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ABSTRACT

This paper presents an overview of the intergovernmental planning and cooperation in a failed effort to defend a regulatory program for school concurrence in Florida's Broward County public school system. A detailed description of the proposed concurrency system is provided along with the critiques of the system that resulted from the administrative challenge, the County's response to the critiques, and the lessons learned from the program. (GR)

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SCHOOL CONCURRENCY:

LESSONS LEARNED FROM BROWARD COUNTY, FLORIDA

by
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Submitted

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I. General Introduction

In the early 1990s, the Broward County Board of Commissioners and the School Board of Broward County, Florida began to contemplate a regulatory program to require the availability of adequate public school facilities to serve the school children from new residential development. In Florida, similar programs applied to other public facilities by statutory mandate are known as "concurrency" programs -- meaning that public facilities are to be provided "concurrent" with the impacts of development. While Florida statutes require concurrency for water, sewerage, parks, roads and other such facilities, concurrency for schools is optional under Florida law.

During various forums and committee meetings held by the School Board, the public indicated a clear desire that residential developers have greater accountability for public school overcrowding. In a series of events that are an extraordinary example of intergovernmental cooperation, the County and School Board took on what is possibly the most controversial Florida growth management issue of the 1990s -- school concurrency. Their interest preceded the state legislature's 1995 amendments to the state's Growth Management Act addressing school concurrency by a full five years, and won the Broward County School Board an award of merit in 1996 from the Florida Chapter of the American Planning Association. Ultimately, however, the program was stalled and nearly defeated in administrative proceedings, and opponents succeeded in hamstringing the program and future such programs in other Florida communities. Indeed, in early 2000, Broward

County withdrew from efforts to create school concurrency. Nevertheless, lessons can be learned from the experience.

The Broward County concurrency program offers insights into the regulatory, political and social difficulties of blending land use and school facility planning. Broward County initially succeeded in overcoming local obstacles inherent in a program requiring such close intergovernmental coordination between the School Board and the County Commission. However, it found that the regulatory review process required by the state Growth Management legislation was too costly and burdensome to maintain the momentum of the proposed innovations. The lack of state support for the program and persistent challenges by the development community proved to be significant hurdles in the final adoption of the program.

This research presents an overview of the intergovernmental planning effort, followed by a detailed description of the proposed concurrency system. The research describes the critiques of that system that resulted from the administrative challenge, the County's response to the critiques, and the lessons learned from the program.

II. Broward County Background

A. School Population Growth

Why did Broward County elect to enter the fray on school concurrency? Some background on the School District's experience is illuminating. The School District is the second largest school district in Florida, and the fifth largest in the nation. In 1996, at the beginning of its effort, it had an enrollment of 217,000 students housed in about 200

schools. These schools had a total permanent student capacity of 185,000. Students not in permanent classrooms were housed in other schoolrooms such as art and music rooms, and in approximately 2000 portable classrooms. In 2000, the district's enrollment is nearly 240,000 students in 210 schools. Almost 8,000 new students are enrolled each year.

B. Early Management Efforts

From 1987 through 1997, the School Board built fifty-five (55) new schools, to accommodate an annual increase of student enrollment of approximately 10,000 students. Even so, parts of the county still experienced overcrowded schools, particularly in the high growth areas of western suburbs and when Hurricane Andrew's aftermath created a migration from Dade County into southwest Broward County. The School Board adopted school overcrowding policies in 1994, which established an enrollment definition of "critically overcrowded schools" as well as procedures and options to temporarily relieve overcrowding until new schools could be built.

The County had been collecting school impact fees since 1993, and indeed in fiscal year 1997 -1998 collected over $8,000,000 in impact fees. The question of whether school impact fees could withstand constitutional scrutiny had been finally decided in St. John's County v. Northeast Fla. Builders Ass'n, Inc., 583 So. 2d 635 (Fla. 1991). In St. Johns, the Florida Supreme Court examined the constitutionality of a county ordinance imposing an impact fee on new residential construction to be used for new school facilities.

The Supreme Court applied the two-part "rational nexus" test to the school impact fee. This test required that the fee represent no more than the proportionate share of the costs of new school facilities required by new development. The methodologies developed to determine the proportionate share conservatively calculated that share so that impact fees had never represented a large part of the revenues needed or collected for new school construction. Other revenue sources were also limited. The School District collected the maximum amount of property taxes for schools that was allowed under state law, but despite its large building program, it could not keep up with the needs of growth with its available resources. In 1995, a county one-cent sales tax referendum for the construction of new schools failed, and the overcrowding situation took on new urgency.

C. Planning Pursuant to the Broward County Charter

The growth of the student population and resulting overcrowding occurred in the context of Broward County's unique charter system of government, which has mandated countywide planning and land use regulation since the late 1970s. The Charter grants the County final authority over municipal land use planning. The Charter establishes requirements and standards that municipalities must follow for land use planning and development approval. The Charter also assures city-county planning coordination by providing for a Planning Council whose membership includes elected municipal officials and a school board member. The Planning Council is an intergovernmental body with countywide authority. The Council is charged with the responsibility of preparing a countywide land use plan and map ("County Land Use Plan"). Once adopted by the

County Commission, the County Land Use Plan became the official land use plan for both the incorporated and the unincorporated areas of Broward County. Additionally, City land use plans and the plan for the incorporated areas of the county must be approved and certified by the Broward County Planning Council as in substantial conformity with the County Land Use Plan. All of the local land use plans of municipalities in Broward County and the unincorporated area land use element have been certified. Thus, the County has final authority over local land use plans and can mandate land use planning requirements and development review standards that cities must apply.

The County Charter also grants the County the authority to implement a countywide growth management system, including a concurrency management system. By charter, all plats of land must be approved by the Broward County Commission. The County platting requirements include the provision of adequate public facilities such as roads and sewers. Broward County voluntarily incorporated adequate public facilities requirements in its platting requirements and County Land Use Plan before concurrency became a statewide requirement for certain public facilities under the state's 1985 Growth Management Act ("Act"). With the adoption of the Act[1], the authority of counties to adopt such requirements without complying with the specific concurrency standards and procedures of the Act became legally questionable, and the County decided to pursue the optional program under the statutes.

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1 Chapter 163, Part II, Fla. Stat., relating to local government comprehensive planning, is informally referred to as the "Growth Management Act". It was originally adopted in 1985 to strengthen state oversight of local planning authorized under an earlier version of the statute.

D. School Board Authority and Responsibility

The Florida Statutes provide that the School Board has the responsibility for operation and administration of all public schools within the School district, in conformity with regulations and minimum standards prescribed by the state. School district boundaries in Florida are the same as county boundaries. By state law, school districts are authorized to approve school attendance zones; cooperate with other agencies in joint projects; approve planning for the location, construction and maintenance of school property; and to assure adequate education facilities. The Florida Statutes also require that school districts create five year school facility plans, in compliance with state standards for school facilities and facilities planning.

The Broward County School Board is an elected body of nine members, seven of whom run for election from districts within the county, and who then appoint a school superintendent to manage the school district. School board members are paid a minimal salary, and many go on to other elected office, such as the county commission, after serving on the board. The School Board has been a part of countywide land use management for many years. In addition to being represented on the County Planning Council, it participates on a staff level in the review of development proposals.

E. Concurrency as Applied to Schools

The school concurrency system was built on the established framework described above and many years of School Board/County Commission cooperation. The program

also incorporated many of the same procedures that apply in Broward County to concurrency for other public facilities.

This is not to say that adopting a school concurrency system was an easy task; to the contrary, it required shared technical expertise, considerable intergovernmental coordination, and a common sense of purpose to accomplish its adoption. Public school concurrency involves two constitutionally independent and separately elected government entities, the County Commission and the School Board. While concurrency for mandated public services are both provided by the County and regulated through the County comprehensive plan, the public schools are operated, controlled and supervised by the School Board. The public school concurrency requirement also had to be adopted in the county comprehensive plan, but budgeting, building and operational functions for the program had to be accomplished by the School Board. The school concurrency provisions in the Growth Management Act generally address the division of responsibility between the county school board and the county government, but the actual division of responsibilities necessary to prepare and implement school concurrency had to be sorted out between Broward County through interlocal agreements.

III. Background of School Needs in Florida: 1996 – 2002

The school needs of Broward County are not unique in the State of Florida. The rate of growth in Florida public school enrollment has increased in every year since 1983, and in 1996-97, Florida enrolled approximately 2.26 million students in grades K-12. The projected enrollment for 2002-2003 is almost 2.44 million students. Report of Governor's

Commission on Education on Facility Needs Assessment (September 2, 1997). According to the National Education Association, the rate of growth in Florida's public school enrollment between 1996 and 2006 is expected to be approximately twice the national average. Florida House of Representatives Committee on General Governmental Appropriations, H.B. 17-A Bill Research and Economic Impact Statement, at 3 (November 24, 1997).

Based on then current revenue sources only, the Governor's Commission on Education in 1997 recommended that the total unmet public school facilities needs over the next five years would cost about $3.4 billion. Id. at 5; see also Needs Assessment. There is general agreement that the majority of the unmet school facility needs is concentrated in about one-fifth of Florida's school districts, one of which is Broward County. Id. A significant shortfall of revenues was expected in 25 school districts. Needs Assessment at 26. Thirty-six percent (36%) of state students were projected to be in districts with significant unmet needs. Id. at 27.

The Governor's Commission on Education also projected the state's 5-year needs for school maintenance and repair, projecting it to be $3.4 billion for existing facilities. Needs Assessment at 19. This is compared to the state DCA of Education estimate of $4.4 billion, which was discounted by the Commission on the assumption that construction costs could be lower than results from current practice. Id. at 17. The Commission also projected the 5-year statewide need for new student stations to be $6.4 billion. Id. at 21. The total 5-year baseline statewide facilities needs, including both the cost to build new

student stations and to maintain and repair existing facilities, was estimated to cost $9.8 billion. Id. The Commission also estimated that $6.4 billion was available from existing sources, assuming for example, that school districts use the maximum property tax available for construction, but not including impact fees. Thus, the resulting unmet need ($9.8 - $6.4 billion) was estimated to be $3.4 billion.

Compounding this issue is the fact that revenues on the state level have not kept up with school needs. During its 1997 special legislative session, the Florida legislature allocated $2.7 billion of lottery funds to the projected 5-year facility needs of school districts statewide. The legislature also allocated $200 million of bonded funds from Capital Outlay & Debt Service,[2] for a total of approximately $2.9 billion toward the $3.4 billion identified needs. At the end of October 1998, the legislature had appropriated $381 million.[3] However, some of the 1998 state funding was targeted for specific needs, such as those in rural areas, or for specific programs of "frugal construction."

Thus, despite some efforts on the part of the state, insufficient revenues were being made available for new growth, especially in high growth areas such as Broward County. No new revenue sources had been authorized by the legislature for school needs at the time that Broward County first adopted its school concurrency program..

IV. The Legal Background of School Concurrency

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[2] These are bonded revenue funds which the State of Florida has collected from license tag fees and the legislature has allocated to school districts statewide, based upon their projected needs.

[3] Letter from Patricia Levesque, assistant to the Speaker of the House of Representatives, to Joseph Polkemba, Burke Weaver & Prell (October 28, 1998). (On file with the author).

A. Mandated Public Facility Concurrency

Section 163.3180, Fla. Stat., imposes upon all local governments the requirement that certain specified public facilities be available "concurrent" with the impacts of development. The law requires local governments to adopt land development regulations that insure that public facilities and services contained in the capital improvements element are available when needed, or that development orders and permits are conditioned on the availability of those public facilities and services necessary to serve the proposed development. Additionally, the statute prohibits the issuance of a development order that would result in a violation of the levels of service provided in the comprehensive plan. Section 163.3177(h) states: It is the intent of the Legislature that public facilities and services needed to support development shall be available concurrent with the impacts of such development. In meeting this intent, public facility and service availability shall be deemed sufficient if the public facilities and services for a development are phased, or the development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that development are available concurrent with the impacts of the development.

B. Optional School Concurrency

Schools are not subject to the mandatory concurrency requirement. However, starting in 1993, the legislature began to adopt preconditions to the local adoption of school concurrency systems where the local government **elected** to extend concurrency to public school facilities. In 1993, the legislature provided that a study must first be conducted, and

legislative amendments in 1995 and 1996 added other preconditions.[4]

Local governments also have the ability, independent of concurrency programs, to consider the adequacy of public school facilities when reviewing an application for an amendment to the comprehensive plan. For example, Section 163.3161(3), Fla. Stat., states:

> It is the intent of this act that its adoption is necessary so that local governments can . . . deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can... facilitate the adequate and efficient provision of transportation, water, sewage, schools, parks, for recreational facilities, housing, and other requirements and services . . . ."

Additionally, the legislature has stated that coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process, and that the future land use plan shall be based upon surveys, studies and data regarding the area, including the availability of public services. See Sections 163.3177(2) and (6)(a), Fla. Stat.

Not only does the initial adoption of a comprehensive plan require consideration of adequate public facilities, but any amendments to the comprehensive plan also must follow the same criteria. See Section 163.3187 (2), Fla. Stat.: "Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan and pursuant to 163.3177 (2) . . . ."

Even prior to the Act, adequate public facilities programs had been tested in Florida courts and upheld under local government's police power authority. In particular,

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4 Chapter 95-341, Section 10; and chapter 96-416, Section 3, Laws of Florida.

Broward County's authority to require adequate public facilities in its countywide platting regulations had been challenged and upheld in Kane Homes, Inc. v. City of Ft. Lauderdale, 418 So. 2d 451 (Fla. 4th DCA 1982), and City of Coconut Creek v. Broward Board of County Commissioners, 430 So. 2d 959 (Fla. 4th DCA 1983). In Coconut Creek, the court approved the county's adoption of countywide platting regulations, which specifically included standards for adequacy of school sites and school buildings. Broward County decided to further strengthen school facility decisions by adopting a comprehensive plan-based program.

V. Broward Prepares A School Concurrency Program

A. Intergovernmental Efforts

The process to adopt a school concurrency program for Broward County as part of the comprehensive plan began with a series of task forces and other groups of interested citizens addressing problems of growth and desegregation in the early 1990s. The County Commission began to develop a school concurrency system in 1993 by amending the County Land Use Plan to adopt a policy to study school concurrency. In November 1993, the County and School Board staff jointly authored a concurrency study. The study explored the issues and options available to the County and School Board if they chose to implement school concurrency. It found that there was a need for a concurrency system to help deal with school overcrowding, and that such a system should build on the County's existing concurrency management system for each public facilities.

Continuing their close cooperation, the County Commission and School Board met

in a joint meeting in January 1994 to discuss the study's recommendations. This kicked off a series of School Board and staff team efforts to further develop the steps to prepare a concurrency system. By June 1994, the School Board and the County Commission had executed an interlocal agreement delineating the responsibilities of each government to develop the system. The School Board agreed to become the County's "local planning agency" for the preparation of a public school facilities element, among other responsibilities.[5] The School Board prepared a final draft of the element by June 1995. The draft was circulated to all cities in the county, and was the subject of numerous workshops and public hearings by both the School Board and County and their various technical advisory committees.

B. Adoption of the Concurrency Plan Amendment

The County Commission adopted the Public School Facilities Element, the core of the concurrency program, for transmission to the DCA of Community Affairs ("") on May 1, 1996. Under the Act, all comprehensive plans and amendments to the plans must be reviewed and approved by the as complying with certain statutory criteria, which are further detailed in an administrative rule. With a few changes recommended by the, the element and associated amendments to the County's Capital Improvements and Intergovernmental Coordination Elements were finally adopted by the Commission on September 11, 1996. At the same time, the County and School Board entered into an

5 A local planning agency review is required by the Growth Management Act for all comprehensive plan amendments, and the public school facilities element was to be adopted as part of the county comprehensive plan.

interlocal agreement that set out responsibilities of each party to implement the Element and amendments (hereinafter together the "concurrency plan amendment").

1. School Board Responsibilities

The School Board's principal responsibilities included the development of level of service standards for the school facilities, and the preparation of a five-year financially feasible capital facilities program. The program anticipated expenditures between 1995/96 and 1990/00 of $220 million for 22 new schools and $128 million for renovations and replacements in existing schools. Existing revenues included those generated by the full two mils of property tax allowed under state law restrictions. On a system-wide basis, the program would have accommodated the more than 42,000 new students anticipated in the school system through year 2000. However, some schools were shown not to meet the adopted level of service, even at the end of the five-year program.

The School Board also retained the ability to change school attendance zone boundaries to accomplish various educational objectives, including alleviation of overcrowding conditions and the provision of school capacity where needed. Developments in school attendance zones that did not meet the established level of service (i.e., are critically overcrowded) under the program were required to obtain the School Board's approval of mitigation plans, following criteria in the plan, before development could proceed. Finally, in the spring of 1997, the School Board adopted rules to implement the school concurrency system to be effective once the concurrency plan amendment became effective.

2. County Responsibilities

The County's responsibilities included adoption of the concurrency plan amendment, including the goals, policies and objectives that form the framework for the concurrency management system, as well as the level of service standard and financially feasible capital facilities program developed by the School Board. The County, in coordination with the School Board, adopted land development regulations to implement the system in September 1997, to become effective when the concurrency plan amendment was approved by the state and thus became effective.

C. The Administrative Challenge to the Concurrency Plan Amendment

Under the Growth Management Act, a proposed comprehensive plan amendment initially found in compliance by the DCA can be challenged by interested parties, and then brought before an administrative law judge in a proceeding, much like a trial, to determine the amendment's compliance with the statute. The administrative law judge prepares a recommended order for the consideration of the DCA. The Broward School Concurrency Plan Amendment was challenged as not in compliance with the statutes by the state Homebuilders Association and other building industry groups. After an unsuccessful mediation between the parties, the School Board, and County and the DCA of Community Affairs (as respondents) met the industry petitioners in a two-week administrative law hearing.

A major concern of the challengers was that the program could not ensure that the moratoria on development would not be created in some school attendance areas in the

county. The County and School Board's program allowed for the probability that, in some instances and locations, development might be temporarily delayed. The County and School Board believed that this was acceptable under the law and the Growth Management Act[6]. Of course, any unreasonable delay in development or moratorium under the law could present constitutional problems. Indeed, concurrency requirements in Broward County for other facilities such as roads have in the past resulted in some delays in development.

The School Board and the County argued that the school concurrency system as adopted by the County had sufficient flexibility, including mitigation options and potential boundary changes, so that moratoria would be the rare exception, and not the rule. At the same time, school concurrency would contribute to the ability of the County and the School Board to provide the critically needed adequate school facilities to the burgeoning school population in Broward County. It is precisely this need that propelled the School Board and County into this unprecedented intergovernmental cooperation effort.

The result of the administrative hearing was a recommended order finding the program not in compliance for a number of reasons, including that the five year work program was not financially feasible because it did not provide sufficient evidence in the supporting data and analysis that each of the approximately 200 schools in the system

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6 The Florida Supreme Court in Palm Beach County v. Wright, 641 So.2d 50, 53 (Fla. 1994) had recognized that "(u)nder the concurrency requirements of Section 163.3177(10)(h). . . development will be curtailed unless (facilities) are available to accommodate the impact of such development." As one noted commentator has written
" . . . concurrency does not assure that development can take place at all until levels or service are achieved and facilities made available . . . ." Robert Rhodes, "Concurrency: Problems, Practicalities,

would have adequate capacity to meet the level of service established for each level of school (elementary, middle and high school). The administrative law judge found that the School Board's ability to change boundaries was not sufficient to ensure that the level of service would be met as described above. He also found that there were existing capacities in schools that were predicted not to be overcrowded (generally the older schools in older downtown areas) and the School Board did not adequately demonstrate how those capacities would be used to reduce crowding in the newly developing areas. The judge concluded that the program could not be established without the agreement of each city in the county, and also made a series of other conclusions critical of the proposed program. When the DCA ultimately agreed with the administrative law judge on a number of his findings, and in particular the financial feasibility of the plan, the Governor and Cabinet by law was referred the case to make the final decision.

The 1998 Final Order from the Governor and Cabinet (acting as the Administration Commission under the Act) included detailed remedial actions that would bring the program into compliance. However, the Administration Commission agreed that the County had sufficient Charter authority so as not to necessitate consent to the program from each municipality in the County. When this conclusion was challenged in court by the local Economic Development Council, the appellate court agreed with the County and the Administration Commission. The County and the School Board agreed to try once again, and developed further data and analysis and new amendments to the program.

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and Prospects," 6 J.Land Use & Envtl. L. 241, 249 (1991).

In 1998-99, the County and School Board made a number of revisions to the Concurrency Plan Amendment to bring it into compliance with the Final Order of the Administration Commission. The Capital Improvements Element was expanded to a six year plan, with detailed information in regard to available capacity, existing and projected school population, and projected new capacity made available by specific improvements, school by school, for each year. The Future Land Use Element and the Intergovernmental Coordination Element was amended to conform to certain Final Order requirements. These amendments clarified the existing system, but were not significant program changes to it.

Perhaps more impressively, the data and analysis for the financially feasible program was considerably expanded and detailed. In the short-range future (five years), data was provided on a school-by-school, year-by-year basis, including anticipated changes in school district boundaries necessitated by construction of new schools. Tables provided information regarding a) Population: Demand from Existing, Exempt and New Development, b) School Capacity and c) Strategies to Provide Capacity. New revenue resources, made available by the state since the original Concurrency Plan Amendment was transmitted, helped to make the system financially workable. For the long-range future (twenty years), the level of detail was less specific, but contained projections for population, revenues, and construction needs.

VI. Effects of the Broward Attempt at the State Level

A. Statutory and Rule Changes

While Broward County's administrative hearing proceeded, the legislature created the Public School Construction Committee in 1997 to make recommendations to the 1998 legislature regarding school concurrency. The resulting 1998 statutory amendments to the Growth Management Act, among other things, more explicitly required the adoption of a six year "financially feasible" school capital facilities program that demonstrates that the adopted level of service standards for schools will be achieved and maintained throughout the five-year program. Subsequently, the DCA's administrative rule implementing the new legislative requirements further required extensive data and analysis to support the school concurrency system, including:

> . . . (b) For each school facility: the projected enrollment by year for the initial five years of the planning period, and projected enrollment district-wide by school type for the end of the long range planning period of the host county, based on projected population.
>
> (c) Existing and projected school facility surpluses and deficiencies by concurrency service area by year for the five-year planning period, and district-wide by school type for the end of the long range planning period of the host county based on projected population.
>
> . . . (e) School facilities needed for each concurrency service area to accommodate projected enrollment at the adopted level of service standard each year for the five-year planning period, and for the end of the long range planning period of the host county, including ancillary plants and land area requirements . . ..

Effectively, the statutory changes incorporated all of the proposals made by the Homebuilders Association and other industry groups during the challenge to the Broward County Concurrency Plan Amendment, including the requirement that all cities in a county be required to consent to the plan, and to amend their own comprehensive plans (with

minor exceptions), and to have those plans be found in compliance before a school concurrency system could be put into effect. The legislature, however, in recognition of Broward County's pioneering efforts, exempted the County from the new requirements.

B. Broward County Reverses Course in 1999

In 1999, the School Board began to lose interest in the school concurrency program. New members of the Board, elected after the concurrency program had been through the initial administrative challenge, questioned the costs of continuing the effort to prepare a program. Those costs, although never detailed, principally included staff time to modify the program and potential legal costs to defend it. Board members pointed to the new development throughout the county that, in the meanwhile, had continued to be approved, and the consequent scarcity of available vacant land in the county to be developed, and questioned if it were not too late to achieve meaningful results. Additionally, the School Board hired a new School Superintendent, from outside of Florida, who did not have school concurrency as top priority. Finally, the Board in late 1999 advised its staff to discontinue its efforts, except for the minimal assistance required to allow the County to proceed once again through the state administrative review process. The County transmitted amendments, with the complete data and analysis prepared by the School Board, to the DCA for its review in January 2000. However, when the DCA of Community Affairs indicated that the amendments were unsatisfactory, the County also began to reconsider its effort. The DCA was concerned that, although the revised program demonstrated that each school in the County would be brought up the level of service

standard at the end of five years, a few schools (less than seven) would fall for some years, below the level of service during the five year period. The DCA also required that the School Board provide more detailed explanations of how each of the projected boundary changes would provide new capacity within individual schools. With the lack of state support, and with the lack of encouragement from the School Board, the County finally withdrew its efforts in the Spring of 2000.

VIII. Lessons Learned

Broward County has in many respects been a laboratory of experience with different techniques to manage school facility needs in a rapidly developing community. Faced with certain constraints, such as a school financing system reliant on property taxes, vestiges of a segregated school system, and exploding population growth that has been legally and politically very difficult to control, the County has attempted with varying success to manage one of the most difficult issues facing communities today. The lessons to be learned from this latest experience with school concurrency are discussed below.

The initial challenge for school concurrency is to coordinate efforts in a manner that respects and builds on the sovereignty of each public body involved – the School Board and the County Commission. In Florida, as in other states, schools are operated under a School Board that is elected and administered separately from the county government. In Florida, the School Board also sets it own budget. Politically, School Boards have been considered "the little sisters" of the general-purpose local government, in part because they often serve as springboards for political careers in other elected positions. It is not unusual

for School Boards to guard their responsibilities jealously from any perceived political or administrative interference from the County Commission.

Thus, with different sovereignties at stake, it is vital that the members of each board are able to work in good faith together to achieve a common purpose. The working relationship is strengthened where the common purpose is supported by the electorate. For example, if the common purpose of relieving school overcrowding becomes a campaign issue, each board has an incentive to outshine the other in developing a successful program. This was the case in Broward County, to some extent. When the concurrency system proposed jointly by the two governments ran into difficulty and was perceived to be failing, both boards were initially reluctant to withdraw from concurrency, for fear that the electorate would blame one board more than the other. This ultimately changed when the program suffered further setbacks, time passed, and momentum for the program slowed.

Because the boards jealously guard their respective duties, those duties therefore should be clearly defined and understood by both bodies. For example, the School Board had not been willing to give up to the County any responsibility for setting school attendance areas. A state suggestion to do so during its initial concurrency system review was a "deal breaker," on which the state eventually conceded. The program had to be carefully constructed to insure that the respective roles of the School Board and County were maintained. These roles were set out specifically in an interlocal agreement and in the Comprehensive Plan. A general-purpose local government which would try to intrude on School Board responsibilities, and vice versa, cannot reasonably expect the cooperation

from the each other that is necessary in these types of programs.

Another challenge in Broward County was to insure that both the County and School Board administrative staffs were adequate to the tasks of technical planning and administration of the system. Regrettably, School Boards do not always have the available expert planning staff more typically at work in a County administration. Thus, while the County can call the resources of demographers, site planners, and land use technicians that regularly deal with land planning issues, it is more rare to have such trained personnel in School district staff. In Broward County's case, trained School Board staff was available and, indeed, took the lead in developing the data and analysis for the School Facilities Element of the Comprehensive Plan. County planning staff provided needed assistance in both the conceptual and technical development of the program. Because the critical background work in such a program is prepared on the staff level, a mutual respect and good working relationship between staffs was important. Additionally, when consultants are used, those consultants also should have the mutual respect of the staff that will eventually implement the programs.

Public support, as mentioned above, is an important factor in the success of such programs. The political bodies in Broward's case were very cognizant of the high interest shown by the citizenry in the school concurrency program. This interest had for many years kept school facility needs on the "front burner." At times, this pushed the political leaders to extraordinary efforts, such as creating a media event at the hearing before the Governor and Cabinet during its consideration of the Final Order. Later, however, citizens became

increasingly impatient and disheartened with the long administrative process involved in adopting the program.

Lack of a continued citizen outcry after years of developing the program probably led to increasing disinterest by the School Board, especially as the membership of the Board changed. Other school issues evolved to take a higher priority on the School Board agenda, such as fiscal accountability of the school construction program, perceived racial imbalances in school funding, and increasing interest for new initiatives such as charter schools and voucher systems. After more than five years of effort, it was difficult to sustain momentum on the school concurrency issue. Additionally, some concern was expressed that efforts at school concurrency distracted staff from the other issues on the agenda. Concern also was expressed that concurrency might disadvantage the schools in declining urban center areas, where school population was decreasing and more important problems included deteriorating older schools and poor pupil achievement. [7]

The activities of affected industries are also vitally important in the process. The homebuilders and the building industry groups historically keep a close watch on impact fee and concurrency systems in Florida. Indeed, Broward County received attention from these groups because of the statewide, precedential importance of the programs, more than for any actual impact that may have resulted to the industries. This is most evident from the builder groups' decision not to accept a mediated settlement after days of negotiation.

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7 Pupil achievement in the overcrowded suburban schools could be more easily recognized to be related to the overcrowded facilities. Pupil achievement more apparently suffered where overcrowding required use of portables; reduced core space for such activities as music, art or physical education; and required very early and late lunch schedules.

Although the mediated settlement prior to the administrative hearing had gained preliminary acceptance from all parties, after considering the precedent that an adopted concurrency would set for the rest of Florida, the Builders ultimately refused to settle and went forward to the administrative hearing.

Additionally, in states such as Florida, that liberally define public records and greatly encourage "government in the sunshine," the ability of affected groups such as builders' associations can complicate the strategic planning for a concurrency program. The County and School Board were very cognizant of the scrutiny of the affected group throughout the process, and provided public hearings for all concerns to be aired. However, in this "fish bowl" atmosphere, discussions of options and alternatives may have been somewhat constrained and may have made the administrative challenge inevitable. It is difficult to say whether the early, somewhat adversarial, atmosphere in developing the program could have been cured by earlier consensus-building efforts.

The strengthening of planning between government jurisdictions requires a significant commitment to intergovernmental coordination and joint decision-making. It requires political leadership to work through the sometimes-tedious activities necessary in the intergovernmental process. Even where the end goal has not been achieved, however, significant benefits can result from the effort. Two such benefits are evident in the Broward County experience. First, the planning that was required to develop the Concurrency Plan Amendment required a significant effort to share expertise and create a workable program between the different DCAs in the school administration. The budget function within the

school district was necessarily informed and changed by the planning process; likewise, the intricacies of the budget process became better understood and appreciated by the planning and construction-oriented school personnel. On a broader level, having to adapt the specific school planning and budget process to the county experience that was based on capital planning for roads, water, sewer and the like, challenged the County and School Board participants to better understand the other's system. The understanding that results from that effort may better prepare those involved for similar coordination challenges in the future.

Finally, although probably never intended nor desired by any of the participants, the experience of preparing together to defend the school concurrency plan in an administrative challenge resulted in forging personnel and professional links between the two government staffs. These relationships may also be valuable when other intergovernmental disputes relating to school facility needs arise.

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