

**THE OVERSIGHT COMMITTEE FOR
THE IMPLEMENTATION OF THE SECOND AMENDED INTERLOCAL AGREEMENT FOR PUBLIC
SCHOOL FACILITY PLANNING, BROWARD COUNTY, FLORIDA**

**Final Amended Minutes
Oversight Committee Public Meeting
October 11, 2017**

12:00 noon

Kathleen C. Wright Administration Center, School Board Meeting Room

1. Call to Order

Chair Stermer called the October 11, 2017 Oversight Committee meeting to order at 12:15 p.m.

2. Roll Call

Linda Houchins took roll call, and the following Committee Members were in attendance:

- Eicher, Shelley
- Freedman, Abby M.
- Good, Patricia
- Hunschofsky, Christine
- Naylor, Lew
- Olbel, Mikelage
- Resnick, Gary
- Rich Levinson, Laurie
- Schwartz, Jonathan
- Sharief, Barbara
- Stermer, Daniel J.
- Wexler, Lois

3. Approval of Minutes - August 9, 2017 Meeting

Committee Member Wexler made a motion to approve the minutes of the August 9, 2017 meeting. Committee Member Sharief seconded the motion, and the minutes were approved unanimously.

4. Additions to the October 11, 2017 Meeting Agenda

There were no additions to the October 11, 2017 meeting agenda.

5. Approval of the Final Agenda for the October 11, 2017 Meeting

Committee Member Schwartz made a motion to approve the final agenda. Committee Member Eichner seconded the motion, and the motion passed unanimously.

6. Excused Absences for October 11, 2017 Meeting

Chair Stermer advised that Committee Member Cooper had requested an excused absence. Committee Member Good made a motion to accept the request for excused absence. Committee Member Sharief seconded the motion, and the motion passed unanimously.

7. Election of Officers

Ms. Brown opened the floor for the nomination of officers. Committee Member Good made a motion to reappoint the current Officers; Chair Stermer, Vice Chair Rich Levinson, and Secretary Hunschofsky. Committee Member Wexler seconded the motion. There were no other nominations. Committee Member Good made a motion to close nominations. Committee Member Olbel seconded the motion, and the motion to close nominations passed unanimously. A vote was taken, and the motion to reappoint the current Officers passed unanimously.

8. PUBLIC INPUT

Chair Stermer asked for public input for any item not related to the Student Generation Rate and School Impact Fee Study Update or the Third Amended and Restated Interlocal Agreement for Public School Facility Planning (TRILA). He said that anyone wanting to address those two (2) items could do so when those items were heard. There was no public input on any of the other items.

9. SUBCOMMITTEE REPORTS

None

10. OLD BUSINESS

10.1 Status - Student Generation Rate and School Impact Fee Study Update

Ms. Brown said that great work had been done on the Student Generation Rate and School Impact Fee Study Update. She said there was good input from the School Board at the last School Board Workshop, a follow-up meeting with representatives of the affordable housing community had taken place, and revisions incorporating pertinent suggestions from the various cited entities had been made to the Study through the Consultants. Additionally, Ms. Brown said staff had also met with the Staff Working Group regarding the Study, and she thanked everyone for their help.

Ms. Kamp, Tindale Oliver & Associates shared the updates that had been made to the Study. She said that language was added to address the updated impact fee rate with a capped increase of 75% from the current adopted fee. She said when they analyzed the potential revenue loss from the cap, it was minor, less than 2%, and Tindale Oliver's legal representative advised that if the loss was de minimis, less than 5%, adjustments could be made if it exceeded 5%. Ms. Kamp said the added language started on page 28 of the Report.

Chair Stermer asked what staff was looking for from the Oversight Committee. Ms. Brown said staff was looking for a recommendation from the Committee to move the Study forward to the School Board for consideration and then to Broward County. Mr. Akagbosu added that the Interlocal Agreement (ILA) called for the Oversight Committee to oversee the ILA and one of the provisions in the Agreement was that the Student Generation Rate and School Impact Fee Study be updated every three (3) years. He said the School Board in collaboration with the County and the Municipalities have met that obligation. Mr. Akagbosu said the Study Update would go back to the School Board for adoption of a Resolution and then to the Broward County Commission for consideration and adoption of amendments to the Broward County Land Development Code which incorporates the Study recommendations. Chair Stermer asked Mr. Gabriel if the Committee could now recommend moving the Study forward or choose to do nothing with the Study, now that the three (3) year obligation had been met. Mr. Gabriel clarified that it was the Oversight

Committee's opportunity to make a recommendation to either do nothing with the Study or to move it forward. Committee Member Naylor asked if the Committee had to accept the complete Study or was there opportunities to make recommendations for individual adjustments. Mr. Gabriel said the Committee could make whatever recommendation it chooses. Committee Member Good asked Mr. Gabriel if the Committee made a recommendation to forward the Study to the School Board for consideration, would the Board have an opportunity to modify that recommendation, and if they did make a modification, would the Study then have to come back to the Oversight Committee. Mr. Gabriel said the Committee decides how it would like to proceed, the School Board then takes whatever action it deems appropriate and then the Study is forwarded to Broward County, who is the ultimate determiner. Additionally, he said the Board could bring any revisions made back to the Oversight Committee, but they had no obligation to do so.

Committee Member Wexler asked what happened at the School Board Workshop regarding the affordable housing issue. Ms. Brown said the Board was very supportive and asked staff to schedule a follow-up meeting with representatives of the affordable housing community. She said the direction from the Board was to expand the opportunity for more communities to be involved by looking at both low and very low-income projects and also to increase the annual allocation cap from \$25,000 to \$50,000 per project. Additionally, Ms. Brown said the Board asked staff to look closely at the process utilized to disburse the allocated funds. She said after reviewing the school impact fee waiver process, staff had discovered that there were situations where developers' timelines to redeem approved waivers had lapsed, and the money continued to sit in the coffer. She said the Board was committed to continuing to allocate \$375,000 per year toward affordable housing, and asked staff to be very clear on the process so that the funds would be used within an annual period. Committee Member Wexler said given the dramatic increases in the proposed school impact fees and the need for affordable housing, she was not prepared to support or approve the Study Update, and would speak against raising fees at the County Commission meeting until the School Board modified its policy, and asked how long that process would take. Ms. Brown said the process would entail a Resolution and revisions to School Board (SB) Policy 1161. She said staff would work with the Board to see how to fast track the process. Ms. Brown said staff had already begun working on the Resolution as well as revisions to SB Policy 1161.

Committee Member Wexler asked if the table regarding phasing in the impact fees was included in the final draft Report. Ms. Brown said a request was made to include a phase-in table for the impact fees, but it was not included in the revised Study. Discussions followed regarding the calculated school impact fee comparison (Table 11) and the calculated impact fee hybrid method, full calculated fee vs. 75% capped fee (Table 12).

Committee Member Rich Levinson commented that the School Board had talked about another component to affordable housing which would involve providing a portion of the school impact fee waivers for teachers. Ms. Brown explained that staff had looked at that component, however, after doing research, staff found that it falls outside of the School Impact Fee Waiver process. She said a different process would have to be created because currently, there is no mechanism in place for Broward County to determine whether a home buyer is a teacher. Ms. Brown said there may be new ways for the District to work with teachers, and that staff was looking at creating an opportunity for them based on the impact fees for a residence that the teacher occupies.

Committee Member Sharief said there seemed to be no agreement between the County and the District in terms of the capped rates. She said she was confused as to how they were going to reach consensus on the issues. Ms. Brown stated that the District agreed to the language suggested by the County regarding capping fees, but said the District was not comfortable going forward with the

phase-in approach. She stated that the Chief Financial Officer (CFO) advised that the phase-in approach created a challenge in meeting previous commitments and programs. Ms. Brown said that staff, along with the consultant and the CFO had reviewed all the numbers that increased by more than 50%. She said that all the numbers that were higher than 75% were capped at 75%; and as such, the extreme fee increase range from 79% to 861% no longer exists. Committee Member Sharief stated she felt another memorandum from the District was needed to tie all the pieces together.

Committee Member Naylor commented that the community does not care about percentages, but about absolute dollars and the impact of those dollars. He said affordable housing was a serious concern, and the developers needed to be encouraged to build affordable housing. Committee Member Naylor said that the impact to the County needed to be looked at because revising Policy to issue credits for something that will never happen would be a waste of time.

Committee Member Good asked why the phase-in process would be problematic to the District. The District's CFO, Judith Marte, explained that the phase-in process would bring in less dollars, and the District counted on that revenue to fund projects as well as pay down the debt service in those areas. Discussions continued regarding the phase in approach and the 75% cap for select units where the fees would be increasing by more than 75%. Chair Stermer suggested that the header on Table 12 should read: Broward County School Impact Fee at 75% cap as proposed. Further discussions continued regarding clarification of Table 12, and Ms. Kamp said that the figures in red showed the calculated rates capped at 75% from the current adopted fees.

Ms. Eichner said that much time had been spent on the methodology, but if the numbers change because of policy issues, and that change impacts the end results of the Study, what would that mean legally. Ms. Kamp stated that as long as the overall revenues are de minimis (5% or less) it would be legally acceptable. Committee Member Resnick said he agreed with devising a cap, but said he could not support the 75% based on what he knew at this point. He said that impact fees are not intended to influence development decisions, but that the proposed fees would influence what the developer determined to develop.

Chair Stermer asked about the calculation that was used to determine the phase-in 1 and phase-in 2 figures. Ms. Kamp explained that the difference between the proposed fee and the current adopted fee was divided in half and added to the current fee for the phase-in 1 figure, and the phase-in 2 figure was the new proposed fee. Discussions continued regarding the impact fee figures and how they were calculated.

Ms. Kamp talked about the student generation rates and compared the dwelling unit types and the total students per unit. She said the method was a combination of looking at both recent permitting as well as the entire unit and any data that had been collected from the past two (2) studies. Committee Member Resnick asked what the School Board was trying to achieve as a result of the numbers. Ms. Brown said it was the Oversight Committee's role to improve education. She said there had been growth and resources generated from that growth and that she believed that the School District should get its fair share. Ms. Brown said that construction costs, land costs, and infrastructure costs were going up, and said that a fair share should go to the District. She said the District was not trying to get more out of the developer or municipality, but wanted to be equitable. Ms. Brown said there was an impact on development and on the children. Discussions followed regarding school impact fees, the impact of development on the District and debt service.

Ms. Eichner said school impact fees were charged to provide additional capacity needed for new development. She said no future additional capacity was being built, countywide seats are available, and most of the impact fees go towards debt service for schools that were previously built. She said people were struggling to understand why impact fees are still being charged. Ms. Eichner suggested that perhaps the easiest way of updating the Study may have been to go back and find the costs to build the new schools, how many seats were in those schools and that would be the cost per student station. Ms. Brown said that the District continues to pay for capacity and that new development needs to be responsible for paying the impact they have on the school system. She said that the developments are receiving the benefits from the schools and are paying for capacity in the long term. Ms. Brown said that every home has an impact for the life of that home, they pay it once and it is passed on each time a new person buys the home and that is the cost for that home to be in the community. Ms. Kamp said that the School District built the capacity so that when new development comes, there would be a seat for the children.

Chair Stermer stated that the questions asked did not regard how the Study was conducted and what it says, but about outside influences that are being put on the data to get to a certain outcome. Committee Member Good thanked Ms. Brown for explaining the issue of the importance of paying for the debt service. She asked how many more years of debt service the District has. Ms. Brown said she would provide that information to the Committee. Committee Member Good also stated that she supported the 75% cap, but said it was important that the formula used be defensible. Mr. Gabriel said that it was defensible as currently presented, but if it were to be modified, then that would have to be determined. Committee Member Good asked how the 75% cap was derived and said the philosophy behind the phase-in approach needed to be clearly defined.

Chair Stermer took public input regarding the Student Generation Rate and School Impact Fee Study Update, and the following members of the public spoke:

Skeet Jernigan, President of the Community and Economic Development Council, said he understands the importance of school impact fees and has supported the fees provided those fees were done appropriately and legally. He talked about the dual rational nexus test and several court cases. Mr. Jernigan said that state law does not contemplate utilization of school impact fees to pay debt service. He said that Broward County is controlled by Broward County Ordinance 8937 which states that "a separate fund will be created for each of the service areas and the fees will be spent within a reasonable period of time from collection within the service area in which they were collected for the acquisition of school sites or the provision of facilities which will substantially benefit the residents of development". Mr. Jernigan said he did not believe the Study Update could be utilized for the payment of debt service for construction done in the past which resulted in today's capacity. He talked about the District's Capital Facilities Plan, the fact that the District's revenues are going down, and said that school impact fees are not a funding source for the School Board's general revenue fund. Mr. Jernigan said that impact fees are a reimbursement for the impact on the system. He said impact fees should only be paid for new capacity generated by the need from growth. Mr. Jernigan said he would be monitoring the issue very closely through the entire process.

Committee Member Freedman said that when the District builds a school which is later deemed unsafe and the building is demolished, the District has no legal obligation to replace what was removed.

Truly Burton, Executive Vice President of the Builders Association of South Florida said she supported the presentation by Mr. Jernigan. She said one of the things the Builders Association

struggled with was housing for working families. Ms. Burton said that any government fee that was adopted, would be passed along to the home buyer or renter by the builder in the form of higher prices. She talked about the issue of housing affordability, excess capacity and debt service. Ms. Burton said in 2015, the Florida legislature adopted a more stringent set of rigorous tests that came from a United States Supreme Court case that required a rough proportionality between the facilities cost and the fees charged.

Committee Member Hunschofsky stated that developers have the option of lowering their prices and profits if they are concerned about affordable housing. She said she would like to move forward one way or another with the Study Update. Mr. Gabriel said there was no obligation on the Oversight Committee as a group to give a recommendation, but only an obligation to move it forward. Chair Stermer asked if when the consultant speaks about talking to legal counsel, she was speaking of her own legal counsel or of Mr. Gabriel, the District's cadre attorney. Mr. Gabriel stated that he was not the legal counsel for the consultants, and had not advised them legally. Chair Stermer said he wanted it to be clear that when the consultant said she had a legal opinion, she was not talking about the School Board attorney or cadre attorney. Committee Member Wexler said if the Study Update moved forward to the County Commission, the School Board attorney would have to defend the issues and answer any questions the County may have. She requested that the District's outstanding debt amount be sent to the Oversight Committee members.

Committee Member Hunschofsky made a motion to move forward the Student Generation Rate and School Impact Fee Study Update to the School Board for consideration. Committee Member Naylor seconded the motion. Chair Stermer asked Ms. Houchins to call the roll, and the motion passed as follows:

- Committee Member Freedman Yes
- Committee Member Good Yes
- Committee Member Hunschofsky Yes
- Committee Member Naylor Yes
- Vice Chair Rich Levinson Yes
- Committee Member Schwartz Yes
- Chair Stermer Yes
- Committee Member Wexler Yes

Chair Stermer stated that it was imperative that when the Study Update is agendized for the School Board, the Oversight Committee and all interested parties receive notice.

10.2 Status - Third Amended and Restated Interlocal Agreement for Public School Facility Planning

There was no discussion on Item No. 10.2

11. INFORMATIONAL ITEMS

11.1 October 5, 2017 SWG Draft (Not Approved) Minutes (Not Currently Available)

There was no discussion on Item No. 11.1

11.2 Next Scheduled Meeting - January 10, 2018

There was no discussion on Item No. 11.2.

12. ADJOURN

Chair Stermer adjourned the Oversight Committee Meeting at 2:00 p.m.

Respectfully submitted by:



Christine Hunschofsky, Secretary

10-11-17

Date