

EXECUTIVE SUMMARY

Recommendation to have the Board of County Commissioners review and approve a Compliance Agreement between the Florida Department of Community Affairs and Collier County, setting forth a proposed Remedial Amendment relating to public schools in the Capital Improvement Element of the Growth Management Plan, Ordinance 89-05, as amended; and, Recommendation to have the Board of County Commissioners review and adopt an Ordinance for this Remedial Amendment to the Capital Improvement Element, as set forth in said Agreement

OBJECTIVES:

This Summary addresses two objectives to consider for resolving matters of compliance with the Florida Department of Community Affairs.

For the Board of County Commissioners (BCC) to review and approve a Stipulated Settlement Agreement (Compliance Agreement) between the Florida Department of Community Affairs (DCA) and Collier County – in which the BCC commits to adopt a remedial amendment relating to public schools in the Capital Improvement Element (CIE) of the Collier County Growth Management Plan (GMP) – and approve its transmittal to the Department of Community Affairs.

Secondly, for the Board of County Commissioners (BCC) to review and adopt an Ordinance for a remedial amendment relating to public schools in the Capital Improvement Element (CIE) of the Collier County Growth Management Plan (GMP) as set forth in said Compliance Agreement – and approve its transmittal to the Department of Community Affairs.

Together, the Compliance Agreement and accompanying Ordinance for the remedial CIE amendment, restore the Growth Management Plan to being “In Compliance”.

CONSIDERATIONS:

Provided with this Executive Summary are copies of the materials to be transmitted to the DCA, and include: the Stipulated Settlement Agreement (Compliance Agreement), as first-signed by DCA personnel; the DCA’s “Statement of Intent to Find a Portion of Comprehensive Plan Amendments Not In Compliance” (Statement of Intent); the Ordinance adopting the remedial amendment, and its “Exhibit A” – the strike-through/underline CIE version [as an attachment to the Ordinance].

Background

On February 24, 2009, the BCC adopted its annual update to the Capital Improvement Element by Ordinance No. 09-07. Amended CIE materials were transmitted to the DCA for their review, and on May 19, they rendered a Notice of Intent (NOI) and a Statement of Intent (SOI) to find certain CIE amendments relating to public schools not in compliance. The Notice of Intent was duly published in the *Naples Daily News* on May 20.

In its Statement of Intent, the DCA identified the issues of inconsistency and recommended specific action to the County with respect to remedying these inconsistencies, stating, “Delete the amendments to Objective 2 and Policy 5.4 from the Comprehensive Plan.” Pursuant to DCAs recommendation, proposed remedial amendments have been drafted for the CIE. These issues are addressed by the DCA in the Compliance Agreement to be approved by the BCC along with the remedial CIE amendments.

The DCA found the remaining CIE amendments adopted pursuant to Ordinance 09-07 to be “In Compliance”.

Florida Department of Community Affairs “Statement of Intent to Find a Portion of Comprehensive Plan Amendments Not In Compliance” – Staff Response:

On June 12, 2009, Collier County staff submitted to DCA, for review and consideration, a proposed remedial CIE amendment in order to demonstrate the County’s ability to achieve compliance and to be consistent with Chapter 163, Part II, *Florida Statutes*, the State Comprehensive Plan (Chapter 187, *Florida Statutes*), and Rule 9J-5, *Florida Administrative Code*.

At the request of Collier County staff and DCA personnel, on June 9, 2009, a Division of Administrative Hearings’ Administrative Law Judge granted an Order Placing Case in Abeyance. Abeyance sets aside a formal Administrative proceeding and allows the County to resolve compliance issues amicably with the DCA. As a stipulation, the Order provided Collier County with 90 days to report our progress toward achieving compliance.

In accordance with said Order, Collier County staff submitted to DCA on July 20, 2009, a letter reporting progress toward adopting the remedial CIE amendment in response to the Department of Community Affairs’ Statement of Intent. This letter explained Collier County is in the process of adopting remedial amendments to the Capital Improvement Element of the Growth Management Plan in accordance with the Department’s Recommended Remedial Actions, through a Compliance Agreement with the Department of Community Affairs. The report further indicated:

- Based upon the Department of Community Affairs’ Statement of Intent, issued May 19, 2009, Collier County has prepared the recommended revisions as a remedial amendment. The necessary documents and materials are attached for review and consideration.
- Legal notices were placed in the *Naples Daily News* to meet the public hearing notice requirement for the Board of County Commissioners (BCC) on September 15, 2009. In these hearings the BCC will consider and approve the Compliance Agreement as prepared and signed first by the Department of Community Affairs and, review and adopt an Ordinance for the remedial CIE amendment.
- Upon their execution and endorsements by the necessary signatories, the Compliance Agreement and the Ordinance for the remedial Capital Improvement Element amendment will be provided to the Department of Community Affairs. This post-adoption processing can be expected to require no more than thirty (30) days to complete from the date of the Board of County Commissioners’ hearings. This puts a

target on the third week of October for transmittal to the Department of Community Affairs. An appeal period extends thirty (30) days following the receipt of transmitted materials by the Department of Community Affairs, by which time compliance issues will be resolved without the need for a final hearing before a Division of Administrative Hearings' Administrative Law Judge.

In confirmation, the letter also reiterated our understanding that an Administrative Hearing before the Division of Administrative Hearings has been placed in abeyance pending settlement.

Ordinance No. 09-07, Capital Improvement Element Amendment, Revisions: The "Not In Compliance" portions of the Amendment under this subject heading and their recommended remedial actions are found in Exhibit A (the strike-through/underline version of the affected portions of the Capital Improvement Element).

The specific amendments to the Capital Improvement Element of the Growth Management Plan resulting from the revisions discussed herein are characterized as remedial amendments and are exempt from the twice per year limitation on adoption of comprehensive plan amendments as set forth in Rule 9J-11.006(1)(a)7, *F.A.C.*

Collier County has previously provided its complete adopted comprehensive plan, including amendments and support documents, to all agencies identified in Rule 9J-11.009(6), *F.A.C.*

In Summary

Annual amendments to the CIE were adopted by Ordinance 09-07 on February 24, 2009 effectively amending the Growth Management Plan, Ordinance 89-05, as amended. The DCA issued a Notice of Intent and a Statement of Intent to find a portion of the CIE as adopted by Ordinance 09-07 "Not In Compliance". Virtually all of DCA's compliance issues originated in provisions addressing public school facilities capital planning. As a result, only two specific revisions to the text portions of the CIE were recommended by DCA as "Remedial Actions".

No re-evaluation was necessary to the remainder of the Capital Improvement Element found to be "In Compliance" and no other substantive changes have been made.

In accordance with Rule 9J-11.006(1)(a)(7)(d), *F.A.C.*, Collier County staff has provided proposed remedial CIE amendments to the DCA based upon the DCA's Statement of Intent, and compliance through Administrative proceedings is in abeyance.

If, after holding a hearing to consider its approval, the BCC enters into this Compliance Agreement with DCA, then a second hearing will be held by the BCC immediately thereafter to consider and adopt the Ordinance for this remedial CIE amendment.

FISCAL IMPACT:

Potential fiscal impacts to Collier County could result from these proposed remedial CIE amendments. If public school facilities were scheduled for development and construction during the time period beginning with the expiration of the School Board Review (SBR) Process between Collier County Government and the District School Board of Collier County and ending with the adoption of the next SBR – then the costs of such facilities might be shared in an unspecified manner between the two parties, or could be borne entirely by Collier County. It

should be noted that the School Board Review Process expired in May 2009 and the agreed upon July 2009 deadline for the new SBR has not been met.

This combination of a temporary absence of an SBR and the “Not In Compliance” language being removed from the Capital Improvement Element relating to public schools is problematic. No bridge agreement has been prepared for this interim period. However, no major public school facility improvements were identified in the District School Board’s Five-Year Capital Improvement Program for the same period.

No public school facilities typically covered by an SBR or bridge agreement are scheduled for development or construction during this interim period, so the likelihood that the County would realize any potential fiscal impact is highly improbable.

GROWTH MANAGEMENT IMPACT:

The purpose of the first portion of this hearing is to consider entering into a Compliance Agreement with DCA in which Collier County would commit to adopt a remedial amendment to the Collier County Growth Management Plan based upon the Statement of Intent to find certain amendments to the CIE adopted February 24, 2009 to be “Not In Compliance”.

DCA personnel reviewed and signed the Compliance Agreement in advance of County staff drafting the remedial CIE amendment and presenting it to the BCC.

The purpose of the second portion of this hearing is to adopt certain amendments to the CIE as a remedial amendment to the Collier County Growth Management Plan, Ordinance 89-05, as amended, pursuant to the Compliance Agreement with DCA, approved by the BCC on this date and executed by all parties by accordingly.

This Compliance Agreement and remedial CIE amendment represent a short-term solution, as best resolved by complying with specific DCA direction. Nevertheless, the County still needs to bring long-term resolution to these compliance issues. Such resolution will be carried out through additional amendments to the Public School Facilities Element and CIE of the GMP, and through the adoption and implementation of a new School Board Review Process between Collier County and the District School Board of Collier County.

LEGAL CONSIDERATIONS:

The DCA has found a portion of the County’s CIE in non-compliance. The proposed Stipulated Settlement Agreement will resolve the issue. The DCA has already signed the Agreement. Once the DCA-signed Agreement is approved by the BCC at this meeting, the Board may, at this same meeting, proceed with the Ordinance for the remedial CIE amendment. When the remedially amended CIE is found “In Compliance” by the DCA, the DOAH case will be dismissed. This item is not quasi-judicial and as such, ex parte disclosure is not required. This item requires a majority vote only. (STW)

RECOMMENDATIONS:

The Stipulated Settlement Agreement effectively addresses each issue identified in the Statement of Intent (*Attachment A*) issued by the DCA. The Comprehensive Planning staff respectfully recommends that the Board of County Commissioners enter into the Agreement with the DCA.

The remedial Capital Improvement Element amendment is prepared as written in the Stipulated Settlement Agreement, rendered and first-signed by DCA personnel. The Comprehensive Planning staff respectfully recommends that the Board of County Commissioners adopt the Ordinance for these modified portions of the Capital Improvement Element as a remedial amendment to the Collier County Growth Management Plan, Ordinance 89-05, as amended.

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