

Lee County Board of County Commissioners
Agenda Item Summary

DATE CRITICAL
Blue Sheet No. 20040080

1. **REQUESTED MOTION:**

ACTION REQUESTED: Approve interlocal agreement with Lee County School Board for disbursal of school impact fees.

WHY ACTION IS NECESSARY: Assists the Lee County School Board in meeting a critical need for educational facilities to serve the children of Lee County.

WHAT ACTION ACCOMPLISHES: Provides for disbursal of up to one half of the impact fees collected to the School Board and provides for repayment to Lee County if the Court ultimately requires the County to refund school impact fees.

2. **DEPARTMENTAL CATEGORY:**
COMMISSION DISTRICT #

A12C

3. **MEETING DATE:**

02-03-2004

4. **AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: 10 Minutes

5. **REQUIREMENT/PURPOSE:**
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION Land Use
- BY: *Timothy Jones*
Timothy Jones
Chief Assistant County Attorney

7. **BACKGROUND:**

Pursuant to direction of the Board of County Commissioners, the County Attorney's Office worked with the School Board Attorney to provide an agreement with appropriate conditions for protection of the County so that the County can disburse one half of school impact fees collected and to be collected during the pendency of the lawsuit filed by the Lee County Building Industry Association and others.

Attachment: Draft Interlocal Agreement between Lee County and the Lee County School Board

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
n/a	n/a	n/a		<i>Timothy Jones</i>	OA RK 1/21	OM 1/22/04	RISK 1/22/04	GC 1/21/04	<i>W. H. ...</i>

10. **COMMISSION ACTION:**

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
1/21/04 1:30

RECEIVED BY
COUNTY ADMIN. *RK*
1-21-04
1PM
COUNTY ADMIN
FORWARDED TO: *RK*
1/22/04
5PM

INTERLOCAL AGREEMENT

THIS AGREEMENT is made this ____ day of _____ 2004, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as "County," and the Lee County School Board, a public agency of the State of Florida, hereinafter referred to as "School Board."

WHEREAS, on November 27, 2001, the County adopted ordinance #01-21 assessing impact fees that are paid by new residential construction for educational purposes, hereinafter called "Ordinance;" and

WHEREAS, the Lee County Building Industry Association and others filed a lawsuit in December of 2001 challenging the legality of the Ordinance; and

WHEREAS, the County and the School Board expected the lawsuit to be expedited and resolved within a reasonable time because of the great public importance of the matter; and, pursuant to that expectation, mutually agreed that it would be prudent for the County to hold funds collected under the Ordinance without disbursement to the School Board as otherwise provided in the Ordinance; and,

WHEREAS, the lawsuit has been pending for more than two years and even though a trial is set for March 2004, there will certainly be appeals of the trial court's decision; and

WHEREAS, the County has collected approximately \$36,000,000.00 pursuant to the Ordinance; and

WHEREAS, unprecedented growth in Lee County has created a dire need for funds to pay for new schools and other capital expenditures necessary to properly provide for the education of the children of Lee County; and

WHEREAS, the County and the School Board wish to help provide for the needs of the school children by releasing one-half of funds collected, and to be collected, under the Ordinance to the School Board for use in accordance with the requirements of the Ordinance.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Upon acceptance and execution of this agreement by the County and the School Board, the County will disburse to the School Board one-half of the school impact fee funds held by the County; and the County will disburse to the School Board one-half of future school impact fees collected on a quarterly basis.

2. The School Board will strictly comply with the requirements of the Ordinance as to the expenditure of the funds.

3. The School Board will repay or return without delay or protest all funds, including interest received, pursuant to this agreement within ninety days after written request from the County. The County will only make such a request if the County is required to refund school impact fees by the Circuit Court after exhaustion of all appeals. The request will only be in an amount sufficient to provide refunds required by a court order, or the amount disbursed, whichever is less.

4. The School Board will reserve sufficient borrowing capacity or other legally available funds to ensure that it will be able to repay all funds disbursed under this agreement plus interest earnings as applicable.

5. The County and the School Board will be jointly and severally liable for any refund that may ultimately be required pursuant to the lawsuit and the School Board agrees that any such order will specify such joint and several liability. The School Board liability under this paragraph will be limited to amounts disbursed to the School Board and interest thereon as appropriate. The School Board hereby waives any and all conditions, claims of, or defenses to the prompt refund of any such County-advanced funds to the County or to the Court as appropriate, if the County is required to refund any such school impact fees and interest thereon by the Courts after exhaustion of all appeals.

6. Due to the nature of this advance funding agreement, the School Board agrees the School Board's refund obligations hereunder and the provisions of this interlocal shall not be terminated by the School Board once the County has disbursed any funds to the School Board hereunder. Once the County funds have been disbursed to the School Board, the School Board will take no action legal or otherwise to nullify or reject the provisions hereof. The School Board agrees any such action by the School Board will automatically mandate the School Board to immediately refund or repay all such County disbursed funds plus accrued interest to the County and the County may immediately enforce this right in a Court of Law without being subject to any Chapter 164 or other pre-suit restrictions.

7. If the County is required to enforce the repayment provisions hereof in a Court of Law or otherwise, School Board agrees it will be responsible to pay all attorney fees and costs necessary for the County to enforce its repayment rights hereunder. The County's rights of enforcement will not be subject to any Chapter 164 or other pre-litigation restrictions.

8. This agreement will remain in full force and effect until the final completion of the aforesaid litigation and any related court directed fee refund process if applicable, including the School Board's repayment obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused the execution hereof by their duly authorized officials on the dates set forth below.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman or Vice Chairman

(Seal)

Date: _____

APPROVED AS TO FORM:

By: _____
Lee County Attorney's Office

ATTEST:

THE SCHOOL BOARD OF LEE COUNTY,
FLORIDA

By: _____
Superintendent

By: _____
Chairman of the Board

Date: _____

APPROVED AS TO FORM:

By: _____
Keith Martin, Esq.
Attorney for The School Board