



# CITY OF ORLANDO

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Office of  
**Vicki Vargo**  
City Commissioner

On Monday, April 19, 2004, Commissioner Vicki Vargo, Commissioner Betty Wyman, and Commissioner Ernest Page, and Commissioner Phil Diamond, met for a luncheon meeting. Also attending were Doug Doudney, Tom Daly, and Ellen Avery-Smith. The meeting took place at Orlando City Hall, 400 S. Orange Avenue, Conference Room R. The meeting began at 12:00 p.m. and adjourned at 12:55 p.m.

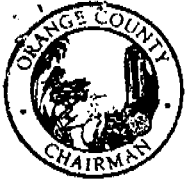
Topics discussed included City Council agenda items, zoning and land use issues, city budget, finance, city operations and personnel issues, downtown development, economic incentive issues, traffic, capital improvements, Interstate 4, and school capacity.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jeanne Rosenthal".

Jeanne Rosenthal  
Aide to Commissioner Vicki Vargo  
April 21, 2004

**EXHIBIT ATTACHED**



Interoffice Memorandum

March 29, 2000

TO: Board of County Commissioners  
FROM: Mel Martinez, Orange County Chairman  
RE: Land Use Approvals and School Overcrowding

In recent weeks and months, the Board has faced a number of requests for residential land-use approvals in areas of the county where public schools are seriously overcrowded. The Board's frustration over the apparent lack of options to address the problem has once again been evident, and I can assure you that I very much share the frustration.

I have been perplexed with the issue since shortly after taking office, when I realized that, as Mr. Wilkes explained at Board meeting last month, the Florida legislature has "turned school concurrency upside down." Unlike road concurrency, where counties and cities are *prohibited from issuing* certificates of occupancy in areas where roads are congested, under the "school concurrency" statute we may be *prohibited from denying* C.O.'s where schools are overcrowded unless we have gone through an extraordinarily onerous, perhaps impossible, obstacle course. Obviously, as we contemplate a new approach, we must be careful to strike a balance, taking into account the rights of property owners and the value that the development community adds to our local economy.

With the able assistance of the members of the Public Schools Task Force that I formed last year, I still intend to consider implementation of school concurrency. However, implementing school concurrency is so difficult that, I am told, not one county or city in Florida has succeeded in doing it. In my view, counties and cities in Florida are hardly indifferent to the issue of school overcrowding. Instead, counties and cities are stymied by a statute that seemingly turns a deaf ear to the educational needs of our children.

Because school concurrency has proven to be such an ineffective and illusory land-use tool, I directed our planning and legal staffs last year to review once again the state of the law in Florida and to determine where in the several stages of the land use approval process, if at all, school overcrowding legally can be considered in the Board's decisions to grant or deny approvals. I wanted to know whether the concurrency statute acts to preempt other sources of legal authority such as charter county home-rule powers. The analysis has been completed, and I

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have sought input from a number of stakeholder groups, such as the Home Builders Association of Mid Florida, the Orange County PTA, the Board of Realtors, and the Orange County Homeowners Association. Based on our staff's analysis and input from these groups, I have directed several changes be undertaken with respect to our land use approval process.

First, on all requests for amendments to the Future Land Use Map in the comprehensive plan, and on requests for residential re-zonings (including PD's and PD amendments), where the map amendment or the requested re-zoning will have the effect, if approved, of increasing residential densities, the request will be sent to the Orange County Public Schools for review. If the review and analysis by OCPS determines that the affected schools are seriously overcrowded and that the increased residential densities will substantially aggravate the overcrowded conditions, our staff will render a recommendation of denial of the map amendment or re-zoning.

The foregoing will also apply to requests for approval of any "development of regional impact," as well as requests for amendments to development orders for any previously approved DRI's.

However, with respect to approvals of preliminary subdivision plans for single-family residential projects, approvals of residential plats, approvals of apartment construction plans, and issuance of building permits, I am persuaded by our staff that any attempt to deny approval should be postponed for now. Under current law the likelihood that denials of these types of applications would be overturned by the courts is much higher than for re-zonings. Our ostensible recourse at those late stages in the land use process is to implement school concurrency -- a task that, as I said, is onerous and perhaps impossible under the requirements and constraints imposed in recent years by the legislature.

Actually, with respect to PSP's, plats, apartment construction plans, and building permits, our real recourse might be to convince the legislature to revise school concurrency laws so that they are similar to the much more workable and effective concurrency rules governing roads, utilities, stormwater drainage, and other infrastructure. I have directed our staff to pursue the school concurrency portion of our legislative priorities with those changes in mind.

Of course, school overcrowding is not affected by commercial, office, or industrial development, so there will be no changes with respect to the processing of nonresidential land-use applications.

Our staff is completing its discussions with OCPS staff regarding the types of information and analysis that OCPS will provide for residential FLUM amendments, residential DRI approvals and amendments, and residential re-zonings. I expect that these types of staff recommendations of denial will begin to appear on the Board's agenda within the next several weeks.

Recognize that there may be exceptions. For example, in areas where developers are willing or are required by our regulations to donate school sites, our staff may opt not to recommend denial. However, as a general rule, school overcrowding will be a major factor in the Board's decision making in the future.

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I am optimistic that, if the Board elects to deny FLUM amendments or residential re-zonings or DRI approvals or amendments based on school overcrowding, we can defend our decisions against the inevitable court challenges. However, the County Attorney advises that the state of the law does not provide certainty regarding the outcome. If it happens that the courts won't support us, we will then turn to the legislature for relief. For now, however, we will take this most difficult and frustrating of issues and do what we can.

I invite you to support this new approach to this long-standing issue. By working together and making tough decisions we can make a difference in this important area. If you have questions, please contact Bruce McClendon or Tom Wilkes.

MM:wcc

cc: Members, Orange County School Board  
Members, Orange County Planning and Zoning Commission  
Dennis Smith, Superintendent, Orange County Public Schools  
Ajit Lalchandani, Orange County Administrator  
Dan Murphy, Chief of Staff, Orange County Chairman's Office  
Byron Brooks, Deputy County Administrator  
Tom Wilkes, Orange County Attorney  
Bruce McClendon, Director, Growth Management & Environmental Resources Dept.  
Bill Baxter, Director, Public Works Department  
David Heath, Manager, Planning Division  
Mitch Gordon, Manager, Zoning Division  
Oscar Anderson, Director of Public Affairs

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May 17  
May 04

**PROPOSED  
CHARTER AMENDMENT  
2004-12**

Be it proposed by the Orange County Charter Review Commission:

Section 1. Article VII of the Orange County Charter is revised to read:

**ARTICLE VII**

**GENERAL PROVISIONS**

...

**Section 704. Conflict of County Ordinances with Municipal Ordinances; Pre-emption**

A. No county ordinance shall be effective within a municipality if the municipality maintains an ordinance covering the same subject matter, activity or conduct as the county ordinance provided, however, that county ordinances shall be effective within municipalities and shall prevail over municipal ordinances only when the county shall set minimum standards for (1) regulating adult entertainment and (2) protecting the environment by prohibiting or regulating air or water pollution, and only to the extent that such minimum standards are stricter than the applicable municipal standards.

B. The intent of this section is that no person within a municipality shall be governed simultaneously by two (2) sets of ordinances covering the same subject matter, activity or conduct, except in matters of minimum adult entertainment, pollution regulatory standard. In absence of an ordinance within a municipality on a subject, the county ordinance on that subject shall govern.

C. To the extent not inconsistent with general or constitutional law, and notwithstanding any municipal ordinance to the contrary, a county ordinance may provide that residential rezonings and amendments to county and city comprehensive plans to approve or increase residential land uses may take effect only if approved by both the board of county commissioners and the governing board of an affected city when:

(a) the school zone for at least one public school to be affected by the increase in residential land uses lies partly inside the affected city and partly outside the affected city; and

(b) the school district cannot certify to the county and the affected city that the school, the zone for which straddles the city's boundaries, can

44 accommodate the additional students that will result from the increase in  
45 residential land uses.  
46

47 If the school's zone lies within the boundaries of more than one city, the ordinance must require  
48 the approval of the governing boards of all affected cities. Further the requirements of the  
49 ordinance must apply equally to land-use approvals of both the county and the affected city or  
50 cities. Finally, the board of county commissioners may include in the ordinance such terms,  
51 requirements, limitations, exceptions, and other provisions as may be necessary or useful to  
52 protect property rights and carryout the intent and purposes of this paragraph.  
53

54 **Section 2. Intent.** With respect to the revision of Article VII in section 1, the Charter  
55 Review Commission expressly declares its intent as follows:  
56

- 57 (a) To create a framework whereby Orange County government and the  
58 municipalities located therein can create a cooperative intergovernmental  
59 framework to maximize the quality of the Orange County Public School  
60 System.  
61 (b) To recognize that the school system in Orange County is a regional system  
62 that transcends local governmental jurisdictional boundaries.  
63

64 **Section 3. Referendum and Ballot Summary.** The Charter Review Commission hereby  
65 calls a referendum to be held at the General Election on November 2, 2004, as required by  
66 section 702 of the Charter, at which time the electors of Orange County will consider the  
67 revision set forth in section 1. As required by section 101.161 of Florida Statutes, the following  
68 ballot title and ballot summary shall be transmitted to the Orange County Supervisor of Elections  
69 for consideration by the electors at the referendum:  
70

71  
72  
73 *[Ballot title and summary to be drafted]*  
74  
75  
76

77 **Section 4. Codification and Conforming Changes.** The Board of County Commissioners  
78 is authorized to direct the publisher of the Charter and the Orange County Code to codify only  
79 the revision of Article VII in section 1 and to refrain from codifying and publishing sections 2, 3,  
80 and 5 and this section 4. The board is further authorized to make such changes in the other  
81 articles of the Charter, and to authorize the publication and codification of such changes in the  
82 other articles, as is necessary to conform them to the revision in section 1.  
83

84 **Section 5. Effective Dates.** Section 3 and this section 5 shall take effect upon approval by  
85 the Orange County Charter Review Commission. All other sections shall take effect on January  
86 1, 2005, but only if the revision to Articles VII set forth in section 1 is approved by a majority of  
87 the electors voting on the question at the referendum contemplated in section 3.  
88

89 # 243307 v1  
90

**ORANGE  
COUNTY  
GOVERNMENT  
FLORIDA  
MEMORANDUM**

April 9, 2004

TO: Scott Justice, Charter Review Commission  
FROM: Teresa S. Jacobs, Commissioner, District #1 *T.S.J.*  
SUBJECT: School Capacity Charter Amendment

As you are aware, two weeks ago, four members of the Orlando City Council voted to rezone property in the Dr. Phillips area to allow 150 multi-family homes over the objections of Orange County Public Schools (OCPS) Superintendent Ron Blocker.

Anywhere else in the state this would have been viewed as business as usual, but not here in Orange County where, four years ago, the Orange County Board of County Commissioners began the practice of denying rezoning and land-use amendments that would aggravate school overcrowding unless the Orange County School Board certified that it could handle the additional students. Not once, during that time, has our board deviated from that practice.

Following the County's lead, the City of Orlando in 2002, along with all other municipalities except for Eatonville, entered into interlocal agreements with OCPS and Orange County that require each jurisdiction to consider the impact of residential rezonings and land-use amendments on overcrowded schools.

To my knowledge, this was the first time, since executing that agreement, that the City of Orlando approved a rezoning over the objections of the School Board.

As a result, the School Board is considering busing the students generated by this development to other less crowded schools; as well they should.

You and I share many of the same concerns about the City of Orlando's recent decision, and I understand you are considering a charter amendment to give countywide jurisdiction to future ordinances that pertain to school concurrency. I believe the intent of this amendment is to give

**COMMISSIONER TERESA S. JACOBS, DISTRICT 1**

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Scott Justice, Charter Review Commission

April 9, 2004

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greater oversight to Orange County over decisions made by municipalities. However, in 1998 the Florida legislature amended concurrency statutes, rendering school concurrency largely ineffective.

For instance, under current law, local governments are prohibited from denying development approvals based on school overcrowding if there is capacity in any school within miles of the school impacted by the development or, in some cases, if there is capacity anywhere else in the county.

Due to the limitations of school concurrency, please give favorable consideration to my request to introduce an amendment to the charter that would allow Orange County to adopt an ordinance to ensure that all citizens in Orange County have fair representation on land-use decisions that will exacerbate school overcrowding.

I raise the issue of fair representation because most of the children zoned for the three impacted schools (Dr. Phillips Elementary, Southwest Middle and Dr. Phillips High School) live outside the City limits. Furthermore, no City residents are currently zoned for Dr. Phillips Elementary School, the elementary school currently slated to accommodate these additional students and arguably the most severely impacted of the three schools. Likewise, less than 15% of the students zoned for Southwest Middle School are City residents.

For that reason, I seek your assistance in offering a charter amendment to provide for dual approval of residential rezonings and land-use amendments in those cases where the impacts will be felt by students across jurisdictional lines and OCPS indicates it is unable to handle the additional students. With your assistance, I would like the Charter Review Commission to consider adding, as a third prong, the following language to proposed charter amendment 2004-4:

3. *To the extent not inconsistent with general or constitutional law, a county ordinance may provide that residential rezonings and amendments to county and city comprehensive plans to approve or increase residential land uses may take effect only if approved by both the board of county commissioners and the governing board of an affected city when:*

- a. *the school zone for at least one public school to be affected by the increase in residential land uses lies partly inside the affected city and partly outside the affected city; and*
- b. *the school district cannot certify to the county and the affected city that the school, the zone for which straddles the city's boundaries, can accommodate the additional students that will result from the increase in residential land uses.*

*If the school's zone lies within the boundaries of more than one city, the ordinance must require the approval of the governing boards of all affected cities. Further the requirements of the ordinance must apply equally to land-use approvals of both the county and the affected city or cities. Finally, the board of county commissioners may*

Scott Justice, Charter Review Commission  
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*include in the ordinance such terms, requirements, limitations, exceptions, and other provisions as may be necessary or useful to protect property rights and carryout the intent and purposes of this paragraph.*

Thank you for your consideration of this request and for volunteering your time and expertise to serve the citizens of Orange County.

TSJ/tp

c: Richard T. Crotty, Orange County Chairman  
Orange County Board of County Commissioners  
Charter Review Committee  
Alison Yurko, Attorney, Thomas P. Callan, P.A.

2000 CHARTER REVIEW COMMISSION

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*African*

Revised 6/19/03

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Revised 2/17/04

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