



## Memorandum

**Memorandum No: 21-033**

**Date:** April 19, 2021

**To:** Honorable Mayor and Commissioners

**From:** Chris Lagerbloom, ICMA-CM, City Manager

**Re:** Granting Authority for the Mayor and Commissioners to Deny Future Development Applications Based on Condition of the Surrounding Infrastructure

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On December 20, 2020, the City Commission requested staff to investigate the potential of adding criteria to the City Commission's development approval authority, based on the existing condition of surrounding infrastructure (water/sewer). Currently, the City requires an analysis of infrastructure from the perspective of capacity. This requirement can be found in Section 47-25.2 – Adequacy Requirements, of the City's Unified Land Development Regulations (ULDR), which states:

*47-25.2.H.2 – Potable Water Facilities*

- a. *If the system is tied into the city treatment facility, the available capacity shall be determined by subtracting committed capacity and present flow from design capacity. If there is available capacity, the city shall determine the impact of the proposed development utilizing Table 3, Water and Wastewater, on file with the department.*
- b. *If there is adequate capacity available in the city treatment plant to serve the proposed development, the city shall reserve the necessary capacity to serve the development.*
- c. *Where the county is the projected service provider, a similar written assurance will be required.*

and,

*47-25.2.I – Sanitary Sewer*

1. *If the system is tied into the city treatment facility, the available capacity shall be determined by subtracting committed capacity and present flow from the design capacity. If there is available capacity, the city shall determine the impact of the proposed development utilizing Table 3, Water and Wastewater, on file with the department.*
2. *If there is adequate capacity available in the city treatment plant to serve the proposed development, the city shall reserve the necessary capacity to serve the proposed development.*
3. *Where the county is the projected service provider, a written assurance will be required.*

4. *Where septic tanks will be utilized, the applicant shall secure and submit to the city a certificate from the Broward County Health Unit that certifies that the site is or can be made suitable for an on-site sewage disposal system for the proposed use.*

The requirements listed above are analyzed at the time of development approval, which includes Development Review Committee (DRC), Planning and Zoning Board (PZB), and City Commission depending on the level of approval required by the City's ULDR. However, once a project is granted a development approval, an analysis is performed again at the building permit submittal stage to ensure capacity is still available and the project can move forward to construction. This 2-step process is done to give assurance that a development approval doesn't exceed the capacity of the system and to address the fact that at any given time there are multiple projects in various stages of approval and construction that may have changed the capacity availability in between development approval and building permit submittal.

The City Attorney's Office (CAO) has advised that the City may only consider the impact on existing infrastructure directly attributed to a proposed development. The method upheld by the courts, is to calculate the projected needs of a proposed development and determine whether the system has sufficient capacity to accommodate the projected increase. In consultation with the CAO, we have determined that in order to address the City Commission's request to include the condition of infrastructure, as well as capacity, two fundamental questions need to be addressed:

1. What is the condition of the infrastructure that would prevent the delivery of service?
2. Is the state of the condition of the infrastructure directly caused by the proposed development?

If the condition of the infrastructure is in a state of disrepair regardless of whether the proposed development is constructed or not, then the condition is not directly attributed to the proposed development and the denial would constitute a prohibited exaction under Section 70.45, Florida Statutes, as there is a lack of showing that the denial is roughly proportionate to the impacts of the proposed use. The analysis requires that the proposed development be the proportionate cause of the condition.

The application of the methodology used to measure capacity is a straightforward effective way to quantify the impacts a development will have on the City's infrastructure. However, establishing the condition of the infrastructure and then using the data to determine if a development will potentially have a negative impact on infrastructure may prove to be more challenging.

A suitable methodology for determining the condition of the system prior to a development permit approval would have to be established to allow applicants to move forward through the process in a timely manner. However, from a legal perspective, it may be difficult to make the connection between the proposed development based on the guidance provided by the CAO.

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