South
Florida
Regional
Planning
Council

MEMORANDUM

AGENDA ITEM #6a)1

DATE: JULY 6, 2009

TO: EXECUTIVE COMMITTEE

FROM: STAFF

SUBJECT: CHAPTER 2009-96 (CS/CS/SB 360) SENATE BILL 360

On June 1, 2009, Governor Crist signed SB 360 into law. Council staff has participated in several meetings with local planners, transportation consultants, and land use attorneys who represent both local governments and developers. The last meeting occurred on June 10, 2009, and focused on the following:

- Core questions that should be presented to the Florida Department of Community Affairs (DCA);
- Short-term or immediate assistance may be needed for local governments and the development community to conduct the transition to the new growth management requirements;
- Long-term assistance may be needed for local governments and the development community to address mobility issues; and
- Voluntary intergovernmental coordination tools could be employed to preempt and lessen the use of the mandated Regional Dispute Resolution Process.

As a result of this meeting, a series of questions were developed and sent to DCA; the letter is attached. During his Webinar on June 12, 2009, Secretary Pelham provided interpretations regarding the legislation. The Secretary indicated that SB 360 makes changes to portions of growth management statutes (Chapters 163, Part II, and 380, Part I, Fla. Stat.), but each statute must be read in the context and entirety. Secretary Pelham's primary interpretations were:

- The basic concepts of SB 360 are to: (1) direct future development to targeted areas; (2) promote infill; and (3) eliminate state concurrency.
- A county's qualification as a Dense Urban Land Area (DULA) is based on its population and land area as well as the municipalities therein. A municipality that is within a county that meets the DULA definition **does not** automatically qualify as a DULA. In order to be a DULA, a municipality must have at least 1,000 people per square mile and a minimum population of 5,000. (Council staff calculation of municipal and county densities is attached. It should be noted that annexations and contractions could affect these preliminary calculations.)
- The legislation eliminated state-mandated concurrency. Local governments must amend their Comprehensive Plans in order to abolish or revise existing transportation concurrency provisions as a matter of local law or to adopt other approaches. Until a local government effectively amends its Comprehensive Plan, existing transportation concurrency provisions continue to apply in TCEA's as a matter of local law.
- SB 360 does not preclude a local government form adopting regional impact analysis procedures.
- SB 360 does not eliminate Areas of Critical State Concern requirements, including hurricane evacuation.

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- Within two years, a local government must adopt into its Comprehensive Plan land use and transportation strategies to support and fund mobility in the TCEA. The strategies must include alternative modes of transportation. Local Governments are encouraged to adopt complementary strategies that reflect the Region's Vision for its future.
- DCA will undertake rulemaking to implement SB 360 and HB 697 (2008 Session). The mobility requirements in SB 360 will need to be addressed in concert with the requirements of HB 697.
  A. HB 697 (2008) amended Ch. 163, F.S., to establish new, local, planning requirements that the Future Land Use Element be based on data and studies that demonstrate:
     √ Discouragement of Urban Sprawl;
     √ Energy efficient land use patterns that account for existing and future electric power generation and transmission systems;
     √ Greenhouse gas (GHG) reduction strategies; and
     √ FLUM must be amended to depict Energy Conservation Areas.
  B. Traffic Circulation/Transportation Elements must be amended to incorporate transportation strategies to reduce GHG emissions.
  C. Conservation Element must address "factors that affect energy conservation."
  D. Housing Element must be amended to include standards, plan, and principles to be followed in:
     √ "energy efficiency in the design and construction of new housing" and
     √ "use of renewable energy resources"

Council staff has been advised that DCA will try to respond to questions as appropriate and within its staff resources. DCA is developing a Webpage devoted to SB 360 and asks for everyone's patience.

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Sent via email

June 11, 2009

Ms. Sheri L.R. Coven
Director of Intergovernmental and Public Affairs
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Dear Ms. Coven

On June 10, 2009, staff of the South Florida Regional Planning Council (SFRPC) participated in an informal discussion among land use attorneys who represent developers and local governments, transportation consultants, and local government planners. The topic of discussion was implementation of Senate Bill 360 (2009 Legislative Session). During the meeting a series of questions were developed, which are enclosed.

We understand that Secretary Pelham will be discussing the transportation-related aspects of SB 360 during his Webinar tomorrow. Please forward Issues and Question Sets 1 – 6 for inclusion in the Webinar. We also believe all questions are of universal concern and await a response from the Department.

As always, thank you for assistance. Please contact Bob Cambric, Special Projects Manager, at bcambric@sfrpc.com or 954.985.4416 if you have any questions.

Sincerely,

Carolyn A. Dekle
Executive Director

CAD/tnb

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SB 360 Implementation Questions

Issue 1: Supporting and funding mobility. Bill lines 526-532: A local government that has a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. shall, within 2 years after the designated area becomes exempt, adopt into its local comprehensive plan land use and transportation strategies to **support and fund** mobility within the exception area, including alternative modes of transportation (emphasis added).

Question Set 1: (A) How broadly will the terms "support and fund" be interpreted by the Department of Community Affairs (DCA)? (B) Will the local government be responsible for supporting and funding mobility addressing all roadways within its boundary or only the roads owned and maintained by the local government? (C) Will level of service standards be prescribed by the State for facilities and mobility services supported and funded by the local government?

Issue 2: Transportation Data and Analysis.

Question Set 2: (A) Will the DCA continue to require a transportation analysis to accompany plan amendments within a Transportation Concurrency Exemption Area (TCEA) authorized by SB 360? (B) Can local governments continue to require that an applicant submit a transportation analysis for proposed Comprehensive Plan amendments, zoning changes, and development review for projects located within a TCEA authorized by SB 360?

Issue 3: Adequate facilities analysis

Question Set 3: Can a city or county that meets the definition of a "Dense Urban Land Area"(DULA) adopt its own version of a roadway capacity analysis as part of its development review process?

Issue 4: Primacy: SB 360 or the Comprehensive Plan and Land Development Regulation (LDR)

Question Set 4: (A) Does SB 360 trump the adopted Comprehensive Plan and LDRs? (B) Since the LDRs must be consistent with the Comprehensive Plan and most local governments adopted transportation concurrency as a regulation, can concurrency be eliminated by a local government without first amending the Comprehensive Plan? (C) Does SB 360 compel a DULA local government to immediately eliminate its concurrency provisions or can concurrency be maintained until the DULA local government has amended its Plan (within the mandatory two years) with "land use and transportation strategies to support and fund mobility within the exception area"?

Issue 5: Maintaining adopted Level of Service Standards. Bill Lines 303-308: A local government's comprehensive plan and plan amendments for land uses within all TCEAs that are designated and maintained in accordance with s. 163.3180(5) shall be deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.

Question Set 5: (A) Does this provision mean a city or county that meets the definition of a Dense Urban Land Area (DULA) and those areas that are designated TCEAs pursuant to SB 360 do not have to maintain the adopted of Level of Service standard(s) for facilities within the local government (automatically-qualifying DULA) or the designated TCEA? (B) If the answer to 5A is yes, then why is a DULA required to support and fund mobility?

Issue 6: Status of existing TCEAs

Question Set 6: While SB 360 provided provisions that would allow Miami-Dade County to maintain all and Broward County to maintain portions of their existing systems of TCEAs, do DULAs with existing TCEAs have to rescind their Comprehensive Plan GOPs and implementing LDRs associated with an existing, pre- SB 360 TCEA?

Issue 7: Rulemaking

Question Set 7: (A) Will DCA undertake rulemaking to implement SB 360? (B) If so, what is the planned schedule?

Issue 8: Extension of Permits. Bill Lines 1251-1263: Except as provided in subsection (4), and in recognition of 2009 real estate market conditions, any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, Florida Statutes, that has an expiration date of September 1, 2008, through January 1, 2012, is extended and renewed for a period of 2 years following its date of expiration. This extension includes any local government-issued development order or building permit. The 2-year extension also applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c), Florida Statutes. This section shall not be construed to prohibit conversion from the construction phase to the operation phase upon completion of construction.

Question Set 8: (A) Are the local government-issued development orders and building permits that are to be extended limited to those associated with a permit issued by DEP or a WMD pursuant Chapter 373, Part IV, Fla. Stat.? (B) If the permit extensions are limited to those associated with a DEP or WMD permit, which expiration date will govern whether the permit holder qualifies for an exemption? (C) Since building permits are governed by the Florida Building Code, can the Legislature amend the Florida Building Code? (D) Can the extension be applied to a permit issued through a quasi-judicial proceeding? (E) Local governments issue development orders for many categories of activities; what, if any, limitation will be placed on what qualifies for the extension? (F) Does this section apply solely to existing permits or can a person that receives a permit in two months and said permit expires before 01 January 2012 eligible for the extension? (G) Would lack of information regarding how the holder intends to use the extension and the anticipated timeframe for acting on the authorization require a local government to deny the extension for non-compliance with the statute? (H) Does the extension apply to all DEP permits or only those authorized under Chapter 373, Part IV?

Issue 9: State Land Planning Agency review of Development Orders for projects over 120% of Development of Regional Impact (DRI) threshold. Bill Lines 1192-1200: Local governments must submit by mail a development order to the state land planning agency for projects that would be larger than 120 percent of any applicable development-of regional-impact threshold and would require development-of regional-impact review but for the exemption from the program under paragraphs (a)-(c). For such development orders, the state land planning agency may appeal the development order pursuant to s. 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.

Question Set 9: (A) What constitutes a "project"; is it the office building within a development or the total development plan? (B) Does this provision mean that DULA local governments and developers will have to adhere to the Aggregation Rule?

Issue 10: Voluntary Participation in the DRI Process

Question Set 10: Can a property owner that is not an existing DRI; does not have a pending application; and is not located in an Area of Critical State Concern, the Wekiva Study Area, or within two

miles of the Everglades Protection Area forego the DRI exemption granted by SB 360 and voluntarily participate in the DRI Program and have his/her property approved and vested under 380.06, Fla. Stat.?

Issue 11: Maintaining residential densities in the unincorporated areas of a county. Bill Lines 1600-1605: Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high hazard area under s. 163.3178.

Question Set 11: (A) Does this section mean that neither an increase nor a decrease in the current residential density of residential properties and recreational vehicle parks can ever occur, as long as the properties have sufficient infrastructure and is not in the CHHA? (B) What does the phrase "properties intended for residential use" mean; should land use category that has been assigned density be considered to be intended for residential use? (C) Also, if a property has been assigned a density and has a level of infrastructure to support the maximum allowable density, does this mean that density must be "maintained'? For instance, must property assigned an Agricultural land use category with a density of one (1) unit per 10 acres that is not in the CHHA and is served by septic tanks and wells be maintained at the 1:10?

Issue 12: Using relocatable facilities when calculating LOS for public school concurrency (PSC). Broward County School Board commenced implementation of PSC on 01 February 2008, and the fist year of the District's financially-feasible plan was school year 2007-08, making 2011-2012 the first deadline for schools to achieve and maintain level of service standard. However, it should be noted that PSC become effective at different points in time for each municipality and the County, depending on when their Public Schools Facilities Elements were approved.

Question Set 12: SB 360 requires relocatables be included in the LOS when conducting PSC review during the first three years of PSC implementation. Given the facts presented in Issue 12 and the requirements of SB 360, when does the first three years of PSC implementation begin in Broward County?

Issue 13: If the first year began 01 February 2008 or school year 2007-08, that means Broward County Schools is one and a half years into implementation of PSC. Subsequently, if the Broward County Amended Interlocal Agreement for Public School Facility Planning (ILA) is to be amended, the process will likely take one or more years to complete, and the requirement to include relocatables in the first three years would be obsolete.

Question Set 13: Must each interlocal agreement be amended to comply with the relocatable requirements of SB 360 or can the signatories agree to a different but mutually agreeable process to comply with the requirements?

Issue 14: Chapter 163, Fla. Stat., requires that the adopted LOS shall be achieved and maintained in the 5-year Capital Improvements Plan (CIP). Also, the Plan must be financially-feasible in the fifth year. As stated in Question Set 12, the initial adopted Broward County DEFP is required to be financially-feasible in the fifth year, thereby requiring the majority of schools in Broward County to meet the adopted LOS.

Question Set 14: Is the District required to plan for all schools to meet the LOS once every five years or at the end of the first 5-year period?

Issue 15: Charter schools are constructed in compliance with Section 1002.33(18), Fla. Stat., have been added as an appropriate mitigation measure through SB 380. Currently, the Broward County ILA lists charter schools as a mitigation option. However, the ILA includes additional criteria besides

adherence to State Requirement for Education Facilities (SREF) in order to be accepted as a mitigation option.

Question Set 15: Since the Broward County ILA mitigation requirements regarding charter schools is more restrictive than the requirements of SB 360, is it reasonable, given the authority of home rule, to conclude that the Broward County ILA does not need to be amended?