

ORDINANCE NO. 2008-33

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, ARTICLE XI. DEVELOPMENT REVIEW PROCEDURES; ADDING DIVISION 6, SCHOOL CONCURRENCY, IN ORDER TO COMPLY WITH REQUIREMENTS TO IMPLEMENT PUBLIC SCHOOL CONCURRENCY; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, due to statutory changes adopted by the State in 2005 through Senate Bill 360, all local governments in Florida are required to create and implement a school concurrency system; and

WHEREAS, on April 2, 2008 the Town took the first steps in establishing school concurrency by adopting an amendment to the Comprehensive Plan that added a Public School Facilities Element as well as amended both the Intergovernmental Coordination Element (ICE) and Capital Improvements Element (CIE); and

WHEREAS, the Florida Department of Community Affairs has determined that the effective date of school concurrency in each local jurisdiction is 21 days after the amendment to the Comprehensive Plan is found consistent; and

WHEREAS, the effective date of school concurrency in the Town is June 17, 2008.

WHEREAS, within 90 days of school concurrency becoming effective, the Town is required to amend the Land Development Code and adopt the required public school concurrency provisions outlining the development review process for proposed residential developments; and

WHEREAS, the Local Planning Agency of the Town of Davie held a public hearing on August 13, 2008; and

WHEREAS, the Town Council of the Town of Davie held a public hearing duly advertised as required by State Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the above foregoing whereas clauses are hereby incorporated.

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SECTION 2. That Division 6, School Concurrency, of the Land Development Code of the Town of Davie, Florida (the "Town"), is hereby added to read as follows:

**DIVISION 6. SCHOOL CONCURRENCY**

**Sec. 12-350 Public School Concurrency**

Pursuant to the Public School Facilities Element (PSFE) of the Town of Davie Comprehensive Plan and the Amended Interlocal Agreement for Public School Facility Planning (ILA), the Town, in collaboration with the School Board of Broward County (School Board), shall ensure public school facilities will be available for current and future students consistent with available financial resources

and adopted level of service standards and that such facilities will be available concurrent with the impact of proposed residential development.

(A) Applications Subject to a Public School Concurrency Determination: The Town shall not approve an application for a residential plat, replat, plat note amendment, or any site plan, until the School Board has reported that the school concurrency requirement has been satisfied or unless the Town has determined that the application is exempt or vested.

(B) Exemptions and Vested Development:

(1) The following residential applications shall be exempt from the requirements of public school concurrency:

(a) An application which generates less than one student at each school level in the relevant Concurrency Service Area (CSA). Such development shall nevertheless be subject to the payment of school impact fees.

(b) An application for age restricted communities with no permanent residents under the age of eighteen (18). Exemption for an aged restricted community shall only be applicable provided that a recorded Restrictive Covenant prohibiting the residence of school aged children in a manner not inconsistent with federal, state or local law or regulations is provided.

(c) A Development of Regional Impact (DRI) with a development order issued before the effective date of Senate Bill 360 (effective date of Senate Bill 360 is July 1, 2005) or an application submitted before May 1, 2005.

(d) As may otherwise be exempted by Florida Statutes, including but not limited to, applications within municipalities which meet specific qualifying criteria outlined in the Statute and approved by the School Board.

(2) The following residential applications shall be vested from the requirements of public school concurrency:

(a) Any application located within a previously approved comprehensive plan amendment or rezoning which is subject to a mitigation agreement in accordance with the following:

1. The mitigation to address the impact of the new students anticipated from the development has been accepted by the School Board consistent with School Board Policy 1161, entitled "Growth Management", as may be amended from time to time, and;

2. A Declaration of Restrictive Covenant executed and recorded by the Developer, or the development is located within a boundary area that is subject to an executed and recorded tri-party agreement (between the School Board, local government and the applicant) consistent with School Board Policy 1161, as may be amended from time to time.

(b) Any application which is included within a residential plat or development agreement for which school impacts have been satisfied for the dwelling units included in the proposed application. This includes any unexpired application

approved by the Town between February 2, 1979 and the effective date of the Public School Facilities Element and other related amendments regarding school concurrency to the Comprehensive Plan.

(c) Any residential site plan (or functional equivalent) that has received final approval, and which has not expired, prior to the effective date of public school concurrency.

(3) To be exempt or vested from the requirements of public school concurrency, an applicant seeking such a determination shall be required to submit documentation with the application to the Town which shall include written evidence sufficient to verify that the subject development meets the exemptions stated herein, and as such, is exempt from the requirements of public school concurrency. The Town shall transmit or provide written information to the School Board indicating that the units in the application are vested.

(C) Level of Service Standards: The level of service standard (LOS) shall be 110% of the permanent Florida Inventory of School Housing capacity for each Concurrency Service Area (CSA). The LOS shall be achieved and maintained within the period covered by the five-year schedule of capital improvements contained in the effective Five-Year Adopted District Educational Facilities Plan (DEFP).

(D) Concurrency Service Areas (CSA's): The areas for the implementation of public school concurrency in Broward County shall be known as Concurrency Service Areas (CSA), and such CSA's shall be the approved school boundaries for elementary, middle and high schools as annually adopted by the School Board. For the purposes of public school concurrency, such CSA's shall be effective on the first day of the school year and end on the last day before the beginning of the next school year.

(E) Student Generation Rates: The Broward County adopted student generation rate(s) contained in Broward County Land Development Code Section 5-182(m)(6) "Student Generation Rates" shall be utilized to determine the potential student impact anticipated from the residential development proposed in submitted applications.

(F) Review Procedure:

(1) Public School Impact Application (PSIA)

Any applicant submitting an application with a residential component, that is not exempt or vested, is subject to public school concurrency and shall be required to submit a Public School Impact Application (PSIA) for review by the School District. Evidence of acceptance of the PSIA and payment of the applicable application fee to the School District shall be required prior to acceptance of the application by the Town.

(2) School Capacity Availability Determination Letter (SCAD)

(a) No residential application or amendments thereto, shall be approved by the Town, unless the residential development is exempt or vested from the requirements of public school concurrency, or until a School Capacity Availability Determination (SCAD) Letter has been received from the School District confirming that capacity is available, or if capacity is not available, that proportionate share mitigation has been accepted by the School Board. The SCAD

letter shall be sent to the applicant, the Broward County Development Management Division and the Town with jurisdiction over the subject development, no later than forty-five (45) days after acceptance of the completed PSIA by the School District.

(b) The School District shall determine the potential student impact from proposed residential development on the applicable CSA by performing the review procedure specified in School Board Policy 1161, as amended.

(c) If the School District determines that sufficient permanent capacity is available at the adopted LOS to accommodate students anticipated from the development, the School District shall issue a SCAD Letter indicating that adequate school facilities exist to accommodate the student impact and that the proposed development satisfies public school concurrency requirements.

(d) If the SCAD Letter states that the development has not satisfied public school concurrency requirements, the SCAD Letter shall state the basis for such determination, and the applicant shall have thirty (30) days to propose proportionate share mitigation to the School District.

(e) If the applicant proposes proportionate share mitigation within the thirty (30) day deadline, upon the subsequent acceptance of the proposed mitigation by the School Board, and upon the execution of a legally binding document among the School Board, the Town (if applicable) and the applicant, an amended SCAD Letter shall state that adequate capacity anticipated from the accepted proportionate share mitigation will be available to accommodate the student impact anticipated from the proposed development and that the proposed development satisfies public school concurrency requirements. The total amount committed for any mitigation option shall not be less than the school impact fees due for the proposed units as calculated based upon the adopted school impact fee schedule provided in Section 5-182 (m)(3) of the Broward County Code of Ordinances. The school impact fee for the development shall be considered included in the total proportionate share mitigation amount due or paid. If the proportionate share mitigation is not accepted by the School Board, the Amended SCAD Letter shall state the basis upon which the mitigation proposal(s) was rejected and why the development is not in compliance with public school concurrency requirements.

(f) An applicant adversely impacted by a SCAD determination may appeal such determination by written request to the School Board within the designated thirty (30) day time period. A timely request for an appeal shall stay the requirement for an applicant to propose proportionate share mitigation until the appeal has been resolved.

(G) Term of public school concurrency

(1) The public school concurrency approval for a residential application shall expire if development does not commence, as outlined in (2) below, within five (5) years following the date of Town approval.

(2) If a residential application receives Town approval, the development and anticipated students shall be considered vested for up to five (5) years from the date of Town

approval. Vesting of a residential application beyond the five years requires that one of the following conditions are met within the five (5) year period: 1) the issuance of a building permit for a principal building and first inspection approval or 2) substantial completion of project water lines, sewer lines and the rock base for internal roads. If the development is denied, the School Board shall deduct students associated with the development from its database.

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SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

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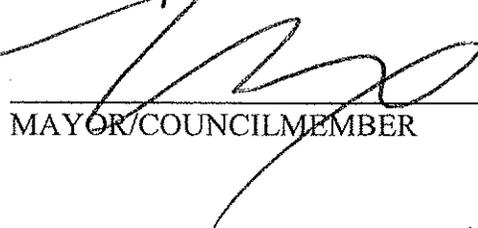
SECTION 4. If any section, subsection, sentence, clause, phrase, title, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

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SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS 3<sup>rd</sup> DAY OF September, 2008.

PASSED ON SECOND READING THIS 17<sup>th</sup> DAY OF September, 2008.



MAYOR/COUNCILMEMBER

ATTEST:



TOWN CLERK

APPROVED THIS 17<sup>th</sup> DAY OF September, 2008.