Article III

Contents

ARTICLE III. VESTED RIGHTS REVIEW AND CONCURRENCY

DIVISION 1. VESTED RIGHTS REVIEW

Section 30-3.1. Statement of intent.

This division establishes the sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the City of Gainesville Comprehensive Plan and this chapter; and when said development, which does not conform with the consistency and/or concurrency requirements of the City of Gainesville Comprehensive Plan or the requirements of this chapter, may continue.

Section 30-3.2. Applicability of vested rights.

A. Presumptive vested rights.

1. The following categories shall be presumptively vested for the purposes of consistency with the City of Gainesville Comprehensive Plan and concurrency as specified in said plan:

   a. All active and valid final development orders issued by the city prior to the effective date.

   b. All technically complete building permit applications which are approvable in their submitted form, and received by the building official on or before the effective date.

   c. All lots within a subdivision recorded as of the effective date, or lots in approved unrecorded subdivisions for which streets, stormwater management facilities, utilities and other infrastructure required for the development have been completed as of the effective date.

   d. Lots of record not located within a subdivision, but only to the extent of one (1) single-family residence per lot. Lots of record not located within a subdivision must conform to current land development and/or zoning ordinances, must have legally conformed under some previous zoning ordinance, or must have existed prior to any zoning ordinance. Certified copies of deeds and subdivision plats recorded in the office of the clerk of circuit court, or records of lot splits maintained by the department of planning and development services, will prove the time of a lot's existence.

   e. Any structure on which construction has been completed and a certificate of occupancy issued if a certificate of occupancy was required at the time of permitting.

2. The following categories shall be presumptively vested for the purpose of developing under the provisions of former Chapter 29 (zoning code) of the city Code of Ordinances:

   a. All technically complete building permit applications which are approvable in their submitted form, and received by the building official on or before the effective date of this chapter.

   b. All design plats that have been approved by the city commission on or before the effective date of this chapter.

B. Nonpresumptive vested rights.

1. An application for a vested rights determination that does not satisfy the requirements for presumptive vested rights may be filed with the city plan board for a nonpresumptive vested rights determination or an applicant may choose to initially apply for a nonpresumptive vested rights determination.

2. In making this determination, the city plan board may consider all relevant factors, including but not limited to:

    a. Whether the permitted construction or other development activity has commenced and is continuing in good faith.

    b. Whether the expense or obligation incurred cannot be substantially saved by use and application of the plans, materials, studies, permits, approval and services acquired for a development permitted by the City of Gainesville Comprehensive Plan and applicable land development regulations without acquiring new permits or development plan.

    c. The following shall not be considered development expenditures or obligations in and of themselves:

        i. Expenditures for legal and other professional services that are not related to the design, or construction of improvements.

        ii. Expenditures related to a rezoning action.

        iii. Taxes paid.

        iv. Expenditures for initial acquisition of the land.

C. Limitations on determination of presumptive and nonpresumptive vested rights.

1. If vested rights were determined based on the possession of a final development order or other unexpired city action, vested rights will expire with expiration of that final development order or action.

2. Any vested rights determination shall not create vested rights for additional phases or additional development not expressly authorized by the final development order. This section does not apply to any other subsequent final development order which may also be required for project completion, provided the densities and intensities allowed under the initial final development order are not increased and the specific development plan approved under the initial final development order remains substantially unchanged.

3. All development subject to a vested rights determination shall not deviate from the terms of the development orders or actions upon which the vested rights certificate was based.

4. A vested rights certificate shall run with the land and is therefore transferable from owner to owner of the land subject to the certificate.

Section 30-3.3. Administrative procedures.

A. Application for vested rights determination.

1. Any person claiming vested rights, as provided in section 30-3.2, to develop property shall make an application for a vested rights determination pursuant to this chapter. An application for a vested rights certificate shall be approved if an applicant has demonstrated that his/her rights are vested under the standards of presumptive or nonpresumptive vesting.

2. The property owner shall request a determination of vested rights by submitting a technically complete, sworn application to the planning and development services department upon a form to be provided for that purpose, setting forth the following information:

    a. The name(s), signature(s) and address(es) of the owner(s) of the property;

    b. The names(s) and address(es) of the applicant(s), who shall be the owner(s) or an agent authorized by affidavit to apply on behalf of the owner(s);

c. A legal description and survey of the property which is the subject of the application;

d. A copy of approved and unexpired final development orders, which may include a final site plan, final subdivision plat or building plan;

e. Identification by specific reference to any ordinance, resolution or other action of the city, or failure by the city to act, upon which the applicant relied and which the applicant believes to support the owner's vested rights claim;

f. A statement of facts which the applicant intends to prove in support of the application; and

g. Such other relevant information which the director may request.

B. Determination procedures.

1. Incomplete applications. Within ten (10) calendar days after the receipt of an application, the director shall make a determination as to whether or not the application is technically complete. If not technically complete, the application shall be returned to the applicant with a written notification of the items required by section 30-28(a)(1) and (2) and which are absent or insufficient.

2. Decision by director. Upon determination that an application is technically complete, the director shall review the application and make a determination within thirty (30) calendar days whether or not the application clearly and unequivocally has vested rights.

3. Notice of decision. Within seven (7) calendar days after making a determination of vested rights, the director shall provide the applicant with written notification of the determination of vested rights. The owner shall have the right to rely upon such written notification that the proposed development is vested; such determination that the development is vested shall be final and not subject to administrative appeal, revocation or modification.

Application for hearing before city plan board. In the event the applicant desires to challenge the decision made by the director for a presumptive vested right, the applicant may file an application for a hearing before the city plan board to make a determination for nonpresumptive vested rights. The application shall be accompanied by a fee as indicated in Appendix A. The director shall set a date for a hearing to be held by the city plan board within thirty (30) calendar days of the director's decision and shall notify the applicant and the city plan board of the date, time and place of the hearing. The notice shall be mailed to the applicant not less than ten (10) calendar days prior to the date of the hearing. At the applicant's option and with city plan board concurrence, stipulations and sworn affidavits may be submitted in lieu of testifying at the city plan board hearing.

4. Conduct and recording of city plan board hearing. At the hearing, the applicant shall present all of the owner's evidence in support of the application. The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost. At the conclusion of the testimony, the city plan board shall adopt a decision of approval, denial, or approval with conditions, or continue the proceedings to a date certain. A written decision shall follow in not more than ten (10) calendar days. A city plan board decision to grant vested rights shall be final and not subject to administrative appeal, revocation or modification.

5. Appeals to hearing officer.

a. Purpose. It is the purpose of this section to provide an administrative process for appealing written decisions of the city plan board which deny vested rights. In particular, it is intended that such administrative relief be provided in the most professional, objective and equitable manner possible through the appointment of a hearing officer to adjudicate matters as provided herein. The function

of the hearing officer shall be to serve as the third step of a three-step administrative process relating to the determination of vested rights. No party shall be deemed to have exhausted his/her administrative remedies for the purpose of seeking judicial review unless the party first obtains review of the city plan board's decision by a hearing officer as provided herein.

b. Intent and nature of appeal process. The hearing officer "appeal" process provided in this division is designed to allow for an appeal of city plan board action after a full and complete hearing. This "appeal" is not intended to mean an appeal in the traditional sense, that is, only a review of the city plan board record of their hearing. The hearing officer "appeal" shall be construed in its broadest, nontechnical sense, which is merely an application to a higher authority for a review of the city plan board action taken.

c. Presentation of additional evidence. If the city plan board record of their hearing is full and complete, the hearing officer may determine that the record is the only evidence that is necessary. However, the hearing officer may determine that additional evidence and oral or written testimony, including cross examination, is necessary to properly evaluate the city plan board's action and render a decision as to its validity. The hearing officer shall have the authority to determine the need for additional evidence and/or testimony.

d. Applicability. The property owner may appeal to the hearing officer, a decision rendered by the city plan board on an application denying vested rights.

e. Filing of appeal; records; notice of decision. The procedure for filing an appeal shall be as follows:

   i. Appeals shall be commenced by filing a notice of appeal with the director within twenty (20) calendar days of the date of the decision of the city plan board accompanied with a nonrefundable filing fee of five hundred dollars ($500.00).

   ii. The notice of appeal shall set forth in detail the basis of the appeal.

   iii. All expenses associated with the hearing officer appeal process, except attorney fees, shall be the responsibility of the nonprevailing party.

   iv. The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost.

   v. In any case where a notice of appeal has been filed, the decision of the city plan board shall be stayed pending the final determination of the case.

   vi. Following the hearing, the hearing officer shall prepare the written findings and decision; copies of the findings and decision shall be mailed by the hearing officer to each party to the appeal and to the director, with a copy provided to the clerk of the commission.

f. Conduct of hearing. Conduct of the hearing before the hearing officer shall be as follows:

   i. The hearing officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing will be conducted.

   ii. The order of presentation at the hearing shall be as follows:

      - Receipt of the transcript minutes and exhibits from the city plan board and any records of the director, if any.
      - Opening statements by the parties.
      - Appellant's case.

- Respondent's case.
- Rebuttal by appellant.
- Summation by respondent.
- Summation by appellant.
- Conclusion of the hearing by the hearing officer.

iii. The director's records and the record of the city plan board's hearing and decision, including all exhibits, shall be received and constitute a part of the record.

iv. The hearing officer shall have the authority to determine the applicability and relevance of all materials, exhibits and testimony and to exclude irrelevant, immaterial or repetitious matter.

v. The hearing officer is authorized to administer oaths to witnesses.

vi. A reasonable amount of cross examination of witnesses shall be permitted at the discretion of the hearing officer.

vii. The time for presentation of a case shall be determined by the hearing officer.

viii. The hearing officer may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties to the timetable for so doing if allowed.

6. Decision by hearing offices. The decision of the hearing officer shall be based upon the following criteria and rendered as follows:

   a. The hearing officer shall review the director's records and record and testimony presented at the hearing before the city plan board, and at the hearing officer's hearing. Although additional evidence may be brought before the hearing officer, the hearing shall not be deemed a hearing de novo, and the record before the city plan board shall be incorporated into the record before the hearing officer, supplemented by such additional evidence as may be brought before the hearing officer.

   b. The hearing officer shall be guided by the previously adopted comprehensive plan, the adopted Comprehensive Plan, the land development regulations, this article, the Code of Ordinances of the city, and established case law.

   c. The burden shall be upon the appellant to show that the decision of the city plan board cannot be sustained by a preponderance of evidence or the city plan board decision departs from the essential requirements of law.

   d. The hearing officer's determination shall include appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The hearing officer may affirm, affirm with conditions, or reverse the decision of the city plan board.

   e. The hearing officer shall file his/her written determination on each appeal with the director within thirty (30) calendar days of the date of the appeal hearing and a copy shall be provided to the clerk of the commission and the applicant.

   f. The decision of the hearing officer shall be final, subject to judicial review.

7. Judicial review. Judicial review of the hearing officer's decision is available to the property owner and the city and shall be by common-law certiorari to the Eighth Judicial Circuit Court. In any case where judicial review is sought, the decision of the hearing officer shall be stayed pending the final determination of the case.

C. Appointment and qualifications of hearing officer.

1. The city commission shall provide a hearing officer to conduct appeal hearings.

2. No hearing officer shall act as agent or attorney or be otherwise involved with any matter which will come before the city during the term of the hearing officer's appointment. Further, no hearing officer shall initiate or consider ex parte or other communication with any party of interest to the hearing concerning the substance of any proceeding to be heard by the hearing officer, except such expert advice as the hearing officer may determine appropriate and solicit.

Section 30-3.4. Rules for determination of vested rights.

The city plan board and the hearing officer shall be guided by the following rules:

A. *Common law vesting.* A right to develop or to continue the development of property notwithstanding the Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith upon some act or omission of the city, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.

B. Statutory vesting.

1. The right to develop or to continue the development of property shall be found to exist if a valid and unexpired final development order was issued by the city prior to the effective date, and substantial development has occurred on a significant portion of the development authorized in a single final development order, and is completed or development is continuing in good faith as of the effective date.

2. Each statutory vesting determination also requires that all material requirements, conditions, limitations and regulations of the development order have been met.

3. The right to develop or continue the development of a planned development shall be found to exist if a planned development was subject to a valid and unexpired final development order issued prior to the effective date. However, planned developments approved prior to May 23, 1991, must have commenced substantial development on the planned development consistent with the planned development layout plan as approved and continued development in good faith as of the effective date in order to qualify for vested rights under this subsection.

Section 30-3.5. Reserved.

DIVISION 2. Nonconforming lots, uses and structures[LDI1].

Section 30-3.6. Intent.

A. Within the districts established by this chapter there exist lots, structures and uses of land or land and structures which were lawful before this chapter was adopted or amended but which will be prohibited, regulated or restricted under the terms of this chapter. It is the intent of this chapter to permit these nonconformities to continue until they are removed but not to encourage their continuation. Except as otherwise provided, it is the further intent of this chapter that nonconformities shall not be enlarged upon, expanded, intensified or extended nor be used as a basis for adding other structures or uses prohibited within the district. Improvements to nonconforming uses shall be allowed as long as they:

1. Do not involve increases in the size of structures or changes in the character of existing uses;

2. Are reasonably related to the continuation of those uses; and
3. Will not have an adverse impact on the surrounding neighborhood and general public;

B. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which a building permit has been issued prior to the effective date of adoption or amendment of this chapter. If actual substantial construction has not begun, under a permit issued prior to the adoption or amendment of this chapter, within six months of the date of issuance of the permit, such permit shall become invalid and shall not be renewed except in conformity with this chapter.

Section 30-3.7. Nonconforming buildings or structures.

Nonconforming principal buildings and structures shall be made to comply with these regulations only after destruction which exceeds 80 percent of its then physical value immediately prior to the time of destruction as determined by the building official with substantial competent evidence. An existing nonconforming principal building or structure may be maintained and repaired, remodeled or altered provided that such remodeling or alteration is in compliance with this chapter. Provided, however, that, in the case of a single-family structure where the nonconformity is created by an encroachment into a required yard setback, such nonconforming single-family structure may be added onto or altered as long as the addition or alteration is in line with the legally existing encroachment and does not extend further into the required setback.

Section 30-3.8. Nonconforming lots.

[LDI2]

A. *Dwellings on nonconforming lots.* The building official may issue a building permit for a single-family dwelling on any nonconforming lot which is not substandard; provided that the remedy set forth in subsection A of this section cannot be complied with, that a single-family dwelling is a permitted use in the district in which the lot is located, and that the district minimum yard setbacks and building size limitations are met.

B. *Buildings on nonconforming or substandard lots.* The reviewing board may authorize by special exception the issuance of a building permit for a building to be located on a substandard or nonconforming lot, provided that the remedies set forth in subsection A of this section cannot be complied with and that the building use is permitted in the zoning district in which the lot is located, as long as the board of adjustment finds that such building will not create any condition detrimental to the safety, convenience and quiet possession of surrounding properties and uses. The board of adjustment shall not authorize a multiple-family dwelling on a substandard or nonconforming lot in any district in which a single-family dwelling is a permitted use.

Section 30-3.9. Nonconforming uses of buildings, structures and premises.

If a lawful use of a structure, or of a structure and premises in combination, exists in a district other than a residential district on the date this chapter was adopted or amended, that would not be allowed in the district under the terms of this chapter as a result of the adoption or amendment, the lawful use may be continued as long as it remains otherwise lawful. However, if a lawful use of a structure, or of a structure and premises in combination, exists in a residential district on the date this chapter was adopted or amended, that would not be allowed in that district under the terms of this chapter as a result of the adoption or amendment, the lawful use may be continued as long as it remains otherwise lawful, except that in accordance with the Religious Land Use and Institutionalized Persons Act, as codified in 42 U.S.C.A. § 2000cc et. seq., a membership organization may be changed to a place of religious assembly and, for the purpose of the Act, shall be considered the same use. All nonconforming uses shall be subject to the following provisions:

A. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, remodeled, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. The city plan board may allow, by special use permit, minor decorative, functional or safety improvements to existing structures devoted to legal nonconforming uses. Such improvements may not include:

   1. An increase in floor area;
   2. Enclosures of previously unenclosed areas; or
   3. Improvements involving the installation of marquees, canopies, awnings and signs unless they comply with the provisions of this code.

B. When nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

C. There may be a change of tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

D. Whenever a nonconforming use of land or of a building or other structure or any portion thereof is abandoned or the use is discontinued for a continuous period of nine months or more, such abandonment or discontinuance shall be presumed to constitute an intention to abandon or discontinue such use, and such use shall no longer be permitted. Any subsequent use of such building or structure or land shall be in conformity with the provisions of this chapter. A use is deemed abandoned or discontinued if:

   1. Business taxes are allowed to lapse;
   2. Utility meters are removed; and/or
   3. The structure is not maintained in a habitable condition

[LDI3]

Section 30-3.10. Expansion and renovation of nonconforming single-family and two-family uses and structures.

A. An existing nonconforming single-family or two-family use may be expanded or renovated in accordance with the development standards for the zoning district in which it is located. However, the use shall not be expanded or renovated to include any additional units.

B. An existing nonconforming single-family or two-family building or structure may be expanded or renovated in accordance with the provisions of section 30-3.7.

Section 30-3.11. Improvements to vehicular use areas associated with nonconforming uses.

The city plan board may allow by special use permit improvements to vehicular use areas associated with legal nonconforming uses relating to size, location, design, landscaping, drainage, lighting, or buffering and screening to protect neighboring land uses. Proposed improvements must comply with the dimensional and other requirements applicable to new development to the maximum extent possible with recognized site constraints. If a request is made to move a vehicular use area, the applicant must additionally show that the relocation is needed to meet dimensional, landscaping, drainage or buffering requirements. Paving or repaving of an existing vehicular use area which utilizes a local street or alley for vehicle access or maneuvering may be allowed if the city manager or designee determines traffic movement and circulation would not be endangered.

Section 30-3.12. Findings of fact required for issuance of special use permits relating to this section.

Any other provision of this section or this chapter notwithstanding, the city plan board must make the following additional findings of fact before it may approve a special use permit under this section:

A. That the applicant has demonstrated with competent substantial evidence the legality of the nonconforming use of the structure or structure and premises in combination addressed in the application. Competent substantial evidence may include but is not limited to historic aerial photographs, use and property records maintained by the city's business tax and code enforcement departments, records maintained by the county property appraiser's office, business records, and photographs that can be certified as to their date and authenticity;

B. That the proposed improvements are reasonably related to the continuation of a nonconforming use and associated facilities and will not result in an increase in the floor area of structures, enclosure of previously unenclosed areas, a change in the existing character of a use or detrimental impacts on surrounding uses and properties or the general public; and

C. That the proposed improvements are in compliance with all other applicable regulations of this chapter to the maximum extent practicable.

Section 30-3.13. Nonconforming luminaires[LDI4].

All lamps, light fixtures and lighting systems (hereinafter "luminaires") lawfully in place prior to February 11, 2002, shall be deemed legally nonconforming. However, if cumulatively at any time, 50 percent or more of the existing outdoor light fixtures are replaced, or number of outdoor light fixtures is increased by 50 percent or more, then all outdoor light fixtures shall conform to the provisions of section 30-8.3, and section 30-9.52. A development plan amendment shall be certified by a registered engineer or architect, or lighting professional holding a current L.C. (lighting certificate) from the National Council on Qualifications for the Lighting Profession (NCQLP). Additionally, nonconforming luminaires that direct light toward streets or parking areas that cause glare so as to cause a public nuisance should be either shielded or re-directed within 30 days of notification.

Section 30-3.14. Reserved.

DIVISION 3. - CONCURRENCY MANAGEMENT

Section 30-3.15. Intent and purpose.

This division is intended to implement the City of Gainesville Comprehensive Plan, by ensuring that development approved by the city shall not result in a reduction of service below the adopted level of service standards contained in the plan, as required by F.S. § 163.3202(2)(g). This intent is implemented by means of a concurrency management system which shall measure the potential impact of development order(s) on the adopted level of service standards.

Section 30-3.16. Implementation of comprehensive plan.

In order to implement the provisions of the plan requiring that adequate public facilities are available to handle the impacts of development, and maintain the city's adopted LOS standards concurrent with those impacts, the city establishes, pursuant to this division:

A. A concurrency management system which enables the city to determine whether it is adhering to the adopted LOS standards and its five-year schedule of capital improvements; and

B. A regulatory program that ensures each public facility is available to serve development concurrent with the impacts of development on public facilities.

Section 30-3.17. Concurrency management system.

A. *Generally.* In order to ensure that adequate public facilities are available concurrent with the impacts of development on public facilities, the city shall establish the following monitoring practices.

B. *Annual report on facility capacity.* On an annual basis the planning and development services department shall issue a facility capacity report indicating the facility capacity status for each public facility having an adopted LOS standard. The extent of the remaining capacity available for each fiscal year shall be made available to the general public within 30 days of the start of each fiscal year. Gainesville Regional Utilities shall be responsible for determining the water and wastewater facility capacity status to be included in the facility capacity report. Capacity status shall be determined in accordance with Gainesville Regional Utilities' water/wastewater capacity policy.

1. Nothing herein shall preclude the issuance and effectiveness of amendments to the annual report if updating or correction is deemed necessary for: errors in preparation, the impact of issued development orders or permits, as monitored by the planning and development services department if such monitoring indicates an unacceptable degradation to an adopted LOS standard; or changes in the status of capital improvement projects of the state or any local government which changes the underlying assumption of the annual report.

2. Under no circumstances will an amended annual report divest those rights acquired prior to the amended annual statement except where a divestiture of such rights is clearly established by the city commission to be essential to the health, safety or welfare of the general public.

C. *Annual capital improvements element update.* As provided in the plan, the capital improvements element shall be updated annually during the budget review process. The annual report on facility capacity, prepared in conjunction with the budget review process, shall include a forecast of the capacity of existing and planned capital improvements identified in the five-year schedule of capital improvements. The forecast shall be based on the most recently updated schedule of capital improvements for each public facility. The planning and development services department shall also annually revise relevant population projections, update public facility inventories, update unit costs, and update revenue forecasts in cooperation with the office of management and budget, the finance department and Gainesville Regional Utilities (GRU). The findings of the planning and development services department shall be fully considered in preparing any proposed amendments to the capital improvements element, any proposed amendments to the city annual budget for public facilities, any proposed amendments to GRU's annual budget for public facilities, and the review of and issuance of development orders during the next year.

D. *Recommendations on amendments to the capital improvements element, city annual budget and GRU annual budget.* Based upon the planning and development services department report described above, the city manager and general manager of utilities shall annually propose to the city commission any amendments to the capital improvements element, the city's annual budget and the GRU annual budget for capital improvements made necessary by circumstances described in the report.

Section 30-3.18. Mandatory and optional review of development orders.

A. *Generally.* It is the policy of the city that, after the effective date of this chapter, no development order shall be issued unless adequate public facilities are available to serve the project, which is the subject of the development order, at adopted LOS standards. The responsibility for providing information to show compliance with the adopted LOS standards and meeting concurrency requirements shall be upon the applicant. In order to ensure that adequate public facilities are available concurrent with the impacts of development on each public facility, the following procedures shall govern the issuance of development orders.

B. *Exemptions.* Developments may be exempt from the concurrency requirements of this chapter. Exemption can either be: automatically exempt which require no concurrency review or certification, based on meeting certain threshold criteria; or, subject to review which require the issuance of a certificate of concurrency exemption as further provided in this chapter.

The following types of development fall below the threshold for any concurrency review and are deemed automatically exempt:

1. Building permits for single-family dwellings (including expansions and remodeling) on lots of record which existed on or before June 10, 1992.
2. Building permits for two-family dwellings (including expansions and remodeling) on lots of record which existed on or before June 10, 1992.
3. Concept review of a development as specified in Article IV, Division 4.
4. Zoning compliance permits with no associated change of use as defined in Article IV, Division 3.
5. Lot splits.
6. Building permits for the construction or reconstruction of single-family or two-family dwellings which previously have met all of the concurrency requirements of this chapter.
7. Changes to a new use allowed under the applicable zoning district within an existing neighborhood shopping center, regional shopping center or shopping center which do not involve adding any new square footage and/or impervious surface to the existing shopping center.

All other development that is not specifically enumerated above shall be subject to review and require the issuance of a certificate of concurrency exemption.

C. *Issuance of certificate of exemption.* Upon application by an owner of a project which is exempt pursuant to the terms in this section, the director of the planning and development services, or his/her designee, shall issue a certificate of concurrency exemption, using the procedures described below. There shall be no fee for a certificate of concurrency exemption.

D. *Mandatory certification of preliminary development orders.* Prior to the final approval of a preliminary development order, as defined in this chapter, the owner of a project shall have obtained either a certificate of concurrency exemption, a certificate of preliminary concurrency or a certificate of conditional concurrency reservation. Renewals of approvals for preliminary development orders shall consider the implications for concurrency management.

E. *Mandatory certification of final development orders.* Prior to the final approval of a final development order, as defined in this chapter, the owner of a project must demonstrate that a valid and unexpired certificate of concurrency exemption, certificate of final concurrency or certificate of conditional concurrency reservation exists for the project. A valid and unexpired certificate of preliminary concurrency for a project which is seeking approval of a final development order and which has not been amended in a fashion to change densities and/or intensities of use shall be automatically granted a certificate of final concurrency. Renewals of approvals for final development orders shall consider the implications for concurrency management.

F. *Succession.* As long as the original certificate of concurrency exemption, certificate of preliminary concurrency, certificate of final concurrency or certificate of conditional concurrency reservation remains valid and unexpired, it shall serve all subsequent development permits for that specific project.

G. *Optional review of projects.* Any person may submit an application for a concurrency determination at any time subject to the payment of the appropriate application fee as set out in Appendix A (Schedule of Fees, Rates and Charges). A concurrency determination reserves no capacity and is in no way binding on the city.

Applications for a concurrency determination must contain sufficient data on the project to prepare a concurrency determination.

H. *Credit for redevelopment, reuse or demolition of existing structure.* If an applicant proposes to redevelop, reuse or demolish a building or part of a building as part of the redevelopment of a property and desires to receive public facility impact credits for that portion of the property being redeveloped, reused or demolished in accordance with this section, application shall be made and approved prior to such action. Construction must commence within one year after receiving a final development order to obtain the benefits of the credit. The applicant must provide sufficient information about the previous use of the structure(s) so that credits can be calculated. Credits are not transferable to any other site.

Section 30-3.19. Administrative procedures.

A. Issuance and validity of certificates.

1. Time of application. An application for a certificate of concurrency exemption, certificate of preliminary concurrency, certificate of final concurrency, concurrency determination or certificate of conditional concurrency reservation may be submitted at any time during the year.

2. Assignability and transferability. A certificate of concurrency exemption, certificate of preliminary concurrency or certificate of conditional concurrency reservation shall run with the land as long as it is valid and unexpired, but shall not be assignable to any other project.

3. Expiration and effect. A certificate of concurrency exemption shall be valid for one year. A certificate of preliminary concurrency and certificate of final concurrency shall be valid for the time period that the appropriate development order is valid and unexpired. If either a preliminary or final development order does not have an expiration date, the certificate of preliminary concurrency or certificate of final concurrency shall expire in one year. A certificate of conditional concurrency reservation shall be valid for the time period reserved in the certificate. A new application for a certificate of preliminary or final concurrency must be submitted if the project does not continue in good faith. A new fee will be assessed for the resubmittal of an application for a certificate of preliminary or final concurrency.

B. Determination of exemption or capacity.

1. Submission of application. Applications for a concurrency determination, certificate of concurrency exemption, certificate of preliminary concurrency, certificate of final concurrency and certificate of conditional concurrency reservation shall be available in the planning and development services department. Fees for each type of application are set out in Appendix A (Schedule of Fees, Rates and Charges). The application shall consist of such information as needed by the planning and development services department to determine concurrency status.

2. Incomplete applications. After receipt of an application, the planning and development services department shall determine whether it is complete within five working days after the date of submission. If it is determined that the application is not complete, written notice shall be mailed to the applicant specifying the deficiencies within five working days after the date of submission. The applicant shall have 30 days to correct deficiencies on the application after which time a new application with updated information must be submitted and a new application fee will be incurred. The planning and development services development department shall take no further action on the application unless the deficiencies are remedied.

3. Review and comment on applications. The review of applications shall be completed within 12 working days after determination of a complete application form. The planning and development services department shall be responsible for coordinating application review under this article. The following

departments and agencies shall coordinate (as needed) with the planning and development services department in this process:

a. Gainesville Regional Utilities.

b. Public works department.

c. Traffic engineering department.

d. Recreation and parks division.

e. Regional transit system.

f. County public works department.

g. Any other departments, divisions or agencies as may be deemed necessary by the planning and development services department.

These agencies, departments and divisions shall forward their determinations of capacity to the planning and development services department. The planning and development services department shall be responsible for compiling all the determinations of capacity into a report and issuing the relevant certification or denial of certification.

4. Limitation of approval. A concurrency determination, certificate of concurrency exemption, certificate of preliminary concurrency, certificate of final concurrency and a certificate of conditional concurrency reservation shall apply only to the specific land uses, densities and intensities based on information provided in the application, and, where applicable, the preliminary and final development orders. All applicants, to the extent required by the planning and development services department, shall submit such applications for entire projects, rather than portions of projects, except in cases of phased developments.

5. Issuance of certification. After concurrency review has been completed, the director of the planning and development services department or his/her designee shall either conclude that the application is approved or denied. If denied, the denial shall be in writing and shall include the reasons for denial. If a certificate of conditional concurrency reservation is approved, the approval shall require the payment of the relevant reservation fee or a bond equal to the amount of the reservation fee for reserving capacity, as specified in the executed development agreement. This fee must be paid within ten working days of the issuance of the certificate of concurrency reservation or the certificate shall be cancelled. In either case, the final development order shall not be issued until the capacity reservation fee is paid. Public facility capacity shall be granted on a first-come, first-served basis, determined as of the date and time a certificate of preliminary concurrency, certificate of final concurrency or certificate of conditional concurrency reservation is issued.

6. Deferral of capacity reservation. Preliminary and final development orders may be issued without a concurrency reservation and payment of reservations fees only for water and/or wastewater facilities. An applicant may elect to defer a water and/or wastewater concurrency reservation and payment of fees until an application for a building permit is made. Deferrals are subject to the following procedures:

   a. Preliminary and final development orders undergo a concurrency review at the time of application. A determination shall be made of whether sufficient capacity exists at that time to permit the development under the concurrency procedures. Under no circumstances shall a project be granted a deferral of capacity reservation if, at the application point, there is insufficient capacity to meet concurrency requirements.

   b. The applicant must sign a deferral of capacity reservation affidavit acknowledging that:

      i. Water and/or wastewater capacity reservation is being deferred at this stage.

ii. No rights to obtain a final development order or building permit, nor any other rights to develop the subject property, have been guaranteed, granted or implied by the city's approval of the preliminary and/or final development order without a concurrency reservation.

iii. No guarantee of water and/or wastewater capacity availability is made.

iv. A concurrency review must be made prior to the issuance of the building permit to determine whether sufficient capacity exists for the proposed project and no building permit will be issued until sufficient capacity is available.

c. The applicant may elect to cancel a deferral and reserve water and/or wastewater capacity at any time prior to the building permit application stage under the following conditions:

i. Treatment plant capacity is available to meet the needs of the project; and

ii. Full payment of water and/or wastewater reservation fees are made to Gainesville Regional Utilities.

7. Other procedures concerning concurrency. Any other procedures concerning concurrency administration, calculations and methodologies, and determinations shall be managed by the planning and development services department. The general manager for utilities shall develop policies to administer the water/wastewater capacity system, including capacity reservations.

8. Appeals.

a. Application procedure. An applicant may appeal any final decision, pursuant to this section, made by the director of the planning and development services department or his/her designee by filing an application for a hearing before the city plan board. Applications for appeal shall be available in the planning and development services department. The appeal must be filed within 20 calendar days after such decision. The application for appeal shall be accompanied by a fee as set out in Appendix A (Schedule of Fees, Rates and Charges). The director shall set a date for a hearing to be held by the city plan board within 30 calendar days of an application for an appeal and shall notify the applicant and the city plan board of the date, time and place of the hearing. The notice shall be mailed to the applicant not less than ten calendar days prior to the date of the hearing. At the applicant's option and with the city plan board's concurrence, stipulations and sworn affidavits may be submitted in lieu of testifying at the city plan board hearing.

b. Conduct and recording of city plan board hearing. At the city plan board hearing, the applicant making the appeal shall present all of the evidence in support of the appeal. The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, shall make a full or partial hearing record available at no more than actual cost. At the conclusion of the testimony, the city plan board shall adopt a decision of approval, denial, or approval with conditions or continue the proceedings to a date certain. A written decision shall follow in not more than ten (10) calendar days.

c. Appeals to hearing officer. No person shall be deemed to have exhausted his/her administrative remedies for the purpose of seeking judicial review unless the party first obtains review of the director or city plan board's decision by a hearing officer as provided herein. The hearing officer appeal process provided in this article is designed to allow for an appeal of the city plan board action after a full and complete hearing. This appeal shall be construed in its broadest, nontechnical sense, which is merely an application to a higher authority for a review of the city plan board action taken.

If the city plan board record of their hearing is full and complete, the hearing officer may determine that the record is the only evidence that is necessary. However, the hearing officer may determine that additional evidence and oral or written testimony, including cross examination, is necessary to

properly evaluate the city plan board's action and render a decision as to its validity. The hearing officer shall have the authority to determine the need for additional evidence and/or testimony.

i. Filing of appeal; records; notice of decision. The procedure for filing an appeal shall be as follows:

- An applicant must file a notice of appeal with the director within twenty (20) calendar days of the city plan board's final decision. The notice of appeal must be accompanied by a filing fee as set out in Appendix A (Schedule of Fees, Rates and Charges).
- The notice of appeal shall set forth in detail the basis of the appeal.
- All expenses associated with the hearing officer appeal process, except attorney fees, shall be the responsibility of the nonprevailing party.
- The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, shall make a full or partial hearing record available at no more than actual cost.
- In any case where a notice of appeal has been filed, the decision of the city plan board shall be stayed pending the final determination of the case.
- Following the hearing, the hearing officer shall prepare the written findings and decision; copies of the findings and decision shall be mailed by the hearing officer to each party to the appeal and to the director, with a copy provided to the clerk of the commission.

ii. Conduct of hearing. Conduct of the hearing before the hearing officer shall be as follows:

- The hearing officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing shall be conducted.
- The order of presentation at the hearing shall be as follows:

(i) Receipt of the transcript, minutes and exhibits from the city plan board and any records of the director, if any.

(ii) Opening statements by the parties.

(iii) Appellant's case.

(iv) Respondent's case.

(v) Rebuttal by appellant.

(vi) Summation by respondent.

(vii) Summation by appellant.

(viii) Conclusion of the hearing by the hearing officer.

- The director's records and the record of the city plan board's hearing and decision, including all exhibits, shall be received and constitute a part of the record.
- The hearing officer shall have the authority to determine the applicability and relevance of all materials, exhibits and testimony and to exclude irrelevant, immaterial or repetitious matter.
- The hearing officer is authorized to administer oaths to witnesses.
- A reasonable amount of cross examination of witnesses shall be permitted at the discretion of the hearing officer.

- The time for presentation of a case shall be determined by the hearing officer.
- The hearing officer may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties to the timetable for so doing if allowed.

iii. Decision by hearing officer. The decision of the hearing officer shall be based on the following criteria and rendered as follows:

- The hearing officer shall review the director's records and record and testimony presented at the hearing before the city plan board, and at the hearing officer's hearing. Although additional evidence may be brought before the hearing officer, the hearing shall not be deemed a hearing de novo, and the record before the city plan board shall be incorporated into the record before the hearing officer, supplemented by such additional evidence as may be brought before the hearing officer.
- The hearing officer shall be guided by the level of service standards adopted in the plan and in this section, the Concurrency Procedures Manual, technical evidence and calculations, and established case law.
- The burden shall be upon the appellant to show that the decision of the city plan board cannot be sustained by a preponderance of evidence or the city plan board decision departs from the essential requirements of law.
- The hearing officer's determination shall include appropriate findings of fact, conclusions of law and decisions in the matter of the appeal. The hearing officer may affirm, affirm with conditions or reverse the decision of the city plan board.
- The hearing officer shall file his or her written determination on each appeal with the director within thirty (30) calendar days of the date of the appeal hearing and a copy shall be provided to the clerk of the commission, the applicant and the director.
- The decision of the hearing officer shall be final for the purpose of administrative appeals.

iv. Judicial appeal. Judicial review of the hearing officer's decision is available to the applicant and the city and shall be by the circuit court having jurisdiction over the city. In any case where judicial review is sought, the decision of the hearing officer shall be stayed pending the final determination of the appeal.

d. Appointment and qualifications of hearing officer. The city commission shall provide a hearing officer to conduct appeal hearings. No hearing officer shall act as agent or attorney or be otherwise involved with any matter which will come before the city during the term of the hearing officer's appointment. Further, no hearing officer shall initiate or consider ex parte or other communication with any party of interest to the hearing concerning the substance of any proceeding to be heard by the hearing officer, except such expert advice as the hearing officer may determine appropriate and solicit.

9. Concurrency fees in designated redevelopment areas. In order to encourage redevelopment in areas so designated in the future land use element of the plan, the city shall reduce the applicable concurrency fees by fifty (50) percent for applications for projects in those areas.

Section 30-3.20. Level of service standards.

The following level of service standards ("LOS") shall be used to determine whether concurrency exists:

A. Traffic circulation.

1. LOS "C" for limited access highways, controlled access highways and the Florida intrastate highway system as defined and shown in the Mobility Element of the City of Gainesville Comprehensive Plan; LOS "D" for state two-way arterials in the roadway network as defined and shown in the Mobility Element of the City of Gainesville Comprehensive Plan, except on those specific highway segments within the Central City Transportation Concurrency Management Area (TCMA) as provided in paragraph (d) below or except on those specific segments designated as backlogged or constrained by the Florida Department of Transportation (FDOT) and shown in the Level of Service Report as provided in paragraph (e) below.
2. LOS "E" for nonstate roadways (including nonstate roadways functioning as arterials) for the city-maintained facilities in the roadway network as shown in the Mobility Element of the City of Gainesville Comprehensive Plan, except on those specific segments within the Central City TCMA as provided in paragraph (d) below or except for those specific segments designated as backlogged or constrained by FDOT and shown in the level of service report as provided in paragraph (e) below.
3. LOS "D" for non-state roadways (including non-state roadways functioning as arterials) for Alachua County-maintained facilities in the roadway network as shown in the Mobility Element of the Comprehensive Plan, except those on specific segments within the Central City TCMA as specified in paragraph (d) below or except for those specific segments designated as backlogged or constrained by FDOT and shown in the level of service report as specified in paragraph (e) below.
4. Within the Central City TCMA, as legally described in the Mobility Element of the City of Gainesville Comprehensive Plan, the LOS standards are as shown in Policy 1.1.5 of the Mobility Element of the Comprehensive Plan.
5. New development shall not degrade constrained and backlogged facilities located outside the Central City TCMA as shown in the level of service report as prepared by the North Central Florida Regional Planning Council and on file with the planning and development services department. The constrained facilities shall be at least maintained at or below the maximum service volume as identified in the most current level of service report. The interim level of service for backlogged facilities shall be at least maintained at or below the maximum service volume as identified in the most current level of service report until improvements are undertaken by the appropriate agency responsible for maintenance of the roadway segment to improve the level of service to the adopted LOS.
    a. Proposed development within ¼ mile access of roadway facilities designated as constrained or backlogged shall be of a land use not likely to exacerbate peak hour conditions; or
    b. Proposed development within ¼ mile access of roadway facilities designated as constrained or backlogged shall have a traffic mitigation program that limits impacts on peak hour capacity; and/or
    c. Reuse of existing structures shall be permitted that does not increase the trip generation over that generated by the most recent use of such existing buildings.
6. In order to meet concurrency requirements for development projects within ¼ mile of the following categories of roadway facilities:
    a. Any state- or county-maintained arterial or collector in the Gainesville Urbanized Area Transportation Study ("GUATS") network which has a median average annual daily trips (AADT) within 85 percent of maximum service volumes allowed at LOS "D" when calculated using Art-plan Analysis as identified in the Florida Highway System Plan, Level of Service Manual published by FDOT April 12, 1992 ed.;
    b. Any state- or county-maintained arterial or collector in the GUATS network which has a median AADT within 85 percent of any negotiated maximum volume; or

c. Any city-maintained collector in the GUATS network which has a median AADT within 85 percent of maximum service volumes allowed at LOS "E" when calculated using Art-plan analysis;

multi-modal access improvements, such as, but not limited to: (i) bicycle parking; (ii) greenway/biketrail connections; (iii) sidewalk connections from new and existing building(s) on the subject site to the public sidewalk; (iv) completion of public sidewalk serving the subject property to an existing sidewalk or to the nearest intersection where existing sidewalk systems are incomplete and located on the same side of the street; (v) joint driveway access for adjacent parcels, if feasible; and (vi) the closing of poorly located, overly wide or duplicative curb cuts, shall be required when there is any new development; or, any redevelopment of an existing site which results in a net increase in trip generation.

B. Stormwater management.

1. The LOS standard for off-site stormwater discharge of all stormwater facilities shall be the twenty-five-year ten-day critical duration storm. The LOS standard for water quality treatment shall be treatment of first one (1) inch of runoff, and compliance with the design and performance standards established in Chapter 40-C-42.025 F.A.C. and 42.035 F.A.C. to ensure that the receiving water quality standards of Chapter 17-302.500 F.A.C. are met and to ensure their water quality is not degraded below the minimum conditions necessary to maintain their classifications as established in Chapter 17-302 F.A.C.

2. These standards shall apply to all new development and redevelopment and any exemptions, exceptions or thresholds in these citations are not applicable. Infill residential development within improved residential areas or subdivisions existing prior to the adoption of the plan must ensure that its post-development stormwater runoff will not contribute pollutants which will cause the runoff from the entire improved area or subdivision to degrade receiving water bodies and their water quality as stated above.

C. Potable water/wastewater.

1. Potable water.

a. *Maximum day (peak) design flow:* Two hundred (200) gallons daily demand per capita.

b. *Storage capacity:* One-half of maximum daily consumption volume.

c. *Pressure:* The system shall be designed for a minimum pressure of forty (40) psig under forecasted peak hourly demands to assure twenty (20) psig under extreme and unforeseen conditions.

2. Wastewater.

a. *Average day standard:* One hundred thirteen (113) gallons daily flow per capita. Peak standard: one hundred twenty-three (123) gallons daily flow per capita.

b. *University of Florida standard:* Forty (40) gallons per capita average daily flow.

D. Recreation.

1. Level of service standards for parks and facilities. [1]

Facility LOS	1991 LOS Standard	1997 LOS Standard
Swimming pool (50 meters)	1 per 85,000	1 per 85,000
Swimming pool (25 yards)[2]	1 per 50,000	1 per 75,000
Softball field (adult)	1 per 14,000	1 per 10,000
Soccer field	1 per 8,500	1 per 11,000

Trail/linear corridor/greenway	1 mile per 3,500	1 mile per 4,500
Basketball court	1 per 4,500	1 per 4,400
Tennis court	1 per 6,000	1 per 6,000
Racquetball court	1 per 12,000	1 per 7,000

Park	1991 LOS Standard (acres/1,000 people)	1997 LOS Standard (acres/1,000 people)
Local nature/conservation	5.00	6.00
Sports complex	0.50	0.50
Community park[2]	2.00	2.00
Neighborhood park	1.50	0.80
Total acres per 1,000	9.00	9.30

Notes:

[1] Standards for local nature park, sports complex, and fifty-meter pool facilities apply urban area-wide. Standards for community park, twenty-five-yard pool, softball, soccer, trail, neighborhood park, basketball, tennis and racquetball facilities apply urban area-wide in 1991, and quadrant-by-quadrant in 1997. Park and facility substitution: There are instances where LOS standards will indicate a deficiency for certain recreational facilities, yet the quadrant may not have the acreage or desire by its population to accommodate the new facilities. See the Concurrency Procedures Manual for the substitution process.

[2] Southwest quadrant is exempt from community park and twenty-five-yard pool standards through 2001.

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2. Park design and function standards.

   a. *Mini-parks.* Small recreation areas within relatively high density residential areas: include benches, child play areas, shade trees and picnic facilities. Size is one-fourth acre to five (5) acres. Service radius is one-fourth mile. Access is by local streets, with facilities for pedestrians and bicycles. There is no LOS standard for this park type.

   b. *Neighborhood parks.* Moderately sized recreation areas located to provide convenient access (no more than one-half mile) from neighborhoods served: include tennis courts, racquetball courts, shade trees, picnic facilities, child play areas and a limited number of soccer and baseball fields. Size ranges from five (5) to twenty (20) acres, although the presence of certain types of facilities may classify certain sites less than five (5) acres as neighborhood parks. (These smaller sites must provide at least two (2) facilities of different types from the following list: basketball courts, tennis courts, racquetball courts, baseball/softball fields, gymnasium or recreation center, and soccer fields.) Service radius is one-half mile. Access is by local streets, with facilities for pedestrians and bicycles.

   c. *Community parks.* Intensive-use, activity-based recreation areas which serve an entire planning quadrant. Include a wide range and large concentration of facilities: lighted tennis courts, racquetball courts, soccer and baseball fields, a swimming pool, off-street parking, playgrounds and picnic facilities. Sites twenty (20) acres or larger are classified as "un- developed" if the site does not contain at least two (2) different types of these facilities. If LOS standards require community park acres, but the quadrant is not deficient in any of these facilities, the following facilities may be

substituted: basketball courts, tennis courts or racquetball courts. Size ranges from twenty (20) to one hundred (100) acres, although certain types of facilities may classify certain sites less than twenty (20) acres as community parks. (Parks between ten (10) to twenty (20) acres can be classified as a community park if at least two (2) different types of the following facilities are provided: baseball/softball fields, swimming pool, gymnasium, recreation center, and/or soccer or football fields.) Service radius is one and one-half (1½) miles or the planning quadrant. Access is by collector or arterial streets, with facilities for pedestrians, bicycles, autos and buses.

d. *Sports complex parks.* Intensive-use recreation areas which provide a concentration of facilities for leagues and tournaments. One (1) or more of the following facilities are necessary but not necessarily sufficient to classify a site as a sports complex:

   i. At least four (4) adult-size or youth-size baseball/softball fields;

   ii. At least six (6) regulation-size soccer fields;

   iii. A professional or semiprofessional sports stadium;

   iv. A combination of at least one (1) gymnasium, four (4) tennis courts and four (4) racquetball courts; and/or

   v. A region-serving water theme park.

   Size ranges from fifteen (15) to one hundred (100) acres. Service radius is urban area-wide. Access is by arterial streets, with facilities for bicycles, autos and buses.

e. *Local nature parks.* Moderately sized, resource-based parks which offer physical or visual access to environmentally significant open spaces. Such parks include trails, benches, picnic facilities, boardwalks and exhibits. Size is generally less than one hundred (100) acres. (All resource-based parks owned by the city or county are designated local nature parks, regardless of size.) Service radius is urban area-wide. Access is variable. Motorized vehicles are prohibited from pedestrian/bicycle corridors. Public properties containing environmentally significant features that have not been developed to accommodate passive recreation are known as "conservation areas."

f. *Linear corridors.* Provide a recreational travel corridor or greenway for such users as bicyclists, hikers, horseback riders, canoeists and joggers. Such park is typically a narrow strip of land developed along a creek, or along a utility or abandoned railroad right-of-way. Such parks often link parks, schools, commercial or residential areas, and natural features to each other. While staging areas typically provide auto parking, the corridors themselves allow only nonmotorized travel. Service radius is urban area-wide if owned by the state, and quadrant-wide if owned by the city or county.

E. Mass transit.

1. The city shall provide main bus service to each medium and high intensity mixed use area identified on the future land use map of the comprehensive plan unless the city commission determines that there is inadequate ridership to support this service.

2. The city shall provide main bus service to the medium and high intensity mixed use areas identified on the future land use map of the comprehensive plan with minimum headways of one (1) hour during peak hours. Peak hours shall be operating hours before 9:00 a.m. and between 3:30 p.m. and 7:00 p.m.

3. The city shall provide main bus service within one-fourth mile of eighty (80) percent of all medium and high density residential areas designated on the future land use map of the comprehensive plan, and within the RTS main bus service area as shown on the existing and future RTS main bus service area map in the mass transit element of the comprehensive plan.

4. The city shall provide a transit system that can accommodate at least one and three-fourths (1¾) percent of all Gainesville urbanized area daily person trips as determined by the FDOT trip generation model developed by John Harris (1986).

F. *Solid waste.* For class I solid waste, seven hundred sixty-three-thousandths (0.763) tons of solid waste per capita per year disposed (four and two-tenths (4.2) pounds of solid waste per capita per day disposed).

Section 30-3.21. Standards of concurrency review.

The following standards of review shall be utilized to determine whether the LOS standards have been met:

A. *Potable water, solid waste, stormwater management and wastewater.* The concurrency requirements for potable water, solid waste, stormwater management and wastewater shall be met by any one of the following standards:

1. The necessary facilities and services are in place at the time a final development order is issued;
2. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
3. The necessary facilities are under construction and bonded for completion at the time a final development order is issued; or
4. The necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions listed in subsections 30-3.21.A.1 through 3 of this section, which guarantee is secured by a completion bond, letter of credit or other security acceptable to the city attorney. The agreement must guarantee that the necessary facilities and services will be in place when the impacts of the development occur.

B. *Recreation.* The concurrency requirements for recreation shall be met by any one of the following standards:

1. The necessary facilities and services are in place at the time a final development order is issued;
2. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
3. The necessary facilities are under construction and bonded for completion at the time a final development order is issued;
4. The necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions listed in subsections 30-3.21.B.1 through 3 of this section, which guarantee is secured by a completion bond, letter of credit or other security acceptable to the city attorney. The agreement must guarantee that the facilities and services will be in place when the impacts of the development occur;
5. At the time the final development order is issued, the necessary facilities and services are the subject of an executed, binding contract, bonded for completion and which is acceptable to the city attorney, which provides for the start of construction of the required facilities, or provision of the services, within one (1) year of the issuance of the final development order; or
6. The necessary facilities and services are guaranteed in an enforceable development agreement requiring commencement of actual construction of the facilities or the provision of services within one year from issuance of the applicable development order, which guarantee is secured by a completion bond, letter of credit or other security acceptable to the city attorney.

C. *Traffic circulation and mass transit.* The concurrency requirements for traffic circulation and mass transit shall be met by any one of the following standards:

1. The necessary facilities are in place at the time a final development order is issued;
2. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur;
3. The necessary facilities are under construction and bonded for completion at the time a final development order is issued;
4. The necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions listed in subsections 30-3.21.C.1 through 3 of this section, which guarantee is secured by a completion bond, letter of credit or other security acceptable to the city attorney. The agreement must guarantee that the facilities and services will be in place when the impacts of the development occur;
5. At the time the final development order is issued, the necessary facilities and services are the subject of an executed, binding contract, bonded for completion and which is acceptable to the city attorney, which provides for the start of construction of the required facilities, or provision of the services, within one year of the issuance of the final development order;
6. The necessary facilities and services are shown for actual construction in the first three years of the applicable, adopted state department of transportation five-year work program, and are scheduled to commence construction within the first three years of the five-year schedule of capital improvements included within the capital improvements element of the comprehensive plan; or
7. The necessary facilities are shown for actual construction by the city in the first three years of the five-year schedule of capital improvements included with the capital improvements element of the plan.

D. *Project phasing.* In determining the availability of public facilities, an applicant may propose and the city may approve proposed projects in stages or phases so that public facilities needed for each phase shall be available in accordance with the standards set forth in this section.

Section 30-3.22. Reserved.

DIVISION 4. PROPORTIONATE FAIR-SHARE

Section 30-3.23. Intent and purpose.

The purpose of this division 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 F.S. § 163.3180.

Section 30-3.24. Findings.

The city commission finds that transportation capacity is a commodity that has a value to both the public and private sectors, and that the City of Gainesville Proportionate Fair-Share Program:

A. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;

B. Allows developers of property to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of a transportation modification;

C. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;

D. Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the city to expedite transportation modifications by supplementing funds currently allocated for transportation modifications in the capital improvements element (CIE).

E. Is consistent with F.S. § 163.3180, and Policies 1.2.1 and 1.2.6 in the city's CIE.

F. Allows proportionate fair-share mitigation to be directed toward one or more specific transportation modifications reasonably related to the mobility demands created by a development and such modifications may address one or more modes of travel.

G. Limits proportionate fair-share contributions to ensure that a development meeting the mitigation requirements is not responsible for the additional cost of reducing or eliminating backlogs.

H. Recognizes that the funding of any modification that significantly benefits the impacted transportation system can satisfy transportation concurrency requirements as a mitigation of the development's impact upon the overall transportation system even if there remains a failure of transportation concurrency on other impacted facilities.

Section 30-3.25. Procedures.

A. Applicability.

Except as listed below in this subsection (a), the proportionate fair-share program shall apply to all developments that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the City of Gainesville Concurrency Management System (CMS), including transportation facilities maintained by the Florida Department of Transportation (FDOT) or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of this section. The proportionate fair-share program does not apply to:

1. Developments of regional impact (DRIs) using proportionate share under F.S. § 163.3180; or

2. Developments exempted or excepted from concurrency as provided in the concurrency management element of the comprehensive plan, including without limitation, developments within the city's TCEA Zones A, B and C, as adopted in the city's comprehensive plan prior to July 8, 2009; or

3. Developments excepted from concurrency by virtue of being located within the state-mandated TCEA that receive a final development order on or after July 8, 2009. Developments in the state-mandated TCEA shall be required to meet the applicable standards in division 4 of this article or in the comprehensive plan, at such time as adopted. Notwithstanding the foregoing, any applicant that filed an application for a development order with the city prior to July 2009, and was being processed with a requirement to comply with the proportionate fair-share program, may elect to proceed with its development under the proportionate fair-share program by entering into a proportionate fair-share agreement with the city; or

4. Development on annexed property located within the state-mandated TCEA that does not yet have a city land use category. In accordance with Objective 4.4 and its sub-policies in the city's future land use element and F.S. § 171.062(2), such developments shall continue to be subject to the county land use plan and county zoning or subdivision regulations until such time as the city adopts a comprehensive plan amendment placing a city land use category on the annexed property.

B. General requirements.

An applicant may choose to satisfy the transportation concurrency requirements of the city by making a proportionate fair-share contribution, pursuant to the following requirements:

1. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
2. The five-year schedule of capital improvements in the city's CIE or the long-term schedule of capital improvements for an adopted long-term concurrency management system includes a transportation modification(s) that, upon completion, will satisfy the requirements of the city's transportation CMS. The provisions of subsection B.3 may apply if a project or projects needed to satisfy concurrency are not presently contained within the city's CIE or an adopted long-term schedule of capital improvements.
3. The city may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program by contributing to a transportation modification that, upon completion, will satisfy the requirements of the city's transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:
    a. The city adopts by resolution a commitment to add the transportation modification(s) to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. Additionally, to qualify for consideration under this section, the proposed transportation modification must be: determined to be financially feasible by the city commission for city transportation facilities, or by the governmental entity or entities maintaining the impacted transportation facility for county and state roads, pursuant to F.S. § 163.3180(16)(b)1.; consistent with the comprehensive plan; and in compliance with the provisions of the city's proportionate fair-share program. Financial feasibility for this section shall mean that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed ten years to fully mitigate impacts on the transportation facilities.
    b. If the funds allocated for the five-year schedule of capital improvements in the CIE are insufficient to fully fund construction of a transportation modification required by the CMS, the city may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more projects which, in the opinion of the governmental entity or entities maintaining the transportation facility, (i) are reasonably related to the mobility demands created by the development, and (ii) will significantly benefit the impacted transportation system even if there remains a failure of concurrency on other impacted facilities (also referred to as system-wide transportation projects). In order for the city to enter into the proportionate fair share agreement, the governmental entity or entities maintaining the impacted transportation facilities must provide written findings to the city as to (i) and (ii).
    c. The system-wide transportation projects as mentioned in subsection 30-39(b)(3)b. and subsection 30-39(b)(4) shall include, but not be limited to: the traffic management system (TMS), expansions of the transit fleet to increase service frequency, bus rapid transit corridors, transit service expansion to new areas, park and ride facilities for the transit system, or other mobility projects improving the transit, pedestrian and/or bicycle level of service.
    d. The modification or modifications funded by the proportionate fair-share program shall be adopted into the five-year capital improvements schedule of the comprehensive plan or the long-term schedule of capital improvements for an adopted long-term concurrency management system at the next annual CIE update.

e. Any modification proposed to meet the developer's fair-share obligation must meet design standards of the city on city roads or Metropolitan Transportation Planning Organization (MTPO) for locally maintained roadways and those of the FDOT for the state highway system.

C. Application process.

Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of section 30-39

1. Prior to submitting an application for concurrency certification that involves a proportionate fair-share agreement, a pre-application staff conference shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. The pre-application meeting may be held in conjunction with a traffic study meeting. If the impacted facility is on the strategic intermodal system (SIS), then the FDOT will be notified and invited to participate in the pre-application meeting.
2. The applicant shall submit a completed application for concurrency certification at the time of application for development plan review, special use permit approval, subdivision or minor subdivision approval, or planned development rezoning that includes:
   a. Name, address and phone number of owner(s), developer and agent;
   b. Phasing schedule, if applicable;
   c. Trip generation and trip distribution; and
   d. Description of the proportionate fair-share mitigation method(s) that will be provided.
3. Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrence 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.
4. When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding proportionate fair-share agreement will be prepared by the city manager or designee 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, Alachua County for any proposed proportionate fair-share mitigation on a county-maintained facility, or any other municipality whose road facility is significantly impacted and for which proposed proportionate fair-share mitigation is required. No proportionate fair-share agreement will be effective until fully executed by the applicant and the city manager or designee. The agreement shall specify the date or dates on which payments, dedications, and/or completed construction of projects by the developer are due.

D. Determining proportionate fair-share obligation.

As provided in F.S. § 163.3180(16)(c), the proportionate fair-share mitigation method for transportation concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities. Construction and contribution of facilities shall be subject to final inspection and approval by the appropriate governmental agency. Proportionate fair-share mitigation may be directed toward one or more specific transportation modification(s) reasonably related to the mobility demands created by the development and such modification(s) may address one or more modes of travel.

1. As provided in F.S. § 163.3180(16)(c), a development 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. Proportionate fair-share mitigation shall be limited to ensure that a development meeting the requirements of this section mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs.

2. The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in F.S. § 163.3180(12), 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 maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS."

   OR

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

   Where:

   Development Trips^i = Those net, new peak hour trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS;

   SV Increase^i = Service volume increase provided by the eligible improvement/modification to roadway segment "i" per this section;

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

3. For the purposes of determining proportionate fair-share obligations, the city shall determine modification costs based upon the actual cost of the modification as obtained from the CIE, the MTPO/TIP or the FDOT Work Program. Where such information is not available, modification cost shall be determined using one of the following methods:

   a. An analysis by the city manager or designee of costs by cross-section type that incorporates data from recent projects and is updated annually and approved by the city manager or designee. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; or

   b. The most recent issue of FDOT *Transportation Costs,* as adjusted based upon the type of cross-section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program shall be determined using this method in coordination with FDOT District 2.

   c. If the city has accepted a modification project proposed by the applicant, then the value of the modification shall be determined using one of the methods provided in this section.

   d. If the city has accepted right-of-way dedication for the proportionate fair- share payment, credit for the dedication of the non-site related right-of- way shall be valued on the date of the dedication by fair market value established by an independent appraisal provided to the city by the applicant, at the applicant's expense. The appraisal is subject to review and approval by the city. The applicant, at its own expense, shall supply to the city: a certified survey and legal description of the land and an owner's title policy insuring the city for the appraised value. If the right-of-way dedication is for

either a county-maintained or FDOT roadway facility, the dedication shall be to the appropriate agency and under the same provisions as listed above. If the estimated value of the right-of-way dedication proposed by the applicant is less than the city-estimated total proportionate fair-share obligation for that development, then the applicant must also pay 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.

4. At the discretion of the city, the proportionate fair-share obligation, as calculated in subsection 30-39(d), can be used to fund system-wide transportation project(s) as described in subsection 30-39(b)(3)c, that, in the opinion of the governmental entity or entities having maintenance authority over the impacted transportation facility, (i) are reasonably related to the mobility demands created by the development, and (ii) will significantly benefit the impacted transportation system even if there remains a failure of concurrency on other impacted facilities. In order for the city to enter into the proportionate fair share agreement, the governmental entity or entities maintaining the impacted transportation facilities must provide written findings to the city as to (i) and (ii).

5. Pursuant to the provisions of subsection (b)(3)b. and c., the city, at its discretion, may allow smaller developments generating fewer than 1,000 average daily trips (ADT) or 100 peak hour trips (whichever produces the smaller development size in terms of square footage or residential units) to contribute proportionate fair-share funds to system-wide transportation projects. The development shall contribute to both the TMS and the transit system, and all proportionate fair-share calculations shall be based on the total number of peak hour trips. For the purposes of determining proportionate fair-share obligations for system-wide transportation projects such as the TMS or transit services, the city shall determine modification costs based upon the actual cost of the modification as obtained from the city's public works department and regional transit service. These costs shall be updated annually.

   a. The TMS cost shall be calculated as follows:

      i. Average the daily traffic counts per TMS corridors within city limits and sum them;

      ii. Translate to peak hour trips using the locally derived 9.1 percent ratio per city studies;

      iii. Calculate the TMS cost minus corridors outside city limits;

      iv. Divide the sum of all p.m. peak hour corridor counts into the TMS cost within the city limits to obtain a cost per peak trip.

   b. The transit costs shall be calculated as follows:

      Development's net, new peak hour trip generation × (TAA Costs/TAA new peak trips) /CF where,

      TAA Cost = Transit Assessment Area Cost (3 years) of capital and operating costs for enhancements to existing transit service routes that demonstrate the need for service expansion (i.e., full buses, high productivity, customer requests); 5 years of capital and operating costs for new transit service routes).

      TAA new peak trips = the new transit trips available in the peak hour based on the enhancements.

      CF = the conversion factor of person-trips to vehicle trips (= the current vehicle occupancy rate per the local transportation model is 1.09).

6. If the city designates any multimodal transportation districts (MMTD), the proportionate fair-share assessments shall be based on the expected costs and transportation benefits of all the required multimodal modifications within the MMTD. The proportionate fair-share assessment shall be based on the percentage of proposed development net, new peak hour trips divided by the total number of trips

projected for the MMTD multiplied by the cost to provide all needed mobility modifications within the MMTD.

E. Proportionate fair-share agreements.

Upon execution of a proportionate fair-share agreement (agreement), the applicant shall receive a city certificate of preliminary and/or final concurrency (as appropriate). Should the applicant fail to apply for a development permit within the timeframe provided in the Land Development Code, then the agreement shall be considered null and void, and the applicant shall be required to reapply.

1. Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order, special use permit, second reading of the PD ordinance, or recording of the final plat, whichever is the first to occur, and shall be nonrefundable. If the payment is submitted more than 12 months from the date of execution of the 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 modification at the time of payment, pursuant to subsection 30-39(d) and adjusted accordingly.
2. All developer modifications authorized under this section must be completed prior to issuance of a building permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required modification(s). It is the intent of this section that any required modification(s) be completed before issuance of building permits.
3. Dedication of necessary right-of-way for facility modifications pursuant to an agreement must be completed prior to issuance of the final development order or recording of the final plat.
4. Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation. If a requested change to a development project reduces its traffic impact subsequent to a development order and prior to the issuance of a certificate of occupancy, the applicant may request that the proportionate fair-share agreement be amended and the contribution reduced to reflect the revised mitigation required, if the city has not appropriated the funds. Applicants may submit a letter to withdraw from the proportionate fair share program at any time prior to the execution of an agreement.

F. Appropriation of fair-share revenues.

Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled modifications in the city's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the city, proportionate fair-share revenues may be used for operational modifications prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50 percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

1. In the event a schedule facility modification is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another modification within that same corridor or sector that is found to mitigate the impacts of development pursuant to the requirements of subsection 30-39(b)(3)b.
2. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in F.S. § 339.155, the city may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. Such coordination shall be ratified by the city commission through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

G. Impact fee credit for proportionate fair-share mitigation.

If the city adopts transportation impact fees, the following provisions shall apply:

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 the city's impact fee ordinance.
2. Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the proportionate fair-share agreement as they become due per the city's impact fee ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the city pursuant to the requirements of the city impact fee ordinance.
3. Major projects not included within the city's impact fee ordinance or created under subsection 30-39(b)(3)a. and b. which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government's discretion for impact fee credits.
4. The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the city's impact fee ordinance.

Section 30-3.26. Intergovernmental coordination.

A. *Cross jurisdictional impacts.* Pursuant to policies in the intergovernmental coordination element of the City of Gainesville Comprehensive Plan, the city shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

B. In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the city may enter into an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.

C. A development application submitted to the city subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:

1. All or part of the proposed development is located within .25 mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government or generates more than 1,000 net, new ADT; and
2. Using its own concurrency analysis procedures, the city concludes that the additional traffic from the proposed development would use five percent or more of the adopted peak hour LOS maximum service volume of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and
3. The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.

D. Upon identification of an impacted regional facility pursuant to subsection 30-40(c)(l)—(3), the city shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an

additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.

E. The adjacent local government shall have up to 30 days in which to notify the city of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of F.S. § 163.3180(16). Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the city.

F. If the subject application is subsequently approved by the city, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has" been satisfied.

Section 30-3.27. Method for cost escalation

This section contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages.

$Cost^{n} = Cost^{0} \times (1 + Cost\_growth^{3yr})^{n}$

Where:

$Cost^{n}$ = The cost of the improvements in year n;

$Cost^{0}$ = The cost of the improvement in the current year;

$Cost\_growth^{3yr}$ = The growth rate of costs over the last three years;

n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$Cost\_growth^{3yr} = [Cost\_growth^{-1} + Cost\_growth^{-2} + Cost\_growth^{-3}]/3$

Where:

$Cost\_growth^{3yr}$ = The growth rate of costs over the last three years;

$Cost\_growth^{-1}$ = The growth rate of costs in the previous year;

$Cost\_growth^{-2}$ = The growth rate of costs two years prior;

$Cost\_growth^{-3}$ = The growth rate of costs three years prior.

[LDI5]