

Implementing School Concurrency

by Cari L. Roth

The Florida Legislature passed sweeping changes to growth-management laws during the 2005 session. One of the most significant provisions of the legislation, SB 360, is the conversion of a previously optional provision of the growth management law into a requirement that all jurisdictions implement and enforce school concurrency.

This article will discuss the new requirements and the issues and choices that must be resolved at the local level. Although the implementation deadline is not until 2008, many local governments have entered into grant agreements with the Florida Department of Community Affairs (DCA) to update their interlocal agreements in advance of the required deadline. They are confronted with the growing need for school capacity, made all the more acute by the upcoming full implementation of the class-size limitations adopted by amendment in our state constitution.

The new legislation requires changes to a previously required interlocal agreement between counties, cities and their district school board to reflect an unprecedented level of coordination between the three forms of government. The new law also requires each local government to make changes in three places in their local comprehensive plan and includes incorporating the school district's five-year plan into the capital-improvements element of the local government comprehensive plan. Both the interlocal agreement and the required comprehensive-plan changes must reflect the collaborative decisions of the three forms of government on the measurements and mechanisms that are necessary to implement school concurrency. Both are also reviewed by the DCA for compliance with the statutory requirements and can be challenged by affected persons.

School Concurrency Defined

What is concurrency? In the context of schools, it means adequate school facilities are in place or under actual construction within three years after issuance of a subdivision or site-plan approval. There are a lot of local decisions embedded in that one phrase! Determining what are adequate school facilities involves decisions to establish how school capacity will be measured, how many students are acceptable in a school (levels of service), and what schools are looked at to determine whether capacity exists to accommodate new residential development (concurrency service areas).

Measuring Capacity

Most of us are familiar with the transportation context regarding levels of service – essentially the carrying capacity



of the road. With schools, there is no single standard of measurement required for use in school concurrency analyses. Many jurisdictions are using the same methodology used by the Florida Department of Education (DOE) – the Florida Inventory of School Houses (FISH) capacity. Some local governments are using different measures or modifying the FISH capacity measurement by not only examining the school's count of student stations but also including the core facilities that are necessary to make a school function, such as cafeterias, auditoriums, media centers and bathrooms, part of what is measured for school capacity. Some jurisdictions are considering the capacity of other specialized classrooms, such as laboratories and art and music rooms. In addition, the expected capacity needed for vested or previously permitted but as-yet-unbuilt residential development should be reserved in the school capacity.

The law requires a capacity measurement at two stages in development. The interlocal agreement must establish a process for the school board to inform the local government regarding the effect of a comprehensive-plan amendment on school capacity, and how the school board anticipates it will meet the public-school demand. At this stage, the school-board comments are advisory and are meant to serve as an early-warning system. Many local governments also are choosing to perform this advisory review at rezoning as well. The actual imposition of school concurrency is done at site-plan or subdivision-review stage.

Level of Service

Once the measurement tool is chosen, the parties to the interlocal agreement must choose the actual level of service, usually expressed as a percentage of FISH or another chosen measure of capacity. The statute requires that the level of service be uniform throughout the school district for schools of the same type (i.e., different levels of service can be chosen for elementary, middle and high schools). But levels of service cannot be modified by the location of the school or the local



government in which the school is located. Also, there is an option to phase in or tier the level of service standard over time in order to ease the burden of the new requirement. There is an exception to the uniformity requirement for special-purpose schools such as magnet schools.

Concurrency Service Areas

The other important factor in developing a system to measure the concurrency of schools is the choice of service areas. This part of the review establishes which schools are looked to in order to provide capacity for the new students being generated by a proposed new development. The choices range from the largest of service areas, the entire school district, to the attendance zones established for each individual school. The statute encourages school concurrency to be first established districtwide, but requires the concurrency service areas be set at something less than districtwide within five years. If the concurrency service areas are less than districtwide, the local government has the burden of demonstrating that it has utilized existing school capacity to the greatest extent possible. Factors that can be brought to bear in such a defense include transportation costs and court-ordered segregation plans. The larger the service area, the more likely that capacity can be found for the new students – although it may not be physically proximate to the new development.

Calculating Student Generation

When reviewing a proposed development, the first calculation that needs to be done is to estimate the number of public-school students to be generated by the development. Some jurisdictions are looking at information such as the location and type of residential development, and even the estimated market value of the homes, as history shows that all these factors affect the number of students generated from the proposed development.

Overcoming Deficient Capacity

The Legislature recognized that situations are likely to arise where adequate school capacity does not exist to accommodate a project's anticipated student enrollment and provided an alternative to simply denying a project. The option to “pay and go,” and the methods for calculating the required contribution, must be included in the updated interlocal agreement. These contributions, formally called proportionate-share mitigation, permit a development to proceed if the developer executes an agreement with the local government and the school district to commit to providing mitigation proportionate to the demand for public-school facilities created by actual development of the property. The Legislature also encouraged options for providing proportionate-share mitigation other than cash payments. These options include contributions of land or facilities, construction of public schools, and even public-school mitigation banking, in which a private entity builds a school and sells capacity to developers. The fair market

value of such contributions must be credited toward any impact fees imposed.

The contribution must be directed toward a school-capacity improvement identified in the school district's five-year work plan that satisfies the demand created by that development. The district's plan is required to be “financially feasible,” which means the district must identify the source of the remainder of the funding necessary to build the facility for which it accepted a proportionate share payment. Unless the law is clarified, it is likely that conflicts will arise when a developer is quite willing to pay its fair share but the district is either unwilling or unable to find the money to complete the project. To determine what the proportionate share should be, several jurisdictions are using a rather simple formula:

$$\text{Proportionate Share} = (\text{Development-Generated Students} - \text{Available Capacity}) \times \text{Cost Per Student Station}$$

The DOE-adopted number for “cost per student station” often is used for this amount, but there is no obligation to do so. The DOE number includes the cost of constructing, furnishing and equipping a school and site improvements, but does not include land costs or off-site improvements such as sidewalks and turn lanes.

Exceptions and Waivers

Many jurisdictions are growing so slowly or are at a stage so close to build-out that the Legislature provided some exceptions and waivers to the new requirements for interlocal agreements and comprehensive-plan changes. If the student population has declined over the preceding five years, the local government and school district can petition the DCA to waive one or more requirements of the interlocal agreement. The DCA can grant a waiver to a county and each municipality within the county if all schools but one are not exceeding their capacity and that one school is at no more than 105 percent of capacity. In addition, the projected student growth rate over the next five years must be less than 10 percent. A municipality in a nonexempt county still can apply for and receive an exemption if the city is growing extremely slowly and has not annexed new, undeveloped property eligible for residential development. The DCA has developed forms for these applications.

The DCA has funded school-concurrency pilot projects in several communities around the state. Those work products, as well as other guidance documents, are available on the department's Web site at www.dca.state.fl.us/fdcp/dcp/SchoolPlanning/index.cfm.

Cari Roth is a shareholder in the Tallahassee law office of Bryant Miller Olive. She has 23 years of experience. She served as general counsel of the Florida Department of Community Affairs from 1999 to 2003. She has been active on growth-management issues in the legislative process and has assisted local governments with the implementation of the new school concurrency laws.