

2.3: CONCURRENCY MANAGEMENT – Development Vested from Transportation Concurrency

A. Introduction & Background

Prior to 2003, County staff reviewed all PUD and DRI applications for compliance with transportation concurrency provisions. As part of this review process, proposed projects were assessed for their transportation impacts, and mitigation requirements were assigned to projects on a case-by-case basis. This system was adequate for evaluating individual projects, but did not adequately assess the combined impact of all development on the County's roadway system.

During 2003, the Board of County Commissioners adopted a "checkbook concurrency system." This system examines the total trip capacity available for new development and includes provisions relative to vested traffic. As part of the process of establishing the checkbook concurrency system, County Transportation Planning staff conducted an analysis of the "vested traffic" generated by the existing 327 PUD's in Collier County, as well as platted subdivisions, such as Golden Gate Estates, including Golden Gate City. The logic was that the transportation impacts of these developments were already approved or "vested;" and, therefore, the transportation impacts of these projects had been accounted for within the County's Capital Improvement Planning process.

The analysis of committed or vested traffic was undertaken to evaluate the impacts of development traffic on the roadway system in order to determine the impacts of a "checkbook" concurrency system; to determine what planned improvements would be needed to mitigate the transportation impacts of these projects; and to establish a baseline for the first year of the Concurrency Management System. These projects are ones that, from a planning analysis perspective, are vested for transportation concurrency (i.e. meet statutory requirements, have built required infrastructure, have paid transportation impact fees through a Developers Contribution Agreement, etc.) and would not be analyzed when a checkbook concurrency system was operational. Collier County believes that this approach will provide an adequate means for tracking the road impacts of existing, vested, and proposed development.

B. Identification of Specific Goals, Objectives & Policies

Concurrency management is essential to the overall operation of the County. As a result, references to concurrency and transportation vesting are found throughout the Growth Management Plan.

TRANSPORTATION ELEMENT

Policy 5.3

The County conducted a Traffic Impact Vesting Affirmation Review in 2003 to determine for planning purposes only which developments may be vested for concurrency. No legal determination of vested status for projects was made and even though the initial review indicated vesting, this finding does not provide a legal presumption that a project is vested. All previously approved projects must go through a vesting review pursuant to Subsection 3.15.7.2.6 of the Land Development Code.

C. Data Assessment

Transportation vesting guidelines are set forth in the Collier County Land Development Code:

3.15.7.2.6 Developments that claim vested status from the growth management plan adopted January 10, 1989 and its implementing regulations, and properly obtains a determination of vested rights for a certificate of public facility adequacy in accordance with the provisions of this section, as follows:

3.15.7.2.6.1. *Application.* An application for determination of vested rights for a certificate of public facility adequacy shall be submitted in the form established by the community development and environmental services division administrator. An application fee in an amount to be determined by the board of county commissioners shall accompany and be part of the application. The application shall, at a minimum, include:

3.15.7.2.6.1.1 Name, address, and telephone number of the owner and authorized applicant if other than the owner;

3.15.7.2.6.1.2. Street address, legal description, and acreage of the property; and

3.15.7.2.6.1.3. All factual information and knowledge reasonably available to the owner and applicant to address the criteria established in subsection 3.15.7.2.6.7. of this Code.

3.15.7.2.6.2. *Determination of completeness.* After receipt of an application for determination of vested rights for a certificate of public facility adequacy, the community development and environmental services division administrator shall determine whether the application submitted is complete. If he determines that the application is not complete, the community development and environmental services division administrator shall notify the applicant in writing of the deficiencies. The community development and environmental services division administrator shall take no further steps to process the application until the deficiencies have been remedied.

3.15.7.2.6.3. Review and determination or recommendation by community development and environmental services division administrator and the county attorney. After receipt of a completed application for determination of vested rights for a certificate of public facility adequacy, the community development and environmental services division administrator and the county attorney shall review and evaluate the application in light of all of the criteria in subsection 3.15.7.2.6.7. Based on the review and evaluation, the community development and environmental services division administrator and the county attorney shall prepare a written recommendation to the hearing officer that the application should be denied, granted or granted with conditions by the hearing officer. Such recommendation shall include findings of fact for each of the criteria established in subsection 3.15.7.2.6.7. to the extent that information is represented or obtained or inclusion feasible or applicable. If the community development and environmental services division administrator and the county attorney agree based on the review and evaluation that the application for determination of vested rights for a certificate of public facility adequacy so clearly should be granted or granted with conditions, then they may enter into a written stipulated determination of vested rights for a certificate of public facility adequacy with the owner, in lieu of the written recommendation to the hearing officer and the provisions in subsections 3.15.7.2.6.4., 3.15.7.2.6.5. and 3.15.7.2.6.6. However, any such stipulated determination shall be in writing, signed by the community development and environmental services division administrator, the county attorney and the owner, and shall include findings of fact based on the criteria established in subsection 3.15.7.2.6.7., conclusions of law for such criteria, and the determination granting or granting with conditions, in whole or in part, the vested rights for adequate public facilities.

3.15.7.2.6.4. *Review and determination of vested rights determination for a certificate of public facility adequacy by hearing officer.* Upon receipt by the hearing officer of the application for determination of vested rights for a certificate of public facility adequacy and the written recommendation of the community development and environmental services division administrator and the county attorney, the hearing officer shall hold a public hearing on the application. At the hearing, the hearing officer shall take evidence and sworn testimony concerning the criteria set forth in subsection 3.15.7.2.6.7. of this Code, and shall follow the rules of procedure set forth in F.S. § 120.57(1)(b), 4, 6, 7, and 8; F.S. § 120.58(1)(a),(d) and (f); and F.S. § 120.58(1)(b), only to the extent that the hearing officer is empowered to swear witnesses and take testimony under oath. The hearing officer shall follow the procedures established for administrative hearings in Rules 60Q-2.009, 2.017, 2.020, 2.022, 2.023, 2.024, 2.025, 2.027, and 2.031, F.A.C. except as expressly set forth herein. The parties before the hearing officer shall include the county, the owner or applicant, and the public. Testimony shall be limited to the matters directly relating to the standards set forth in section 3.15.7.2.6.7. of this Code The county attorney shall represent the county, shall attend the public hearing, and shall offer such evidence as is relevant to the proceedings. The owner of the property and its authorized agents may offer such evidence at the public hearing as is relevant to the proceedings and criteria. The order of presentation before the hearing officer at the public hearing shall be as follows: 1) the county's summary of the application, written recommendation, witnesses and other evidence; 2) owner or applicant witnesses and

evidence; 3) public witnesses and evidence; 4) county rebuttal, if any; and 5) applicant rebuttal, if any.

3.15.7.2.6.5. Issuance of vested rights determination for a certificate of public facility adequacy by hearing officer. Within 15 working days after the completion of the public hearing under subsection 3.15.7.2.6.4 of this Code the hearing officer shall consider the application for determination of vested rights for a certificate of public facility adequacy, the recommendation of the community development and environmental services division administrator and the county attorney, and the evidence and testimony presented at the public hearing, in light of all of the criteria set forth in subsection 3.15.7.2.6.7. of this Code, and shall deny, grant, or grant with conditions the application for determination of vested rights for a certificate of public facility adequacy for the property or properties at issue. The determination shall be in writing and shall include findings of fact for each of the applicable criteria established in subsection 3.15.7.2.6.7. of this Code, conclusions of law for each of such criteria, and a determination denying, granting, or granting with conditions, in whole or in part, the vested rights for adequate public facilities.

3.15.7.2.6.6. *Appeal to the board of county commissioners.* Within 30 days after issuance of the hearing officer's written determination of vested rights for a certificate of public facility adequacy, the county attorney, the community development and environmental services division administrator, or the owner or its authorized attorney or agent, may appeal the determination of vested rights for a certificate of public facility adequacy of the hearing officer to the board of county commissioners. A fee for the application and processing of an owner-initiated appeal shall be established at a rate set by the board of county commissioners from time to time and shall be charged to and paid by the owner or its authorized agent. The board of county commissioners shall adopt the hearing officer's determination of vested rights for a certificate of public facility adequacy, with or without modifications or conditions, or reject the hearing officer's determination of vested rights for a certificate of public facility adequacy. The board of county commissioners shall not be authorized to modify or reject the hearing officer's determination of vested rights for a certificate of public facility adequacy unless the board of county commissioners finds that the hearing officer's determination is not supported by substantial competent evidence in the record of the hearing officer's public hearing or that the hearing officer's determination of vested rights for a certificate of public facility adequacy is contrary to the criteria established in subsection 3.15.7.2.6.7. of this Code.

3.15.7.2.6.7. *Criteria for vested rights.* This section is intended to strictly adhere to and implement existing case law as it relates to the doctrine of vested rights and equitable estoppels as applied to a local government exercising its authority and powers in zoning, the provision of adequate public facilities concurrent with development (concurrency), and related matters. It is the express intent of Collier County to require application of the provisions of this division to as much development and property in the unincorporated areas of the county as is legally possible without violating the legally vested rights which the owner may have obtained in accordance with Florida common law and statutory law, particularly F.S. § 163.3167(8). The criteria herein provided shall be considered in rendering a vested right determination under this subsection. It is intended that each case

be decided on a case-by-case factual analysis. An owner shall be entitled to a positive determination of vested rights for a certificate of public facility adequacy only if he demonstrates by substantial competent evidence that he is entitled to complete his development without regard to the otherwise applicable provisions of this division based on the provisions of F.S. § 163.3167(8), or all three of the following requirements of the three-part test under Florida common law: 1) upon some act or omission of the county, 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.

3.15.7.2.6.8. Limitation on determination of vested rights for a certificate of public facility adequacy. A determination of vested rights for a certificate of public facility adequacy which grants an application for determination of vested rights for a certificate of public facility adequacy shall expire and be null and void unless construction is commenced pursuant to a final development order, final subdivision plat, or final site development plan, within two years after the issuance of the determination of vested rights for a certificate of public facility adequacy under subsection 3.15.7.2.6., or unless substantial permanent buildings have been, or are being constructed or installed pursuant to a valid, unexpired, final development order of Collier County within two years after issuance of the determination of vested rights for a certificate of public facility adequacy under subsection 3.15.7.2.6., and such development pursuant to a final development order, final subdivision plat, final site development plan, final subdivision master plan, or planned unit development master plan is continuing in good faith. The aforementioned two-year time limitation on the determination of vested rights for a certificate of public facility adequacy shall be stayed during any time periods within which commencement of construction pursuant to a final development order, final subdivision plat, or final site development plan is prohibited or deferred by the county solely as a result of lack of adequate public facilities to serve the property, pursuant to this division.

D. Objective Achievement Analysis

Transportation Element – Policy 5.3: This Policy describes the County’s Traffic Impact Vesting Affirmation Review, which is the means by which Objective 5 is implemented. That is Policy 5.3 ensures that Collier County coordinates the Transportation System development process with the Future Land Use Map.

E. Conclusion

The Growth Management Plan contains numerous Goals, Objectives and Policies governing the adopted levels of service in the County to ensure the maintenance of standards related to transportation concurrency.