

ORDINANCE NO. 18-2006

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 56, ARTICLE IV, SECTION 56-100 OF THE CODE OF ORDINANCES, PERTAINING TO TRANSPORTATION PERFORMANCE STANDARDS TO CREATE NEW CODE SECTION 56-100 TO BE ENTITLED "PROPORTIONATE FAIR-SHARE MITIGATION PROGRAM"; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town of Lake Park has adopted a Comprehensive Plan which has been determined by the Department of Community Affairs to be in compliance with Chapter 163, Part II, Florida Statutes; and,

WHEREAS, the Town Commission of the Town of Lake Park, Florida, has previously adopted Chapter 56 entitled "Consistency and Concurrency Determinations;" and

WHEREAS, the 2005 amendments to the State of Florida Growth Management Legislation directed local governments to enact concurrency management ordinances by December 1, 2006, that allow for "proportionate share" contributions from developers toward traffic concurrency requirements; and

WHEREAS, the Town Commission has determined that it is necessary to create a Proportionate Fair-Share Program consistent with Section 163.3180(16), Florida Statutes; and

WHEREAS, the Lake Park Town Commission hereby creates new Article IV, Section 56-1-00 of Chapter 56 of the Town Code to be entitled "Proportionate Fair-Share Mitigation Program".

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF
THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of the Town Commission.

Section 2. Section 56-100 entitled "Proportionate Fair-Share Mitigation Program" of the Code of Ordinances of the Town of Lake Park is hereby created to read as follows:

Sec. 56-100. Proportionate Fair-Share Mitigation Program.

(a) Purpose and Intent. The purpose of this section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by, and in a manner consistent with §163.3180(16), F.S.

(b) Applicability. The Proportionate Fair-Share Program ("Program") shall apply to all projects that fail to meet the standards of this division on a roadway or transportation facility within the Town that is not the maintenance responsibility of Palm Beach County or the Florida Department of Transportation ("FDOT") or any other agency. This Program does not apply to Developments of Regional Impact ("DRI") using proportionate fair share under Section 163.3180(12), Florida Statutes, projects exempted from this division, or for projects that received traffic concurrency approval prior to December 1, 2006.

(c) General Requirements.

(1) An applicant may satisfy the transportation concurrency requirements of the Town by making a proportionate fair-share contribution, pursuant to the following requirements:

- a. The proposed project is consistent with the Comprehensive Plan and applicable land development regulations.
- b. The road improvement necessary to maintain the adopted level of service ("LOS") concurrency requirements is specifically identified for construction in the five-year schedule of capital improvements in the Capital Improvements Element ("CIE") of the Comprehensive Plan ("Plan") and identified for construction in the adopted Five-Year County Road Program.

(2) Any improvement project proposed to meet the applicant's fair-share obligation must meet the Town's and Palm Beach County's ("County") design standards for locally maintained roadways and those of the FDOT for the state highway system.

(d) Intergovernmental Coordination. Pursuant to policies in the Intergovernmental Coordination Element of the Town's Plan, the Town shall coordinate with the County regarding mitigation to impacted thoroughfare facilities receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with the County for this purpose.

(e) Application Process.

- (1) In the event of a lack of capacity to satisfy transportation concurrency, the applicant shall have the opportunity to satisfy transportation concurrency through this Program pursuant to the requirements of General Requirements (c) subsection. If the impacted facility is on the Florida Strategic Intermodal System ("SIS"), then the FDOT shall be notified and invited to participate in a pre-application meeting.
- (2) Eligible applicants shall submit an application to the Community Development Director on a form provided for by the Town and all documentation reasonably requested by the Town. The Town Commission may establish an application fee by resolution that does not exceed the costs to the Town of reviewing and processing the application.
- (3) The Community Development Director shall review the application and certify that the application is technically sufficient and complete within fifteen (15) business days of receipt of the application. If an application is determined to be insufficient, incomplete or inconsistent with the General Requirements (c) subsection, then the applicant will be notified in writing of the reasons for such deficiencies within fifteen (15) business days of submittal of the application. If such deficiencies are not remedied by the applicant within thirty (30) days of receipt of the written notification, then the application will be deemed abandoned, and the application fee shall be forfeited to the Town.
- (4) Pursuant to §163.3180(16)(e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.
- (5) When an application is deemed sufficient and complete, the applicant shall be so notified in writing by the Community Development Director. A proposed proportionate fair-share agreement will be prepared by the Community Development Director and/or the applicant and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a SIS facility, no later than sixty (60) days from the date on which the applicant received written confirmation from the Town that the application was complete and eligible. If the executed proportionate fair share agreement is not received by the Town within the sixty (60) day period, the application shall be deemed abandoned and the application fee shall be forfeited to the Town, unless the Town determines in

its sole discretion that an extension of the deadline is warranted based upon good cause shown by the applicant.

- (6) No proportionate fair-share agreement will be effective until approved by the Town Commission and the County, if applicable.

(f) Determining Proportionate Fair-Share Obligation

- (1) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.
- (2) A project eligible for participation under the Proportionate Fair-Share Program shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.
- (3) Pursuant to § 163.3180(16), F.S., the methodology used to calculate a project's proportionate fair-share obligation shall be as follows:

The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour service volume ("SV") of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of applicant payment, of the improvement necessary to maintain the adopted LOS. For purposes of this subsection, construction shall include all costs associated with the improvement. The methodology expressed as a mathematical equation is as follows:

Proportionate Fair-Share = $\sum [((\text{Development Trips}_i) / (\text{SV Increase}_i)) \times \text{Cost}_i]$

Where:

Development Trips_i = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per TPS;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment "i" per the *General Requirements* (c) subsection;

Cost_i = Adjusted cost of the improvement to segment "i". Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering review, inspection, administration, and physical development costs directly associated with construction at the anticipated cost, including contingencies, in the year it will be incurred.

- (4) For the purposes of determining proportionate fair-share obligations, the Community Development Director shall determine improvement costs based upon the actual and/or anticipated cost of the improvement in the year that construction will occur.
- (5) If the Town has accepted an improvement proposed by the applicant, then the value of the improvement shall be based on an engineer's certified cost estimate provided by the applicant and approved by the Community Development Director or other method approved by the Director.
- (6) If the Town has accepted a major thoroughfare road right-of-way ("ROW") dedication for the proportionate fair-share payment, credit for the dedication of the ROW shall be valued on the date of the dedication at one hundred and twenty (120) percent of the most recent assessed value by the Palm Beach County Property Appraiser, or at the option of the applicant and in-lieu of the 120 percent of assessed value, by fair market value established by an independent appraisal approved by the Town at no expense to the Town. This appraisal shall assume no approved development plan for the site. All ROW dedicated must be part of a roadway segment that triggered the deficiency per TPS, and must not be site-related. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the Town at no expense to the Town. If the estimated value of the ROW dedication proposed by the applicant, based on a Town approved appraisal, is more than the Town estimated total proportionate fair share obligation for the development, then the Town will give the developer Town road impact fee credit for the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations, if on a transportation facility maintained by FDOT or if applicable. The Town shall have the option of requiring an environmental assessment by the applicant for right-of-way dedication.

(g) *Impact Fee Credit for Proportionate Fair-Share Mitigation*

- (1) Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by road impact fees which may hereafter be established by the Town.
- (2) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed project. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed project cannot be transferred to any other project.

(h) *Proportionate Fair-Share Agreements*

- (1) Upon execution of any proportionate fair share agreement, the applicant shall receive a certificate of concurrency approval. Should the applicant fail to apply for a

development permit within twelve (12) months, then the proportionate fair share agreement shall be considered null and void, and the applicant shall be required to reapply, unless the Town and the applicant mutually agree to a time extension.

- (2) Payment of the proportionate fair-share contribution is due in full no later than the date of the issuance of the first building permit, and shall be non-refundable. If the payment is submitted more than ninety (90) days from the date of execution of the proportionate fair share agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to the *Determining Proportionate Fair-Share Obligation* (f) subsection and adjusted accordingly.
- (3) In the event proportionate fair share agreement requires the applicant to build one or more road improvements, all such improvements must be commenced prior to issuance of a development permit, and all such improvements must be guaranteed by a binding agreement that is accompanied by a Performance Security, as determined by the Community Development Director, which is in a monetary amount sufficient to ensure the completion of all required improvements as determined by the Community Development Director. It is the intent of this subsection that any required improvements be completed concurrent with development of the project.
- (4) Dedication of necessary ROW for facility improvements pursuant to proportionate fair share agreement must be completed prior to issuance of the first building permit, but shall not include a building permit issued for a *dry model* (a model home not connected to sanitary sewer and potable water).
- (5) Any requested change to a development project made subsequent to the issuance of any development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
- (6) Applicants may submit a letter to withdraw from the proportionate fair share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs paid to Town will be non-refundable.
- (7) The Town may enter into proportionate fair share agreement for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(i) *Appropriation of Fair-Share Revenues*

- (1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the CIE, or as otherwise established in the terms of the proportionate fair share agreement. Proportionate fair-share revenues may be used as the fifty (50) percent local match for funding under the FDOT

Transportation Regional Incentive Program, or any other matching requirement for State and Federal grant programs as may be allowed by law.

- (2) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of the *General Requirements* (c)(2) subsection.

Section 3. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Codification. The sections of the Ordinance may be renumbered or relettered to accomplish codification, and the words "ordinance," "section," "article," or "paragraph" may be changed to provide for continuity.

Section 5. Severability. If any section, subsection, sentence, clause, phrase 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 portions thereof.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Section 7. Effective date. This Ordinance shall take effect immediately upon passage.

