

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION**

**THE SCHOOL BOARD OF HILLSBOROUGH  
COUNTY, FLORIDA, a public body corporate,  
Plaintiff,**

**CASE NO.: 07-CA-10048**

**v.**

**DIVISION: G**

**HILLSBOROUGH COUNTY, FLORIDA,  
a Political subdivision of the State of Florida,  
Defendant.**

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**FINAL JUDGMENT**

**THIS CAUSE** was tried before the Court on June 23, 2008 in the matter of The School Board of Hillsborough County, Florida (“Plaintiff” or “the School Board”) v. Hillsborough County, Florida (“Defendant” or “the County”). The Court, upon review of Plaintiff’s Petition for Declaratory Relief, arguments of counsel, and the record, hereby finds as follows:

**PROCEDURAL BACKGROUND**

On August 10, 2007, Plaintiff filed a Petition for Declaratory Relief seeking a judicial declaration of the School Board’s statutory authority to expend public funds for the construction or provision of offsite infrastructure improvements deemed necessary for the construction of new schools and the expansion of existing schools in Hillsborough County, and the limitations on the County’s authority to impose certain development standards and conditions on school construction and expansions under sections 1013.22(13) and 1013.51(1), Florida Statutes. Specifically, Plaintiff requests that the Court:

- (a) Enter a decree in its favor and against the County, declaring that the words “contiguous to” as used in section 1013.51(1), Florida Statutes, mean “adjacent to” or “immediately abutting”;
- (b) Enter a decree in its favor and against the County, declaring that sections 1013.33(13) and 1013.51(a), Florida Statutes, prohibit the County from imposing any development standard or condition on any new school site or expansion to an existing school which requires any offsite infrastructure improvements other than those which are contiguous to and/or run through the school site; and
- (c) Declare that the School Board is not responsible for the funding of offsite infrastructure improvements on current or proposed school sites unless the improvements are contiguous to and/or run through the school site.

For reasons discussed below, the Court concludes the use of “contiguous” in section 1013.51 means “touching at a point or along a boundary.” The specific term “contiguous” controls the general provision of “offsite”; therefore, the County may not impose any development standard or condition upon “offsite” improvements that do not touch at a point or are not along the boundary of the school site.

## **DISCUSSION**

In order to coordinate and facilitate the siting of new schools and the expansions of existing schools, the School Board and the County are required by law to enter into an interlocal agreement (“Interlocal Agreement”), pursuant to section 163.3177(1)(a) and section 1013.33(2)(a), Florida Statutes. State law expressly requires that the Interlocal Agreement address “[a] process for determining the need for and timing of onsite and offsite improvements to support new, proposed expansion, or redevelopment of existing schools” and must identify

“the party or parties responsible for the improvements.” *See* Fla. Stat. §163.3177(2)(d)(2007); Fla. Stat. §1013.33(3)(d)(2007). The School Board argues the County may not deny the School Board’s application of a site proposal if the “site is consistent with the Comprehensive Plan’s land use policies and categories in which public schools are identified as allowable uses,” but “may impose reasonable development standards and conditions in accordance with §1013.51(1)...” Fla. Stat. §1013.33(13)(2007).<sup>1</sup>

Both parties address the interpretation of the “reasonable development standards and conditions” that the County may impose under section 1013.51(1), Florida Statutes. The section is as follows:

(1)(a) Subject to exemption from the assessment of fees pursuant to s. 1013.37(1), education boards, boards of county commissioners, municipal boards, and other agencies and boards of the state may expend funds, separately or collectively, by contract or agreement, for the placement, paving, or maintaining of any road, byway, or sidewalk if the road, byway, or sidewalk is *contiguous to or runs through* the property of any educational plant or for the maintenance or improvement of the property of any educational plant or of any facility on such property. Expenditures may also be made for sanitary sewer, water, stormwater, and utility improvements upon, *or contiguous to*, and for the installation, operation, and maintenance of traffic control and safety devices upon, *or contiguous to*, any existing or proposed educational plant.

(b) A board may pay its proportionate share of the cost of onsite *and offsite system improvements* necessitated by the educational facility development, but a board is not required to pay for or install any improvements that exceed those required to meet the onsite and offsite needs of a new public educational facility or an expanded site. Development exactions assessed against school boards or

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<sup>1</sup> The section in its entirety is as follows:

- (13) A local governing body may not deny the site applicant based on adequacy of the site plan as it relates solely to the needs of the school. If the site is consistent with the comprehensive plan's land use policies and categories in which public schools are identified as allowable uses, the local government may not deny the application but it may impose reasonable development standards and conditions in accordance with s. 1013.51(1) and consider the site plan and its adequacy as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property. Standards and conditions may not be imposed which conflict with those established in this chapter or the Florida Building Code, unless mutually agreed and consistent with the interlocal agreement required by subsections (2)-(8).

Fla. Stat. §1013.33(13)(2007).

community college districts may not exceed the proportionate share of the cost of system improvements necessitated by the educational facility development and may not address existing facility or service backlogs or deficits.

Fla. Stat. §1013.51(1) (2007) (emphasis added).

The School Board argues the statute's definition of "contiguous" limits its ability to fund offsite infrastructure improvements only to those improvements which are adjacent to or immediately abutting the school site. The School Board alleges the County recently attempted to impose development standards and conditions requiring the School Board to fund the construction of offsite infrastructure that are neither contiguous to, nor run through, the proposed school sites. In particular, the School Board refers to fourteen (14) school site evaluations conducted over the past year, wherein the County required the School Board to fund additional roadway widening projects, intersection location improvements, and sidewalks.

The County contends the Legislature's purposeful usage of "offsite system improvements" and "offsite needs" in section 1013.51(1)(b) indicates the Legislature intended different meanings in different portions of the same statute. *See Maddox v. State*, 923 So. 2d 442, 446 (Fla. 2006) (citing *State v. Mark Marks, P.A.*, 698 So. 2d 533, 541 (Fla. 1997)); *Turner v. Tokai Fin. Servs.*, 767 So. 2d 494, 498 (Fla. 2d DCA 2000) (citing *Dep't of Prof'l Regulation v. Durrani*, 455 So. 2d 515, 518 (Fla. 1st DCA 1984)). The County argues that if the Legislature intended for a school board to have to pay only for their proportionate share of system improvements that were "contiguous" to a new school, would have repeated the use of "contiguous to" in (1)(a) and (1)(b), but it chose not to do so. The County contends the Court must instead give the term "offsite" its plain and obvious meaning, defined in *Webster's New World Dictionary* (2d Edition 2002) as "so as to be away, at a distance."<sup>2</sup> Further, the County

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<sup>2</sup> *See Nehme v. Smithkline Beecham Clinical Laboratories, Inc.*, 863 So. 2d 201, 205 (Fla. 2003) (a court can ascertain the plain and ordinary meaning of a word by referring to a dictionary).

maintains that because the School Board has the authority to pay its proportionate share of “offsite” system improvements, the County “may impose reasonable development standards and conditions in accordance with [section] 1013.51(1).” Fla. Stat. §1013.33(13)(2007).

“One of the most fundamental tenets of statutory construction requires that [the Court] give statutory language its plain and ordinary meaning, unless words are defined in the statute or by the clear intent of the legislature.” *Green v. State*, 604 So.2d 471, 473 (Fla.1992). However, “if the meaning of a statutory provision is deemed ambiguous, it must be subject to judicial construction.” *Gulfstream Park Racing Ass'n, Inc. v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 606 (Fla. 2006). Upon review of section 1013.51(1), the Court agrees the terms “contiguous” and “offsite” are not ambiguous standing alone, but are potentially ambiguous when the statute is reviewed in its entirety. *St. Mary's Hosp., Inc. v. Phillippe*, 769 So. 2d 961, 967 (Fla. 2000) (statutory construction requires that a statute must be construed in its entirety and as a whole). It is ambiguous to the extent that a literal and separate reading of the terms would provide that the School Board is responsible for either contiguous improvements or contiguous improvements and offsite improvements that are not contiguous. The Court notes that if the “offsite” provision of section 1013.51(1)(b) were controlling in the statute, the term “contiguous” would be meaningless because “offsite” needs are inclusive of all “contiguous” improvements. Further, the County’s argument has a corollary; if the Legislature intended for a school board to pay their share of all “offsite” needs, it would have repeated the term “offsite” throughout the statute.

The Court has a duty to interpret section 1013.51(1) “in the most logical and sensible way and to avoid an interpretation that produces an unreasonable consequence.” *Nobles v. State*, 769 So. 2d 1063, 1066 (Fla. 1st DCA 2000); *see also George v. State*, 203 So. 2d 173, 175-176 (Fla. 2d DCA 1967). First, the Court must consider the statutory principle wherein a specific

enactment conflicts with a general enactment. “Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision...” *Parker v. Baker*, 499 So. 2d 843, 845 (Fla. 2d DCA 1986) (quoting *Bryan v. Landis*, 142 So. 650, 653 (1932)). As the Court explained previously, all construction of “contiguous” expenditures are “offsite” system improvements, but not all “offsite” system improvements may be considered “contiguous” expenditures. Accordingly, the specific provision of “contiguous” must control the general provision of “offsite.”

More importantly, the ambiguities within the statute require the Court to “consider its history, [the] evil to be corrected, the intention of the law-making body, [the] subject regulated and the object to be obtained.” *Englewood Water Dist. v. Tate*, 334 So. 2d 626, 628 (Fla. 2d DCA 1976); *see also Gelzer v. Diamond*, 920 So. 2d 1235, 1238 (Fla. 5th DCA 2006) (where the meaning of a legislative enactment is ambiguous, the courts look to its legislative history to determine the intention of the legislative body). During the 2002 legislative session, the Legislature created section 1013.51 after repealing its predecessor statute, section 235.34. *See* Chp. 2002-387, §851, Laws of Florida; Chp. 2002-387, §1058, Laws of Florida.<sup>3</sup> The last major amendment of section 235.34 occurred in 1995, wherein the Legislature added what is now section 1013.51(b). *See* Chp. 95-341, §8, Laws of Florida. In support of its argument, Plaintiff cites to the Legislative Analysis of Chapter 95-341, which states the statute’s addition was intended to “limit the scope of potential assessments of local governments to school boards” and “limit the exactions and costs that can be passed on to school boards.”

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<sup>3</sup> The Legislature also created section 1013.33 after repealing its predecessor statute, section 235.193. *See* Chp. 2002-296, §23, Laws of Florida; Chp. 2002-387, §1058, Laws of Florida.

The Court finds a more persuasive argument exists within the 1985 amendment to section 235.34. It is in this amendment that the Legislature incorporates the term “contiguous”:

(1) School boards, boards of trustees, the Board of Regents, boards of county commissioners, municipal boards, and other agencies and boards of the state ~~may~~ ~~shall~~ expend funds, separately and collectively, by contract or agreement, for the placement, paving, or maintaining of any road, byway, or sidewalk contiguous adjacent to or running through the property of any educational plant or for the maintenance or improvement of the property of any educational plant or of any facility on such property. Expenditures may also be made for sanitary and utility improvements and for the installation, operation, and maintenance of traffic control and safety devices upon, or contiguous to ~~in the vicinity of~~ any existing or proposed education plant.

Chp. 85-116, §21, Laws of Florida.

The Court finds the Legislature’s 1985 revision clearly demonstrates their intention to change a school board’s responsibilities from expenditures “in the vicinity of” any existing or proposed education plant to the more specific “contiguous to.” The Court, upon referring to the dictionary meaning of “contiguous”, finds the best definition defines the term as “touching at a point or along a boundary.” *Black’s Law Dictionary* (8th Edition 2004). The Court finds this definition accords not only the literal and usual meaning, but also the meaning and effect on the objectives and purposes of the section 1013.51(1)’s enactment and subsequent revisions. *See e.g., Fla. Birth-Related Neurological Injury Compensation Ass’n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354 (Fla. 1997). Accordingly, the Court finds the use of “contiguous” in section 1013.51 means “touching at a point or along a boundary.”

Plaintiff also requests the Court declare that sections 1013.33(13) and 1013.51(a), Florida Statutes, prohibit the County from either imposing any development standard or condition or requiring the School Board fund on any new school site or expansion to an existing school which requires any offsite infrastructure improvements other than those which are contiguous to and/or run through the school site. The Court notes that section 1013.51(a) provides education boards

“*may* expend funds”<sup>4</sup> and section 1013.51(b) provides that “a board *may* pay its proportionate share of the cost of onsite and offsite system improvements.” “The word ‘*may*’ when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word ‘*shall*.’” *The Florida Bar v. Trazenfeld*, 833 So. 2d 734, 738 (Fla. 2002); *Shands Teaching Hosp. & Clinics, Inc. v. Sidky*, 936 So. 2d 715, 722 (Fla. 4th DCA 2006); *see also Estate of Johnson v. Badger Acquisition of Tampa LLC*, 983 So. 2d 1175, 1181 FN3 (Fla. 2d DCA 2008). Accordingly, the Court finds the plain meaning of the word “*may*” in section 1013.51 prohibits the County from requiring the School Board to fund any offsite infrastructure improvements or imposing any conditions upon the School Board to pay for such improvements.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. Based on the foregoing, the Court hereby enters a decree for Plaintiff and declares:
  - a. The words “contiguous to” as used in section 1013.51(1), Florida Statutes, mean “touching at a point or along a boundary.”
  - b. Sections 1013.33(13) and 1013.51(a), Florida Statutes, prohibit the County from imposing any development standard or condition on any new school site or expansion to an existing school which requires any offsite infrastructure improvements other than those which are contiguous to and/or run through the school site; and
  - c. The School Board is not responsible for the funding of offsite infrastructure improvements on current or proposed school sites unless the improvements are contiguous to and/or run through the school site.
2. The Court reserves jurisdiction to award any costs it deems equitable.

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<sup>4</sup> During the 1985 revision, the Legislature also changed the term to “*may*” from the term “*shall*.” *See* Chp. 85-116, §21, Laws of Florida.

**DONE AND ORDERED** in Tampa, Hillsborough County, Florida, this \_\_\_\_\_ day of  
September, 2008.

ORIGINAL SIGNED  
CONFORMED COPY  
SEP 25 2008

\_\_\_\_\_  
RALPH C. STODDARD  
Circuit Court Judge

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