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Insights

Orange County School Board Declares It Will No Longer Enter into CEAs; Developers Must Rely on Joint Approval Process

Article
06.30.2020

On June 23, 2020, the Orange County School Board voted to approve its "Declaration Relating to the HB 7103 Impact on School Overcrowding Mitigation," which declared that the School Board will no longer enter into Capacity Enhancement Agreements (CEAs) with developers. Instead, developers must utilize a "joint approval" process from 2004 that has never been used.

The Declaration is the School Board's latest attempt to reconcile the County's Charter with HB 7103, which was passed by the Florida Legislature and signed into law in 2019. In Orange County, Capacity Enhancement Agreements were devised as a means of satisfying a Charter provision prohibiting the approval of a developer-initiated comprehensive plan or rezoning for development where school capacity is not available.

Impact fees, also paid by developers, often do not cover the full amount of needed new school capacity. Under CEAs, developers pay the additional amount of needed capacity not covered by impact fees and the School Board certifies that capacity exists for the development.

In effect, HB 7103 eliminated CEAs as a method of meeting capacity created by new development. Under HB 7103, local governments must give dollar-for-dollar impact fee credits for "any contribution" related to public education facilities. As a result, any capacity added under a CEA would be entirely offset by impact fee credits to the developer. In response, the School Board has not entered into any CEAs since HB 7103 became law.

In the Declaration, the School Board declared that it could no longer enter into CEAs to certify capacity because "HB 7103 makes it impossible to mitigate the impacts of school overcrowding from new development that would cause or exacerbate school overcrowding." Instead, the School Board declared that developers must rely on "the process prescribed by the voters for joint approval of all FLUM and rezoning applications that cause or exacerbate school overcrowding."

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The joint approval process requires developers to receive the approval of all "significantly affected local governments," which is defined in the County's Charter as any local government with more than 10% of the student population of an impacted school. The joint approval process has been available since 2004, but has never been utilized.

For more information about the impact of the School Board's Declaration, contact Lowndes' Land Use, Zoning & Environmental Group.