

ORDINANCE # 05- 29

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V "IMPACT FEES"; AMENDING DIVISION 7 "EDUCATIONAL FACILITIES"; AMENDING SECTIONS 62-922, 62-923, 62-925 AND 62-931 TO ALLOW FOR THE EXPENDITURE OF EDUCATIONAL FACILITIES IMPACT FEES ON THE CONSTRUCTION OF FACILITIES UTILIZED BY CHARTER SCHOOLS THAT HAVE BEEN SPECIFICALLY CREATED TO MITIGATE FOR THE EDUCATIONAL IMPACT CREATED BY THE DEVELOPMENT OF NEW RESIDENTIAL UNITS IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF FLORIDA STATUTES; PROVIDING FOR LEGAL STATUS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA EMBRACED; PROVIDING FOR CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Brevard County Comprehensive Plan establishes the objective of providing essential public services and facilities that are effective, efficient, and adequate to meet the needs of the projected population and that support and reinforce the growth management and land development guidelines; and

WHEREAS, the Brevard County Comprehensive Plan establishes the guideline that new development provide the essential services needed by the new development either through actual construction of the applicable facilities or through specific revenue producing mechanisms; and

WHEREAS, the Brevard County Comprehensive Plan states that the imposition of impact fees is one of the land use regulatory devices that assures that new development will help finance additional facilities required as a result of the new development to provide a minimum level of capital facilities; and

WHEREAS, the Florida Legislature, through the enactment of Section 163.3202(3), Florida Statutes, has sought to encourage local governments to enact impact fees as land development

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04-34

regulations; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida has authorized an independent study to analyze the fiscal impacts of development activity on the public primary and secondary educational system; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida received this independent study in February of 2004; and

WHEREAS, this independent study calculated the maximum impact fees that could be imposed for educational facilities based on currently available data and analysis; and

WHEREAS, the Florida Legislature, through the enactment of Chapter 2004-354, General Laws of Florida, has enabled, Educational Facilities Impact Fees to be expended on the construction of facilities for use by charter schools that have been specifically created to mitigate the educational impact created by development of new residential units.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

Section 1. Section 62-922 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-922. Intent and purpose.

(a) This division is intended to implement and be consistent with the Brevard County Comprehensive Plan, as amended from time to time.

(b) The purpose of this division is to ensure that new residential development bears a proportionate share of the cost of the capital expenditures necessary to provide public elementary and secondary school facilities including those utilized by charter schools necessitated by that new residential growth in the county.

Section 2. Section 62-923 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-923. Findings.

Based on information provided by the School Board, the Board of County Commissioners makes the following findings and determinations:

- (1) Under established levels of service for educational facilities, the existing educational infrastructure is not adequate to accommodate students anticipated to reside in the county as a result of new residential development.
- (2) Existing revenue sources available for the construction of additional educational facilities are not sufficient to fund construction of the educational facilities necessary to accommodate the students anticipated to reside in new development.
- (3) New development should contribute its fair share of the costs of providing new educational facilities necessary to accommodate the students anticipated to reside in new development.
- (4) Impact fees provide a reasonable method of regulating new development in the county to ensure that such new development pays its fair share of the capital costs of governmental services and facilities necessary to accommodate the new development.
- (5) The impact fees set forth in this division are not established at a rate to correct existing deficiencies.
- (6) The impact fees set forth in this division establish a fair and conservative method of assessing new development its fair share costs.
- (7) The impact fees will not fully pay for the costs of educational facilities necessitated by new development, and the School Board and Board of County Commissioners recognize that the shortfall will have to come from other revenue sources.
- (8) The educational facilities impact fee benefit districts established in this division ensure that capital improvements to the educational system will benefit the development located within each district.
- (9) The Board of County Commissioners finds that residential communities where restrictions limiting the age of residents to 55 years of age and older have been legally recognized as having no impact on educational facilities and that, consequently, an educational facilities impact fee exemption should be established for such facilities.
- (10) The Board of County Commissioners finds that an educational facilities impact fee exemption for low income and very low income families under specific circumstances will implement the goal of providing affordable housing for low and very-low income homebuyers, as set forth in following criteria contained in policy 1.1 of the Housing Element in the Brevard County Comprehensive Plan:
 - D. Ensure that homes purchased by low and very-low income homebuyers are brought up to Section 8 Housing Quality Standards or higher.

- E. Encourage mortgage lenders to invest mortgage dollars in housing for low and very-low income families.
- F. Encourage mortgage lenders to investigate and utilize existing programs, such as Fannie Mae, for low income homebuyers.

(11) The Board of County Commissioners finds that formation of ~~municipal-operated~~ charter schools are one method of reducing school and classroom overcrowding and offsetting the high cost of educational facilities in Brevard County.

Section 3. Section 62-925 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-925. Definitions.

As used in this division, the following words shall have the following meanings, unless some other meaning is plainly intended:

Area Median Income means the median family income in Brevard County, Florida, adjusted for family size, as published by the U.S. Department of Housing and Urban Development annually.

Attached Residential Dwelling includes "Single-family Attached Residential", "Duplex" and "Dwelling, multi-family" as defined in § 62-1102 of the Brevard County Code of Ordinances, provided, however, that for the purposes of this ordinance residential social service facilities, adult congregate living facilities, retirement homes, nursing homes, and other structures operated by a social service organization to provide residential care to children, the aged, the destitute, and the physically, mentally and/or emotionally challenged, for the purposes of this ordinance, shall not be considered to be attached residential dwellings. For the purposes of this ordinance, attached residential dwelling units shall include any addition or alteration to an existing structure that creates one or more additional non-exempt dwelling units.

Building Official means the person designated as such by Brevard County or by any municipality within Brevard County.

Building permit means a permit for the construction of a residential building or for the installation of a mobile home that has been issued by the building official.

Capital improvement includes land acquisition, architecture and engineering services, site improvements, construction of buildings, acquisition of educational furnishings and equipment, and school buses, but excludes maintenance and operation of such improvements.

Certificate of Completion means a certificate issued by the building official after the final inspection has verified that the construction has been completed in accordance with the requirements of the building code but for which a certificate of occupancy is not required.

Certificate of Occupancy means a certificate issued by the building official after the final inspection has verified that the construction has been completed in accordance with the requirements of the building code.

Charter School means a public school created pursuant to the requirements of Chapter 1002.33, Florida Statutes.

Eligible educational facilities and capital improvements means those educational facilities or related capital improvements that are necessitated by new growth and development in the benefit district or county and that are (1) under the jurisdiction of the School Board, (2) owned or leased by the School Board, or (3) ~~at the discretion of the School Board, a municipal-operated~~ charter schools approved by the School Board pursuant to Florida Statutes, including those operated by a municipality, that ~~has~~ have been specifically created to mitigate the education impact created by the development of new residential units.

Fee Payer means a person commencing a residential development activity by applying for a building permit or a permit for installation of a mobile home.

Manufactured Home shall have the same meaning as “Manufactured Home” in Chapter 320.01(2)(b), Florida Statutes (2003) which reads:

“Manufactured Home” means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Mobile Home shall have the same meaning as “Mobile Home” in § 62-1102 of the Brevard County Code of Ordinances.

Municipality-operated Charter School means a public school created pursuant to the requirements of Chapter 1002.33(15); Florida Statutes.

New Single Family Detached Dwelling includes new “Dwelling, Single-family” and “Modular Factory-built Home” as defined in § 62-1102 of the Brevard County Code of Ordinances, provided, however, that for the purposes of this ordinance residential social service facilities, adult congregate living facilities, retirement homes, nursing homes, and other structures operated by a social service organization to provide residential care to children, the aged, the destitute, and the physically, mentally and/or emotionally challenged shall, for the purposes of this ordinance, shall not be considered to be new single family residences. . For the purposes of this ordinance, new single family detached residential dwelling units shall include any addition or alteration to an existing structure that creates and one or more additional non-exempt dwelling units.

Permanent as used to modify the term “resident” or “basis” means a period of at least six months and one day in any year.

School Board means the District School Board of Brevard County, Florida or any entity created by that Board for the purposes of owning or leasing educational facilities or capital improvements.

Tentative District Educational Facilities Plan shall have the same meaning as “Tentative District Educational Facilities Plan” in Chapter 1013.35(1)(c), Florida Statutes (2003), as amended from time to time, which reads as follows:

“Tentative District Educational Facilities Plan” means the comprehensive planning document prepared annually by the district school board and submitted to the Office of Educational Facilities and SMART Schools Clearinghouse and the affected general-purpose local governments.

Section 4. Section 62-931 of the Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-931. Use of funds.

(a) Brevard County shall be entitled to retain up to but not more than two and one-half percent of the funds collected under this division as compensation for the administrative expense of collecting the fee and administering this division. All remaining educational facilities impact fees shall be disbursed to the School Board according to the terms of the interlocal agreement between the Board of County Commissioners and the School Board unless the Board of County Commissioners has specifically authorized the expenditure of a portion of the remaining fees on the construction of a facility to be utilized by a charter school specifically created to mitigate for the educational impact created by the development of new residential units. ~~At the discretion of the School Board, educational impact fees disbursed to the School Board may be allocated for use by a municipality for the construction of a municipality-operated charter school that has been specifically created to mitigate the educational impact created by the development of new residential dwelling units. Upon application by a residential developer and a charter school approved by the School Board, including one operated by a municipality, that clearly demonstrates eligibility for educational facility impact fee funding pursuant to the requirements of Chapter 1002.33(18)(f), Florida Statutes, the Board of County Commissioners may authorize the expenditure of educational facility impact fees paid within that residential development, on the construction of facilities that will be utilized by the charter school. The amount of any educational facilities impact fees expended on the construction of a charter school facility shall be the sole discretion of the Board of County Commissioners.~~

The distributed funds shall only be used to fund those eligible educational facilities and capital improvements identified in the Tentative District Educational Facilities Plan as annually adopted by the School Board except as otherwise provided herein. ~~or a municipality-operated charter school that has been specifically created to mitigate the educational impact created by the development of new residential dwelling units.~~ Educational impact fees shall not be used for the maintenance or operation of educational facilities; for the construction of educational facilities that are required to eliminate existing overcrowding or level of service deficiencies; or for the construction of educational facilities that are not under the jurisdiction or ownership, whether by lease or purchase, of the School Board with the exception of ~~municipality-operated~~ charter schools, including those operated by a municipality, created to mitigate the educational impact caused by the development of new residential dwelling units to which educational impact fees have been allocated by the ~~School Board~~ Board of County Commissioners specifically. Unless a municipality has entered into an interlocal agreement with the County obligating the municipality to require the person applying for a municipal building permit to obtain an educational facilities impact fee proof of payment receipt from the County prior to the issuance of a certificate of occupancy or certificate of completion by

the municipal building official, for any property where a building permit has expired and the residential unit has not been completed, each municipality shall be responsible for notifying the county of the building permit expiration, that a refund is due and that a release of lien should be recorded.

(b) Funds shall be used exclusively for the construction of eligible educational facilities or capital improvements that are located within the educational facilities impact fee district from which the funds were collected or for the construction of the proportionate share of eligible educational facilities or capital improvements located in another district that will serve the district from which the funds were collected. Funds shall be expended in the order in which they are collected within each educational facilities impact fee benefit district.

(c) Each fiscal period, the Superintendent of the School Board shall transmit to the Board of County Commissioners, the adopted Tentative District Educational Facilities Plan in which educational facility impact fee funds, including any accrued interest, from the educational facilities impact fee trust funds, are assigned to specific eligible educational facilities capital improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the educational facilities impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this division.

(d) In the event that a facility constructed for use as a ~~municipality-operated~~ charter school, including one operated by a municipality, ceases to be used for public educational purposes and ownership of the facility has not reverted to the School Board, the ~~municipality~~ charter school that operated the facility is required to refund, the full amount of any educational facilities impact fees that it has received to the County unless the School Board and the ~~municipality~~ charter school have contractually agreed to an alternate school related use of the facility. Such refund shall be due within 180 days of the date that the ~~municipality-operated~~ charter school ceases to be used for public educational purposes.

Section 5. **Severability.** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. **Conflicting Provisions.** In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 7. Area Encompassed. This ordinance shall apply to both the unincorporated area of Brevard County and to the incorporated areas of Brevard County.

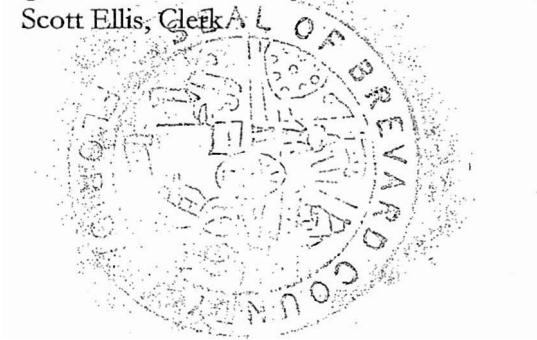
Section 8. Effective Date. This ordinance shall become effective as prescribed by law.

DONE AND ADOPTED in regular session, this twelfth day of July, 2005.

ATTEST:



Scott Ellis, Clerk



BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



By: Ron Pritchard, D.P.A., Chairman

Approved by the Board on July 12, 2005

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COUNTY CLERK