

Office of School Facilities  
Jaime G. Torrens, Chief Facilities Officer

**SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE:**

- 1) **A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG THE SCHOOL BOARD, CITY OF NORTH BAY VILLAGE AND CLPF-NBV, L.P., SUCCESSOR IN INTEREST TO ZF DEVELOPMENT, LLC, IN CONNECTION WITH CONSTRUCTION OF A NEW 285-UNIT RESIDENTIAL DEVELOPMENT, LOCATED AT 8000 WEST DRIVE, PROVIDING FOR MONETARY PROPORTIONATE SHARE MITIGATION PURSUANT TO THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING IN MIAMI-DADE COUNTY; AND**
- 2) **ANY OTHER DOCUMENTATION THAT MAY BE REQUIRED TO EFFECTUATE IMPLEMENTATION OF THE AGREEMENT**

**COMMITTEE: FACILITIES PLANNING AND CONSTRUCTION**

**LINK TO**

**STRATEGIC PLAN: FINANCIAL EFFICIENCY/STABILITY**

Background

CLPF-NBV, L.P., successor in interest to ZF Development, LLC ("developer"), received site plan approval from the City of North Bay Village ("City") for a 285-unit residential development ("Residential Development") on approximately 4.47 acres, located at 8000 West Drive, North Bay Village (see location map), contingent upon obtaining a school concurrency determination from the District, in accordance with the terms of the Interlocal Agreement for School Facility Planning in Miami-Dade County ("ILA").

Pursuant to State Statutes and the ILA, the Residential Development application was reviewed by the District for compliance with Public School Concurrency. The review yielded that the applicable Level of Service ("LOS") standard was met at the elementary and middle school levels, but is deficient by six (6) seats at the impacted senior high (Miami Beach Senior High School).

### Proportionate Share Mitigation

Pursuant to the ILA, where there is insufficient capacity to address the impacts of a proposed development, representatives of the applicant, impacted local government and District (collectively "the Parties") are to discuss ways of mitigating the development's impact, including proportionate share mitigation options ("Mitigation"). After several meetings, the Parties have reached consensus on Mitigation, subject to Board and City approval; this also allows the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Agreement ("Agreement"), pursuant to the ILA. Under the governing provisions, the minimum acceptable mitigation project is a classroom; in this case, to address the deficiency (i.e. six senior high school student stations), Mitigation by the developer will be a monetary contribution equal to the cost of one senior high school classroom (equivalent of 25 senior high student stations) (the "School Project"). A line item in the amount of \$754,800 (the "Mitigation Cost") will be added to the District's Facilities Work Program for the School Project as part of the next update. This amount was derived based on the cost per student station, as published by the State of Florida DOE, for October of 2014, the date by which implementation of the School Project would likely start. It should be noted that as required under state law and the ILA, the developer will be eligible to receive Educational Facilities Impact Fee Credits in an amount estimated at \$427,500. The final amount of the Educational Facilities Impact Fee Credit will be adjusted to reflect the actual impact fees assessed by Miami-Dade County ("County") for the Residential Development.

Discussion on School Project options included: (1) possible conversion of Treasure Island Elementary School into a K-12 Educational Facility, subject to further vetting internally with all relevant District offices, and Board approval; or (2) creation of twenty-five (25) high school student stations at Miami Beach Senior High School. Selection of the applicable School Project shall be at the sole discretion of the School Board.

### Mitigation Banking

As stated above, the School Project will yield twenty-five (25) student stations, or nineteen (19) seats beyond the six (6) student stations required to address the Residential Development's impact. Pursuant to the governing ILA, the developer will retain the right to transfer these nineteen (19) seats to future residential developments affecting the same Concurrency Service Area and also in need to provide mitigation at the senior high school level, through a Mitigation Bank to be established and entirely administered by the District.

### Public School Concurrency Proportionate Share Mitigation Development Agreement

The Agreement between the Board, City and developer shall contain, substantially, the following terms and conditions:

- the developer shall make an upfront monetary contribution to the Board of \$754,800, which is the estimated cost of constructing twenty-five (25) high school student stations based on the October 2014 cost per student station published by the DOE;

- the funds shall be used by the District to provide these additional high school student stations in one of the two ways noted above, with the final selection to be made at the sole discretion of the School Board;
- the School Project is to be added to the District's Facilities Work Program at the time of its next annual update following the execution of the Agreement and upon receipt of the monetary contribution from the developer, most likely as part of the preparation for the FY 2013-14 five-year work plan cycle;
- upon the full execution of the Agreement by all appropriate Parties and receipt of payment from the developer, the District shall issue a Finding of Available School Facility Capacity ("Finding"). Issuance of Finding by the District shall be a pre-condition to issuance of building permits by the City for the subject Residential Development;
- as consideration for the developer's up-front monetary contribution, the District shall provide an Educational Facilities Impact Fee Credit, estimated at Four Hundred Twenty-Seven Thousand Five Hundred Dollars (\$427,500.00), toward any Educational Facilities Impact Fees imposed by County ordinance for construction of the Residential Development. The final Educational Facilities Impact Fee Credit amount shall be determined by the County, pursuant to the then current Miami-Dade County School Impact Fee Ordinance;
- the selected monetary contribution, which will provide for the cost of construction by the District of twenty-five (25) senior high school seats, results in nineteen (19) seats in excess of the six (6) seats needed to be mitigated by the developer. As such, the developer has the right to transfer some or all of the excess nineteen (19) seats to future residential developments, should such a need arise. In this regard, the District shall establish and administer a Mitigation Bank and mitigation banking process, which, in this instance, will have an initial quantity of nineteen (19) Banked Seats. The estimated reimbursable value of each Banked Seat has been established at \$17,226.32 (total upfront contribution minus the estimated amount of impact fees to be paid divided by the number of banked seats). This estimated reimbursable value shall be adjusted to reflect actual total Educational Facilities Impact Fees assessed by the County, and no reimbursement to the developer shall occur until the impact fee amount to be credited is fully reconciled by the County and determined to be final;
- Banked Seats may be purchased by future residential developments affecting the same Concurrency Service Area up to six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time;
- future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has sufficient number of available seats to provide for the entire school capacity deficiency. In the event that in the future, multiple Mitigation Banks are created for the same Concurrency Service Area, the Banked Seats

shall be transferred to future residential developments in the order in which each Mitigation Bank was created;

- the Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- the developer may assign its rights, obligations and responsibilities under this Agreement to a third party purchaser of all or any part of fee simple title to the Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties;
- the developer shall pay all recordation costs to the District necessary to record the Agreement and any related documentation, including without limitation, Assignments, if any, and Releases;
- in the event of any dispute among the Parties, each Party shall be responsible for its own Attorney's fees, and the Parties waive trial by Jury in any action, proceeding or counterclaim brought by any Party against any other Party or Parties with respect to any matter arising under this Agreement; and
- for purposes of this Agreement, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals required under the Agreement, including, without limitation, issuance of reports.

The Agreement will be reviewed by the School Board Attorney's Office prior to execution. Both Counsel for the City and Counsel for the developer have reviewed the Agreement and indicated their concurrence with the proposed terms and conditions.

**RECOMMENDED:** That the School Board of Miami-Dade County, Florida, authorize the Superintendent to finalize negotiations and execute:

- 1) a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among the School Board, City of North Bay Village and CLPF-NBV, L.P., successor in interest to ZF Development, LLC, in connection with construction of a new 285-unit residential development, located at 8000 West Drive, providing for monetary proportionate share mitigation pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County; and
- 2) any other documentation that may be required to effectuate the implementation of the Agreement.

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# Location Map

