Attorney Armstrong-Coffey noted that was part of the current process.

Mr. Subrata Basu, Director, Department of Planning and Zoning, explained that the School Board presents it's plans before the DIC for review, and the comments of the DP&Z staff are reflected in the CDMP recommendations.

Chairwoman Seijas noted she felt the documents in the foregoing Agenda Special Item No. 1 and Supplement should be reviewed carefully to ensure the County would be ready by the July 1 CDMP hearing.

Following discussion, the Committee forwarded the foregoing proposed resolution to the County Commission with a favorable recommendation with committee amendment(s) to incorporate the proposed changes outlined in Special Item No. 1 Supplement to the resolution and Interlocal Agreement, and to include the matrixes of outstanding issues. In addition, the Committee amended Section 12 of the proposed Interlocal Agreement entitled "Effective Date and Term" to provide that the Agreement would become effective upon approval by the County, the School Board and two-thirds of the cities; and that if the District Facilities Work Program was not financially feasible or if the School Board failed to implement the Work Program, the Agreement would be null and void, and to no effect; and to incorporate Commissioner Martinez memorandum, dated June 18, 2008, regarding Interlocal Agreement for Public School Facilities Planning.

SPECIAL ITEM NO. 1 SUPPLEMENT

081926 Report

SUPPLEMENTAL INFORMATION TO SPECIAL ITEM NO. 1, RESOLUTION AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING BETWEEN MIAMI-DADE COUNTY AND MIAMI-DADE COUNTY PUBLIC SCHOOLS

Report received as amended
Mover: Martinez
Seconder: Gimenez
Vote: 5-0
Absent: Edmonson

Report: *(See Agenda Item Special Item No 1 Amended; Legislative File No 082003 for the report)*

4 ADJOURNMENT

Report: *There being no further business to come before this Board, the Governmental Operations and Environment Committee meeting was adjourned at 11:27 a.m.*