

**CHAPTER 168 DEVELOPMENT REVIEW PROCEDURES****168.01 DEVELOPMENT PERMITS**

(A) **Types of Development Permits.** In order to develop land in the Town, one or more of the following procedures are required depending upon the specifics of the case although any parcel must be platted before a building permit will be issued; all but the comprehensive plan amendment (1) are potentially considered development permit applications by State statute:

- (1) Comprehensive plan amendment;
- (2) Rezoning map or Land Development Code text change;
- (3) Plat or subdivision approval or amendment;
- (4) Site plan approval (including landscape plan);
- (5) Conditional use;
- (6) Planned Residential Development District (PRD) approval or amendment;
- (7) Development of Regional Impact (DRI);
- (8) Variance; and/or
- (9) Building or sign permit.

This Chapter explains the review procedures and criteria necessary to receive these development permits. See also Section 165.03 for flood hazard permit requirements, Section 167.02 for tree removal permit requirements and Section 167.01 for special wetland review procedures.

(B) **Planning, Zoning and Variance Board.** See Chapter 30 (Sections 30.30-30.34) of the Town Code of Ordinances for specifics on the function of the Planning, Zoning and Variance Board and the Design Review Committee.

**168.02 CONCURRENCY MANAGEMENT SYSTEM (CMS)****168.02.1 PURPOSE AND INTENT**

Concurrency is a finding that public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of the development. The CMS is intended to provide a systematic process for the review and evaluation of all proposed development for its impact on concurrency facilities and services as required by the Local Government Comprehensive Planning and Land Development Regulations Act, F.S. Chapter 163, Part II, and Rule 9J-5.0055, FAC.

Facilities in the Town of Indian River Shores that are subject to these regulations include:

- (1) Potable water;
- (2) Recreation;
- (3) Sanitary Sewer;
- (4) Public School Facilities;
- (5) Solid Waste;
- (6) Drainage; and
- (7) Transportation.

The purpose of this CMS is to ensure that development orders and permits are conditioned on the availability of concurrency facilities and services that meet adopted level of service requirements identified in this CMS. The CMS is also intended to describe the requirements and procedures for determining consistency of proposed development with the Town of Indian River Shores Comprehensive Plan.

**168.02.2 CONSISTENCY WITH TOWN COMPREHENSIVE PLAN**

All development applications shall demonstrate compliance with Town of Indian River Shores Comprehensive Plan as well as with all applicable provisions of the Town Land Development Code (LDC). Further, development applications shall demonstrate that specified concurrency facilities shall be available at prescribed levels of service concurrent with the impact of the development of those facilities.

### 168.02.3 DEFINITION OF CONCURRENCY MANAGEMENT TERMS

The following definitions shall apply to concurrency management rules and regulations:

**Building Permit.** For purposes of the concurrency management ordinance, a duly issued permit that may authorize the construction of a new building, expansion of floor area, an increase in the number of dwelling units contained in an existing building or a change in use.

**Capacity.** Refers to the availability of a public service or facility to accommodate users expressed in an appropriate unit of measure, such as gallons per day or average daily trips.

**Capacity, Available.** Capacity that can be reserved or committed to future users for a specific public facility.

**Certificate of Occupancy.** A document issued by the Town allowing the occupancy or use of a building and certifying that the structure or use has been constructed or may be used in compliance with all the applicable municipal codes and ordinances.

**Concurrency Facilities.** Public facilities and services for which a level of service must be met concurrent with the impacts of development or an acceptable deadline as mandated in the Comprehensive Plan pursuant to Chapter 163, FS, and 9J-5.0055, FAC, shall include:

- (1) Potable water;
- (2) Recreation;
- (3) Sanitary Sewer;
- (4) Public School Facilities;
- (5) Solid Waste;
- (6) Drainage; and
- (7) Transportation.

**Concurrency Management System.** The procedure and process that the Town uses to ensure that no development order or building permit is issued by the Town unless the necessary concurrency facilities are available or are assured to be available consistent with the Town of Indian River Shores Comprehensive Plan. The procedure and process is also intended to ensure that sufficient capacity for concurrency facilities is available to meet and maintain adopted levels of service. As part of the CMS, the Town shall operate and maintain a concurrency management monitoring system.

**Concurrency Status Report.** A status report prepared by the Town identifying available concurrency facility capacity. The status report shall be produced, modified and adjusted from time-to-time as a result of the reservation of capacity or other act that alters the availability of concurrency facility capacity.

**Design Capacity.** The potential or suitability for holding, storing or accommodating the demands upon a concurrency facility.

**Developer's Agreement.** An agreement between the Town and another party associated with the development of land, including but not limited to agreements associated with development orders.

**Development Order.** Any order or permit granting, denying or granting with conditions an application for a preliminary or final development approval order, a final development order, a development permit or any other official action of the Town which permits the development of land.

**Development Order, Final.** This shall mean the last discretionary act of the Town before development can commence. The last discretionary act shall occur through an act of official authorization and with recorded documentation from the Town of Indian River Shores thereby approving the final development plans for a proposed development project. The issuance of a final development order after the effective date of the ordinance adopting the Comprehensive Plan shall occur only if the site plan, design and construction plans and other prerequisite plans and conditions comply with the goals, objectives, and policies established in the Comprehensive Plan, the Land Development Code and the Building Code. Approval of a final subdivision plat by the Town Council shall not permit

construction activity until a duly authorized building permit has been granted based on submittal of required building plans deemed by the Town Building Official consistent with the Town's Land Development Code and adopted Building Code.

A building permit shall be deemed a final development order. A certificate of occupancy may be deemed a final development order where an application for a proposed change of use for an existing structure is submitted which does not require any approval of buildings or other structures. All other development orders shall be deemed an initial development order since they do not (1) authorize construction for which a building permit is required or (2) authorize a change of use for which an initial or new certificate of occupancy (C.O.) is required. Final development orders shall include the Town's final approval of the following development procedures:

- (1) Final subdivision plat approved subsequent to the adoption of the Comprehensive Plan;
- (2) Building permit; and
- (3) Developments of Regional Impact (DRI) approval, where applicable.

**Development Order, Preliminary.** Any official action of the Town of Indian River Shores or other public entity with duly authorized jurisdiction that has the effect of approving required plans with or without conditions prior to the issuance of a final development order (i.e., building permit) for construction on land located within the corporate limits of the Town of Indian River Shores. A "preliminary development order" may document duly authorized approval of such requirements as amended comprehensive plan future land use map designations, rezonings, site plans, preliminary subdivision plans, final plats, concurrency determinations or other preliminary development approvals required by the Town's Land Development Code prior to the issuance of a building permit.

**Level of Service.** An indicator of the operational efficiency by a concurrency facility provider.

**Level of Service Standard.** The adopted volume of demand required for each concurrency facility to achieve acceptable operational efficiency.

**Vested Rights.** A development order shall be deemed "vested" and not subject to requirements of concurrency management if development circumstances meet criteria for common law or statutory vesting as defined below. All "non-vested" development or development orders are subject to all requirements of this CMS.

#### 168.02.4 GENERAL PROCEDURES AND LEVEL OF SERVICE STANDARDS

- (A) **General CMS Procedures Purpose and Intent.** The concurrency management system (CMS) shall apply to all development activity in the Town except development exempted pursuant to F.S. §163.3180 and a one or two family house (on a lot in ownership separate from adjacent lots). Concurrency public facilities and services may be determined to be adequate to serve the needs of a proposed development after the applicant has demonstrated that traffic circulation, recreation, drainage, potable water, solid waste and sanitary sewer public facilities and services and public school facilities will be available to meet the established level of service standards for the proposed development consistent with F.S. Chapter 163 and the concurrency management provisions of this Chapter. All applicants for a concurrency determination shall be responsible for providing documentation signed by a duly authorized official of each concurrency facility service provider that identifies the provider's (1) estimated measure of demand generated by the proposed development (2) estimated measure of available capacity to meet the demand and (3) commitment to provide the needed services with or without stated conditions. Applicants for conditional concurrency determinations [see Section 168.02.5 (C) (2)] shall provide best available estimates from the service provider. Applicants for a final concurrency determination [see Section 168.02.5 (C) (3-4)] shall provide authorized final commitments to provide the service together with any conditions that may apply to the commitment.
- (B) **Level of Service Standards.** New development shall not be approved unless there is sufficient available design capacity to sustain the following levels of service as established in the Town of Indian River Shores Comprehensive Plan:
- (1) **Streets.** "C" for all roads except "D" during peak tourist season.
  - (2) **Sanitary Sewers.** Two hundred, fifty-five (255) gallons per day per dwelling unit (one hundred, thirteen (113) gallons per capita per day). Two thousand, five hundred (2,500) gallons day per commercial acre (i.e. equivalent to twenty-two (22) gallons per capita per acre per day).
  - (3) **Solid Waste.** Twenty-one (21) pounds per capita per week (or three (3) pounds per capita per day).
  - (4) **Drainage.** 25-year, 24-hour design storm; post-development conditions shall not increase the amount or rate of run-off beyond predevelopment conditions.
  - (5) **Potable Water.** Residential – Four hundred, fifty (450) gallons per dwelling unit per day (two hundred (200) gallons

per capita per day). Commercial – Two thousand, five hundred (2,500) gallons per day per gross acre (i.e. equivalent to twenty-two (22) gallons per capita per acre per day).

- (6) **Recreation.** Provide two and a half (2 1/2) acres of Neighborhood Park per one thousand (1,000) population, plus the following facility standards:

<b>TABLE 168.02.4 (B) (6)</b>	
<b>RECREATION FACILITY STANDARDS</b>	
<b>Facility</b>	<b>Median Standard</b>
Tennis Courts	1 court per 2,000 population
Racquetball/Handball Courts	1 court per 10,000 population
Basketball Courts	1 court per 5,000 population
Softball/Baseball Diamond	1 diamond per 3,000 population
Swimming Pool	1 pool per 8,700 population
Golf Course	1 9-hole per 50,000 population
Picnic Tables	1 table per 500 population
Shuffleboard Courts	1 court per 1,500 population
Bicycle/Jogging Path	0.56 miles per 1,000 population

- (7) **Public School Facilities Countywide Standards.** The below stated Level of Service (LOS) standards are consistent with Public School Facilities Element Policy 1.1 and Section 13 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency".
  - (a) **Weighted Average.** 139.07 building square foot per student station.
  - (b) **Elementary School.** 144.71 building square foot per student station.
  - (c) **Middle School.** 117.26 building square foot per student station.
  - (d) **High School.** 147.57 building square foot per student station.
  - (e) **School Concurrency Service Area.** One hundred (100) percent of Florida Inventory of School Houses (FISH) capacity for each public school type (elementary, middle and high school).

**168.02.5 APPLICABILITY, EXEMPTIONS AND REVIEW PROCEDURES**

- (A) **Applicability of Concurrency Determinations.** All preliminary and final development orders required to (1) construct a new building or residential unit (2) expand an existing use or (3) increase the intensity of a use, shall comply with concurrency management requirements of Section 168.01, unless specifically exempted by Florida Statutes. No development order shall be approved unless an approved concurrency determination has been rendered or a determination is made that the development proposed is exempt from concurrency review. All redevelopment or additional development of previously improved lands shall be subject to a concurrency determination for the additional capacity needed to serve the net additional dwelling units as well as the net additional square footage of non-residential area.
- (B) **Exempt Property.** Determinations of exemption from concurrency review shall be made by the Town Manager or his designee. Exemptions may be based on vested rights determinations, application of de minimis criteria or determinations that there will be no increase in density or intensity. For school concurrency, also reference Section 168.02.8 (E) (2). Applications for single-family dwellings will be processed through the Town’s concurrency management system and exempted dwellings shall receive an approved concurrency determination. Exemption from concurrency review shall not affect any obligation to pay applicable impact fees and utility capacity charges. Appeals of determinations shall follow the procedures of Section 165.04 (D).

Exempt property includes:

- (1) Development found by the Town Attorney to have vested rights with regard to any effected roadway segments or infrastructure capacity reservations; both State statute and common law shall be considered;
- (2) Permits for single-family homes deemed as "de minimis" under Florida Statutes 163.3180 (5). Development of one (1) single family dwelling on a legal lot of record as of July 1, 2008 which is on a lot in single and separate ownership from adjacent lots. This exemption shall apply to the permitting of a single-family dwelling on a lawfully created lot or parcel

of record that meets minimum size requirements and is not subject to a plat notice which states that there is no guarantee of concurrency for development of the lot. This de minimis exemption will not apply if:

- (a) The lawfully created lot or parcel does not meet minimum size requirements and has not received a duly approved variance authorizing the single-family dwelling, thereby ensuring that the lot or parcel is of sufficient size to accommodate a single-family dwelling while protecting the health, safety and welfare of the public; or
  - (b) The impacts of the proposed new single-family dwelling will exceed the adopted level-of-service standard for any affected designated hurricane evacuation routes assigned to the Town of Indian River Shores by the Indian River County Emergency Preparedness Center, or successor agency;
- (3) Any development or redevelopment which clearly causes no increase in square footage or increase in intensity of use. Where the proposed development or redevelopment of existing residential or nonresidential buildings will increase the square footage or the number of dwelling units respectively, only the net increase shall be subject to concurrency review;
- (4) Modification of a vested final subdivision plat that does not create additional lots or units;
- (5) Replacement of existing residential units unless there is an increase in number of units; and
- (6) Any development orders, including land use amendments and rezoning applications, which do not increase density or intensity of use.
- (C) **Review Procedures and Fees.** Each development application requiring a conditional or final concurrency review will be placed in a queue and shall be evaluated in the order in which it was received. The Town Manager or designee shall make a determination that concurrency requirements are satisfied for the type of development order under review. If the Town Manager elects to have a Town consultant review for concurrency, the applicant shall bear the costs for the fees charged by the consultant and such fees shall be commensurate with the contracted fee schedule approved by the Town in the consultant's contract.
- (1) **Demand and Supply Analysis.** The applicant's calculated demand for each application will be compared to available capacity for each facility respectively per Section 168.02.6 and Section 168.02.7. Concurrency determinations relating to public school facilities shall be analyzed by the school district in accordance with Section 14 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," as may be amended from time to time. The School District of Indian River County must review residential development applications that are not exempt to ensure that sufficient capacity is available to accommodate the demand represented by the application. The applicant, through an enforceable development agreement or proportionate fair-share mitigation agreements with the Town, Indian River County and/or the School District, may mitigate deficiencies in order to satisfy the concurrency review. Regulations for proportionate fair-share mitigation for transportation facilities are provided in Section 168.03.1. Regulations for proportionate fair-share mitigation for public school facilities are provided in Section 168.03.2.
  - (2) **Conditional Concurrency Determination.** A conditional concurrency determination shall be required concurrent with review of an application for approval of a preliminary development order for an amended comprehensive plan future land use map designation, a rezoning, a site plan, preliminary subdivision plan, final plat or a lot split, whichever occurs first. Approval of a conditional concurrency application shall not guarantee the applicant availability of capacity but rather is a preliminary analysis indicating that at the current time capacity is available with or without conditions. Any concurrency determination delivered prior to Town approval of all building requirements shall be considered a conditional concurrency determination. Upon the Town's approval of an application for a conditional concurrency determination, the Town shall ensure that the records used to monitor the concurrency management system are appropriately updated including available capacity, encumbered capacity and committed but unencumbered capacity, as may be required. The monitoring system shall be coordinated with each concurrency facility provider. For instance, approval of conditional concurrency reviews shall cause a reduction in "available" capacity and cause an increase in "committed but unencumbered capacity."
  - (3) **Final Concurrency Determination.** Final concurrency determinations must be obtained prior to issuance of a building permit to construct (1) a net addition to the dwelling unit (2) a net addition to the available floor area for a non-residential use or (3) an increased density or intensity for a specific use. An application for a final concurrency determination can only be approved after the applicant has completed all requirements for a building permit including final engineering, architectural and landscape architectural plans, and payment of requisite fees, including impact fees as applicable. Final concurrency determinations shall be rendered concurrently with building permit approvals. Approval of final concurrency reviews shall cause a reduction in either "available" capacity or "committed but unencumbered" capacity and shall cause an increase in "encumbered capacity."

- (a) **Final Concurrency Must Occur Prior to the Release of a Building Permit.** In order to obtain a building permit for a new building, expansion of a use or increase in the intensity of use, the applicant must have a valid final concurrency approval. A final concurrency approval is valid for twelve (12) months from approval. Upon issuance of the building permit, the final concurrency approval shall be valid as long as the building permit is active.
- (b) **Final Concurrency Determinations for Single-Family Dwellings.** Applications for single-family dwellings shall be evaluated to determine if the application (1) is exempt from concurrency requirements pursuant to criteria listed in Section 168.02.5(B) and (2) if not exempt, does the application comply with adopted levels of service standards for each concurrency facility identified in Section 168.02.06. No building permit shall be issued for a single-family dwelling that has not first received a valid final concurrency approval for the concurrency facilities identified in Section 168.02.4(B). Only a final concurrency review is required for such single-family dwellings.
- (c) **Final Concurrency Determinations for Proposed Subdivision Plats or Replats.** When a new non-exempt, final plat application is filed to create single-family lots, the following notice shall appear on the face of the final plat: *“No building permit will be issued for development of any lot or tract unless and until an approved concurrency determination for development of the lot or tract is obtained. The Town does not guarantee that adequate capacity will exist at the time when an applicant or applicant's successor chooses to apply for and obtain an approved concurrency determination.”*

In addition to the notice on the face of the final plat, a separate but similar “off-plat” notice (i.e., a stand-alone document that is not written on the plat) shall be prepared by the applicant in a manner approved by the Town Attorney. The applicant shall have the off-plat notice recorded in the Indian River County public records at the time that the final plat is recorded. A copy of the off-plat notice shall be attached to and recorded as an exhibit to the first deed that conveys each lot or tract to a party other than the subdivision developer. This deed exhibit requirement shall not apply to any lot or tract conveyed with a single-family residential unit already constructed on the lot at the time of conveyance.

- (4) **Approved Concurrency Determinations.** The applicant shall meet all the requirements for approval of all required concurrency facilities in order to be eligible for approval of the concurrency portion of a development application. No concurrency approval will be issued until the potable water service, sanitary sewerage service, transportation, drainage, solid waste disposal and recreation requirements are met together with school concurrency requirements, if applicable. Final concurrency certificates shall be issued at the time of building permit issuance.

**168.02.6 MEASUREMENT OF LEVELS OF SERVICE**

- (A) **Water and Wastewater.** Measurement of the water capacity will be based on the design capacities of both the lines serving the property and the Vero Beach potable water supply system. Wastewater capacity will be measured in the same manner. Water demand and sewage generation rates will be based upon Table 168.02.6 (A)-1 and Table 168.02.6 (A)-2 below, or an alternative method acceptable to the Vero Beach Director of Water and Sewer Utility.

<b>TABLE 168.02.6 (A)-1 POTABLE WATER DESIGN FLOWS</b>	
<b>Facility Type</b>	<b>Water Use in Gallons Per Day</b>
Residential:	
Single-Family House	375
Duplex, Triplex, Townhouse and Apartment per Unit	270
Mobile Home	108
Auditorium per Seat	5
Bar or Cocktail Lounge per Seat	21
Boarding School (Students & Staff per Person)	108
Boarding House per Person	54
Bowling Alleys (including Bar and Food Services per Lane)	215
Churches per Sanctuary Seat	3
Churches with Kitchen per Sanctuary Seat	7

Construction Camps (Semi-Permanent per Person)	54
Country Clubs:	
Per Resident Member per Room	108
Per Seat (Bar, Dining)	27
Day Schools:	
With Cafeterias, Gyms and Showers per Pupil	27
Without Cafeterias, Gyms and Showers per Pupil	16
With Cafeterias but no Gyms and Showers per Pupil	21
Factories (No Processing or Industrial):	
With Showers per Person	37
Without Showers per Person	21
Hospitals:	
With Laundry per Bed	270
Without Laundry per Bed	214
Landscape and Lawn Per square foot of Area	0.35
Laundromats per Machine	428
Motels & Hotels per Room	161
Movie Theaters per Seat	5
Nursing Homes per Bed	108
Offices per Person	21
Picnic Parks:	
With Bathhouse Shower & Toilets	11
Toilets Only	5
Public Institutions per Person	108
Restaurants (Including Toilets):	
24-Hour per Seat	54
Not 24-Hour per Seat	39
Drive-in per Car Space	16
Cocktail Lounge per Seat	21
Rooming Houses per Day	39
Service Stations:	
Full Service Stations:	
First Two Bays	810
Each Additional Bay	375
Self Service Stations:	
Per Fuel Pump	108
Shopping Centers (No Food Service or Laundry) Per Square Foot of Floor Space	0.10
Stores (No Food Service or Laundry) Per Square Foot of Floor Space	0.10
Swimming Pools per Person	10
Warehouses (No Food Service or Laundry) Per Square Foot of Floor Space	0.10

- I. In the case where the type of connection is not listed, then the most suitable one is to be used.
- II. The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.

<b>TABLE 168.02.6 (A)-2 SANITARY SEWER DESIGN FLOWS</b>	
<b>Facility Type</b>	<b>Daily Flow in Gallons Per Day</b>
Residential:	
Single-Family House	315
Duplex, Triplex, Townhouse and Apartment per Unit	225
Mobile Home	90
Auditorium per Seat	5
Bar or Cocktail Lounge per Seat	18
Boarding School (Students & Staff per Person)	90
Boarding House per Person	45
Bowling Alleys (including Bar and Food Services per Lane)	180
Churches per Sanctuary Seat	3
Churches with Kitchen per Sanctuary Seat	6
Construction Camps (Semi-Permanent per Person)	45
Country Clubs:	
Per Resident Member per Room	90
Per Seat (Bar, Dining)	23
Day Schools:	
With Cafeterias, Gyms and Showers per Pupil	23
Without Cafeterias, Gyms and Showers per Pupil	14
With Cafeterias but no Gyms and Showers per Pupil	18
Factories (No Processing or Industrial):	
With Showers per Person	31
Without Showers per Person	18
Hospitals:	
With Laundry per Bed	225
Without Laundry per Bed	180
Laundromats per Machine	360
Motels & Hotels per Room	135
Movie Theaters per Seat	5
Nursing Homes per Bed	90
Offices per Person	18
Picnic Parks:	
With Bathhouse Shower & Toilets	9
Toilets Only	5
Public Institutions per Person	90
Restaurants (Including Toilets):	
24-Hour per Seat	45
Not 24-Hour per Seat	33
Drive-in per Car Space	14
Cocktail Lounge per Seat	18
Rooming Houses per Day	33
Service Stations:	



Full Service Stations:	
First Two Bays	680
Each Additional Bay	315
Self Service Stations:	
Per Fuel Pump	90
Shopping Centers (No Food Service or Laundry) Per Square Foot of Floor Space	0.10
Stores (No Food Service or Laundry) Per Square Foot of Floor Space	0.10
Warehouses (No Food Service or Laundry) Per Square Foot of Floor Space	0.10

- I. In the case where the type of connection is not listed, then the most suitable one is to be used.
  - II. The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.
- (B) **Roadways.** The standard for measuring highway capacities shall be the Florida DOT Table of Generalized Daily Level of Service Maximum Volumes. Capacity may also be measured by engineering studies provided that analysis techniques are technically sound and acceptable to the Town Engineer or, in the case of a County or State maintained road, the methodology for determining demand and capacity shall be consistent with Chapter 910, Indian River Land Development Code (as hereinafter may be amended) and acceptable to the Indian River County Public Works Department. In determining capacity, existing volumes plus "committed" trips from approved site plans and recorded plats shall be included. Traffic generation shall be based upon the Institute of Transportation Engineers Manual. Impacts shall be presumed to be limited to the collector or arterial serving the local street giving access to the lot, or to the collector or arterial giving direct access to the lot.
- (C) **Solid Waste.** Table 168.02.6 (C) may be used to calculate solid waste generation rates. Capacity is determined by the capacity of the Indian River County landfill.

<b>TABLE 168.02.6 (C)</b>	
<b>SOLID WASTE GENERATION RATES</b>	
<b>Facility Type</b>	<b>Generation Per Day</b>
<b>Residential Unit</b>	12.0 lbs. per single-family or two-family unit
	7.0 lbs. per multifamily unit
<b>Industrial &amp; Commercial</b>	
Factory/Warehouse	2 lbs. per 100 square feet
Office Buildings	1 lb. per 100 square feet
Department Store	4 lbs. per 100 square feet
Supermarket	9 lbs. per 100 square feet
Restaurant	2 lbs. per meal per day
Drug Store	5 lbs. per 100 square feet
<b>Institutional</b>	
Schools	
Grade School	10 lbs. per room and 1/4 lb. per pupil
High School	8 lbs. per room and 1/4 lb. per pupil
Hospital	8 lbs. per bed
Nursing Home	3 lbs. per person
Home for Aged	3 lbs. per person
Rest Home	3 lbs. per person

- (D) **Drainage.** Drainage shall be measured based on assumed runoff rates (i.e., St. Johns River Water Management District or FDOT tables) subject to approval by the Town Engineer. Typically, this shall be achieved by a combination of on-site detention and French drains.

- (E) **Recreation.** Measurement shall be based on data in the Town Comprehensive Plan and latest Town population estimate with any necessary interpretation provided by the Town Manager.
- (F) **Public School Facilities.** Evaluation of public school facilities levels of service, capacity and demand shall be determined by the School District of Indian River County. Evaluation of Public School Facilities Supply (Capacity) shall be determined by each public school facility (elementary schools, middle schools and high schools), not including charter schools or magnet schools. The supply (capacity) for each school shall be its Florida Inventory of School Housing (FISH) Capacity including the FISH Capacity of programmed construction in the first three (3) years of the School District Five-Year Facilities Work Program. Capacity shall include capacity-producing mitigation guaranteed through any proportionate share mitigation agreements approved in accordance with Section 14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," the Public School Facilities Element of the Comprehensive Plan, and Section 168.03.1.

#### 168.02.7 AVAILABLE CAPACITY DETERMINATION

- (A) **General Formula.** For purposes of these regulations, the capacity availability shall be determined by:
- (1) Adding together:
    - (a) The total design capacity of existing facilities operating at the required level of service; and
    - (b) The total design capacity of any new facilities that will become available concurrent with the impact of the development. The capacity of new facilities may be counted only if one or more of the criteria stated in Section 168.02.8 are achieved for each new facility respectively.
  - (2) Subtracting from that number the sum of:
    - (a) The design demand for the service created by existing development; and
    - (b) The new design demand for the service (by phase or otherwise) that will be created concurrent with the impacts of the proposed site plan or plat by the anticipated completion of other presently approved development projects.
- (B) **Burden of Showing Compliance on Applicant.** The burden of showing compliance with these levels of service requirements shall be upon the applicant. In order to be approvable, applications for development approval shall provide sufficient and verifiable information showing compliance with these standards.
- (C) **Concurrency Monitoring System.** The Town Building Official shall be responsible for monitoring development activity to ensure the development is consistent with the Town Comprehensive Plan and Town Land Development Code and shall enforce any conditions or stipulations contained in concurrency determinations. All existing and committed development and its impact on facilities subject to level of service standards shall be recorded. Monitoring shall include:
- (1) A quarterly report of all changes in zoning districts;
  - (2) A quarterly summary of all building permits;
  - (3) A quarterly summary of all permits issued for demolition of buildings; and
  - (4) A quarterly summary of all certificates of occupancy.

The School District of Indian River County shall monitor the status of concurrency for public school facilities on a continuing basis. In accordance with the adopted "Interlocal Agreement of Coordinated Planning and School Concurrency," the School District of Indian River County shall maintain a database by school service area for existing and programmed school facilities, capacities committed through proportionate share mitigation agreements, Florida Inventory of School Housing (FISH) capacities, student enrollment, vested students by development project together with the duration of time vested, certificates of occupancy issued for vested residential units by project (subdivision) and available capacity.

- (D) **Concurrency Rights Reservation and Effective Period.**
- (1) **Timing of Capacity Reservations.** Although conditional concurrency determinations can occur at any stage in the development review process, the compliance will be finally calculated and capacity reserved at time a final development order is required, and/or pursuant to the terms of an enforceable developer's agreement or proportionate fair-share agreement. Applications for development permits shall be chronologically logged upon approval to determine rights to available capacity.
  - (2) **Effective Period.**

- (a) A building permit application must be submitted within twelve (12) months of site plan approval to preserve the capacity reservation. An extension of one (1) year may be issued by the Town Council. Only those dwelling units which have received their building permits will have their capacity reserved.
- (b) Developer agreements as described in Chapter 163.3220, the "Florida Local Government Development Agreement Act" or other enforceable development agreement shall have a valid concurrency period not to exceed five (5) years or as may otherwise be provided in the development agreement.

### 168.02.8 CRITERIA FOR CONCURRENCY AND FINAL DEVELOPMENT ORDERS

A final development order shall not be granted for a proposed development unless the Town finds that adequate capacity for concurrency facilities exists at or above adopted level of service in order to accommodate the impacts of the proposed development, or that improvements necessary to bring concurrency facilities up to their adopted level of service will be in place concurrent with the impacts of the development.

- (A) **Solid Waste and Drainage.** For solid waste and drainage facilities, the Town shall find that the following criteria have been met for a proposed development to be found in compliance with concurrency management requirements:
- (1) A development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new development; or
  - (2) At the time a development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement pursuant to F.S. §163.3220 or an agreement or development order issued pursuant to F.S. Chapter 380 to be in place and available to serve new development at the time of the issuance of a certificate of occupancy or its functional equivalent [Also reference F.S. §163.3180(2)].
- (B) **Parks and Recreation.** For parks and recreation facilities, at a minimum, the Town shall find that the following criteria have been met in order for a proposed development to be found in compliance with concurrency management requirements:
- (1) At the time the final development order is issued, the necessary facilities and services shall be in place or under actual construction; or
  - (2) A final development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy, the acreage for the necessary facilities and services to serve the new development shall be dedicated or acquired by the Town, or funds in the amount of the developer's fair-share shall be committed; or
  - (3) A final development order is issued subject to the conditions that the necessary facilities and services needed to serve the new development shall be scheduled to be in place or under actual construction not more than one (1) year after issuance of a certificate of occupancy as provided in the Town Capital Improvements Program.
- (C) **Sanitary Sewer and Potable Water Services.** Prior to the release of a building permit, an applicant or property owner must provide the Town Manager or designee a notarized letter from the water and sewer service provider stating that the water supplies and potable water and sewer capacities are available and will be reserved for the subject development consistent with the Town's adopted level of service standards. A duly authorized agent of the City of Vero Beach Water and Sewer Utility or successor entity serving the Town shall provide a letter certifying the following:
- (1) At the time an occupancy permit or its functional equivalent is issued, the necessary facilities and capacity will be in place and available to serve the new development; or
  - (2) Construction of the new facilities is under way at the time of site plan or plat approval and necessary facilities and capacity will be in place concurrent with the impacts of new development; or
  - (3) The new facilities are guaranteed at a specific time in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to F.S. §163.3220 or an agreement or development order pursuant to F.S. Chapter 380.
- (D) **Transportation Facilities.** For transportation facilities, at a minimum, transportation supply shall be determined on a segment by segment basis and segment capacity will be based either on FDOT's generalized capacity tables or individual segment capacity studies approved by the Town Engineer or consultant. Transportation supply for each segment is the segment's existing peak hour, peak season, peak direction capacity or the segment's new roadway capacity if facility expansion for the segment is proposed, and if requisite conditions in Section 168.02.8 (D)(1) below are met.

- (1) **Requisite Conditions to Achieve Concurrency.** The Town shall ensure that the following standards are met to satisfy concurrency requirements, unless State authorized exceptions are enacted by the Town and duly approved by the State [Cross reference §9J-20055 (4-7), F.A.C.].
- (a) At the time the final development order is issued, the necessary facilities and services are in place or under actual construction; or
  - (b) A final development order or permit is issued subject to the conditions that the necessary facilities' expansion and services needed to serve the new development are scheduled to be in place or under actual construction not more than three (3) years after issuance of a building permit as provided in the Town Five Year Capital Improvements Program. The Town's Capital Improvement Program may recognize and include transportation projects included in the first three (3) years of the adopted Florida Department of Transportation Five-Year work program or the Indian River County Capital Improvement Program. The Capital Improvements Element must include the following policies:
    - (i) The estimated date of commencement of actual construction and the estimated date of project completion; and
    - (ii) A provision that a plan amendment is required to eliminate, defer or delay construction of any road or public transit facility or service which is needed to maintain the adopted level of service standard and which is listed in the Five Year Capital Improvements Program; or
  - (c) At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than three (3) years after issuance of a certificate of occupancy; or
  - (d) At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement pursuant to F.S. §163.3220 or an agreement or development order issued pursuant to F.S. Chapter 380, to be in place or under actual construction not more than three (3) years after issuance of a certificate of occupancy; or
  - (e) The segment is the subject of a proportionate fair-share agreement. In such case, the segment capacity increase reflected in the proportionate fair-share agreement shall be available only to the parties of said agreement.
- (2) **Exceptions.** For the purpose of issuing a final development order, a proposed development may be deemed to have a de minimis impact and is exempt from the transportation concurrency requirements based on the following criteria:
- (a) The development is exempt if it is for redevelopment of an existing development and the post-development condition has a density and/or intensity equal to or less than the pre-existing development;
  - (b) The development is exempt if the traffic generated by the development would not affect more than one (1) percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the Town Engineer, provided however, it shall not be exempt if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed one hundred, ten (110) percent of the maximum volume at the adopted level of service of the affected transportation facility;
  - (c) Existing single family lots shall be exempt from the concurrency management regulations if the lot is a conforming lot or legal non-conforming lot existing prior to 1991 (adoption date of the Town Comprehensive Plan) regardless of the level of the deficiency of the roadway; or
  - (d) Notwithstanding any of the above, no development will be exempt if it would cause the adopted level-of-service standard to be exceeded for any affected designated hurricane evacuation routes.
- (E) **Public School Facilities.** Evaluation of public school facilities levels of service, capacity and demand shall be determined by the School District of Indian River County. School concurrency shall be determined for each public school facility (elementary schools, middle schools and high schools), not including charter schools or magnet schools.
- (1) **School Facility Capacity:** Capacity for each school shall be its Florida Inventory of School Housing (FISH) Capacity including the FISH Capacity of programmed construction in the first three (3) years of the School District Five-Year Facilities Work Program. Capacity calculations for each school service area shall include capacity-producing mitigation guaranteed through any proportionate fair-share mitigation agreements approved in accordance with §14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," the Public School Facilities Element of the Comprehensive Plan and Section 168.03.1 of this Ordinance.

- (2) **School 25 Facility Demand; School Concurrency Exemptions.** The School District of Indian River County shall determine public school facility demand. Demand shall be calculated only for residential development with the following exemptions:
- (a) **All legal, single-family lots of record on July 1, 2008.**
  - (b) **Valid Residential Developments Approved Prior to July 1, 2008.** Any residential development that received a final site plan approval prior to July 1, 2008 where that approval has not expired and the approval remains valid.
  - (c) **Amendments Not Increasing Number of DUs, Size or Type.** Any amendment to any previously approved residential development which does not increase the number of dwelling units or change the dwelling unit structure type, such as single-family or multiple-family dwelling unit.
  - (d) **Certain Age Restricted Communities.** Any age restricted community with no permanent residents under the age of eighteen (18) years old. Exemption of an age restricted community will be subject to a restrictive covenant limiting the age of permanent residents to eighteen (18) years and older. Said covenant shall be in a form acceptable to the Town Attorney and shall be recorded in the public records prior to site plan approval and where no site plan is required prior to the release of a building permit for constructing improvements to a new subdivision or any dwelling unit.
  - (e) **School District to Issue Exemption Determination.** Upon request by a developer submitting an application for any new residential development, the School District of Indian River County shall issue a determination as to whether or not the development, lot or unit, is exempt from the requirements of school concurrency. Residential development that fits into one of the four (4) categories referenced above in subsection 168.02.8 (E) (2) (a-d) in this Section shall be exempt from public school facilities concurrency review.
  - (f) **School District Procedure for Calculating Demand.** The system demand shall be calculated for each public school facility (elementary schools, middle schools and high schools), not including charter schools or magnet schools, and shall consist of student enrollment as counted for the fall full time equivalent (FTE) students projected to be generated from residential development vested for school concurrency under these school concurrency regulations and students projected to be generated from approved residential developments that fall within exemption categories pursuant to State law, and for which a building permit has been issued. Project demand shall be calculated as students projected to be generated from proposed development projects residential units based on the student generation rates contained in the adopted "Intergovernmental Agreement for Coordinated Planning and School Concurrency" and the Public School Facilities Element of the Comprehensive Plan.
- (3) **Formula for Determining Available Public School Facility Capacity.** The School District of Indian River County shall determine available public school facility capacity using the following formula:

$$\text{Available School Capacity} = (\text{School Capacity}) - (\text{Enrollment} + \text{Vested})$$

Where:

**School Capacity** = Florida Inventory of School Housing (FISH) Capacity, including the FISH Capacity of schools programmed for construction in the first three (3) years of the School District Five-Year Facilities Work Program;

**Enrollment** = Student enrollment as counted at the fall FTE; and

**Vested** = Students projected to be generated from residential developments approved after the implementation of school concurrency where all school impact fees have been paid, plus students projected to be generated from residential building permits issued since implementation of school concurrency for lots that existed prior to implementation of school concurrency where either (1) no certificate of occupancy has been issued or (2) a certificate of occupancy has been issued since the last fall FTE.

- (a) At the fall FTE, the vested number of students will be reduced by the number of students represented by the vested residential units that received certificates of occupancy within the previous twelve (12) month period.
- (b) If a proposed residential development causes the adopted level of service to be exceeded in the school service area in which the proposed residential development is located, the available capacity in the adjacent school service area(s) shall be used.

- (c) Available capacity determination shall be stated in a *School Capacity Availability Determination Letter (SCADL)*, as required in the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency". Each SCADL shall state the total number and type of residential units for which school capacity is available and shall be sent to the coordinating agency (community development) and the applicant.
- (4) **Public School Facilities Concurrency Test.** The test for public school facilities concurrency shall be a comparison of project demand and available capacity. A project shall be deemed to meet public school facilities concurrency if available capacity exceeds project demand.
- (F) **Concurrency Determination Assignability and Transferability.**
- (1) **Concurrency Approval Runs with Land.** Concurrency determination shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of such transfer to the Town Manager.
- (2) **Application for Assignability and Transferability.** The following information shall be disclosed in all applications pertaining to concurrency:
- Full legal name of the person or business entity acquiring the interest in the property;
  - Nature of the interest;
  - Address of the principal place of business of the successor;
  - Telephone number;
  - Name and address of registered agent if corporation;
  - Name, address and title of officers or agents authorized to transact business with the Town;
  - Proof of authorization if other than president or vice-president or general partner; and
  - Name and address of any new design professional for the project if applicable.
- (3) **Burdens on Transferee Applicant.** A transferee applicant must also assume, in writing on a form acceptable to the Town Attorney, all commitments, responsibilities and obligations of the prior applicant, including all special conditions of the concurrency determination certificate.
- (4) **Suspension of Concurrency Approval.** Failure to make the required disclosure and assumption shall suspend a concurrency approval until such time as proper disclosure and assumption are made.
- (5) **Time Constraints Unaffected.** Transfer of a concurrency approval until concurrency determination shall not toll or modify the calculation of time limits set forth in the concurrency determination approval. Following any transfer, such time limits shall be calculated as if the transfer had not occurred.
- (6) **Not Assignable or Transferable to Other Developments.** A concurrency determination certificate shall not be assignable or transferable to other developments.

### 168.03 PROPORTIONATE FAIR-SHARE OPTIONS TO MITIGATE DEFICIT TRANSPORTATION FACILITIES AND PUBLIC SCHOOL FACILITIES

#### 168.03.1 PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES

- (A) **Purpose and Intent.** The purpose of this Section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program.
- (B) **Findings.** The Town Council finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors, and that the Town's Proportionate Fair-Share Program:
- Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative and creative efforts of the public and private sectors;
  - Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost of expanding or improving a transportation facility;

- (3) Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion; and
  - (4) Maximizes the use of public funds for adequate transportation facilities to serve future growth and may, in certain circumstances, allow the Town to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Budget.
- (C) **Applicability.** The Proportionate Fair-Share Program shall apply to any development project in the Town of Indian River Shores where the project's traffic impact study or the Town Engineer determines that there is insufficient capacity on one (1) or more segments to satisfy the development project's transportation concurrency requirements. The Proportionate Fair-Share Program does not apply to developments exempted from concurrency as provided in Section 168.02.5 (B).
- (D) **General Requirements.**
- (1) An applicant whose project meets the criteria of Section 168.03 may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution pursuant to the following requirements:
    - (a) The proposed development is consistent with the Town Comprehensive Plan and applicable Land Development Code regulations, and
    - (b) The five (5) year schedule of capital improvements in the Town's Capital Improvements Element (CIE) includes one (1) or more transportation improvements that, upon completion, will provide sufficient capacity for the deficient segments to accommodate the traffic generated by the proposed development.
  - (2) The Town may choose to allow an applicant to satisfy transportation concurrency for a deficient segment through the Proportionate Fair-Share Program by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment sufficient to accommodate the additional traffic generated by the applicant's proposed development, even if the improvement project for the deficient segment is not contained in the five (5) year schedule of capital improvements in the CIE where:
    - (a) The Town Council holds an advertised public hearing to consider the proportionate fair-share agreement and corresponding future changes to the five (5) year CIE, and
    - (b) The Town adopts, by ordinance, an amendment adding the improvement to the five (5) year schedule of capital improvements in the CIE.
  - (3) Any improvement project proposed to meet a developer's fair-share obligation must meet design standards of the Town for locally maintained roadways and of the Florida Department of Transportation (FDOT) for the state highway system.
- (E) **Application Process.**
- (1) Upon identification of a lack of capacity to satisfy transportation concurrency, an applicant may choose to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of Section 168.03.1.
  - (2) Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with the Town Manager or designee to discuss eligibility, application submittal requirements, potential mitigation options and related issues.
  - (3) Eligible applicants shall submit an application to the Town Manager or designee that includes an application fee as established by resolution and the following:
    - (a) Name, address and phone number of owner(s), developer and agent;
    - (b) Property location, including parcel identification numbers;
    - (c) Legal description and survey of property;
    - (d) Project description including type, intensity and amount of development;
    - (e) Phasing schedule, if applicable;
    - (f) Description of requested proportionate fair-share mitigation method(s);

- (g) Copy of concurrency application;
  - (h) Copy of the project's Traffic Impact Statement (TIS) or Traffic Impact Analysis (TIA); and
  - (i) Location map depicting the site and affected road network.
- (4) The Town Manager or designee shall review the application and certify that the application is sufficient and complete. Should the application require the Town to use the professional services of a consultant, the applicant shall bear all expenses incurred by the Town for use of such consultant services. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the proportionate fair-share program as indicated in Section 168.02 and Section 168.03.1, then the applicant shall be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within thirty (30) days of receipt of the written notification, then the application shall be deemed abandoned. The Town Council may, in its discretion, grant an extension of time not to exceed sixty (60) days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.
- (5) When an application is deemed sufficient, complete and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the Town or the applicant with direction from the Town and delivered to the appropriate parties for review.
- (6) The Town Manager or designee shall notify the applicant regarding the date of the Town Council meeting at which the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Town Council.

**(F) Determining Proportionate Fair-Share Obligation.**

- (1) Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land and construction and contribution of facilities.
- (2) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ based on the form of mitigation.
- (3) The methodology used to calculate an applicant's proportionate fair-share obligation shall be based on the cumulative number of peak hour, peak direction trips from the complete build-out of the proposed development, or build-out of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour directional maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated construction cost of the proportionate share project in the year that construction will occur.

This methodology is expressed by the following formula:

$$\text{Proportionate Fair-Share} = \Sigma [(Development\ Trips_i) \div (SV\ Increase_i)] \times Cost_i$$

(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)

Where:

$\Sigma$  = Sum of all deficient links proposed for proportionate fair-share mitigation for a project;

*Development Trips<sub>i</sub>* = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the concurrency management system;

*SV Increase<sub>i</sub>* = Service volume increase provided by the eligible improvement to roadway segment "i"; and

*Cost<sub>i</sub>* = Adjusted cost of the improvement to segment "i". Cost shall consist of all improvements and associated costs including design, right-of-way acquisition, planning, engineering, inspection and physical development costs directly associated with construction at the anticipated cost in the year that construction will occur.

- (4) For purposes of determining proportionate fair-share obligations, the Town shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur. The Town shall coordinate the review of impacts to State or County maintained roads with the Indian River County Public Works Department. Any County fees associated with review of impacts or needed improvements to State or County maintained roads, including engineering, design and cost estimates, shall be paid by the applicant.



- (5) If the Town has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on an engineer's certified cost estimate provided by the applicant and approved by the County Public Works Director or other method approved by the County Public Works Director.
- (6) If the Town has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at one hundred, twenty (120) percent of the most recent assessed value by the County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the Town and at no expense to the Town. Said appraisal shall assume no approved development plan for the site. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the Town at no expense to the Town. If the estimated value of the right-of-way dedication proposed by the applicant (based on a Town approved appraisal) is less than the Town estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. If the estimated value of the right-of-way dedication proposed by the applicant (based on a Town approved appraisal) is more than the Town estimated total proportionate fair-share obligation for the development, then the Town will give the applicant traffic impact fee credit for the difference.

**(G) Impact Fee Credit for Proportionate Fair-Share Mitigation.**

- (1) Proportionate fair-share mitigation payments for a development project shall be applied as a credit toward the traffic impact fees assessed to that development project.
- (2) Impact fee credits for a proportionate fair-share contribution will be determined when the traffic impact fee obligation is calculated for the proposed development. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant must pay the remaining impact fee amount.
- (3) A proportionate fair-share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any traffic impact fee credit based upon proportionate fair-share contributions for a proposed development may not be transferred to any other location.
- (4) The amount of traffic impact fee (TIF) credit for a proportionate fair-share contribution may be up to but shall not exceed the project's proportionate fair-share amount and will be determined based on the following formula:

TIF Credit = [(Proportionate fair-share impacted roadways' *VMT*) ÷ (*Total Project VMT*)] x (Total Project Traffic Impact Fee Liability)

Where:

*VMT* (Vehicle miles of travel on a link) = (length of link) x (number of trips assigned to that link); and

**Total Project VMT** = Total vehicle miles of travel on all links impacted by proportionate fair-share project.

- (5) A proportionate fair-share impact fee credit shall be applied consistent with the following formula:

Applicant payment = [(Total project traffic impact fees assessed) + (Proportionate Share Payment)] – (TIF Credit)

**(H) Proportionate Fair-Share Agreements.**

- (1) Upon executing a Proportionate Fair-Share Agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive concurrency approval for subject trips. Should the applicant fail to apply for building permits within the timeframe provided for in the Town concurrency approval, then the project's concurrency vesting shall expire and the applicant shall be required to reapply. Once a proportionate share payment for a project is made, other impact fees for the project are paid and all other aspects of the Agreement are fulfilled, no refunds shall be given and trips shall be deemed vested. All vested trips shall run with the land.
- (2) All developer improvements accepted as proportionate fair-share contributions must be completed within three (3) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement (unless otherwise provided in the Agreement) and be accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. The security instrument shall conform to specifications set by the Town Council and approved by the Town Attorney.
- (3) Dedication of necessary right-of-way for facility improvements pursuant to the Agreement must occur at a date as specified in the Agreement.

- (4) Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.
- (5) Applicants may withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the Town are nonrefundable.
- (6) The Town may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

**(I) Appropriation of Fair-Share Revenues.**

- (1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the Town capital improvements element, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may also be used as the fifty (50) percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).
- (2) In the event a scheduled facility improvement is removed from the CIE, then the proportionate fair-share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair-share contribution was made.

**168.03.2 PROPORTIONATE FAIR-SHARE MITIGATION FOR PUBLIC SCHOOL FACILITIES**

The proportionate fair-share mitigation provisions for public school facilities shall apply to any residential development project subject to school concurrency located in Indian River County where the school district has determined that there is insufficient public school facilities capacity to satisfy the development's public school facilities concurrency requirements. The school district shall process for consideration all requests for proportionate fair-share mitigation for public school facilities and shall administer resulting mitigation agreements in accordance with Section 14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency" and the public school facilities element of the Town Comprehensive Plan.

**168.04 SITE PLANS**

- (A) Site Plan Required.** No structure, other than a single-family detached house on a lot in single and separate ownership from adjacent lots, shall be erected or expanded unless a site plan shall be submitted and approved pursuant to the provisions of this subchapter.
- (1) **Preliminary Site Plans.** A preliminary site plan may be submitted for any development project requiring a site plan as defined in the Land Development Code of the Town of Indian River Shores, Section 168.04 "Site Plans".
  - (2) **Components of a Preliminary Site Plan.** A preliminary site plan shall include the following:
    - (a) **Existing Natural Features.** This includes but is not limited to soils, topography, water areas, trees and other vegetation.
    - (b) **Structures.** Proposed structures and any existing structures which are to be retained including but not limited to their location, use, height, dimension and setbacks.
    - (c) **Landscaping.** Proposed trees, plants and other landscape features and any existing trees and vegetation to be retained including but not limited to their location, height, diameter at breast height (DBH) and type.
    - (d) **Vehicular Use Area.** Proposed off-street parking and loading areas and overall vehicular and pedestrian circulation patterns.
    - (e) **Stormwater Management Plan and Utilities.** Storm drainage system improvements (see Section 167.09 "Stormwater Management") including an On-Site Stormwater Management Plan compliant with applicable National Pollution Discharge Elimination Standards (NPDES) and all other applicable rules and requirements of the Town and the St. Johns River Water Management District. All supportive engineering calculations and drawings for projected volume of stormwater runoff, system design, detention and other relevant data shall be included. In addition, the site plan must include plans for required system improvements for potable water distribution, wastewater collection and disposal, fire protection and provision of other requisite utilities and related easements.

- (f) **Tabular Summary.**
  - (i) Total gross project acreage and net buildable land area;
  - (ii) Total number of proposed residential units (if any), including their characteristics by number of bedrooms and total gross square footage;
  - (iii) Proposed residential densities, including both net and gross acre calculations;
  - (iv) Proposed nonresidential floor area by type of use and total gross square footage;
  - (v) Percentages of total gross project area proposed for pervious and impervious areas and building coverage; and
  - (vi) Number of off-street parking and loading spaces.
- (g) **Erosion and Sediment Control Plan.** The plan shall incorporate erosion and sediment control measures in accordance with State Best Management Practices (BMP's). See also Section 168.05 (B).
- (3) **Review and Approval of Preliminary Site Plans Advisory.** The preliminary site plan shall be reviewed by the Town Staff and shall be submitted to the Planning, Zoning and Variance Board for its consideration. Approval of a preliminary site plan shall be advisory in nature to the developers and shall not excuse in any manner the requirements of Section 168.04 of the Land Development Code relating to Site Plans.

(B) **Application Information.**

- (1) **Filing.** Before a site plan shall be approved, an application for the approval shall be filed with the office of the Town Building Official. The application must be submitted at least two (2) weeks before the Planning, Zoning and Variance Board meeting at which it is to be considered.
- (2) **Attachments.**
  - (a) **Disclosure of Ownership.** All applications shall include a verified statement showing each individual person having a legal or equitable ownership interest in the subject property described in the site plan application. However, publicly-held corporations whose stock is traded on a nationally-recognized stock exchange shall include the name and address of the corporation and principal executive officers. A person other than the landowner may serve as applicant provided a written affidavit signed by the landowner and authorizing the person to act as agent for the landowner is submitted with the application.
  - (b) **Fee.** The Town may establish a fee structure for the above application.
- (3) **Data to be Shown on Site Plan.**
  - (a) **Elevations.** The site plan shall show grades, finished ground floor elevations, contours and shall designate the number of dwelling units, square footage of the site, building coverage, square footage of paved areas and open area.
  - (b) **Architectural Plans.** A scale drawing of the sides, front and rear of the building or structure; a generalized floor plan indicating uses and square footage of each proposed use of all buildings or structures; and the building's exterior construction material and color.
  - (c) **Accessory Structures.** The location and character of all outside facilities for waste disposal, storage areas or display.
  - (d) **Vehicle Use Areas.** All curb cuts, driveways, parking areas, loading areas, surface materials, number of employees and number and type of vehicles owned by the establishment.
  - (e) **Walkways.** All pedestrian walks, malls, yards and open spaces, including beach accessways.
  - (f) **Signs.** The location, size, character, height or orientation of all signs as required in Chapter 164 of the Town Land Development Code.
  - (g) **Landscaping.** The location and general character of landscaped areas based on the criteria contained in Chapter 163 of the Town Land Development Code, including existing vegetation.

- (h) **Adjacent Vehicular Use Areas.** The location and general character of all existing curb cuts, driveways, parking areas and loading areas within two hundred (200) feet of any proposed curb cuts, driveways, parking areas or loading areas.
  - (i) **Walls.** The location, height and general character of perimeter or ornamental walls, fences or other screening devices.
  - (j) **Stormwater Management.** The required “On-Site Stormwater Management Plan” meeting criteria of Section 167.09 “Stormwater Management,” certified by an engineer or architect registered in the State of Florida.
  - (k) **Easements.** The location of existing easements and rights-of-way.
  - (l) **Survey.** A land survey with a complete legal description prepared and certified by a registered surveyor.
  - (m) **Seal.** All site plans must be sealed by a state registered architect or engineer pursuant to Florida Statutes as existing or hereafter amended.
  - (n) **Plat.** Citation of plat recordation number, if applicable.
  - (o) **Utilities.** The location of sewer lines, water lines and fire hydrants.
  - (p) **Lighting.** Lighting shall be in accordance with Section 161.19 of the Town Land Development Code, “Sea Turtle Protection.”
  - (q) **Erosion and Sediment Control Plan.** The plan shall incorporate erosion and sediment control measures in accordance with State Best Management Practices (BMP’s).
- (4) **A1A Frontage Requirements.** As a part of the required site plan documents presented for all developments with direct entry to Highway A1A, the developer shall present approval from the Florida Department of Transportation (FDOT) for access to Highway A1A. Each developer shall have made a request to FDOT for a determination as to whether left-turn storage lanes and right-turn deceleration lanes are needed or are desirable for the development due to the anticipated motor vehicular traffic activity. If left-turn storage lanes or right-turn deceleration lanes are determined to be needed or desirable by FDOT, the developer shall include FDOT approved plans for the lanes and shall complete the lanes at the developer's expense. A time schedule for completion of the lane construction shall be presented for site plan approval.
- (C) **Review by Planning, Zoning and Variance Board.**
- (1) **Staff Report.** The Town Building Official shall prepare a staff report on the application, including any comments of the Town Engineer.
  - (2) **Board Action.** The Planning, Zoning and Variance Board shall not approve any site plan unless it finds that it conforms to all applicable provisions of this title, that the safety and convenience of the public are properly provided for and that adequate protection and separation are provided for contiguous and nearby residential property. The Planning, Zoning and Variance Board may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgment, to effectuate the purpose of this Section and carry out the spirit and purpose of this Chapter.
- (D) **Town Council Review.**
- (1) **Board Approval.** If the site plan is approved by the Planning, Zoning and Variance Board, the site plan, together with staff evaluation and minutes reflecting the Board's action, shall be forwarded to the Town Council for review at the next regular meeting of the Town Council. The Town Council shall review the site plan and consider the recommendations of the Town Building Official and the findings and recommendations of the Planning, Zoning and Variance Board. Once final approval has been given to the site plan, no deviations may be made in that plan without approval of the Town Council except for minor modifications as set forth hereinafter. Upon approval of the site plan by the Town Council, a building permit shall be issued by the Town Building Official upon request of the applicant.
  - (2) **Board Disapproval.** In the event the site plan is not approved by the Planning, Zoning and Variance Board, the applicant for site plan approval may, within ten (10) days of the disapproval, appeal to the Town Council for site plan approval. If the Planning, Zoning and Variance Board denies site plan approval, it shall specify the reasons the plan was denied with specific reference to those sections of the applicable ordinances on which the denial was based. No reasons other than those so stated shall be presented to the Town Council.

- (3) **Site Plan Approval Before Building Permit Granted.** No building permit shall be granted by the Town Building Official until a site plan is approved by the Town Council.
- (E) **Minor Modification of Approved Site Plan.** Minor changes as listed below require authorization by the Mayor or Chairman of the Planning, Zoning and Variance Board, or a Board member appointed by him or her, after review and approval of the Town Building Official. If approved as a minor change, the site plan shall not be required to be returned to the Planning, Zoning and Variance Board or Town Council for reapproval. The Chairman shall report each change so approved to the Planning, Zoning and Variance Board for the record at the next scheduled meeting. Minor changes to the site plan include the following:
- (1) **Building Details.** The addition of awnings, canopies or ornamental structures; and modifications in stairways or elevations of decks, porches, pools, terraces and fencing.
  - (2) **Parking Lots.** Parking lot reconfiguration or the addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or twenty (20) spaces, whichever is the lesser amount.
  - (3) **Building Additions.** Attached or detached additions to buildings which do not increase the floor area in excess of ten (10) percent of the ground floor area of the principal structure or five hundred (500) square feet, whichever is the lesser amount.
  - (4) **Infrastructure.** Changes of a technical engineering nature to the water, sewer, drainage or street designs.
  - (5) **Landscaping.** Any upgrading of the original landscape plan.
- (F) **Approval Period.**
- (1) **Commencement of Construction.** All site plan approvals shall terminate and become null and void automatically without notice if a building permit has not been issued and construction has not commenced within twelve (12) months from the date of approval. For the purposes of this division, construction shall be deemed to have commenced when the developer has built a portion of a structure shown on the plan (for example, the pouring of footers) or has made substantial improvements to the site other than land clearing, filling or grading in accordance with the approved site plan evidencing a good faith effort to diligently pursue construction to completion.
  - (2) **Extensions of Site Plan Approval.** Site plan approval may be extended one (1) time only for good cause by the Town Council for a period not to exceed twelve (12) months. All requests for extensions must be in writing on a form supplied by the Town and received by the Town prior to expiration of the site plan. Upon receiving an extension, all approved site plans shall comply with applicable Town regulations as they exist on the date the extension is granted.
  - (3) **Abandonment of Construction.**
    - (a) In cases where construction is abandoned or suspended after commencement, as defined above, the site plan approval shall terminate and become null and void after notice and hearing by the Town Council. For the purpose of this division, construction shall be considered abandoned or suspended if:
      - (i) The Town Council finds during the hearing that an active building permit has not been maintained for the construction of a structure in accordance with the approved plan; or
      - (ii) The Town Council finds during the hearing that construction at a level indicating a good faith effort to proceed with the completion of the project has not occurred for a continuous period of six (6) months immediately preceding the receipt of notice.
    - (b) However, the Town Council shall not deem this inactivity to constitute project abandonment or suspension if the inactivity is deliberate and entirely consistent with a Town Council approved schedule for the phasing of a multi-phase project. This division shall not operate to invalidate any site plan prior to the end of the initial twelve (12) month period or any authorized extension thereof.
  - (4) **Site Plan Requirement and Schedule of Phasing; Lapses.**
    - (a) Any planned multi-phased project to be approved by the Town Council shall include an approved schedule for the phasing of construction. In addition, if a complete site plan for each phase of the proposed project is not initially submitted, a schedule of future site plan submissions for each successive project phase shall be approved by the Town Council as part of the initial site plan approval.

- (b) A person shall be required to request Town Council approval of an amended schedule of phasing for any planned multi-phase project if the approved schedules for site plan submittal or construction lapses. Upon receiving an approval of an amended schedule of phasing, the site plans for respective future phases shall comply with all applicable Town regulations as they exist on the date the amendment is granted.

(5) **Transfer of Site Plan Approval to Run With Land.**

- (a) A site plan approval shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of the transfer, including the identity of the successor in ownership. The disclosure shall be submitted to the Town Manager and shall provide the full legal name of the person or business entity acquiring an interest in the property, the nature of the interest, the address of the principal place of business, the telephone number of the successor in ownership and the name and address of any registered agent of the owner. If the new owner is a corporation, the enclosure shall include the name, address and title of officers or agents authorized to transact business with the Town, and the name and address of any new design professional for the project.
- (b) Upon site plan transfer, the successors in interest shall provide a written acknowledgment and acceptance of all commitments, responsibilities and obligations of the prior developer, including all special conditions of site plan approval. This written acknowledgement shall be in a form acceptable to the Town Attorney and shall be approved by the Town Attorney.
- (c) The following provisions shall also apply to transfer of site plan approvals:
  - (i) **Disclosure of requisite information.** Failure to make the required disclosure and assumption shall suspend all site plan and zoning approvals until such time as proper disclosure and assumption is made.
  - (ii) **Time limits.** Transfer of site plan approval shall not toll or modify the calculation of time limits set forth with respect to commencement or abandonment of construction. Following any transfer, the time limits shall be calculated as if the transfer had not occurred.
  - (iii) **Transferability exceptions.** This provision does not relate to any transfer of space, units, buildings or property to a transferee who intends to occupy the property only after issuance of a certificate of occupancy, unless the transferee is the successor developer, nor to the creation or transfer of a nonpossessory lien or encumbrance.

(G) **Posting of Bonds.**

- (1) **Improvement or Public Facility Bond.** Upon final site plan approval by the Town Council, the applicant shall post a bond executed by a surety company authorized to do business in the state in an amount estimated by the Mayor or his designee to be equal to the cost of constructing required public facilities. The bond shall be in favor of the Town and shall be subject to the condition that all of the improvements will be completed within one (1) year after approval of the site plan. In the event they are not so completed within that time, the Town may proceed with the work and hold the applicant and the surety jointly and severally responsible for the cost thereof. As an alternative surety, the applicant may deposit a certified check or cash with the Town Treasurer or any other bond provisions as the Town Council deems adequate to insure compliance with this provision.
- (2) **Site Restoration Bond.** See Section 168.05.

(H) **Violations.**

- (1) Failure to comply and continually maintain all approved elements of an approved site plan, including landscape, appearance and other site development features, shall be a violation of this title, subject to the enforcement and penalty procedure of Section 168.04 (H)(2) below.
- (2) In the event of a noncompliance with this subchapter, the Mayor or the Town Building Official shall have the authority to suspend and revoke any building permit used under this subchapter and to take all actions necessary to halt construction until that time as the provisions herein are complied with. In the event legal action is necessary and costs are incurred by the Town in forcing compliance, these expenses shall be borne by the developer or other parties violating the terms of this subchapter.

- (I) **Site Plan Review Criteria.** The Planning, Zoning and Variance Board and the Town Council shall use the appropriate foregoing chapters of this title or Code plus the following criteria in reviewing site plans:

- (1) **Appearance of Site and Structures.** The appearance of the site and structures shall be coordinated for the purpose of

creating a pleasing and harmonious overall effect. The choice of building and site improvements shall be commensurate with the objectives of the subject use without generating adverse visual impact on surrounding properties or transportation corridors. Architectural style or design is not restricted. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to the impacted area considering the following factors.

- (a) **Urban Design.** The exterior of buildings and structures including mass, facade and materials shall be in harmony with the site and the impacted area and not gaudy or garish. Awnings or ornamental features shall be designed in a manner harmonious with the building design and shall be of appropriate scale, shape, color scheme and pattern in order to reinforce good design principles. Similarly, awnings or ornamental features shall not use incompatible or extraordinary scale, shapes, color schemes, patterns or other extraordinary features for purposes of attracting attention.
  - (b) **Colors.** They shall be harmonious with development in the impacted area and not gaudy or garish, with bright or brilliant colors used only for accent.
  - (c) **Mechanical Equipment.** This and other utility hardware other than antennas and stacks on roofs shall be harmonious with the building or they shall be located or screened so as not to be visible from any public ways within the impacted area.
  - (d) **Dumpsters.** Refuse and waste removal areas shall be screened from adjacent properties and public ways by appropriate fences, walls or hedges. In cases where dumpsters must be located in areas highly visible from any public right-of-way, the Planning, Zoning and Variance Board shall be authorized to require an appropriate vegetative or structural screen to shield an unsightly condition.
  - (e) **Outdoor Uses.** All businesses, services or other commercial activities shall be conducted within completely enclosed buildings.
  - (f) **Lighting.** Exterior lighting shall be arranged so as to shield or deflect the light from adjoining properties, beaches and public streets. Chapter 164 of this Code shall control signs and their lighting.
- (2) **Traffic Impact, Driveways and Parking Areas.**
- (a) **Traffic Impact.** If not already completed as a part of the subdivision approval, a traffic generation study shall accompany the site plan and be part of the concurrency review (See Section 168.02).
  - (b) **Parking Lots.** Driveways and areas for the parking and internal circulation of vehicles shall be located, designed and controlled so as to provide for safe and convenient circulation within the site, and safe and convenient access from adjoining streets. The requirements of Chapter 162 of this Code shall be applied for off-street parking. Among factors to be considered shall be the number and location of access drives from adjacent streets, the location and width of driveways and access aisles to parking spaces, the arrangement of parking areas and the means of access to buildings for firefighting apparatus and other emergency vehicles.
  - (c) **Channelization.** Parking areas and driveways shall be clearly identified and separated from principal pedestrian routes and recreation areas by curbs, pavement markings, planting areas, fences or similar features.
  - (d) **Minor Street Access.** Vehicular access to adjoining minor residential streets generally shall not be permitted when adequate access is available to collector streets or major thoroughfares and when adequate access for emergency vehicles can otherwise be provided. Similarly, vehicular access points shall be strategically planned and located in order to avoid disrupting traffic flow. Generally, points of access shall be located at least fifty (50) feet from existing intersections. New curb cuts along State Road A1A shall be coordinated with the State Department of Transportation. For any site abutting on State Road A1A, the Town may require the submission of plans for a stacking lane, turning lane or deceleration lane subject to the approval and review by FDOT.
- (3) **Landscaping.** The provisions of Chapter 163 of this Code shall provide the criteria for landscaping and the provisions of Chapter 167 of this Code shall provide the criteria for tree preservation.
- (4) **Infrastructure.** Appropriate facilities for providing public potable water and sanitary sewerage collection plus solid waste disposal, surface water drainage and fire protection shall be incorporated in the site plan. These facilities shall be reviewed by appropriate Town officials and a consulting engineer if needed. Evaluative staff comments shall be provided to the Planning, Zoning and Variance Board to facilitate the Board's review, including the results of the concurrency review and environmental sensitivity. Water, sewer, drainage, streets and walkway facilities shall be designed in accordance with the standard specifications as exist or as hereafter amended and on file with the Town Building Official; installation shall minimize impact on the environment, including tree canopy and soil stability.

- (5) **On-Site Drainage.**
  - (a) **Plans.** A concept plan for drainage of surface water run-off supplied by the applicant shall be approved by the Town Engineer prior to consideration of a site plan by the Planning, Zoning and Variance Board. Prior to application for a building permit, a detailed drainage plan prepared by a professional engineer or registered architect registered in the State shall be approved by the Town Engineer. A state registered professional engineer or registered architect shall certify that the drainage plan has been appropriately implemented prior to the issuance of an occupancy permit.
  - (b) **Detention.** Surface water management systems shall be designed and constructed to detain with filtration or retain as a minimum the runoff from a 25-year frequency, 24-hour design storm. Post development runoff shall not exceed pre-development runoff.
- (6) **Environmental Assessment.** An environmental assessment report shall be prepared which demonstrates compliance with all applicable portions of Chapter 167 of this Code. It shall also demonstrate appropriate passive energy conservation measures, including building and window orientation, and landscaping.
- (7) **Natural Drainage.** A natural vegetative buffer or littoral zone of three (3) feet shall be provided along any natural drainage way unless the drainage way is a wetland or other vegetated area. See also Section 167.08.
- (8) **Shoreline Use Criteria.** First priority shall be given to shoreline protection uses, second to water-dependent uses and third to water-related uses. See Comprehensive Plan Coastal Management Element (Chapter 5) for details. Building arrangements shall maximize ocean views. Renourished beaches shall not be impacted.
- (9) **Hurricanes.** In addition to meeting the flood management provisions of Chapter 165 of this Code, any applicable site plan must show conformance to the Indian River County Hurricane Evacuation Plan.

#### 168.05 EROSION AND SEDIMENT CONTROL AND SITE RESTORATION

##### (A) Bond or Secured Obligation.

- (1) **Submittal of Required Secured Obligation/Bond.** At least five (5) days prior to the time an application is made for a building permit for any building, the applicant shall deliver to the Town a secured obligation satisfactory to the Town Manager in the sum of two thousand five hundred dollars (\$2,500), plus two (2) percent of the cost of construction of the entire building as indicated on the application for building permit.
- (2) **Exemptions.** No site restoration secured obligation shall be required for:
  - (a) Any project for which the costs of improvements do not exceed seventy-five thousand dollars (\$75,000);
  - (b) The construction of any single-family residence in any zoning district; or
  - (c) Town owned government facilities or any governmental facilities to be owned or constructed by the Town of Indian River Shores.
- (3) **License Requirement.** If the secured obligation to be delivered is a corporate surety bond, the surety company must be licensed to do business in the State of Florida and be on the United States Treasury Department's list of approved surety companies.
- (4) **Performance Guarantee, Abandonment and Expiration.** The secured obligation shall guarantee that the site will be promptly restored to its original state, so far as is possible, if the construction is abandoned. In default thereof, the amount of the security shall be paid, on demand, to the Town for its use in effecting the restoration or retained by it as liquidated damages if complete restoration is impossible or impracticable or if restoration costs would exceed the amount of the security. Construction shall be deemed to have been abandoned if the applicant or his successors or assigns so notify the building department, in writing, or if work on the premises ceases prior to the completion of the improvement and is not resumed within thirty (30) days of the expiration of the building permit. The secured obligation shall have an expiration date at least one (1) year after the expected construction completion date as reflected on the building permit application.

##### (B) Permit Inspections and Documentation.

- (1) **Erosion Control Requirements/Inspections to Commence Prior to Land Clearing.** Erosion and sedimentary control inspections will be performed by the Town to verify compliance with the approved site Erosion and Sediment Control



Plan during the construction process. Inspections will occur at construction commencement, during construction and upon completion of construction. Erosion and control sediments shall be in place prior to any clearing, grubbing or grading activities other than that incidental activity necessary to install the perimeter controls. It shall be the responsibility of the Developer/Contractor to notify the Town within seventy-two (72) hours of expected construction commencement and expected construction completion of all projects within the Town. If sufficient discrepancies are noted during the inspection, the Developer/Contractor shall be notified by the Town within seventy-two (72) hours of the inspection detailing the discrepancies along with any applicable enforcement action. Applicable enforcement actions include but are not limited to sanctions, fines and stop work orders as deemed necessary by the Town's Staff depending upon the severity of the discrepancy.

- (2) **Permit Documentation.** The applicant shall provide all applicable permit documentation from various agencies for the project including but not limited to the St. Johns River Water Management District (SJRWMD), Florida Department of Transportation (FDOT), Florida Department of Environmental Protection (FDEP) and Army Corps of Engineers (ACOE), etc. as part of the plan review process prior to either construction plan approval or prior to the Town releasing Certificate of Occupancy for the project. The applicant shall include all applicable permits that have either been obtained or submitted such as SJRWMD Environmental Resource Permits (ERP's), FDEP National Pollutant Discharge Elimination System (NPDES), FDOT Drainage and Drive Connection Permits, etc. This list is given as basic guidance and is by no means all-inclusive. Each project under review shall be reviewed on a case-by-case basis.
  - (3) **Permits for Tree Removal and Land Clearing.** Permits for tree removal, clearing of the land (except debrushing), excavation, grading or installation of utilities shall not be issued nor such work undertaken in areas beyond the limits of the area necessary for the construction of the building for which a building permit has been applied or site plan has been approved. The Town Building Department shall determine, in writing, the limits of the area necessary for the satisfactory completion of the permitted work and such determination shall be deemed a condition of the permit. The construction area shall be fenced to avoid damage to other areas where determined necessary by the Town Building Department. See Chapter 167 of this Code.
- (C) **Failure to Restore Site.**
- (1) In the event the applicant, his successors or assigns fail to restore the site prior to abandonment, the Town shall notify the applicant and his surety, guarantor or security agent as appropriate by certified mail, addressed to the last address furnished by the parties to the Town, demanding performance or the guarantee sum deposit. Not later than ten (10) days after the posting by the Town of the demand, the applicant or his surety, guarantor or security agent shall deposit with the Town Building Official the sum demanded by the Town. This may be either the estimated cost of restoring the site to its original condition as nearly as possible or the full sum of the secured obligation.
  - (2) In the event there is a surplus in the deposit made on the Town's demand after restoration of the site, the Town shall refund to the depositor on his or her order the surplus after costs and expenses. If the amount received by the Town is insufficient to restore the site, the applicant shall not be relieved of his or her obligation to complete the improvement or restore the site; and the applicant shall, upon further demand by the Town, deposit the additional amount necessary to restore the site.
- (D) **Town Construction of Abandoned Structures.** By accepting the building permit at the time of undertaking construction, the landowner and the builder or builder/developer as agent for the landowner represents to the Town the intention and ability to complete the construction for which the permit was requested. The landowner further consents to permit the Town to undertake certain construction on any building, structure or development having been undertaken and subsequently abandoned. The extent to which the Town may complete a structure or project is to make the exterior aesthetically pleasing and give the appearance of a finished structure so it will blend with structures in the surrounding area. In addition, the Town may take such actions as are necessary to protect the health, safety and welfare of the public, including but not limited to restoration of the site to its original condition, if practical, under the circumstances of each particular case.
- (E) **Project Amenities.** Any developer of a proposed project within the Town shall identify, as specifically as possible, the time frame for completion of the amenities. It is the policy of the Town to require completion of amenities in compliance with the site plan commitment. In furtherance of this goal, the developer shall be required to explain in writing the proposed timing of amenities for the development. In addition, a developer may be required to post a reasonable sum or surety to carry out the contemplated expenditures for amenities and common element improvements. In the event the Town determines there is a failure to comply on the part of the developer, builder or owner, the Town shall notify the developer of such failure of compliance and may stop work on the project. Further, the Town may refuse to issue a certificate of occupancy or refuse to issue a building permit for any violation of this Section in not completing amenities and common elements or in otherwise failing to comply with the provisions of this subchapter.
- (F) **Procedural Steps**

- (1) **Notice of Violation and Hearing.** Prior to instituting action to finish, improve or correct any structure or site that has been abandoned, the Town shall notify the owner or the owner's agent of the violation of this Section and any other ordinance of the Town for which compliance is sought. A hearing shall be held before the Code Enforcement Board, subject to the notice and terms and conditions of the Code Enforcement Board as set forth in the Town Code of Ordinances.
- (2) **Additional Remedies.**
  - (a) In addition to utilizing funds and remedies as set forth in this Section, the Town shall have all rights of enforcement of the Town Code of Ordinances through the use of the Code Enforcement Board under the authority vested in that Board.
  - (b) This provision shall not supersede other remedies, but shall be in addition to the remedies permitted with the Code Enforcement Board.
  - (c) Nothing in this Section or any other related ordinances shall prevent the Town from taking legal action in addition to the other remedies herein.

#### 168.06 CONDITIONAL USE

The plan or application requirements and the approval process shall be the same as for a site plan. The review criteria are found in the individual districts and in Chapter 167 of this Code.

#### 168.07 LAND DEVELOPMENT CODE AMENDMENT

##### (A) Zoning Map Amendment.

- (1) **Application.** An application for a change of zoning map designation must be submitted to the Town Building Official and shall show the name of the owner of the property, his or her address, a legal description of the property, its present zoning classification and its proposed zoning classification. In addition, the application must be signed by the owner of the property or specific written authority from the owner for an agent to sign must be attached to the application.
- (2) **Fee.** The Town may establish a fee structure for the above application.
- (3) **Sketch Plan.** At least two (2) weeks prior to the Planning, Zoning and Variance Board meeting, the sketch plan shall be submitted to include the following:
  - (a) Location of proposed buildings;
  - (b) All roads and easements to be located on the property;
  - (c) General location of proposed water and sewer lines; and
  - (d) A general description of the project, including density.
- (4) **Planning, Zoning and Variance Board Public Hearing.** In the event of a Planning, Zoning and Variance Board public hearing for rezoning, a notice shall be published at least fourteen (14) days prior to the hearing stating the time and place of the hearing. In addition, all property owners within three hundred (300) feet of the outside boundary of the property to be rezoned shall be notified by certified mail fourteen (14) days prior to the hearing. The Town Building Official shall prepare a staff report on the request for the Board.
- (5) **Town Council Public Hearing.** After a public hearing on rezoning, the Planning, Zoning and Variance Board shall recommend to the Town Council to either accept or deny the rezoning request. The Council shall follow the provisions of Chapter 166.041 F.S. in advertising for their public hearings.

- (B) **Text Amendment.** Any amendment to the text of this Chapter shall be approved like any other ordinance after the Planning, Zoning and Variance Board has made a recommendation to Town Council.

#### 168.08 COMPREHENSIVE PLAN

References in this Code to the Comprehensive Plan and its elements including the Future Land Use Plan refer to the 1990 Indian River Shores Comprehensive Plan as may be amended from time to time. Such amendments shall be made in accordance with Chapter 163 F.S.

**168.09 VARIANCE AND ADMINISTRATIVE APPEAL****(A) Variance.**

- (1) **The Planning, Zoning and Variance Board.** The Board shall have the power to recommend approval or denial of applications from the terms of this Chapter as will not be contrary to the public interest where, owing to conditions unique to this site, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship. The Town Council shall make the final decision.
  - (a) The Town Building Official may grant approval of variances for encroachments by existing structures into building setback lines or easements of one (1) foot or less. The application procedure and considerations in granting this variance shall be the same as set forth in Section 165.04 (D).
  - (b) The Planning, Zoning and Variance Board may, without approval of the Town Council, approve variances for encroachments by existing structures into building setback lines or easements of three (3) feet or less. The application procedure and considerations in granting this variance shall be the same as set forth in Section 165.04 (D).
- (2) **Criteria.** The Planning, Zoning and Variance Board shall approve a variance only after the applicant has demonstrated justification for the granting of a variance in conformance with the following criteria:
  - (a) **Special Conditions.** That special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of said land, structure or building.
  - (b) **Unique.** That the circumstances which cause the hardship are peculiar to the property, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the district.
  - (c) **Hardship.** That the literal interpretation of the provisions of this Chapter would deprive the applicant of a substantial property right that is enjoyed by other property owners in the district. It is of no importance whatsoever that the denial of the variance might deny to the property owner some opportunity to use the property in a more profitable way, or to sell it at a greater profit than is possible under the terms of this Chapter.
  - (d) **Self-Created.** That the hardship is not self-created or the result of mere disregard for or ignorance of the provisions of this Ordinance.
  - (e) **Minimum Variance.** That the variance is the minimum variance that will make possible the reasonable use of the property.
  - (f) **Adjacent Property.** That granting the variance requested will not be detrimental to adjacent property or adversely affect the public welfare and will be in harmony with the general intent of this Chapter.
  - (g) **Use Variance.** Under no circumstances shall the Board grant a variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Chapter in said district.

**(B) Administrative Appeal and Re-Submittal.**

- (1) **Appeal.** Appeal from any action taken by the Planning, Zoning and Variance Board must be filed with the Town within sixty (60) days of the action from which the appeal is taken. In the event any provision of the Land Development Code provides for a shorter appeal period, then said shorter period shall apply.
- (2) **Re-Submittals After Denial.**
  - (a) Applicant must wait a period of one (1) year following denial by the Planning, Zoning and Variance Board of any request for variance when the re-submittal is substantially the same as the denied request.
  - (b) Any requests, other than a variance request for action by the Planning, Zoning and Variance Board, may be denied if the Board determines the issue has been previously addressed and denied within a one (1) year period of the submittal.
  - (c) The Board shall also review any appeal of an administrative decision made by the Town Building Official in administering this Chapter and make a recommendation to the Town Council.

**168.10 NONCONFORMING USES AND LOTS**

- (A) **Elimination of Nonconforming Uses.** Any use existing on the effective date of this Code which is classified as a nonconforming use in the zoning classification in which it is located shall be terminated by the year 2000. By July 1, 1991, the Town Building Official shall issue a special certificate of occupancy to the owner of all nonconforming uses which shall state the future date of termination of the nonconforming use, and said special certificate of occupancy shall be prominently displayed on said property.

Any owner that perceives the year 2000 date to constitute a unique hardship may apply to the Planning, Zoning and Variance Board. All applications for extensions must be submitted to the Town Building Official by January 1, 1992; said applications must be accompanied by an appraisal, and a statement of what is unique to this use and structure. No extension shall be granted beyond the Year 2010. The Board is authorized to hire tax, accounting and/or architectural experts (at the expense of the applicant) to assist in assessing the stated hardship.

- (B) **Expansion or Discontinuance of Nonconforming Use.** No nonconforming building containing a nonconforming use shall be structurally changed, altered, enlarged or moved unless the altered, enlarged or moved building or use shall conform to the provisions of the district in which it is located; provided, however, redevelopment of a nonconforming building or a nonconforming use which results in a decrease in the degree of nonconformity may be approved by the Town Council if the Town Council finds that the redevelopment will not adversely affect adjacent property and that it would not adversely affect the public welfare. No nonconforming use, if discontinued or changed to a use permitted in the district in which it is located, shall be resumed or changed back to a nonconforming use. A nonconforming use shall be deemed discontinued for the purpose of this Section if a nonconforming use is not made of the property for a period of one (1) year. For the purposes of this Section, "redevelopment" shall mean new construction which replaces pre-existing construction on a site.
- (C) **Effect of Enactment of Code.** The enactment of this Code shall not be deemed to affect, alter or change any special exception or variance heretofore granted by the appropriate administrative or legislative body of the Town or by a court of competent jurisdiction upon review of the action of the administrative or legislative body.
- (D) **Restoration of Damaged Buildings.** Nothing in this Section shall prevent the restoration of a building damaged by fire, explosion, an act of God or an act of the public enemy subsequent to the effective date of this Chapter or prevent the continuance of the use of the building or part thereof as the use existed at the time of the impairment of the building or part thereof. However, the restoration shall be no greater than fifty (50) percent of the structure's total current replacement value, the restoration shall be made within one (1) year and the same use shall be made of the premises. The restoration must be comparable in quality to the remaining structure. In no instance shall a nonconforming use be permitted to be restored when more than fifty (50) percent of its total current replacement value has been destroyed. The provisions of (A) above shall still apply.
- (E) **Repairs and Maintenance.** Nothing contained in this Section shall prevent the strengthening or restoration of any building or wall declared unsafe by the Town Building Official.
- (F) **Nonconforming Lots.** In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption of this Chapter. This provision shall apply even though the lot fails to meet the requirements for area, width or both area and width that are generally applicable in the district. However, front, side and rear yard dimensions and other requirements not involving area, width, or both area and width of the lot shall conform to the regulations for the district in which the lot is located.

#### 168.11 QUASI-JUDICIAL PROCEDURES

- (A) **Quasi-Judicial Hearings on Land Use Matters.** The Town Council and the Planning, Zoning and Variance Board, hereinafter referenced as "Board" as applicable, shall conduct quasi-judicial hearings on land use matters in accordance with the procedures set forth in this Ordinance. Land use matters shall include:
- (1) The rezoning of property which is limited to a single parcel or a limited number of property owners;
  - (2) Subdivision plat approvals;
  - (3) Site plans;
  - (4) Variances;
  - (5) Special use permits;
  - (6) Conditional use permits;
  - (7) Building permits;

- (8) Any other land use decisions which require quasi-judicial hearings; and
  - (9) Siting of telecommunication towers and antennas.
- (B) **Procedures.** The following procedures and rules are adopted for quasi-judicial proceedings on land use matters:
- (1) **Rule Relating to Nonparty and Nonparty-Interveners.** Any person who is not a party or party-intervener shall be allowed to testify subject to procedural rules adopted by the Town Council and may be requested to respond to questions from members of the Town Council or from Planning, Zoning and Variance Board members as applicable. A nonparty or nonparty-intervener need not be sworn as a witness and shall not be required to be subject to cross-examination and need not be an expert witness.
  - (2) **Rule Relating to Party and Party-Interveners.** A party or party-intervener, upon request by another party or party-intervener, shall be sworn as a witness and shall be subject to cross-examination by other parties or party-interveners, and if appropriate be qualified as an expert witness.
  - (3) **Ex Parte Communication Prohibitions.** Pursuant to Florida Statutes Section 286.0115, in a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the Town Council or Board member by application of ex parte communication prohibitions; provided that the substance of such communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter is made by a member of Town Council or Board member as applicable. In that case, the presumption of prejudice arising from such ex parte communication is removed.
  - (4) **Presentations at Quasi-Judicial Hearing.**
    - (a) The Mayor or Planning, Zoning and Variance Board Chairman shall announce the procedure to be followed identifying the parties and order of presentation.
    - (b) The party applicant or proponent of a land use matter may make a presentation not to exceed ten (10) minutes, followed by questions from an adverse party or parties.
    - (c) The party opponent may make a presentation not to exceed ten (10) minutes, followed by questions from an adverse party or parties.
    - (d) Following presentation by the parties, any nonparty may have up to three (3) minutes for comment.
    - (e) The party proponent shall have up to five (5) minutes for closing remarks or presentations. Questions may be permitted on any matters that have not previously been discussed.
    - (f) At the start of the hearing, the Mayor or the Board Chairman shall announce whether testimony and evidence is to be received from Town Staff. The Town Staff may be requested by the Mayor or Board Chairman to make remarks and explanations regarding the pending issue. Each party or party-intervener shall have a reasonable opportunity to question statements and evidence presented by Staff.
    - (g) Following all testimony and evidence as set forth above, the public portion of the hearing shall be closed and deliberation shall take place by the Town Council or the applicable Board. Questions may be asked by any Town Council or Board member during the deliberation process.
  - (5) **Extension of Time.** Any affected party or party-intervener who will be prejudiced by time limitations set in this procedure may request additional time from the Town Council or Board as appropriate.
- (C) **Record of Quasi-Judicial Hearing.** A record of quasi-judicial hearings shall consist of the following:
- (1) Appropriate Town Ordinances, Comprehensive Plan provisions and applicable portions of the Land Development Code;
  - (2) The application and any supporting documents;
  - (3) Staff recommendations;
  - (4) Any written communication to the Town Council or Board as appropriate and relevant;
  - (5) The meeting shall be recorded by the Town in a manner acceptable to the Town. The recording shall be retained by the Town. Any party requiring a court reporter or other method of transcription shall be required to provide same.

- (D) **Basis for Decisions.** All decisions of the Town Council or the Board as applicable in a quasi-judicial proceeding on land use matters must be supported by substantial competent evidence in the record pertinent to the proceeding, irrespective of any ex parte communications made to a member or members of the Town Council or Board.