

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 (Companion Item to 17B).

OBJECTIVES:

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 adopting 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.

Together, the Compliance Agreement along with its companion Ordinance for the remedial CIE amendment, restore the Growth Management Plan to being “In Compliance”.

CONSIDERATIONS:

On February 24, 2009, the BCC adopted its annual update to the Capital Improvement Element (CIE) by Ordinance No. 09-07. The ordinance along with the amended CIE materials as approved by the Board were transmitted to the DCA for their review, and on May 19, 2009, the DCA rendered a ruling finding certain CIE amendments relating to public schools not in compliance and in doing so issued a Notice of Intent (NOI) and a Statement of Intent (SOI). In order to resolve and correct the noted inconsistencies, staff subsequently drafted the proposed remedial CIE amendments consistent with DCA’s proposed compliance agreement.

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, and the DCA’s “Statement of Intent to Find a Portion of Comprehensive Plan Amendments Not In Compliance” (Statement of Intent).

Approval of the compliance agreement will allow the BCC to consider and adopt the companion Ordinance for the remedial CIE amendment. The remedial CIE amendment will remedy all inconsistencies between the Public Schools Facilities Element, the Capital Improvement Element and the Inter-local Agreement previously entered into between the BCC and School District. Stated succinctly, the inconsistencies cited had to do with funding for offsite improvements associated with the construction of new schools. This agreement merely aligns the CIE with the Public Schools Facilities Element of the GMP and the Inter-local Agreement recently approved by the Board. The issues related to offsite improvements will still need to be addressed through the adoption and implementation of a new School Board Review (SBR) Process between Collier County and the District School Board of Collier County. The temporary absence of a School

Board Review Process is not overly problematic as there are no major public school facility improvements identified in the District School Board's Five-Year Capital Improvement Program.

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.*" These deletions clarify that any future offsite improvements for future schools will be done in accordance with the Inter-local Agreement that the BCC has previously entered into with the School District. The amendments will also insure that the Public Schools Facilities Element, the Capital Improvement Element and the aforementioned Inter-local Agreement are consistent with each other. Finally, adopting the remedial amendment will allow the County to avoid a potential costly Administrative Hearing.

Legal notice has been placed in the *Naples Daily News* to meet the public hearing notice requirement for the Board of County Commissioners (BCC) meeting on September 15, 2009. In this hearing, the BCC will consider and approve the Compliance Agreement as prepared and signed first by the Department of Community Affairs.

Upon the execution and endorsements by the BCC, the Compliance Agreement and the Ordinance for the remedial Capital Improvement Element amendment will be forwarded to the Department of Community Affairs. It should be noted that upon receipt by DCA that any affected party has 30 days to appeal the amendment to the CIE. This is unlikely as the DCA, School District, and Collier County would all be in agreement after the BCC's approval of the Compliance Agreement and CIE Amendment.

FISCAL IMPACT:

There is very little potential for fiscal impacts to Collier County resulting from these proposed remedial CIE amendments. No public school facilities are scheduled for development and construction during the 5-year CIE Schedule of Capital Improvements. Therefore, the likelihood that the County would realize any potential fiscal impact is highly improbable.

GROWTH MANAGEMENT IMPACT:

The purpose 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.

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 Florida Department of Administrative Hearings (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:

That the Board of County Commissioners enter into the Agreement with the DCA and in doing so recognize that the stipulated Settlement Agreement effectively addresses each issue identified in the Statement of Intent (*Attachment A*) issued by the DCA.

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