# Application No. 11 TEXT AMENDMENT

### **APPLICATION SUMMARY**

Applicant/Representative: Builders Association of South Florida/Jeffrey Bercow.

Esq. and Graham Penn, Esq.

Element(s) to be Amended EDUCTIONAL ELEMENT

Requested Text Changes In the Educational Element, add language to allow

the use of Charter schools as a proportionate share mitigation option. The option is proposed to be included into Policy EDU-2C of the Educational Element as presented in the replacement pages for the Special Amendment to the "Adopted Components of the Comprehensive Development Master Plan for Miami-Dade County, Florida, October 2006 Edition."

Amendment Type: Standard Text Amendment

### RECOMMENDATIONS

Staff: DENY AND DO NOT TRANSMIT

(August 25, 2008)

Community Council: NOT APPLICABLE

Planning Advisory Board (PAB) acting as **TO BE DETERMINED** (October 6, 2008)

Local Planning Agency:

Board of County Commissioners: TO BE DETERMINED (November 6, 2008)

Final Recommendation of PAB acting as TO BE DETERMINED (March 2009)

Local Planning Agency:

Final Action of Board of County

Commissioners:

TO BE DETERMINED (April 2009)

### STAFF RECOMMENDATIONS AND ANALYSIS

Staff recommends to **DENY AND DO NOT TRANSMIT** the proposed text amendment for the following reasons:

1. The filing of the proposed text amendment to the CDMP is premature and should not be considered until the Interlocal Agreement for Public School Facilities Planning has been amended and adopted include charter schools as a proportionate share mitigation option.

According to Section 163.3180 (13)(g), F.S., the intent of the Interlocal Agreement for Public School Facilities Planning is to implement a "uniform districtwide school concurrency system." Section 163.3177(12) states "Each county and each municipality within the county, unless exempt or subject to a waiver, must adopt a public school facilities element that is consistent with those adopted by the other local governments within the county and enter the interlocal agreement pursuant to s. 163.31777." An executed Interlocal Agreement is also required as Data and Analysis for the adopted amendment. Additionally, any amendment to the public school facilities element pertaining to the uniform concurrency management system must also be accompanied by an executed Interlocal Agreement.

The proposed amendment, if transmitted to DCA, would need to include an executed Interlocal Agreement as required for the Data and Analysis. Should no Interlocal Agreement be available, it is likely DCA will, through the Objections, Recommendations and Comments report, object to the application based on a lack of data and analysis. It is also likely the application could not be found "in compliance" by DCA until such an agreement is provided.

- 2. Proportionate share mitigation options must be provided in both the Interlocal Agreement and the comprehensive plan. At this time, the County and School Board have not jointly executed an Interlocal Agreement for Public School Facility Planning in accordance with Chapter 163 Florida Statutes.
- 3. The versions of the Interlocal Agreement that have been approved by the School Board and the County, do not currently include charter schools as a proportionate share mitigation option. Inclusion of charter schools as an option into the existing Interlocal Agreements would constitute a change in the uniform concurrency management system. Therefore the Interlocal Agreements of the County, the School Board and all participating municipalities would need to be amended by unanimous vote.
- 4. The proposed text amendment may not reflect the requirements for charter schools that may be deemed necessary by the parties of the Interlocal Agreement. Therefore there is no assurance that this amendment would be consistent with any amendment to the Interlocal Agreement.

### REQUESTED TEXT AMENDMENT

Application 11 requests additional text be added to the Educational Element as follows:

- EDU-2C In the event the adopted LOS standard of a CSA cannot be met as a result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:
  - a) The development's impact can be shifted to one or more contiguous CSAs that have available capacity, subject to such provisions in the Interlocal Agreement for Public School Facility Planning with Miami-Dade County Public Schools that may limit the shifting of impacts to those facilities, located, either in whole or in part, within the same Geographic Areas (Northwest, Northeast, Southwest, or Southeast, see Figure 1A through 1D) as the proposed development; or
  - The development's impact is mitigated, proportionate to the demand for public schools it created, through a combination of one or more appropriate proportionate share mitigation options, as defined in Section 163.3180 (13)(e)1, Florida Statutes, and subject to such provisions in the Interlocal Agreement for Public School Facility Planning with Miami-Dade County Public Schools as may further define the available proportionate share mitigation options. The intent of these options is to provide for the mitigation of residential development impacts on public school facilities, guaranteed by a legal binding agreement, through mechanisms such as: contribution of land; the construction, expansion, or payment for land acquisition or construction of a permanent public school facility; or, the creation of a mitigation bank based on the construction of a permanent public school facility in exchange for the right to sell capacity credits. The proportionate share mitigation agreement is subject to approval by Miami-Dade County School Board and Miami-Dade County Board of County Commission and must be identified in the Miami-Dade County Public Schools Facilities Work Program.
  - The development's impact is mitigated in a manner proportionate to the demand for public schools it created, by providing one or more charter school facilities that will provide at least as many student stations as needed by the development. Any charter school mitigation plan shall be subject to the following requirements. The provision of charter school facilities, as well as compliance with the following requirements, must be guaranteed through a development order, a covenant running with the land, or similar legally binding agreement approved by Miami-Dade County and the Miami-Dade County School Board. Grounds for the refusal of Miami-Dade County or the Miami-Dade County School board to approve a legally binding agreement under this subsection shall be limited to the agreement's compliance with the following requirements.
    - i. The construction of the charter school must be phased so that facilities adequate to accommodate the demand created will be in place or under construction within three (3) years after issuance of a final subdivision plat or functional equivalent.
    - ii. The land where the charter school will be located shall be identified.
    - iii. All charter school facilities must have binding restrictions upon their use that limit enrollment to those students residing within the development or,

- where the facilities will provide capacity in excess of that created by the proposed development, those students residing within a reasonable distance of the school.
- iv. All charter school facilities must be owned by a non-profit entity or municipality.
- v. All charter school classrooms and related facilities must comply with the life safety requirements of Florida State Requirements for Educational Facilities (SREF). Compliance with SREF standards shall be subject to the review of the Miami-Dade County Public Schools, which shall have the authority to waive SREF requirements in a manner similar to that employed for district-owned facilities.
- vi. In the event that any charter school facility is closed for any portion of an academic year, excepting temporary closures necessitated by Acts of God or natural disasters, Miami-Dade County Public Schools shall have the option to assume ownership of the charter school facility and land upon which the facility is located in order to operate the former charter facility as a traditional educational facility.
- c)d) The development's impact is mitigated by any combination of the options discussed in subsections b) and c).
- d)e) The development's impacts are phased to occur when sufficient capacity will be available.

If none of the above conditions is met, the development shall not be approved. It is provided, however, that nothing in this element or in the Interlocal Agreement for Public School Facility Planning shall be construed or applied to effect a permanent or temporary taking of private property in violation of the United States Constitution or the Florida Constitution, to result in the unlawful abrogation of vested rights or other violation of law, to require the payment of compensation for impacts on private property, or to modify or eliminate any remedy available to prevent or rectify a taking, abrogation of vested rights, or violation of law.

### STAFF ANALYSIS:

### **Background Information**

The state legislature passed the Growth Management Law of 2005, which amended Chapter 163, Florida Statutes and mandated a comprehensive focus on public school facilities planning, by requiring local governments and school boards to adopt a school concurrency system. This system establishes coordination between the School Board and the local government in planning and permitting developments that impact school capacity and utilization rates. Through this legislation, local governments must adopt the concurrency management system into the public school facility element of their comprehensive plan. Additionally, Chapter 163, F.S. requires updates to all public schools interlocal agreements, in order to reflect agreement between the County and the School District with regard to the newly established concurrency management program.

As a result of this legislation, Miami-Dade County amended the Educational Element of the Comprehensive Development Master Plan (CDMP) to include a concurrency management system for public school facilities. The amendments, required by Chapter 163, F.S., were adopted on July 1, 2008 by the Miami-Dade County Board of County Commissioners (BCC). Additionally, on July 1, 2008, the BCC adopted with additions, the *Interlocal Agreement for Public School Facility Planning Between Miami-Dade County and Miami-Dade County Public School* (Interlocal Agreement), as adopted by the Miami-Dade County School Board on May 21, 2008. It is important to note that the BCC additions to the Interlocal Agreement did not modify the major components of the Interlocal as required by Chapter 163, F.S. and that the major components are identical in both the School Board Interlocal Agreement approved in May 2008 and the BCC Interlocal Agreement approved on July 1,2008. These components include: level of service (LOS) standard, concurrency service areas (CSA), proportionate share mitigation options, and the annual inclusion of the School Boards financial program into the CIE.

On July 15, 2008, the School Board, without discussion, rejected the additional language in the Interlocal Agreement and therefore there is no jointly executed Interlocal Agreement between these parties exists. Without a jointly executed Interlocal Agreement, the adopted CDMP amendments are considered not in compliance with state law by DCA, and are therefore not in effect.

### **Proposed Text Analysis**

The following analysis reviews portions of the proposed text amendment to the Educational Element to evaluate the language for consistency with Chapter 163, F.S.

Evaluation of proposed Policy EDU-2C(c): The use of charter schools as a mitigation option has been found consistent with State law by the DCA. Section 163.3180(13)(e), F.S. states "School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in subparagraph 1." The use of the wording "but not limited to" with regards to allowable options, suggests that other mitigation options may be considered if approved by the local governments and school boards. Furthermore, the proposed text reiterates that that any charter school created must mitigate the impact of the development's demand. This also is consistent with Section 163.3180(13)(e), F.S. as noted above.

The proposed changes to Policy EDU-2C(c) state that the charter facilities must be guaranteed through "a development order, a covenant running with the land, or similar legally binding agreement approved by Miami-Dade County and the Miami-Dade County School Board." Similar language is found in Section 163.3180 (13)(e), F.S. which states "options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation ... The district school board must be a party to such an agreement." Therefore this portion of the proposed language is consistent with State Statutes.

The proposed text language states "Grounds for the refusal of Miami-Dade County or the Miami-Dade County School Board to approve a legally binding agreement under this subsection shall be limited to the agreement's compliance with the following requirements." This statement suggests that the School Board or the BCC has not latitude and must approve an agreement if the stated requirements for the charter mitigation plan are met. Such language may not be

appropriate especially for the CDMP since this is a policy document. It is recommended that this sentence be stricken.

Evaluation of proposed Policy EDU-2C(c) i: Section 163.3180 (13)(e), F.S. states that a local government may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent." Therefore the proposed text language is consistent with this Section of the State Statutes. However, it is noted that by allowing for construction of the charter school within three (3) years after issuance of a final subdivision plat or functional equivalent, there is no guarantee that the student stations will be available at the time the residential units are occupied. Unlike other mitigation options identified through the state statutes and the Interlocal Agreement, the building and availability of a charter school is outside of the control of the school district. The inability to rely on the identified student stations at the time the development impact occurs could create a hardship on the traditional public school system. In cases where a school exceeds its level of service or, in the State of Florida, its classroom size requirements, it is the responsibility of the school district to transport students to a school with adequate capacity. Therefore, although concurrency for a development's impacts can be achieved based on facilities being under construction within 3 years, consideration should be given to requiring those charter schools to be used for mitigation to include a program, which will ensure that the development's impact is mitigated upon the occupancy of units. This could possibly include the identification of alternative schooling choices to accommodate those students impacts from the development that were to be mitigated through the charter school mitigation option.

<u>Evaluation of proposed Policy EDU-2C(c)</u> ii: Pursuant to Section 1002.33(17), F.S., in the charter and contractual agreement for the charter school the facilities to be used and their location must be identified. However, language for charter schools as options for proportionate share mitigation should be required to locate within or immediately adjacent to the proposed development requesting the charter school mitigation option. This increases the likelihood that students from the development creating the school impacts will attend the charter, since charters are "schools of choice".

Evaluation of proposed Policy EDU-2C(c) iii: Charter schools are "schools of choice" and as such are open to students throughout the district. Without a requirement that the students from the development attend the charter, there is no guarantee that the impacts of the development will be mitigated by the charter school. The law does not require charter schools to specify an attendance boundary unless they are a municipal charter school. The establishment of an attendance boundary could provide a guarantee that the development's impacts are mitigated, but such an approach may have unintended impacts. Should the charter school be bound to limit enrollment to those students residing within the development and the students choose to attend another school, it is unclear what the ramifications would be to the viability of the charter school. As noted in the discussion for EDU-2C (c) ii, it is recommended that the charter school be located within or adjacent to the proposed development to better accommodate the students generated by that development. The locational criteria would help assure attendance by students within and near the development. Otherwise it is unclear how the charter would accomplish this requirement.

The proposed text includes the term "reasonable distance" for any remaining available capacity. In the standard charter school contractual agreements of Miami-Dade County School Board, reasonable distance has come to be defined as approximately a four-mile radius around the school. The use of the stated restrictions to limit the enrollment to only those students residing within the development or within a reasonable (four mile) distance of the charter school may not be an appropriate limitation for the residents or the charter. Such language would not allow a parent who works in the area to utilize this school or may mandate students within the development to attend the school although it does not have the amenities (e.g. athletic, music, or art programs) available at traditional public schools in the area.

Evaluation of proposed Policy EDU-2C(c) iv: Section 1002.33(18)(f), F.S., indicates that "to the extent charter schools are created to mitigate the educational impact created by new residential dwelling units, ... some of or all of the educational impact fees required to be paid in connection with the new residential dwelling units may be designated instead for the construction of the charter school facilities that will mitigate the student station impact. Such facilities shall be built to the State Requirements for Educational Facilities and shall be owned by a public or nonprofit entity." The proposed text language currently limits the ownership to a non-profit or municipality. Although a municipality is a public entity, there may be other public entities that would be excluded. Therefore the language may not be fully consistent with the state statutes.

Evaluation of proposed Policy EDU-2C(c) v: As noted in the Section 1002.33(18)(f), F.S., charter school facilities created to mitigate the educational impact of new residential dwelling units shall be built to State Requirements of Educational Facilities (SREF). Additionally, this section states that the local school district retains the right to monitor and inspect such facilities to ensure compliance with SREF. SREF standards may include life safety, fire and other building and design criteria, in a manner similar to that employed for district-owned public schools. The current proposed text language limits the compliance with SREF to only life and safety requirements. Therefore, the proposed text language is not consistent with the state requirements. On August 18, 2008, the applicant submitted a letter stating that this section should be modified to require charter schools be built to SREF provided that these facilities be subject to the same exceptions and exemptions from SREF available to district owned schools. This letter is included as Appendix B.

Evaluation of proposed Policy EDU-2C(c) vi: Section 1002.33(18)(f), F.S., requires that if a facility (charter school) "ceases to be used for public educational purposes, either the facility shall revert to the school district subject to any debt owed on the facility, or the owner of the facility shall have the option to refund all educational impact fees utilized for the facility to the school district. The district and owner of the facility may contractually agree to another arrangement for the facilities if the facility ceases to be used for educational purposes." The proposed text language does not insure that any funds, used to attain concurrency by the owner of the development, including impact fees and full mitigation fees, if different from impact fees, will be repaid to the school district if the charter closes.

<u>Evaluation of proposed Policy EDU-2C(d)</u>: The use of a charter school as a mitigation option should only occur in large developments or to accommodate several developments in close proximity to each other. It should not be the intent of adding the charter school option so that smaller development can add a classroom or improvement to the facility. Therefore, it is staff's opinion that the building of a charter school (and not allowing for conversions to charter schools) should be a stand-alone option.

### **Charter Schools as Proportionate Share Mitigation**

Section 163.3180(13)(e) Florida Statutes states that options for proportionate-share mitigation of impacts on public school facilities must be established in both the public school facilities element and in the interlocal agreement. Policy EDU-2C(b) of the CDMP's Educational Element, as amended in July 2008, states that the proportionate share mitigation options allowed under the County's concurrency management program are those defined in Section 163.3180 (13)(e) 1, Florida Statutes. Furthermore, these options are subject to and may be further defined by the provisions in the Interlocal Agreement for Public School Facility Planning with Miami-Dade County School Board, which must be jointly executed in accordance with Section 163.31777, F.S. These options currently include money, land, construction, mix and match, and mitigation banking. Charter schools are not currently listed as a proportionate share mitigation option in either the statute or in either of the Interlocal Agreements adopted by the Board of County Commissioners or School Board. The inclusion of the proposed text language would allow, at least through the CDMP, the inclusion of charter schools as a proportionate share mitigation option.

In 1996, the State of Florida passed legislation for the creation of charter schools. Pursuant to Section 1002.33 F.S, private charter entities may enter into agreements with school boards for the provision of educational services to district students. This section also states that all charter schools in Florida are considered public schools. Section 1013.35-6.e. F.S. states that if approved by the school board, charter schools may be deemed a reasonable option to reduce the need for additional permanent student stations. Miami-Dade County Public Schools' (MDCPS) first charter school, and the first in Florida, was opened in 1996. To date, there are 358 charter schools in operation in the State of Florida, 63 of which are in operation in Miami-Dade County and accommodate over 21,000 students. According to MDCPS charter school website, approximately 35 additional charter schools are scheduled to open by 2010.

While Charter Schools have contributed to the reduction in students to the traditional public school system, there are 2 major concerns with charter schools serving as a proportionate share mitigation option. First, charter schools have a district-wide attendance boundary and unless otherwise established, will allow students from anywhere within the County to attend. Secondly, charter schools are operated as a private business. Although partially funded by state educational funds, charter schools can close or be terminated. Since 1996, 12 MDCPS charters in Miami-Dade County have either closed or been terminated. In these situations, it is the School District's responsibility to absorb these displaced students. For these reason's, charter schools have not been considered as an appropriate mitigation option for school concurrency by the Miami-Dade County School Board.

In June 2008, the Department conducted a survey of nine urban counties in the State to see if charter schools were allowed as a proportionate share mitigation option. These counties included Brevard, Broward, Duval, Hillsborough, Orange, Polk, Sarasota, Seminole, and Volusia. Of these counties, all but Sarasota and Seminole proposed the inclusion of charter schools as a proportionate share mitigation option, with certain conditions, in their concurrency management systems. The additional conditions routinely cited by these counties include the requirement that the facilities be built to State Requirements of Educational Facilities (SREF). The SREF standards include life safety, fire and other building and design criteria, similar to that of the traditional public schools. Additionally, five of these counties include a requirement that if a charter school ceases to exist the charter school will be turned over to the school district. Three of the counties state that sufficient permanent stations must be provided to accommodate the impacts of the development. DCA has found that the proposed charter school mitigation

provision, as submitted by the seven counties, to be consistent with state law and the State Comprehensive Plan. Therefore, although not required as a mitigation option by Statute, the use of charter schools is consistent with Chapter 163, F.S.

While the use of charter schools is consistent with state law, staff believes that inclusion of this option into the CDMP is premature. As noted above, Section 163.3180(13)(e), F.S., states that options for proportionate-share mitigation of impacts on public school facilities must be established in both the public school facilities element and in the interlocal agreement. The proposed text amendment would establish the inclusion of charter schools as a proportionate share mitigation option; however, such an option could not be implemented without its inclusion into a jointly executed Interlocal Agreement.

Sections 163.3180(13)(g) and 163.3177(12) require that the Interlocal Agreement be submitted as part of the compliance review for all necessary amendments required by Section 163.3177, F.S. Required amendments include "a process and uniform methodology for determining proportionate-share mitigation..." The uniform methodology includes the listing of those proportionate share mitigation options to be utilized. Therefore, should the proposed amendment be transmitted, DCA would require as data for the amendment, an amended and executed Interlocal Agreement, that also shows charter schools as a mitigation option. Without such data, the DCA could not review the amendment for consistency. As confirmed through conversations with DCA staff, it is likely the filed text amendment would not be found "In Compliance" by DCA without the accompanying amended Interlocal Agreement to show consistency between the documents.

Consistency between these documents is necessary to ensure that 1) all parties to the Interlocal are in agreement with changes made to the concurrency management system; and, 2) that the language relating to the components of the concurrency management system is accurately reflected in both document. Without an amendment to the Interlocal Agreement that allows charter schools as a mitigation option and states the requirements to be applied to that option, no determination of consistency can be made. If and when the parties of the Interlocal Agreement agree to include charter schools as a mitigation option, the specific requirements for the implementation of the option would be developed. Attempts to develop the criteria at this time, without input or agreement from the School Board, could result in significant differences in the applicable requirements placed on this option and would result in additional amendments to the CDMP.

This amendment is premature given that inclusion of charter schools into the CDMP cannot be adequately supported by an amended and executed Interlocal Agreement, and that the proposed text may not accurately reflect the requirements developed for use in the uniform countywide concurrency management system. This proposed text amendment should only be filed upon approval of an amendment to the Interlocal Agreement that allows charter schools as a mitigation option.

### Consistency Review with CDMP Goals, Objectives, Policies, Concepts and Guidelines

None of the CDMP goals, objectives, or policies regarding school concurrency are currently in effect. Additionally, the proposed text amendment will not enhance or deter any of the pending goals, objectives, or policies regarding school concurrency if the proposed designation is approved:

# **APPENDICES**

Appendix A Amendment Application

Appendix B Applicant Correspondence

Appendix C Miami-Dade County Public Schools Analysis

## **APPENDIX A**

### **Amendment Application**

# TEXT AMENDMENT REQUEST TO THE LAND USE ELEMENT APRIL 2008-2009 AMENDMENT CYCLE MIAMI-DADE COUNTY

### COMPREHENSIVE DEVELOPMENT MASTER PLAN

### 1. APPLICANT

Builders Association of South Florida 15225 N.W. 77 Avenue Miami Lakes Florida 33014

### 2. APPLICANT'S REPRESENTATIVES

Jeffrey Bercow, Esq.
Graham Penn, Esq.
Bercow Radell & Fernandez, P.A.
200 South Biscayne Boulevard
Suite 850

Miami, Florida 33/3 (305) 374-5300

By: Jeffrey Bercow, Esq.

Graham Penn, Esq.

Date: April 30, 2008

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Date: April 30, 2008

### 3. DESCRIPTION OF REQUESTED CHANGES

Amendment to Policy EDU-2C of the Comprehensive Development Master Plan Land Use Element Text is requested (Item F. 4 in the fee schedule).

Requested Changes:1

The Applicant requests the following changes to Policy EDU-2C of the Educational Element.

<sup>&</sup>lt;sup>1</sup> The Applicant recognizes that County staff has proposed multiple revisions to the CDMP Education Element text in order to establish public school concurrency in Miami-Dade County. The Applicant has filed this application in the assumption that staff's amendment will be approved by the Board of County Commissioners in coming weeks.

EDU-2C In the event the adopted LOS standard of a CSA cannot be met as result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:

- The development's impact is mitigated in a manner proportionate to the demand for public schools it created, by providing one or more charter school facilities that will provide at least as many student stations as needed by the development. Any charter school mitigation plan shall be subject to the following requirements. The provision of charter school facilities, as well as compliance with the following requirements, must be guaranteed through a development order, a covenant running with the land, or similar legally binding agreement approved by Miami-Dade County and the Miami-Dade County School Board. Grounds for the refusal of Miami-Dade County or the Miami-Dade County School Board to approve a legally binding agreement under this subsection shall be limited to the agreement's compliance with the following requirements.
  - i. The construction of the charter school must be phased so that facilities adequate to accommodate the demand created will be in place or under construction within three (3) years after issuance of a final subdivision plat or functional equivalent.
  - ii. The land where the charter school will be located shall be clearly identified.
  - iii. All charter school facilities must have binding restrictions upon their use that limit enrollment to those students residing within the development or, where the facilities will provide capacity in excess of that created by the proposed development, those students residing within a reasonable distance of the school.
  - iv. All charter school facilities must be owned by a non-profit entity or municipality.
  - v. All charter school classrooms and related facilities must comply with the life safety requirements of Florida State Requirements for Educational Facilities (SREF). Compliance with SREF standards shall be subject to the review of the Miami-Dade County Public Schools, which shall have the authority to waive SREF requirements in a manner similar to that employed for district-owned facilities.
  - vi. In the event that any charter school facility is closed for any portion of an academic year, excepting temporary closures necessitated by Acts of God or natural disasters, Miami-Dade County Public Schools shall have

the option to assume ownership of the charter school facility and land upon which the facility is located in order to operate the former charter facility as a traditional educational facility.

e)d) The development's impact is mitigated by any combination of the options discussed in subsections b) and c).

d)e) The development's impacts are phased to occur when sufficient capacity will be available.

If none of the above conditions is met, the development shall not be approved.

### 4. REASONS FOR AMENDMENT

In 2005, the Florida Legislature enacted an amendment to Florida's Growth Management regulations that, among other things, obligates local governments to adopt amendments to their comprehensive plans to incorporate public school concurrency. The 2005 law, colloquially known as Senate Bill 360 and codified in Section 163.3180(13), sets forth specific requirements for school concurrency programs. It requires school concurrency to "be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a municipality or an unincorporated area." Under the statute, "[s]chool concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property. . . ." Fla. Stat. Section 163.3180(13)(e). Options for proportionate-share mitigation of impacts on public school facilities must be established in the public school facilities element.

The statutorily recognized mitigation options "include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits." Fla. Stat. Section 163.3180(13)(e)(1). Under Florida law, charter schools are public school facilities. Fla. Stat. Section 1002.33(1). One of the recognized purposes for the creation of a charter school is to mitigate the impact of new residential development. Fla. Stat. 1002.33(2)(c)(4). The Florida Department of Community Affairs has opined that charter schools are an appropriate mitigation option for school concurrency and multiple large local governments, including Hillsborough and Broward Counties, have incorporated charter schools as part of their comprehensive plan concurrency mitigation strategies.

Charter schools have been an important tool in educating Miami-Dade County's children. Approximately ten percent of the County's public school students attend nontraditional public schools, including magnet schools and charter schools. Despite the valuable role charter schools have played in the County's educational system, the currently proposed mitigation scheme in the CDMP Educational Element does not expressly permit charter schools to be utilized as mitigation.

Miami-Dade County Public Schools has objected to the use of charter schools as mitigation for two major reasons: 1) most Miami-Dade charter schools are "schools of choice" with no attendance boundaries; and 2) charter schools, as private enterprises, can cease business,



forcing children to attend District-owned schools. We believe that the instant amendment resolves both of the District's issues with the construction and operation of charter schools as concurrency mitigation.

Most current charter schools in Miami-Dade County do not have attendance boundaries. That does not mean that a charter school cannot legally set such boundaries. State Statute Section 1002.33(10)(e)(4) provides charter schools with the option to limit enrollment to target "[s]tudents residing within a reasonable distance of the school." Charter schools are therefore permitted to establish attendance boundaries similar to those employed by the District for neighborhood schools.

In order to provide flexibility in design and location, charter schools are currently exempted from the life safety standards of the Florida State Requirements for Educational Facilities (SREF) of Chapter 4, Section 423 of the Florida Building Code. This allows charter schools to be located in structures such as office buildings. The Applicant understands, however, that the SREF life safety exemption would prohibit the District from assuming the operation of the school in the event that the charter school operator closed. The proposed amendment would resolve this issue.

The Applicant has proposed the limited use of charter school facilities as a concurrency mitigation option. A school would need to comply with the following to be applied as mitigation:

- 1. Limit its attendance boundaries to students residing within the new development or, if the school will offer excess capacity beyond the anticipated impacts of the residential development, students living within a reasonable distance of the school;
- 2. Be owned by a non-profit entity or local government;
- 3. Be constructed so that classrooms and related facilities comply with SREF life safety standards; and
- 4. Provide a mechanism in its charter giving an option to the District to assume operation of the school in the event that the charter school operator ceases operation.

The sum of these requirements would create schools that are essentially identical to District-owned schools except that the schools will enjoy the educational flexibility that is the hallmark of the charter school movement. Charter schools have served an important role in the education of the County's public school students. The Applicant believes that charter schools can, and should be, one of the mitigation options available to a landowner in the event that local schools do not have adequate capacity to serve a particular development. The Applicant further believes that the strong protections proposed in the instant application would ensure that any charter school constructed as mitigation would remain a permanent public school facility serving local children.

### 5. ADDITIONAL MATERIAL SUBMITTED

None. The Applicant reserves the right to supplement the application with additional documentation within the time permitted by the Code of Miami-Dade County.



# **APPENDIX B**

**Applicant Correspondence** 



DIRECT LINE: (305) 377-6229 E-MAIL: gpenn@brzoninglaw.com

August 18, 2008

Marc C. LaFerrier, AICP Director, Department of Planning & Zoning Miami-Dade County 111 NW 1<sup>st</sup> Street 11<sup>th</sup> Floor Miami, FL 33128

Re: <u>Modifications to Proposed Charter School Mitigation Plan - Application 11</u> of the April 2008 Comprehensive Development Master Plan Amendment Cycle.

Dear Mr. LaFerrier:

Our firm represents the Builders Association of South Florida in the above-referenced application. The application seeks to amend the text of the Educational Element of the Comprehensive Development Master Plan to permit, under certain limited circumstances, the use of charter schools as mitigation under the County's forthcoming school concurrency system.

Charter schools are recognized as an appropriate mitigation tool under state law and have been included as a mitigation option under the concurrency programs established by, for example, Duval, Hillsborough, and Orange Counties. However, your staff had indicated some concern that the amendment would not require charter schools used for mitigation purposes to be constructed in compliance with the Florida State Requirements for Educational Facilities (SREF). The original amendment proposed to apply only the life safety elements of the SREF standards.

The Builder's Association has reviewed the situation and has agreed to modify the language of the amendment to require all charter school facilities offered as mitigation to be constructed to the full SREF building standards. The schools would be eligible to waiver the SREF requirements in the same manner applied to schools owned and operated by Dade County Public Schools.

Marc C. LaFerrier, AICP Director, Department of Planning & Zoning August 11, 2008 Page 2

Our proposed revised language is attached. Note that the attached language also includes several small clarifications that had been proffered to your staff earlier in the process of the review of the application.

Charter schools constructed under the revised language will be identical in all relevant respects to district-owned facilities and will be true permanent public school facilities. We look forward to review of the amendment. If you have any questions or concerns, please do not hesitate to phone my direct line at (307) 377-6229.

Sincerely yours

Graham Penn

cc: Subrata Basu Mark Woerner

Paula Church

Jeffrey Bercow, Esq.

EDU-2C In the event the adopted LOS standard of a CSA cannot be met as result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:

\* \*

- The development's impact is mitigated in a manner proportionate to the demand for public schools it created, by providing one or more charter school facilities that will provide at least as many student stations as needed by the development. Any charter school mitigation plan shall be subject to the following requirements. The provision of charter school facilities, as well as compliance with the following requirements, must be guaranteed through a development order, a covenant running with the land, or similar legally binding agreement approved by Miami-Dade County and the Miami-Dade County School Board. Grounds for the refusal of Miami-Dade County or the Miami-Dade County School Board to approve a legally binding agreement under this subsection shall be limited to the agreement's compliance with the following requirements.
  - i. The construction of the charter school must be phased so that facilities adequate to accommodate the demand created will be in place or under construction within three (3) years after issuance of a final subdivision plat or functional equivalent.
  - ii. The land where the charter school will be located shall be clearly identified.
  - iii. All charter school facilities must have binding restrictions upon their use that limit enrollment to those students residing within the development or, where the facilities will provide capacity in excess of that required or utilized by the proposed development, those students residing within a reasonable distance of the school.
  - iv. All charter school facilities must be owned by a non-profit entity, municipality, or other public entity as provided by law.
  - v. All charter school facilities shall be built to the State Requirements for Educational Facilities (SREF); provided however, that that such facilities shall be subject to the same exceptions and exemptions from SREF requirements normally and typically available for district owned schools.
  - vi. In the event that any charter school is closed for any portion of an academic year, excepting temporary closures necessitated by

Acts of God or natural disasters, Miami-Dade County Public Schools shall have the option to assume ownership of the charter school facility and land upon which the facility is located in order to operate the former charter facility as a traditional educational facility.

- e)d) The development's impact is mitigated by any combination of the options discussed in subsections b) and c).
- d)e) The development's impacts are phased to occur when sufficient capacity will be available.

If none of the above conditions is met, the development shall not be approved.

# **APPENDIX C**

**Miami-Dade County Public Schools Analysis** 



# Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools Rudolph F. Crew, Ed.D.

July 9, 2008

Miami-Dade County School Board
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Dr. Marta Pérez
Dr. Solomon C. Stinson

Mr. Marc C. LaFerrier, A.I.C.P., Director Department of Planning and Zoning Miami-Dade County 111 NW 1 Street, 11<sup>th</sup> Floor Miami, Florida 33128

Re: Land Use Amendments – April 2008 Cycle

Dear Mr. LaFerrier:

Attached please find the School District's (District) review analysis of potential impact generated by the land use amendments proposed in applications 1, 2, 3, 4, 8, 9, 10, and 15 (A-D) which have been deemed to generate additional student impact to the District (see attached analyses). Please note that land use amendments 5, 6, 7, 12, 13 and 14 do not have any residential development and therefore they will not impact the schools serving the area.

Of the applications with residential components, applications 1, 8, 9, and 15D, meet the established review threshold and as such, it is our recommendation that dialogue between the District and the applicants take place as it relates specifically to affected public schools. The District will keep the County apprised if such dialogue takes place with respective applicants.

The text amendment request included in application No. 11 (Amendment to Policy EDU-2C of the Comprehensive Development Master Plan (CDMP) Land Use Element Text), is puzzling. Current Policy does not contain any language related to public school concurrency or any reference to <u>"an adopted LOS standard of a CSA"</u>, therefore there is nothing to amend. This request is premature at best. Additionally, when Public School Concurrency is adopted by the County, any changes to its components (such as mitigation options) must be approved by the County, the School Board and the non-exempt local governments; amendments cannot be adopted unilaterally.

Lastly, please note that all residential applications may be subject to school concurrency requirements, at time of Final Subdivision, Site Plan (or functional equivalent), if school concurrency is in effect.

Mr. Marc C. LaFerrier July 9, 2008 Page 2

As always, thank you for your consideration and continued partnership in our mutual goal to enhance the quality of life for the residents of our community.

Sincerely.

Ivan M. Rodriguez, R.

Director II

IMR:cse L-005 Attachment

cc: Ms. Ana Rijo-Conde

Mr. Fernando Albuerne Ms. Vivian G. Villaamil Ms. Corina Esquijarosa Ms. Paula Church

Ms. Helen Brown

### SCHOOL IMPACT REVIEW ANALYSIS

July 3, 2008

APPLICATION:

No. 11 Builders Association of South Florida

**REQUEST:** 

Text amendment request to the Land Use Element April 2008-2009 Amendment Cycle – Amendment to Policy EDU-2C of the Comprehensive Development Master Plan Land Use Element

Text is requested

COMMENT:

School District staff seeks clarification from the county as to the timing and validity of this request at this time. The current Policy does not contain any language related to public school concurrency or any reference to "an adopted LOS standard of a CSA", therefore there is nothing to amend. This request is premature and should not be considered by the County at this time. Additionally, when Public School Concurrency is adopted by the County, any changes to its components (such as mitigation options) must be approved by the County, the School Board and the non-exempt local governments and cannot be considered and acted on unilaterally.