ORDINANCE NO. 2013-048

AN ORDINANCE AMENDING POLK COUNTY ORDINANCE 07-018, THE POLK COUNTY AMENDED, RESTATED AND CONSOLIDATED COMPREHENSIVE IMPACT FEE ORDINANCE, AS AMENDED; ELIMINATING THE REQUIREMENT OF AN ANNUAL INDEX RESOLUTION; INCREASING THE TIME BETWEEN REVIEWS OF THE ORDINANCE AND THE IMPACT FEE STUDIES ADOPTED THEREUNDER FROM AT LEAST ONCE EVERY THREE YEARS TO AT LEAST ONCE EVERY FIVE YEARS; PROVIDING FOR A DEVELOPMENTALLY DISABLED GROUP HOME FACILITY IMPACT FEE EXEMPTION AND LEGISLATIVE FINDINGS AND DEFINITIONS RELATED THERETO; ESTABLISHING A DESIGNATED ACCOUNT WITH THE CLERK OF COURT FOR THE COLLECTION, MAINTENANCE AND DISBURSEMENT OF EDUCATIONAL SYSTEM IMPACT FEES; PROVIDING A PROCEDURE FOR THE SCHOOL BOARD TO MAKE APPLICATION TO THE COUNTY FOR RELEASE OF EDUCATIONAL SYSTEM IMPACT FEES; ELIMINATING THE REVIEW REQUIREMENT RELATED TO STATE FUNDING FOR IMPLEMENTATION OF THE CLASS SIZE AMENDMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 9, 2007, the Board of County Commissioners of Polk County, Florida (the "Board") adopted Ordinance No. 07-018, the Polk County Consolidated, Amended and Restated Comprehensive Impact Fee Ordinance (as amended, the "Ordinance"), providing for the imposition of Impact Fees within the County and requiring the Ordinance and the Impact Fee Studies adopted thereunder, as amended and supplemented, be reviewed by the County at least once every three (3) years, and an Annual Index Resolution setting Impact Fee rates be adopted by the Board each year; and

WHEREAS, eliminating the Annual Index Resolution requirement will increase efficiency and is therefore in the best interest of the County; and

WHEREAS, an increase in the length of time between reviews of the Ordinance and Impact Fee Studies from at least once every three (3) years to at least once every five (5) years will be sufficient to demonstrate whether the Impact Fees, at the then-current rates, exceed reasonably anticipated costs associated with growth-necessitated capital improvements, while more effectively utilizing County resources; and

WHEREAS, the Ordinance provides for certain exemptions from Impact Fees as set forth in Section 2.06.A when there is sufficient justification to warrant an exemption; and

WHEREAS, the Florida Legislature has determined that the development and implementation of community-based services for individuals with a Developmental Disability (hereinafter defined), including community residential opportunities, will enable such individuals to achieve their greatest potential for independent and productive living and permit them to be diverted or removed from unnecessary institutional placements; and

WHEREAS, the County is committed to helping its residents with a Developmental Disability obtain access to safe, affordable, quality group home facilities located in their own communities where they may live, work and learn independently; and

WHEREAS, the Board wishes to assist in the provision of such group home facilities for the purposes specified above by creating a Developmentally Disabled Group Home Facility Impact Fee Exemption; and

WHEREAS, the Ordinance further provides that the School Board shall receive the Educational System Impact Fees, as defined in the Ordinance, and shall deposit such fees in a separate trust account established and maintained by the School Board; and

WHEREAS, the Board wishes to oversee the collection, administration and expenditure of the Educational System Impact Fees by establishing and maintaining a designated account with the Polk County Clerk of Court wherein the Educational System Impact Fees will be deposited and held until application is made by the School Board to the County for expenditure of the funds in accordance with the purposes specified in the Ordinance; and

WHEREAS, in recent years the County has not received State funding for implementation of the class size amendment (Art. IX, Sec. 1, *Florida Constitution*) and is not expected to receive such funding in the near future, so it is in the best interest of the County to eliminate the review requirement imposed by the Ordinance related to such funding.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA:

SECTION 1: The recitals above are true and correct and are fully incorporated herein. Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Ordinance.

SECTION 2: Section 1.02 of the Ordinance is hereby amended and supplemented to include the following definitions:

SECTION 1.02. DEFINITIONS

"Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

"Developmentally Disabled Group Home Facility" means a residential facility licensed under Chapter 393, Florida Statutes, which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents, with capacity of at least four but not more than fifteen residents.

SECTION 3: Section 1.04 of the Ordinance is hereby amended and supplemented to include the following new paragraph:

SECTION 1.04. FINDINGS

T. The Board hereby finds that there is a need for Developmentally Disabled Group Home Facilities in the County to serve the demand of the population. The County is committed to helping residents of the County with a Developmental Disability obtain access to safe, affordable, quality housing. Accordingly, the Board wishes to support new or expanding Developmentally Disabled Group Home Facilities in the County by creating the Developmentally Disabled Group Home Facility Impact Fee Exemption.

SECTION 4: Section 2.06.A. of the Ordinance is hereby amended and supplemented to include the following new Section 2.06.A.9:

SECTION 2.06. EXEMPTIONS

A. The following shall be exempted from payment of impact fees:

....

9. Any land development or construction that qualifies as a Developmentally Disabled Group Home Facility and meets the following requirements:

a. Any Person seeking a Developmentally Disabled Group Home Facility exemption shall file with the County Manager an Application for Exemption prior to the Impact Fee payment date pursuant to Section 2.01 for the proposed development or construction. The Application for Exemption shall contain the following:

i. The name and address of the Owner (and of the Applicant, if different);

ii. The name by which the Developmentally Disabled Group Home Facility is to be known;

iii. The name of the person(s) under whose management or supervision the Developmentally Disabled Group Home Facility will be conducted;

iv. The legal description of the real property upon which the Developmentally Disabled Group Home Facility will be constructed;

v. The number of residents for which maintenance, care, education, or other services are to be provided by the Developmentally Disabled Group Home Facility;

vi. A description of the types of services to be provided by the Developmentally Disabled Group Home Facility;

vii. The proposed selling price, rental price, or other fees to be charged to each resident for occupancy in the Developmentally Disabled Group Home Facility;

viii. A complete copy of the application for facility licensure submitted to the Agency for Persons with Disabilities in accordance with Section 393.067, Florida Statutes;

ix. A copy of the Developmentally Disabled Group Home Facility's license issued pursuant to Section 393.067, Florida Statutes;

x. A copy of a fully executed and recordable lien upon the property in the amount of the Impact Fees exempted hereunder. Such lien will require the payment of the Impact Fees, at the rate in effect at the time of the change in circumstance, in the event the property fails to meet the restrictions of a Developmentally Disabled Group Home Facility as provided herein within the 7-year period following the issuance of the Certificate of Occupancy. Such lien will have priority over all other liens except for taxes and other governmental liens and assessments; and

xi. Any other information that the County Manager determines is necessary to evaluate the Application for Exemption.

b. For land development or construction to receive a Developmentally Disabled Group Home Facility exemption, it must meet all the restrictions of a Developmentally Disabled Group Home as provided herein, and evidence continued compliance with Chapter 393, Florida Statutes, and other applicable law, for a period of at least seven (7) years from the date of issuance of a Certificate of Occupancy.

c. If the land development or construction meets the requirements for a Developmentally Disabled Group Home Facility Impact Fee exemption, the County Manager shall issue an exemption. The exemption shall be presented in lieu of payment of the Impact Fees.

d. The amount of the Impact Fees shall not be increased to replace any revenue lost due to the Developmentally Disabled Group Home Facility Impact Fee exemption.

e. When granted a Developmentally Disabled Group Home Facility Impact Fee exemption, the Applicant or Owner shall annually submit to the County by December 31 a report demonstrating its continued eligibility for the

exemption. In the event the property fails to meet the restrictions of a Developmentally Disabled Group Home Facility as provided herein within the 7-year period following the issuance of the Certificate of Occupancy, the Impact Fees in effect at the time of the change in circumstances shall be immediately due.

SECTION 5: Section 2.05 and any reference thereto is hereby deleted in its entirety.

SECTION 6: Section 6.04 of the Ordinance is hereby amended and restated in its entirety as follows:

SECTION 6.04. USE OF EDUCATIONAL SYSTEM IMPACT FEES.

A. Educational System Impact Fees shall be collected by the County and deposited in a designated account established and maintained by the Polk County Clerk of Court (the "Clerk"). Such account shall be known as the "Educational System Impact Fee Account." The Clerk shall hold all monies deposited into the Educational System Impact Fee Account and may invest all funds which are not immediately necessary for expenditure in a reasonable and prudent manner. All income derived from such investments shall be deposited in the Educational System Impact Fee Account and used as provided herein. The County shall report the balance of the Educational System Impact Fee Account funds to the School Board on a quarterly basis.

B. The School Board shall make application to the County for release of funds from the Educational System Impact Fee Account by submitting its written request to the County Manager, along with supporting documentation to verify the proposed use of funds in accordance with applicable law. The County Manager shall review all such applications to ensure that the proposed expenditures are in accord with the purposes set forth herein and applicable law. Within thirty (30) days of receipt, the County Manager shall forward the School Board's complete application to the Board, along with a written recommendation as to whether the request for release of funds should be approved.

C. After consideration of the School Board's application, the County Manager's recommendation, the limited purposes of the Educational System Impact

Fees as enumerated herein and as established by applicable law, and such other information it deems relevant, the Board may choose in its discretion to approve the School Board's request for release of Educational System Impact Fee Account funds. If an application is approved and funds disbursed, the School Board shall maintain adequate records to demonstrate that the disbursed funds were used as stated in the application. Upon reasonable notice, the County shall have access to such records for the purpose of inspection or audit.

D. The County shall only be permitted to release funds which are in the Educational System Impact Fee Account at the time the School Board's application is approved. In the event that the Board approves a request by the School Board for the release of funds in an amount which exceeds the total amount of funds in the Educational System Impact Fee Account at the time, then, upon the County Manager's approval, the approved funds will be released in an amount up to the total amount of funds in the Educational System Impact Fee Account at the time of approval, and on a quarterly basis thereafter, until the full amount of the request is satisfied.

E. The monies deposited into the Educational System Impact Fee Account shall be used solely for the purpose of providing growth-necessitated capital improvements to Educational Plants and Ancillary Plants of the Educational System, including, without limitation:

1. Design and construction plan preparation;
2. Any permitting or application fees necessary for the construction;
3. Site development and on-site and off-site improvements incidental to the construction thereto;
4. Land acquisition, including any cost of acquisition;
5. Design and construction of Educational Plants and Ancillary Plants;
6. Design and construction of new drainage facilities required by the construction of Educational Plants and Ancillary Plants or improvements thereto;
7. Relocating utilities required by the construction of Educational Plants and Ancillary Plants or improvements or additions thereto;
8. Landscaping;
9. Construction management and inspection;

10. Surveying, soils and materials testing;

11. Acquisition of furniture and equipment necessary to accommodate students, faculty, administrators, staff and the activities of the educational programs and services at Educational Plants which is necessitated by growth;

12. Repayment of monies transferred or borrowed from any budgetary fund of the County or the School Board which were used to fund growth-necessitated capital improvements to the Educational Plants or Ancillary Plants;

13. Costs related to the administration, collection and implementation of the Educational System Impact Fee;

14. Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the School Board to fund growth-necessitated improvements and additions to the Educational System; and

15. Fees for professional services, including, without limitation, architecture, engineering, surveying, landscaping, soils and material testing, legal, appraisals, and construction management.

F. Funds on deposit in the Educational System Impact Fee Account shall not be used for any expenditure that would be classified as a maintenance or repair expense.

G. A report shall be prepared annually by the School Board reflecting the collection and expenditures of the Educational System Impact Fees during the previous year. Such annual report shall be submitted to the County within ninety (90) days after the last day of the School Board's fiscal year.

SECTION 7: Section 6.06 and any reference thereto is hereby deleted in its entirety.

SECTION 8: The first sentence of Section 12.01 of the Ordinance is hereby amended and replaced as follows:

SECTION 12.01. REVIEW REQUIREMENT. This Ordinance and the Impact Fee Studies adopted in Section 1.05 hereof, as may be supplemented and amended, shall be reviewed by the County at least once every five (5) years, unless the County Manager determines that a substantial increase in revenues or new revenue sources warrant an earlier review to evaluate and adjust, if appropriate, the Impact Fees.

SECTION 9: APPLICABILITY. Except as specifically modified, amended and supplemented herein, the Ordinance shall remain in full force and effect.

SECTION 10: SEVERABILITY. If any clause, section or provision of this Ordinance or any Impact Fee imposed pursuant to this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Ordinance or remaining Impact Fees shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 11: EFFECTIVE DATE. A certified copy of this Ordinance shall be filed in the Department of State by the Clerk of the Board within ten (10) days after enactment by the Board and the Ordinance shall take effect as provided by law.

DULY ADOPTED in regular session, this 15th day of October, 2013.

BOARD OF COUNTY COMMISSIONERS
OF POLK COUNTY, FLORIDA

BY: Melony M. Bell
Melony M. Bell, Chairman

ATTEST: Stacy M. Butterfield, Clerk

Kim Hancock
Clerk

(SEAL)

STATE OF FLORIDA)
)
COUNTY OF POLK)

I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No.13-048 adopted by the Board on October 15th, 2013.

WITNESS my hand and official seal on this16th day of October 2013.

STACY M. BUTTERFIELD, CLERK

By: Alison Prevatt
Alison Prevatt
Deputy Clerk

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 16, 2013

Ms. Alison Prevatt
Deputy Clerk
Finance and Accounting
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Prevatt:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of the electronic copy of Polk County Ordinance No. 2013-048, which was filed in this office on October 16, 2013.

Sincerely,

Liz Cloud
Program Administrator

LC/elr

RECEIVED
OCT 16 2013
BY: Alison Prevatt

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