Office of Superintendent of Schools
Board Meeting of May 21, 2008

May 21, 2008

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

SUBJECT: **THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA:**

1. **PROVIDE DIRECTION ON WHETHER TO ALLOW PROPORTIONATE SHARE MITIGATION TO ALWAYS BE IN THE FORM OF CASH, IN THE EVENT OF AN PASSE, AND SUBJECT TO THE CONDITIONS ENUMERATED IN SECTION 9.2(f), PAGE 26, OF THE COUNTY ILA;**

2. **AUTHORIZE THE SUPERINTENDENT AND THE CHAIR TO FINALIZE, EXECUTE AND FORWARD TO MIAMI-DADE COUNTY THE COUNTY ILA; AND** REVIS

2. **UPON ADOPTION BY MIAMI-DADE COUNTY OF THE COUNTY ILA, FURTHER AUTHORIZE THE SUPERINTENDENT AND CHAIR TO EXECUTE AND FORWARD TO ALL NON-EXEMPT MUNICIPALITIES THE AMENDMENT(S) IN A FORM ACCEPTABLE TO THE SCHOOL BOARD ATTORNEY.**

COMMITTEE: **FACILITIES AND CONSTRUCTION REFORM**

LINK TO STRATEGIC PLAN: **IMPROVE CONSTRUCTION SERVICES**

Introduction
On April 16, 2008, as proposed in Board Item H-13 proffered by Vice Chair Perla Tabares Haritman, the School Board authorized the following action:

1. Authorized the Superintendent and the School Board Attorney to negotiate a new Interlocal Agreement for School Concurrency by and between The School Board of Miami-Dade County and the Board of County Commissioners of Miami-Dade County (County ILA), based upon additional input and discussions on the remaining pending issues, with the understanding that the Board would concede on the removal of the requirement for all non-exempt municipalities to agree on future amendments to the County ILA;

2. Directed the Superintendent and the School Board Attorney to bring the negotiated and recommended County ILA for approval by the School Board at the May 21, 2008 meeting; and

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3. Upon approval by the School Board and the Board of County Commissioners of the finalized County ILA, convene a meeting between the Miami-Dade Board of County Commissioners of Miami-Dade County and the School Board.

Additional Information

District and County staff have been working diligently to resolve the differences between the Interlocal approved by the Board and 23 out of the 28 non-exempt municipalities (Consensus ILA), and the Interlocal approved by the County in February of this year (Original County ILA). As reported by District staff prior to that time, reasonable solutions had been identified for 15 out of the original list of 18 items of disagreement. Immediately preceding the Board's April 16, 2008 meeting, the remaining 3 areas needing additional discussion included: 1) the geographic quadrants, 2) proportionate share mitigation, and 3) unanimous approval of future amendments to the ILA by all non-exempt municipalities. The Board, at its April 16th meeting, conceded to the County on item 3 and voted to allow future ILA amendments to be approved by a two-thirds majority vote of all non-exempt municipalities. However, the Board acknowledged that this change would only become effective upon the unanimous approval of this measure by those municipalities. This left only two items needing further discussion between the two parties.

Subsequent to the April 16th Board meeting, District and County staff met to discuss the remaining two items. As of May 7, 2008, the results of the staff discussions were as follows:

Geographic quadrants: County staff requested consideration be given to a different approach where in the event mitigation were to be required of an applicant as a result of school concurrency, an additional level of review would be conducted to ascertain whether allowing additional shifting to a Concurrency Service Area (CSA) in the adjacent geographic quadrant would actually eliminate the need for mitigation. As part of that process, County staff proposed that certain conditions would be tested. Among them, and as a hypothetical example, in order for the additional shifting to occur to a different quadrant, all the seats needed for the particular development would need to be available at that CSA, and the distance from the development to the school in the adjacent quadrant could not exceed the distance to any eligible CSA in the "home" quadrant. In the discussions, District staff pointed out that this was a major departure from the current concurrency management system already agreed to by the Board and 23 of the 28 municipalities and could not be changed through a bilateral agreement with the County. The current concurrency management system has been determined to be sound by the DCA and there have been no instances where it has been shown to be deficient; as such, there is no compelling reason to deviate from a process that was established pursuant to a well thought out and deliberate process and that provided an opportunity for participation by all affected. District staff proposed instead that the geographic quadrants remain in place, but offered as a compromise, that six months after the implementation of school concurrency by the County, there be a joint review of the results. County staff indicated they would consult with the County Manager's Office and have now advised that they will recommend the quadrants stay in place with the understanding that their impact will be assessed as part of the ILA's annual review; if issues should arise during implementation, any party may request an adjustment to the

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shifting of impacts to another quadrant subject to a number of specific criteria. These criteria are outlined in section 9.2(a) of the County ILA (pages 18 and 19) re-issued to the Board as an attachment to the revised supplemental information memorandum. REVISED

Mitigation: The County expressed concern over the fact that lack of agreement by the School Board on the form of mitigation in connection with a particular application would prevent the County from issuing a development order and result in a "takings" claim, which the County would then have to litigate. It is clearly not the intent of the mitigation negotiation process to create an impasse or the type of situation the County fears could happen; conversely, it is also not the intent of the mitigation negotiation process to place the Board in a situation where its decision on appropriate mitigation could be completely disregarded or overridden by one of the other parties to the Interlocal.

The County previously proposed language that, in instances where the applicant and the Board differed on what appropriate mitigation is, the local government would have the discretion to accept the equivalent value of the mitigation in cash, and to receive that mitigation payment on behalf of the School Board. While District staff made it clear that it would be unacceptable to remove the Board's discretion from this important decision-making process, in an attempt to allay the County's concerns, the District offered language that set forth a process for those instances where an impasse may be reached, and supporting the notion of having mitigation translated into a cash equivalent as long as: 1) it is not mandatory on the School Board and therefore the School Board retains the ability to make the final decision; 2) the cash payment can be applied to a project to be added to the first three years of the Capital Plan; and 3) the project fully meets the impact of the development. County staff indicated it would review the language and advise. The most recent communication from County staff is that they would still request that in the event of an impasse, a developer have the ability to always translate mitigation into a cash payment, subject to conditions 2 and 3 referenced above and more specifically detailed on page 26 of the County ILA; this would make this option mandatory on the School Board and staff is seeking policy direction from the Board on this matter. ADDED

"Takings" Clause: In addition to the mitigation language described above, the County also proffered a clause that would seek to provide it with a safeguard against any "takings" claims by applicants denied a development order as a result of unmet school concurrency. A review by the School Board Attorney's Office and the Board's special counsel on school concurrency of the potential implications of including such a clause in the County ILA, yielded concerns and an unfavorable recommendation. The County is aware of this position.

Although not one of the pending issues, during the meetings with the County it became apparent that there may be a desire on the part of the County to revisit the question of how future amendments to the Interlocal would be handled. The Board, as noted above, conceded on the issue of unanimity and accepted that future amendments would require approval by the School Board, County and two-thirds of the municipalities. At the most recent meeting with County staff on May 5th, the County alluded to a possible different configuration which would decrease the percentage of municipalities required for approval of future amendments from the two-thirds already approved by the Board to

a majority. County staff advised it would follow up on this matter and as of May 7th, no additional information or requests had been received by the District on this topic.

A County ILA has been prepared reflecting the consensus reached on 17 out of the 18 items of disagreement for consideration by the School Board and subsequently by the Miami-Dade Board of County Commissioners. The County ILA will be submitted to the Board as supplemental information and a copy filed with the Citizens' Information Office. REVISED

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

1. provide direction on whether to allow proportionate share mitigation to always be in the form of cash, in the event of an impasse, and subject to the conditions enumerated in section 9.2(f), page 26, of the County ILA; and

2. authorize the Superintendent and the Chair to finalize, execute and forward to Miami-Dade County the County ILA; and

2. upon adoption by Miami-Dade County of the County ILA, further authorize the Superintendent and Chair to execute and forward to all non-exempt municipalities the amendment(s) in a form acceptable to the School Board Attorney.

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