

PUBLIC WORKSHOP

IMPACT FEE UPDATE

SEPTEMBER 17, 2008

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September 17, 2008

PUBLIC WORKSHOP OF THE INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

The Board of County Commissioners of Indian River County, Florida, held a Public Workshop at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Wednesday, September 17, 2008, to provide an Impact Fee Update. Present were Chairman Sandra L. Bowden, Vice Chairman Wesley S. Davis, and Commissioners Joseph E. Flescher, Peter D. O'Bryan, and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

Chairman Bowden called the meeting to order at 1:30 p.m.

2. PLEDGE OF ALLEGIANCE

Chairman Bowden led the Pledge of Allegiance to the Flag.

3. PRESENTATIONS

A. STAFF OVERVIEW

Community Development Director Bob Keating reminded the Board that at its last Impact Fee meeting in May, many questions had come up, related to the traffic impact fee portion of the Duncan Report and to how certain traffic characteristics are treated from an impact fee perspective. Other issues were “trip chaining” (when someone leaves one destination and makes several stops before arriving at a final destination); and specific types of uses like “branch banks” and how it affects travel demands and how impact fees relate to that.

Director Keating reminded the Board of prior discussions and/or concerns that commercial uses were charged too high an impact fee compared to residential uses, and the subsequent consensus to have a Workshop that would focus on some of the concerns from the May Workshop, and not on the Impact Fee Report, per se. Consequently staff had sought approval from the Board to retain a Traffic Consultant and also to extend the contract of our Impact Fee Consultant. He announced that Duncan & Associates would present its report followed by Leftwich Consulting Engineers, Inc.

3.B. IMPACT FEE CONSULTANT PRESENTATION

Clancy Mullen, Duncan & Associates, stated that the focus of today’s joint presentation would be the non-residential traffic fees. The three (3) main points for discussion were: (1) the pass-bys/drive-thru bank (to be addressed by Leftwich Consultants); (2) whether or not the proposed fees are high for non-residential relative to residential; and (3) methodologies used by different counties, some of which have resulted in very low fees for non-residential compared to residential.

Mr. Mullen displayed a bar chart depicting residential versus non-residential fees (at a ratio of fee/1,000 sq ft., to fee per typical single-family unit), and pointed out that 1,000 square foot of retail is one and a half times (1 ½) the fee of a single family unit. He provided comparisons from Orange and Osceola counties as well as other counties in Florida.

Mr. Mullen discussed the methodology used by Pasco County and explained how they calculate maximum fees using a standard methodology; how they determine “tipping point” for each land use, based on Fishkind analysis of optimal revenue, stating that they charge the lower of the two for each land use; and reported there were no proportionality of fee to traffic impact.

Mr. Mullen described the different approach taken by Marion County and how they determined that “Retail follows rooftops” – meaning that residential growth causes retail development. He explained that they assign responsibility for retail trips originating in the county to residential trip end (65% of retail trips –the rest originate out-of-county or from other non-residential); and they lump offices and business parks in with retail in generalized retail/office category. He thereafter outlined the problems with Marion County’s approach, which involves the economic base theory. This theory would essentially not charge anything to the residential sector; it would charge everything to the types of industries that our economic development department would like to attract in Indian River County. He therefore would not recommend this theory for the County.

Commissioner O’Bryan talked about the Marion County theory that retail follows residential, and gave an example of Planned Development in Pointe West where they did not build any commercial until they reached a critical mass of residential, because there was no residential there to support the commercial sector. It seemed to fall in the line of “retail follows residential,” and he was not sure the economic theory was really viable here.

Commissioner O'Bryan did not think a shopping center would generate traffic; it would instead capture the traffic on the road, and he was not sure why we charge them 50% more.

Vice Chairman Davis asked how many trips originate from a commercial development, and believed he could do a study that would support that trips generate from residential units, not from commercial developments. He felt it defied logic to be even talking about raising fees currently. It was his opinion that there was a strong consensus on the Board that our commercial, industrial, and office impact fees are those that are hampering the kind of growth in this community that creates jobs, the tax base that is not protected with "Save Our Homes," and it felt like we were killing what we want the most. He wished the Consultants could create a study that would justify and help us do what we want to do.

Mr. Mullen responded defending the concept of having industry in place before residential, stating that people will not move to a place if there are no jobs, and businesses will not move to a place with high unemployment.

Commissioner Flescher agreed that this is rhetorically based, and that the system at best is opinionated or selective, and at this juncture he could not eliminate the economy and the challenges with which we are now confronted. He believed we are in the wrong place at the wrong time with the wrong explanation. He acknowledged all the work done on this study, but felt things have changed since it was conducted over a year ago. He did not believe all retail and commercial are created equal; did not think those two areas bear the same burden upon the community; and did not think they can fairly assess what each establishment is going to do for the rest of the community and the rooftops that exist at the time of application.

Attorney Collins referred to the Pasco County Fishkind Analysis that talked about optimizing revenue for each land use, and said it was not clear to him what kind of revenue they

are trying to optimize. He asked whether it was impact fee revenues, such that if you raise the fees too high people just won't build and the revenue falls, and if you lower them too much you get more buildings. **Mr. Mullen** affirmed the argument as being correct. Attorney Collins further questioned whether it was tax base they were looking at developing, and **Mr. Mullen** said they were all strictly impact fee revenues.

Commissioner Wheeler presented a scenario to substantiate his arguments that people follow businesses, because there is the potential for employment. He voiced his disapproval with charging impact fees on residential and felt businesses would not be here and would not create any traffic if the residential was not here. He could not understand why we have such high fees for industry, and declared his preference for impact fees and for people to pay their way, but questioned the equitability of charging business people that are providing a service that is demanded by the homeowners who live here.

Vice Chairman Davis added that one thing that makes Indian River County a little different, as far as the typical demographics, is that the number of people moving to this community for the jobs is not very high, and there are a lot of people in this county with "an entitled income." He defended the concept of trying to get jobs before residential, and referred to the financial incentive to keep Piper here.

Commissioner Wheeler added that most of the government services are demanded by the residents, not by the businesses; and the main impact on any community is the residential aspect and providing that service.

3.C. TRAFFIC CONSULTANT PRESENTATION

Scott Leftwich, Leftwich Consulting Engineers, addressed the issues of how an impact fee is taken into account. Through a PowerPoint Presentation he discussed the “consumption-based Impact Fee Theory,” looking at the fees charged to new development based on the roadway capacity consumed for that new development. He stated that the existing roadway deficiencies are not charged to new development, and the needed improvements are based on the Long Range Transportation Plan (LRTP) developed by the County.

Mr. Leftwich displayed computerized images to explain capacity consumed by proposed land use; calculation of impact fees (costs to credits); and discussed the traffic impact fee calculation, vehicle miles of travel (VMT), trip rate, percent of new trips, and the average trip length.

Vice Chairman Davis questioned the percentage of new trips calculation and explained why he felt commercial development saves trips. He thereafter engaged in discussion with Mr. Leftwich on whether certain trips should be regarded as a pass-by or a trip.

Mr. Leftwich continued his presentation by discussing primary trip type examples, and comparing primary versus diverted, pass-by (captured) and secondary trips.

Commissioner Flescher questioned the trip type examples given and wanted to know how those primary examples could apply to justify an increase in impact fee and in expense.

Mr. Leftwich continued his explanation of trip type examples, and how the surveys were conducted, using origin and destination to determine if a trip exists and measuring

the trip length (in miles). He stated that each land use has different average trip length that accounts for trips made to/from land use.

Vice Chairman Davis questioned the calculation of the 4.3 lane mile or if they were just going with the data from Duncan & Associates, and Director Keating explained how they calculated the cost for lane-mile, noting that it was calculated for this study, and is not the same cost that was used in the Duncan study; it went up significantly.

Administrator Baird added that because the study was a year and a half old, it was dated and the costs were a lot higher. Now with the slow economy the costs per lane-mile are down, so the numbers have changed.

Mr. Leftwich provided Traffic Impact Fee examples and description for single-family greater than 2,500 sq. ft., retail greater than 200,000 sq. ft., and general industrial, ITE Code, daily trip rate, percentage of new trips, and trip length. He gave trip-chaining examples (from home to Daycare, the Bank and back home) and compared primary with diverted trips explaining how each works.

Vice Chairman Davis was more agreeable with the examples of trip chaining.

Commissioner O'Bryan argued the merits of trip length, and asked why we were charging people for impact fees when there are places (e.g. banks) people could walk to that do not count as a trip. Mr. Leftwich explained the survey results for trip rates.

Director Keating interjected that one of the ways they could reduce impact fees and trip lengths is doing better land use planning. He felt that if retail and commercial uses are closer to where people live, we can reduce trip lengths, reduce vehicle miles traveled on the road, reduce the need for infrastructure, and reduce impact fees. He said traffic analysis is done to

predict human behavior, because people do not automatically go to the nearest convenience, but would rather seek out quality and other characteristics.

Mr. Leftwich provided other examples of trip chaining (work, shop, home) and summarized his presentation, noting that each land use is responsible for the portion of to/from trips allocated to that land use; every trip must be accounted for; land uses with lower percentage (high pass-by) result in a lower VMT thus lower impact fees; and no land use can be excluded from paying fees without adding expenses to other land uses.

4. QUESTION & ANSWER SESSION

Commissioner Wheeler wondered whether, for residential impact fees, we have three different fees based on square footage of the house, and thought primarily that is done because a smaller house cannot afford what a bigger house can.

Commissioners and staff engaged in lengthy and detailed discussions regarding placing more burden on commercial because they can afford it; whether fee amount was proportional to benefit; and Commissioner Davis's desire to reduce fees on commercial/industrial, not increase them on residential; and not to shift the burden.

Administrator Baird urged caution because capital needs are not done through ad valorem taxes. He said the reason ad valorem taxes went up (as shown on the chart by the Press Journal) is that two voted General Obligation Bond issues were a main part of it; the third part was the Jail opening, which is operating cost. He suggested that if the Commission wished to try and get less money, it was best to pick a percentage overall that would be collected; and they should realize that there may be a shortfall. He stated that staff was not recommending using

the aforementioned study, or increasing fees at this time. However, looking at these traffic models, they have to be very careful, because they might reduce commercial but could get sued by residential developers.

Vice Chairman Davis thought the question was, “does no growth pay its own way,” and felt that raising impact fees could generate less revenue.

Commissioner Wheeler agreed with comments about the increasing and lowering of fees, but did not think that was possible in the real world, because someone has to pay the bills for the growth, the streets, and the infrastructure that we need. He argued that we are not paying 80% of our impact fees, we are paying about 50% of the impact with impact fees, and the other 50% comes from gas tax and the one cent optional sales tax, so there was a 50% reduction off the top just looking at impact fees generally. He said we have to be careful and decide what we want for infrastructure – how we are going to build it, and how we are going to pay for it.

Vice Chairman Davis did not agree fundamentally with that premise, and because half of our roads or infrastructures are paid with gas and sales tax, he believed the economic engine that creates more gas and sales tax is what we are trying to increase the fee on. He also believed that if we were to reduce the impact fees on commercial/industrial we would generate more sales tax and more jobs and other things that actually contribute to the economic base. He did not believe those numbers were static; and did not believe that if you reduce impact fees by a dollar, that sales tax or any other taxes that are generated in the business world, do not increase at all.

Commissioner Flescher did not believe in treating the impact fee as a vacuum, because as the impacts arrive, they also share their burden by paying the taxes and they are actually part and parcel to the process. He remarked that we are separating and defining the

parts in different ways just to justify what we do with impacts, and that new businesses should bear the burden they create.

Commissioner O'Bryan commented on the trip types and the people who drive from one area to another because of convenience. He presented a scenario of new homes and the people's choice of banks and their locations, and did not see a new trip in that, because everyone has to go to a bank somewhere, and he could not see how that was a new mile traveled. He analyzed that impact fee is a fixed cost in the price of a house amortized over 30 years, which does not change. He felt we need to keep impact fees in so we can keep our millage rate low, because low property tax is what will draw people here.

Director Keating explained the determination of new trips and trip lengths in relation to banks.

Administrator Baird cautioned about additional consultant charges, and said we have to ask our consultant if we could legally do something similar to what the Pasco study had done.

Attorney Collins alluded to a bid problem and said because if there is methodology to determine trip lengths, lane miles, and the cost of the roads, and it is determined that a particular use generates so many trips, or what would cost to serve those trips in terms of building roads, then it would be very dangerous to say we are going to give someone a break because we think that is a preferred development to rooftops, even though the data shows this is what it costs.

Vice Chairman Davis asked if a study could be created stipulating that if you have manufacturing, your impact fees would be less because you are paying sales tax on the product that you may be selling and therefore we would get that extra one cent.

Attorney Collins explained that that could be gotten out of the credit on the impact fee formula, and further elaborated on what could be done. He submitted that the County would be better off not rejecting the study and charging one use of the study rate and some other use in favor of a lowered rate, but to use its power to encourage economic development through a subsidy to the bank or whatever it is they deem to be a good business.

Discussion ensued among Administrator Baird, Attorney Collins and Vice Chairman Davis regarding eliminating of impact fees and charging a lower percentage.

Mr. Mullen responded to Administrator Baird's question of whether different studies were done for manufacturing, commercial and residential, as far as percentage. He agreed with the County Attorney that there should be a methodology for all land uses.

Commissioner Wheeler inquired of the amount the County collects each year for impact fees, and Budget Director Jason Brown said it depends on the year, and our highest year at the boom time (in 2005) was about thirty-two million dollars (\$32 million) for traffic and for building roads; it does not include gas tax and sales tax.

Commissioner Wheeler then asked what that would do to our millage rate if that was tacked onto the ad valorem tax and we did not have impact fees. Director Brown replied that it would be substantial, and theoretically it would be about two (2) mills. Further discussion ensued on the matter.

5. PUBLIC DISCUSSION

Peter Robinson, Laurel Homes, agreed that if they go back to 2005 and use the two (2) mills number, that is a real number, but if you go to today's number which is 1/10th of a mill, that would be a debate. He referred to the Country's economic standings, and pointed out how gas and sales tax from out-of-towners help pay for impact fees. He believed we have never done a real trip study of our people here, and said we needed to look at other alternatives.

David Harpin felt the way this is structured now, only the county gets benefit from impact fees, and that was a negative incentive to do business. He presented an alternative approach that could cover the needs of the capital requirements over a period of time, that is, to structure the impact fee into the property tax system and add it to final selling price of the unit. That way it would be out of the profit structure and the cost basis of the unit that is being purchased, which could be a significant change in the cost structure of that home or business.

Commissioner Wheeler with a good understanding of Mr. Harpin's proposal, thought it had merit, and wanted to know more about it.

Fred Mensing, 7580 129 Street, Sebastian, believed the first failure of the impact fee is that it runs off commercial development, and that was created as a finance tool to make governing bodies look good because it kept millage rates down on infrastructure. He also believed that to make industries welcome there has to be incentives, and County government needs to ensure that subdivisions built and other infrastructure turned over by developers (industrial & residential), are properly built with quality materials and labor. He declared that we are at a disadvantage for industry and we need to do everything possible to make industry welcome. He did not support an increase in impact fee.

Alan Green, 7756 99th Avenue, thinks this debate misses the point, because it should be about high growth, and felt the County may have to offset some of the initial fees, because growth will eventually pay for itself. He said if the Sextons would give half of their money back and allow a house to be built there, we could float for two years on those numbers.

Commissioner Wheeler, commenting on the Sexton purchase, said that money is not available for this or impact fees or anything else; that was a self imposed tax by the voters to be used specifically and only for that type of purchase. He did not want anyone to think this was an option.

Joseph Paladin, President of Black Swan Consulting, asked Director Keating if the County has enough money to pay for infrastructure.

Director Keating replied in the negative and divulged that we are currently re-doing our Capital Improvement Elements of our Comprehensive Plan, pursuant to State law. He added that we have about \$300,000,000 just for roads under a 5-year capital improvement program, and we are not even close.

Mr. Paladin questioned Director Keating further asking if he was admitting that impact fees are not high enough, and whether the County was close on lowering commercial/ industrial impact fees, which was an idea of the past.

Director Keating said one of the ways to address the matter is making land use changes; another was, if so desired, the Board could lower levels of service and not provide as much infrastructure. He added that based on the levels of service we have, and the current demands, we are getting shortfalls.

Administrator Baird reminded Mr. Paladin that today's discussion was about how we could help commercial.

Mr. Paladin asked if the possibility of detouring trips, to lower commercial/ industrial fees was considered, and **Mr. Leftwich** stated they would have to go back to surveys to look at specific examples.

Mr. Paladin's other question was whether we could lower the fees enough to justify our legal defense, even if we were not very conservative in the commercial/industrial aspect. He did not think that not increasing impact fees in our current economic environment would make a big difference; but thought what could make a big difference is to substantially reduce the impact fees of commercial/industrial, or if it would be legally defensible if we had a moratorium on not charging impact fees on commercial/industrial for twelve (12) months.

Attorney Collins did not think we could defend that under the current system and methodology under which we developed this set of impact fees.

Administrator Baird added that it could, however, be taken out of our General Fund or paid out of ad valorem taxes legally, if the Board desired.

Attorney Collins affirmed Mr. Paladin's statement that we could subsidize it and that would be the only way to legally defend that.

Vice Chairman Davis asked if they could do a refund of impact fees for targeted industries, and Attorney Collins reasoned that if they paid and collected, then that would be tantamount to a grant or subsidy, so it probably could be done. Further discussions ensued regarding funding sources that could be used.

Mr. Paladin, rationalizing the philosophy of doing something drastic, like not having impact fees charged on commercial/industrial development for a moratorium period, asked who would the County be worried about defending itself against, and Administrator Baird said potentially we could have a residential builder sue us.

Mr. Paladin in conclusion stated that if we create an incentive even if it is through a temporary moratorium period to give people that incentive, people would not pull permits right away. It was his opinion that it was not a big threat for us to worry about someone suing us.

Administrator Baird said we could finance the impact fees and that would be a way of deferring them for commercial only, and that has risks. Discussion continued regarding who would sue the County and whether it would be a good idea to reduce impact fees.

The Chairman called a break at 3:21 p.m., and reconvened the meeting at 3:33 p.m., with all members present.

Richard Bialosky proposed that the Board consider the suggested one-year moratorium on fees for commercial development; however, because things are so bad right now he was not sure that a blanket moratorium on impact fees would have a beneficial impact. He supported having an across the board moratorium and for the Board to come back and discuss it after a year. He agreed with Commissioner O'Bryan that if we can get people to start buying from our local suppliers, we could turn things around, and that we have to do something to be sustainable here.

Don Wright, Sebastian, who has served on the Impact Fee Committee, complimented Board members on their level of understanding and knowledge of impact fees. He felt there were good points made today that needed to be taken into consideration. One was for the measuring of trips based on national averages. He thought rather than spending money

on consultants re-doing the Report, maybe they should spend some money to get the numbers right for the County, and take a year to do it. The other was the suggested moratorium, which he did not think would work. He alluded to the Country's economic woes, and felt some bold steps are needed, to be followed up by specific actions.

Bruce Smith, local builder, added to concerns about the economic climate. He believed we could get the money elsewhere than from impact fees, and the County should do what it could to get things moving. He made a point that big builders bring in labor and do not buy locally.

Kirk Swanson, representing Treasure Coast Builders with their impact fee issues, thought the real focus is, as opposed to taking a rock-based arbitrary discount fee, ensuring that the report is accurate, and taking a look at the components within the reports. He gave examples of trip length adjustments and rate decreases, and recommended that the Board look at the components in the fees. He added that the State is offering incentives to reduce fees and the County should take advantage of this.

There were no other speakers and the Chairman closed the public input session.

Mr. Leftwich in closing, stated that he did not endorse having a total survey of everything, but suggested, if there are certain areas that the Board wanted to accomplish on industry or commercial, they could look at it as an incentive to help, or to look at industry for example, then that would be something to lower the trip length which in turn would lower these rates.

Chairman Bowden and Commissioners digressed to contemplate a date for a special call meeting on Mining Moratorium, and came to a CONSENSUS of Monday, October 6, 2008, at no set time.

Director Keating, concluding discussions on the impact fees, remarked that staff feels the current study we have, along with the proposed new rates, are stale and State law dictates that we have the most recent data available. He offered for staff to return with minor changes, to include level of service changes and other impact fee related matters, and reiterated that we could not impose new rates now. He pointed out that if the Board wanted to look at a study for land uses, each land use has to be looked at separately.

6. ADJOURNMENT

There being no further business the Chairman declared the Workshop adjourned at 3:56 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC/Impact Fee Workshop/AA/2008/minutes