



DOAR

Development Order Amendment Report

4000 Gateway Centre Boulevard, Suite 100, Pinellas Park, FL 33782
 Phone (727) 570-5151 FAX (727) 570-5118
 www.tbrpc.org

DRI #132/SP - GATEWAY CENTRE/ST. PETERSBURG CITY OF ST. PETERSBURG

On February 10, 2010, the City of St. Petersburg rendered Ordinance No. 968-G to the Tampa Bay Regional Planning Council. The Ordinance reflects an amendment adopted by City Council on January 21, 2010.

BACKGROUND

On October 30, 1986, the St. Petersburg City Council granted a Development Order (Ordinance No. 939-F) to Gateway Centre Joint Venture for a 589.7-acre, multi-use development. The project is generally located west of Interstate 275 and 28th Street, north of Gandy Boulevard, east of U.S. 19 and south of the equivalent of a Lake Boulevard extension, within the jurisdictions of St. Petersburg and Pinellas Park. A similar Development Order was adopted by the Pinellas Park City Council on July 23, 1986 (Ordinance No. 1617).

The Development Orders were amended a total of seven times by Pinellas Park (most recently on January 26, 2006) and two times by St. Petersburg (most recently on September 27, 1997) prior to the bifurcation approved in 2008 and described in a later paragraph. The amendments had cumulatively: established a maximum of 900 residential units (inclusive of a maximum of 200 single-family units) to be accommodated through the Land Use Equivalency Matrix; recognized that Phase 1 entitlements will generate 4,420 p.m. peak hour external trips; extended the Phase 1 and 2 buildout dates and the Development Order expiration date; revised the required Phase 1 transportation improvements; recognized "Auto Museum" as an approved project use; and clarified the requirement for the developer to pay \$75,000 to the Metropolitan Planning Organization for Transportation Demand Activities, upon request. The buildout date (i.e. December 31, 2008) and Development Order expiration date (i.e. December 31, 2013) have each been extended by three year periods in accordance with 2007 legislative changes to Subsection 380.06(19)(c), F.S.

On March 14, 1994, the TBRPC approved the designation of the Gateway Centre DRI as a "Regional Activity Center" (RAC), which became effective following the September 20, 1994 amendment to the Region's *Comprehensive Regional Policy Plan*.

Prior to the bifurcation, the phasing schedule for the overall project was as follows:

PHASE	BUILDOUT	OFFICE (Sq. Ft.)	LT. INDUSTRIAL (Sq. Ft.)	COMMER- CIAL (Sq. Ft.)	HOTEL (Rooms)	RESIDEN- TIAL (MF Units)	AUTO MUSEUM (Sq. Ft.)
1	12/31/2008	998,232*	2,287,425	150,000	300	300*	12,575
2*	12/31/2013	1,531,000	520,000	96,000	200	0	0
TOTAL		2,529,232	2,807,425	246,000	500	300	12,575

* NOTE: Phase 2 has only received conceptual approval and requires further transportation analysis prior to specific approval. Entitlements are reflective of a Land Use Equivalency Matrix conversion request dated April 22, 2004 and prior conversion of 12,575 sq. ft. of Industrial to Auto Museum use.

The following constitutes of geographic breakdown of project entitlements prior to the bifurcation:

LAND USE	PINELLAS PARK		ST. PETERSBURG		TOTAL	
	PHASE 1	PHASE 2*	PHASE 1	PHASE 2*	PHASE 1	PHASE 2*
ACREAGE	489.7		94.0		589.7	
OFFICE (Sq. Ft.)	998,232	990,479	0	540,521	998,232	1,531,000
LIGHT INDUSTRIAL (Sq. Ft.)	1,487,425	520,000	800,000	0	2,287,425	520,000
COMMERCIAL (Sq. Ft.)	150,000	96,000	0	0	150,000	96,000
HOTEL (Rooms)	300	200	0	0	300	200
RESIDENTIAL (MF Units)	300	0	0	0	300	0
AUTO MUSEUM (Sq. Ft.)	12,575	0	0	0	12,575	0

* NOTE: Specific approval of Phase 2 is contingent upon further transportation analysis(es).

The Developers of the St. Petersburg and Pinellas Park portions of the Gateway Centre DRI initiated a *Bifurcation Agreement* to “officially” separate entitlements and requirements within the project to that within each jurisdiction. The Agreement was approved by the Developers (i.e. Jabil, Inc. for St. Petersburg portion and Tarpon Ridge, Inc. for Pinellas Park portion), each local government and the Florida Department of Community Affairs. The City of St. Petersburg Bifurcation Agreement was approved as Ordinance No. On July 24, 2008.

DEVELOPMENT ORDER AMENDMENT

The Ordinance granted the following modifications to the Development Order:

- reduced the 800,000 sq. ft. of Phase 1 Light Industrial space by 300,000 sq. ft. (to 500,000 sq. ft.);
- specifically-approved 450,000 sq. ft. of the former conceptually-approved 540,521 sq. ft. of Office;
- specifically approved 50,000 sq. ft. of Retail of which none was formerly proposed or approved;
- consolidated all entitlements into a single development phase;
- revise the Land Use Equivalency Matrix and the identified “minimums” and “maximums” for each use available through future conversion(s);
- modified the frequency period of reporting from “annual reports” to “biennial reports.” Such Report will be due on October 30th of each odd-numbered year;
- recognized “Jabil, Inc.” as the new Master Developer for the Gateway Center/St. Petersburg; and
- extended the buildout period and Development Order expiration dates by five additional years (to December 31, 2013 and December 31, 2018 respectively).

The following constitutes the modified plan of development recognized in the Amended Development Order:

BUILDOUT DATE	LT. INDUSTRIAL (Sq. Ft.)	OFFICE (Sq. Ft.)	RETAIL (Sq. Ft.)
December 31, 2013	500,000	450,000	50,000

The following constitute the inconsistencies detected when comparing the corresponding Development Order to the *Gateway Centre/St. Petersburg NOPC Report* adopted by TBRPC on December 14, 2009.

- The following constitutes a comparison of required intersection improvements deemed necessary by Tampa Bay Regional Planning Council staff and that proposed by the Applicant/approved by the City of St. Petersburg. The corresponding costs for these improvements has also been identified:

Type of Improvement	Intersection	Improvement(s) Needed	Prop. Share Contribution Amount Identified in D.O.	Actual Prop. Share Calculation determined by TBRPC	
I N T E R S E C T I O N S	Gandy Blvd./Grand Avenue	Add 3 rd SB LT lane	\$ 473,647	\$ 37,512	
		Add 3 rd EB LT lane	\$ 473,647	\$ 0	
		Add 4 th EB & 4 th WB Through lanes (both 0.25 mi. long W. of Intersection)	\$ 0	\$ 895,434	
		Add SB RT lane with free flow receiving lane	\$ 0	\$ 436,576	
		Provide new traffic signal	\$ 0	\$ 120,647	
	Grand Ave./Gateway Centre Pkwy.	Add 2 nd EB LT lane	\$ 473,647	\$ 154,801	
		Signalize when warranted by MUTCD	\$ 0	\$ 212,191	
	Gateway Centre Blvd./U.S. 19	Add 2 nd WB RT lane	\$ 427,993	\$ 111,449	
		Signalize when warranted by MUTCD	\$ 0	\$ 175,493	
	Grand Ave./N. Gandy Frontage Rd.	Signalize when warranted by MUTCD	\$ 0	\$ 157,447	
	Gateway Centre Pkwy./ Gateway Centre Blvd.	Signalize when warranted by MUTCD	\$ 0	\$ 156,721	
	SUBTOTAL →			\$1,848,934	\$2,458,271
	LINK	Gandy Blvd.: Grand Ave. to I-275	Add 2 WB & EB lanes (for total of 8 in each direction)	\$ 0	\$3,580,536
	PROPORTIONATE SHARE GRAND TOTAL →			\$1,848,934	\$6,038,807
ACRONYM LISTING:					
EB - East Bound		NB - North Bound		RT - Right Turn	
SB - South Bound		WB - West Bound		LT - Left-Turn	
				MUTCD - Manual on Traffic Control Devices	
				- NO Improvement Acknowledged	

* - Misidentified as "Gateway Centre Parkway" intersection with U.S. 19 intersection within Exhibit I (Required Improvements). The reference should have stated "Gateway Centre Blvd." since the specified roadways do NOT intersect.

2. Conditions 4.18.B.1. & 4.B.18.2. provide transportation mitigation alternatives for the Applicant. These options include the payment of a \$1,848,934 proportionate share OR a requirement to construct the four designated transportation improvements prior to issuance of the first Certificate of Occupancy associated with development of the site, respectively. In the event that the Applicant/Developer elects the proportionate share payment option, the Condition does not specify the recipient agency(ies) for these funds and, therefore, the corresponding acceptance of construction responsibilities. In fact, Condition 4.18.B.3. states that “*upon payment of the total required proportionate share identified in Alternative 1... the project shall be fully mitigated and vested from all currently existing obligations...*” It is hereby stated that none of the improvements lie within the City of St. Petersburg. In addition, the City of St. Petersburg has released themselves from potential construction obligations of the required improvements through Condition 4.18.D., which states “*the City shall not be obligated to make any commitments to construct or contribute any funds towards construction of the Needed Improvements or Subphase Needed Improvements.*”
3. The proportionate share calculation was not indexed to FDOT’s June 2009 *Roadway Cost Per Centerline Mile*, as recommended/requested in the Council’s *NOPC Report*, or any other inflation index.
4. *Exhibit I* consists the listing of required improvements to coincide with project development. However, the title of the Table inappropriately continues to contain the caveat “*Preliminary/Subject to Change.*”
5. It is hereby stated that the *NOPC* application included a five-year extension in the Development Order expiration date to coincide with the extension in buildout date. As initially approved, it is typical for a Development Order expiration date to “lag” behind a buildout date in order to provide further assurance that the project has been sufficiently mitigated, especially from a transportation perspective. The Development Order expiration date was not extended to December 31, 2018 as proposed but rather remained December 31, 2013 [Section 5 of the D.O.]. It is arguable whether the required biennial traffic monitoring component would be effective considering: the traffic monitoring is not required to commence until 450,000 sq. ft. of development is existing; the accelerated development schedule (i.e. buildout and D.O. expiration periods both lapse in 2013); and the fact that the frequency of “annual” reporting has now been extended to “biennial” [October 30th of odd-numbered years]. This would yield a maximum of two monitoring events in which to determine whether mitigation was sufficient.
6. It is noted that the majority of conversion formulas recognized within the Land Use Equivalency Matrix for converting between Light Industrial, Office and Retail had changed since the project was declared “sufficient” by the Applicant and the corresponding *NOPC Report* was adopted by the Council.

DISCUSSION

The following was included under the section of the Council’s *Gateway Centre/St. Petersburg NOPC Report* entitled “Proportionate Share Calculation and Backlog,” subsequently adopted on December 14, 2009. These citations are particularly relevant to justify the Council’s formerly identified position that the Applicant shall be partially responsible for the construction costs associated with the future widening of Gandy Blvd. between Grand Ave. and I-275 (identified as the “Link” Improvement identified on Page 3 of this Report).

By letter dated October 13, 2009, the Applicant declared its application “sufficient” and declined to provide additional responses to questions and comments by the TBRPC relating to the Applicant’s proportionate share calculations and how the Applicant was treating traffic backlog in those calculations. In its letter, the Applicant

contends that “the transportation analysis provided to the agencies in the last sufficiency response provides an accurate assessment of the project’s traffic impact on the surrounding roadway network and calculates proportionate share, consistent with the statutory formula, for the transportation improvements that are required solely related to the project’s traffic.” [Emphasis supplied] The Applicant contends that “this is consistent with the enactment by the Legislature of House Bill 1021 earlier this year, which clarifies the meaning of backlog.” It is the position of the Applicant that the proportionate share formula should apply “only to those deficiencies that are the direct result of project traffic.” [Emphasis supplied]

House Bill 1021, passed during the 2009 Legislative Session, amended Sections 163.3180(12) and (16), Florida Statutes, by including the following definition of backlog. This definition which follows has received a great deal of attention and is relied upon by the Applicant for its position:

. . . . the term “backlog” means a facility or facilities on which the adopted level-of-service standards is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

However, before the passage of House Bill 1021, Section 163.3180(12) already provided that, “Proportionate-share mitigation shall be limited to ensure that a development of regional impact meeting the requirements of this subsection mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs.” Thus, while House Bill 1021 did provide a definition of the term “backlog”, it did not change the law in Florida relating to the calculation of proportionate share. The law has been, and continues to be, that a developer is not responsible for reducing or eliminating backlog. The proportionate share formula found in Section 163.3180(12)(a), Florida Statutes, and used in calculating a developer’s traffic mitigation obligation was not amended or changed in any way by House Bill 1021.

By letter dated September 16, 2009, the Florida Department of Transportation stated its objection to the proportionate share methodology used by the Applicant which excludes road links and intersection from the proportionate share calculation where background traffic and future growth is the cause of operating below the level of service standard. Quoting from a joint statement approved by the FDOT Central Office and also the Department of Community Affairs, the letter states:

“HB 1021 was signed by Governor Crist on May 27, 2009 and became effective on July 1, 2009. Section 5 of this act amended Sections 163.3180(12) and 163.3180(16), FS, to provide a definition of backlog as applied to the calculation of proportionate share and proportionate fair-share payments by developers toward the costs of needed transportation improvements. **The formula for calculating proportionate share and proportionate fair-share as defined in the statute has not changed**, however a definition of backlog is created. The definition requires the use of existing traffic plus additional projected background trips to assess whether the adopted level of service standard for a facility is met. The change in statute also provides guidance for forecasting future growth and treatment of phased developments. The assessment of level of service as applied to the calculation of proportionate share mitigation is **consistent with the methodology currently used and recommended** by the Departments of Community Affairs and Transportation.” [Emphasis supplied]

The TBRPC concurs with the view of FDOT and DCA on the meaning of House Bill 1021 relating to the definition of backlog and the calculation of proportionate fair share. For this reason, the Applicant's analysis of the traffic impacts of the project and calculation of proportionate fair share to mitigate those traffic impacts is found to be insufficient.

SUMMARY OF ISSUES OF REGIONAL CONCERN

In accordance with Section 380.07, Florida Statutes (F.S.), this Development Order has been reviewed for consistency with the Council's *NOPC Report* adopted on December 14, 2009 and with the Council's *Final Report* adopted on September 8, 1986. The Council has identified the following issues of regional concern:

- The Development Order does not provide for the same level of mitigation as identified by the Council's analysis. The adopted Proportionate Fair Share is significantly less than the amount identified by the Council's analyses. (See Comment #1 above for more detail)
- It should be noted that the D.O. misidentifies the U.S. 19 intersection with "Gateway Centre Blvd." as "Gateway Centre Pkwy." on the list of required improvements identified as Exhibit I. This misidentification shall not release the Applicant/Developer of improvement obligation. (See footnote to Table provided in Comment #1 above for more detail)
- In the event the Proportionate Fair share mitigation option is chosen, the D.O. does not identify to which entity the proportionate fair share payment shall be paid, if this "Alternative" is selected. All impacted segments and identified improvements lie outside the City of St. Petersburg. (See Comment #2 above for more detail)
- D.O. condition 4.18.D. relieves the City of St. Petersburg of the responsibility to make any conditioned improvements. In the event the proportionate fair share mitigation option is chosen, the D.O. does not specify the party responsible for making the improvements? (See Comment #2 above for more detail)
- The D.O. does not index the proposed fair share payments to inflation and/or FDOT's construction cost index. (See Comment #3 above for more detail)

The Council's formerly-adopted *Gateway Centre/St. Petersburg NOPC Report (including FDOT comments)* is viewable at the following link: <ftp://www.tbrpc.org/dri/Documents/nopc/2009/3e2.pdf>.

RECOMMENDATION

It is recommended that the Department of Community Affairs review the above issues of regional concern for potential appeal.

JURISDICTION & IMPROVEMENT LOCATION MAP

