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CHAPTER 86. CONCURRENCY MANAGEMENT

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Chapter 86 CONCURRENCY MANAGEMENT*

Cross references: Administration, ch. 2; buildings and building regulations, ch. 18; environment, ch. 38; impact fees, ch. 94; natural resources protection, ch. 98; signs, ch. 102; subdivisions, ch. 106; zoning, ch. 110.

ARTICLE I. IN GENERAL

Secs. 86-1--86-25. Reserved.

ARTICLE II. CONCURRENCY MANAGEMENT

Sec. 86-26. Findings and intent.

The City Commission of Deltona, Florida, finds that F.S. § 163.3161 et seq. establishes the Community Planning Act.

The Act requires that each local government in the State of Florida maintain a comprehensive plan to guide and control future development consistent with the requirements of the Act.

F.S. § 163.3202 requires that local governments adopt or amend and enforce land development regulations which are consistent with and implement the local government's comprehensive plan.

F.S. § 163.3180 provides that it is the intent of the legislature that select public facilities and services needed to support development shall be available concurrent with the impact of such development.

F.S. 163.3180 provides the ability for local government to implement level of service standards for other public infrastructure.

F.S. § 163.3202(2)(g) prohibits local governments from issuing development orders or permits which result in a reduction of service for the affected public facilities below the level of services provided in the comprehensive plan of the local government.

The purpose of a concurrency management system is to provide the necessary regulatory mechanism for evaluating development orders to ensure that adequate public facilities are available concurrent with the impact of development. An additional component of a concurrency management system is the establishment of a framework for determining public facility needs and providing a basis for meeting those needs through capital improvement planning.

The Deltona City Commission hereby exercises its legislative authority pursuant to the Constitution of the State of Florida, the Charter of the City of Deltona, F.S. ch. 125, and F.S. ch. 163, by establishing acceptable levels of services for roads, potable water, sanitary sewer, solid waste, drainage, and parks and recreation.

(Ord. No. 96-25, § 1(1401), 3-4-1996)

Sec. 86-27. Certificate of capacity.

- (a) Each non-exempt (for exemptions see section 86-32) development application subject to the provisions of Chapter 106 or 74 of this Code and require a development order as defined in this chapter shall apply for and receive a certificate of capacity on a form provided by and processed through the Planning and Development Services Department.
- (b) Concurrency and level of service standards per Section 86-27(c)(1) – (7) are established within the Comprehensive Plan.
- (c) A determination of adequate capacity shall be provided for the following designated public facilities and services prior to the issuance of a development order for final site plans, master development plans (MDP), overall development plans (ODP), and residential plats:
 - (1) Thoroughfare road system
 - (2) Potable water facilities
 - (3) Sanitary sewer facilities
 - (4) Stormwater management facilities
 - (5) Solid waste facilities
 - (6) Parks and Recreational facilities (for residential uses only)
 - (7) Public school facilities (for residential uses only)
- (d) A determination of adequacy shall be satisfied through written correspondence received from the department or agency responsible for providing volume/capacity data stating that the designated public facilities or services are currently adequate to support the proposed development or redevelopment.

Sec. 86-28. Agency review and comment.

- (a) The Planning and Development Services Director or his/her designee will be responsible for coordinating application review under this article.
- (b) The following agencies shall coordinate with the Planning and Development Services Director or his/her designee and perform, where applicable, a determination of capacity pursuant to section 86-30 concerning the impact of the proposed development on the public facilities designated in this article:
 - (1) Planning and Development Services
 - (2) Public Works
 - (3) Parks and Recreation
 - (4) Solid Waste Division of Enforcement Services
 - (5) Any other local authority, including Volusia County and Volusia County School District, as may be deemed necessary by the Planning and Development Services Director or his/her designee to make a determination of adequacy.

The Planning and Development Services Director or his/her designee will be responsible for including capacity information as part of staff reports for each proposed development reviewed by

the DRC or other City decision making bodies that may review such final site plan, master development plan, overall development plan, and residential plat applications. As an alternative and with City approval, an applicant may provide for independent assessment of the impact of the proposed development on public facilities by a qualified professional in the recognized field of expertise using appropriate studies, surveys and reports, and applying standard methodologies and procedures. When warranted, the City may require such analysis to be performed at the expense of the applicant.

Sec. 86-29. Reserved

Sec. 86-30. Review, approval, terms and issuance of certificates of capacity.

- (a) Appropriate City offices and other entities as appropriate shall assist in or perform a determination of capacity in its appropriate area for each application for a certificate of capacity.
- (b) If the capacity of available public facilities is equal to or greater than the capacity required to maintain all the required level of service standards for the impact of the development, the certificate of capacity will be approved and the certificate of capacity shall be issued by the Planning and Development Services Director or his/her designee.
- (c) If the capacity of available public facilities is less than the capacity required to support the development the certificate of capacity shall be denied. If the certificate of capacity is denied the applicant may select one of the following options:
 - (1) Amend the application to reduce the needed public facilities to the capacity that is available.
 - (2) Arrange to provide for public facilities that are not otherwise available or provide practical and effective alternative to mitigate impact of the development.
 - (3) Reapply for certificate of capacity once acceptable level of service has been established through public capital improvement or other means.
 - (4) File a written appeal of the denial of the application for certificate of capacity within 30 days of said denial to the Planning and Development Services Director or his/her designee for scheduling a hearing before the hearing officer pursuant to section 86-36.
- (d) A determination of capacity shall apply to only specific land uses, densities, intensities and construction schedules based on information provided in the application.
- (e) A certificate of capacity shall be valid for the same period of time as the development order with which it was issued.
- (f) A certificate of capacity may be extended according to the same terms and conditions as the underlying development order. If the development order is granted an extension, so shall the certificate of capacity as provided in this article. A certificate of capacity may be extended through and remain in effect for the life of each subsequent development order for the same parcel and development for as long as the applicant obtains a subsequent development order prior to the expiration of the earlier development order.
- (g) A certificate of capacity runs with land and is valid only for subsequent development orders for the same parcel and development and to new owners of the original parcel for which it was issued.
- (h) A certificate of capacity shall expire if the underlying development order expires or is revoked by the city and the capacity has not yet been extended to a subsequent development order for the same parcel.

- (i) Notwithstanding any other provisions of this article to the contrary, no application for administrative rezoning by the city commission shall encumber or reserve capacity for public facilities at the time of the approval of said rezoning by the city commission.

(Ord. No. 96-25, § 1(1405), 3-4-1996)

Sec. 86-31. Conditions may be added to certificates of capacity.

Development orders and certificates of capacities may contain such reasonable conditions as are necessary to ensure compliance with this article. The DRC, City Commission or the hearing officer, as the case may be, is hereby authorized to impose such conditions on preliminary or final development orders which shall be binding on owners, heirs, successors and assigns.

(Ord. No. 96-25, § 1(1406), 3-4-1996)

Sec. 86-32. Exemptions.

- (a) The following development orders are exempted from this article and may commence development without a certificate of capacity:

- (1) Developments of regional impact currently authorized under F.S. § 380.06, on or before the effective date of this article.
- (2) Chapter 90, article II, flood hazard management.
- (3) Development that is vested pursuant to section 86-34 of this article.
- (4) An alteration of development otherwise exempt under this Code which does not create additional impact on public facilities.
- (5) The construction of accessory building and structures which do not create additional impact on public facilities.
- (6) The replacement of an existing or previous dwelling unit when no additional units are created.
- (7) Room additions to residences, including but not limited to screen rooms.
- (8) Signs.
- (9) Application for tree permit only under chapter 90, article II.
- (10) Application for a wetland alteration permit only under chapter 98, article III.
- (11) Application for a use permit only under chapter 74, article III.

- (b) Upon the determination that the development meets one or more of the criteria set out for exemption, the Planning and Development Services Director or his/her designee shall approve or deny a certificate of capacity exemption. The decision of the Planning and Development Services Director or his/her designee may be appealed in writing within 30 days of said decision to the DRC, who may approve, reverse or modify the decision of the Planning and Development Services Director or his/her designee of said exemption.

(Ord. No. 96-25, § 1(1407), 3-4-1996)

Sec. 86-33. Monitoring.

- (a) Facility capacity shall be monitored at least on an annual basis as part of the annual update to the City Capital Improvements Element (CIE). The status of capacity available shall be made available to the general public as part of the annual CIE update.

Sec. 86-34. Vested rights.

- (a) Based upon the following four-part test for vested rights:
- (1) Upon some act or omission of the city;
 - (2) a property owner relying in good faith;
 - (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired; and
 - (4) that the development has commenced and is continuing in good faith.
- (b) Only the following developments are hereby determined to be vested for the purpose of this article:
- (1) Developments of regional impact as currently authorized under F.S. § 380.06, on or before the effective date of this article.
 - (2) Physical on-site construction if building permit has been issued on or before the effective date of this article.
 - (3) Applications for final site plans submitted to the Planning and Development Services Department on or before effective date of this article shall be vested for a period of one year from the date of approval or one year from the effective date of this article, whichever time period is less. Any amendments or modifications to site plans that would adversely affect the previous concurrency determination shall be tested for concurrency under the provisions of this article.
 - (4) Where a building permit has been issued and it remains valid on or before the effective date of this article.
 - (5) Any activity exempted under chapter 106, section 106-27(a)(1), (6) and (10) of this Code.
 - (6) Any application which has received ODP approval on or before the effective date of this article shall have one year from the date of approval to obtain a preliminary plat approval under the provisions of this chapter and shall have one additional year within which to obtain final plat approval. Thereafter, such OPD application shall be tested for concurrency in accordance with this article.
 - (7) Any commercial or business planned unit development under the city's zoning ordinance, as amended, [chapter 110, Code of Ordinances], which was reviewed and approved under the provisions of this chapter and has commenced and is continuing in good faith as of the effective date of this ordinance.
 - (8) The Planning and Development Services Director or his/her designee shall choose and develop a methodology for informing owners of above-described vested properties under this section of the expiration of said vested rights under this section. Such methodology may include, but not be limited to, newspaper notice, individual notice or notice in the public records. Once that methodology is chosen, the Planning and Development Services Director or his/her designee shall proceed to implement such methodology.

(Ord. No. 96-25, § 1(1409), 3-4-1996)

Sec. 86-35. Reserved

Sec. 86-36. Appeal process.

- (a) Any person aggrieved by a decision of the DRC on the matter of exemptions or denial of a certificate of capacity under this article may appeal in writing to the Planning and Development Services Director or his/her designee within 30 days of the decision of the DRC. The Planning and Development Services Director or his/her designee shall establish a schedule of hearing dates and application deadlines for each respective hearing. The Planning and Development Services Director or his/her designee shall review the application for sufficiency, and insufficient applications shall be returned to the applicant for additional information. Upon acceptance by Planning and Development Services Director or his/her designee, the application shall be assigned a hearing date.
- (b) The City Commission shall appoint one or more hearing officers, all of whom shall be attorneys duly licensed to practice law in the State of Florida and who have five years of experience as a practicing attorney. Said hearing officer may be on the staff of the State of Florida Division of Administrative Hearings. Each hearing officer may be appointed for a term not to exceed one year. A hearing officer shall be removable for cause by the City Commission. A hearing officer shall be compensated at a rate and manner as determined by the City Commission.
- (c) No person who is or who may become a party of record before the hearing officer nor anyone appearing on behalf of a party of record shall communicate ex parte with any hearing officer about any application currently before him/her.
- (d) Hearings before the hearing officer shall be held as scheduled by the Planning and Development Services Director or his/her designee. All hearings shall be open to the public. The hearing shall be taped, and minutes of the proceedings before the hearing officer shall be kept. Said recordings and minutes shall be filed with the Planning and Development Services Director or his/her designee.
- (e) The participants before the hearing officer shall be the applicants, representative of the city or any department or division, and any substantially affected person and witnesses with relevant testimony. The hearing officer shall set reasonable time limits on presentation of the case; the order of presentation shall generally be as follows:
 - (1) City of Deltona summary of the application, staff and department findings and staff testimony.
 - (2) Applicant and applicant's witnesses.
 - (3) Persons with relevant testimony.
 - (4) Amended report of staff, if any.
 - (5) Rebuttal and summation of the applicant.
- (f) To the maximum extent practical the hearing shall be informal. However, fundamental due process shall be observed, but the rules of evidence shall not apply. Reasonable cross-examination of witnesses shall be permitted, but questions shall be confined as closely as possible to the scope of the direct testimony. The hearing officer may call and question witnesses as he/she deems necessary and appropriate. All witnesses shall be sworn in, and the hearing officer shall decide all questions of procedure except as otherwise provided herein. Irrelevant, immaterial, unduly repetitious evidence shall be excluded. Any part of the evidence may be received in written form, and all testimony shall be under oath.

- (g) The hearing officer shall render a decision on the application within 30 days of the hearing unless for good cause that time period should be extended.
- (h) Thereafter, the decision of the hearing officer may be appealed by an aggrieved party who participated in the hearing. In the event of said appeal, the aggrieved party shall file a written appeal to the City Commission within 30 days of the decision of the hearing officer. Said appeal shall be based on the record made at the hearing before the hearing officer and shall not be a hearing de novo. The aggrieved party shall state fully the specific grounds for the appeal and the facts relied upon. The City Commission shall consider only those items specified by the aggrieved party. No appeal shall be granted in whole or in part unless five members of the City Commission concur.
- (i) Other appeals of the decision of the DRC shall be as provided under subsection 74-2(g) of this Code.
(Ord. No. 96-25, § 1(1410), 3-4-1996; Ord. No. 29-2006, § 1, 11-20-2006)

Sec. 86-37. Fees and fee resolution.

The City Commission may establish fees for processing a determination of capacity or an informal analysis (inquiry) of determination of capacity or any other fees related to matters contained in this article. Said processing fees are not refundable.

(Ord. No. 96-25, § 1(1411), 3-4-1996; Ord. No. 29-2006, § 1, 11-20-2006)

CHAPTERS 87--89 RESERVED