WHY A SUSPENSION OF LEE COUNTY IMPACT FEES IS A BAD IDEA

Background:

What is being considered by the County Commissioners?

In an almost annual ritual, the building industry and developers have again proposed to the County Commission that they should place a moratorium on all impact fees, arguing that this will spur economic growth and create jobs. In 2011 and 2012, those proposals were defeated 4-1 by the Board. In light of the recent BoCC election with 2 new commissioners, the industry is pushing the moratorium again.

Although a specific proposal has not yet been agreed upon, based on discussions at the Jan. 14th M & P meeting, it may be a 2-year moratorium, to be reviewed after one year to see the results, and may have a sunset provision. Although the building industry proposed a suspension on all impact fees, several Board members indicated that they want to exempt fire and EMS impact fees from any moratorium. That would leave a moratorium on the bulk of the impact fees: schools, roads, and parks.

What Is An Impact Fee?

Impact fees are a way for local governments to require new developments to pay a proportionate share of the infrastructure costs they impose on the community. The fees are a one-time, up-front charge, with payment made at the time of building permit issuance.

- Lee County has had impact fees for schools, roads, parks, fire, and EMS in effect since 1985. Currently, impact fees (sum of all types of fees) for a new home would be $12,259-$12,738 (depending on the fire control district). The composition of those impact fees are about 53% road impact fees, 31% school impact fees, 12% park fees, and 4% fire and EMS.

- The county has a well-established formula and methodology for calculating and updating these fees every 2-3 years designed to meet all the legal requirements, i.e., the fees must meet the rational nexus "tests" established by the courts and to be based on recent "localized" data.

  In the past several years, the impact fee rates have been significantly reduced. For example, in 2011, road impact fees were reduced by 27%; in 2012, school fees were reduced by 5%, reductions were made in most categories of fire and EMS fees, while park fees remained unchanged.

When will the issue come before the Board?

- On Jan. 16th, the County Administration announced that it had scheduled a public meeting to discuss the possible suspension of impact fees on **Tuesday, January 22, 2013 after the conclusion of the Board's regular weekly meeting, which could be as early as 10:00 a.m.** The hearing is held in the Commission Chambers (2120 SW Main St., Fort Myers)

- During the meeting, the Board will accept public comment, with time limits for each speaker, usually 3 minutes. After public comment, the Board may discuss and then entertain a motion to direct staff on the desired course of action.

- LPA Hearing: The issue will also be on the LPA agenda for its January 28th meeting, which is held at 8:30 a.m. in Commission Chambers. If at the Jan. 22nd public hearing the Board directs staff to amend the LDC to suspend the collection of impact fees, staff will have a draft ordinance ready for review by the LPA on January 28^{th}.

- A **final vote** by BoCC (in the form of an ordinance adoption hearing) will be scheduled for **either Tuesday, February 5 or Tuesday, Feb. 12th,** as part of the BoCC's regular Tuesday morning meeting (starting at **9:30 a.m**. in Commission Chambers). The Board will decide at the Jan. 22nd hearing which of these two dates will be chosen for the final vote.

When and how can the public provide input?

There are multiple ways that the public can share their views on this proposal:

1. **letters to the editor: News-Press:**

    - submit online: http://www.news-press.com/section/editor_letter
    - submit by email: mailbag@news-press.com

2. **Write a letter, an email or call County Commissioners:**
    - John Manning: dist1@leegov.com, 533-2224
    - Cecil Pendergrass: dist2@leegov.com, 533-2227
    - Larry Kiker: dist3@leegov.com, 533-2223
    - Tammy Hall: dist4@leegov.com, 533-2226
    - Frank Mann: dist5@leegov.com, 533-2225

3. **Speak at the BoCC** public hearing on Tuesday, Jan. 22nd, and again at the Feb. 5th or 12th BoCC meeting before the final vote.

4. There is also an opportunity on the agenda for public comment at the Jan. 28th **LPA meeting** before they make recommendations to the Board on the proposal.

Five Reasons Not to impose a moratorium on Lee County Impact Fees:

1. It violates the County's longstanding policy framework of shared responsibility for infrastructure costs and services--developers (impact fees), taxpayers (property taxes), sales taxes (residents and visitors), and bed taxes (visitors).

2. It shifts costs from developers, who created the costs and will benefit from the services, to the existing taxpayers through increased property taxes. New development creates both immediate and future infrastructure and service costs for governments. If a desirable quality of life is to be maintained these costs must eventually be paid.
   Given the county's serious budget crisis and the commissioners' desire not to raise property taxes, it makes no sense to eliminate a revenue source that is helping cover the real costs of transportation infrastructure demand, driven by new development.

3. The alternative is declining levels of service, as existing infrastructure networks become more burdened with additional demand.

4. It creates serious fairness and equal treatment issues between those who recently paid the full fee amounts and those who will now not pay the fees. Lee County could face refunding millions of dollars to previous fee payers in order to avoid legal challenges.

5. There is little evidence that suggests suspending impact fees encourages new development activity.

What do we know from research about impact of impact fee suspension on development?

There is an assumption that eliminating impact fees would send a message that Lee County is open for business – however, this is not borne out in research. For example, in a study prepared for Lee County Planning Department in 2010, comparing impact fees in 40 of the 64 Florida counties, conducted by Clancy Mullen of Duncan Associates and Dr. James C. Nicholas, Professor Emeritus of Florida State University, there was no significant relationship between the reduction (or elimination) of impact fees and building permit activity.[1] In fact, despite that the current impact fees are in place, home building permits are up in Lee and Collier Counties.

What are the trends in home building permits in Lee County and neighboring Collier?

- Home-building has picked up significantly in both Lee and Collier Counties, according to data released by Naples Daily News on Jan. 14th. Lee County new home construction permits are up 50% (compared to 2011) and 68% since 2009. Collier realized more than twice the number of single family permits even with **fees at $18, 137 to $21,134 - a full 30% to 40% higher than those in Lee** County, currently at $12, 259 to $12,738.

[1] Clancy Mullen and Dr. James C. Nicholas. "Impact Fee Reductions and Development Activity: A Quantitative Analysis of Florida Counties." Presented at the Growth and Infrastructure Consortium, November 4, 2010.

- Headlines indicate that we are in what appears to be a steady construction industry recovery. "It's the best year we've seen in a long time, in a very long time for our company throughout Florida. We have seen a rebound in all of our communities, whether that was in Tampa, Palm Beach, Collier or Lee counties," said Patty Campbell, president of G.L. Homes' Southwest Florida division"(Naples News).

- "We are not the only bright spot," Campbell said, pointing to other national builders such as Lennar, Pulte and Naples-based Stock Development that all saw a jump in activity in their communities across Southwest Florida in 2012"(Naples News).

- ***We have no need to "jumpstart" what is already going***.

What lessons can Lee County Learn from Other Areas?

Several areas in Florida offer instructive guidance on the issues of community needs and quality of life factors vs. simply impact fees. .

- **Osceola County** has been portrayed as an impact fee suspension success story with about $61 million worth of new construction occurring after they eliminated their fees. However, in Kissimmee, a municipality within Osceola County with less than one quarter of the population, there was over $50 million worth of new development during the same period.

- Rather than acting rashly to suspend their impact fees, **Kissimmee** had, with clear goals and purpose, transitioned to a zoned mobility fee system, designed to reward redevelopment and infill. This tiered fee system has resulted in up to 50% lower actual fees paid by contractors, while the city realizes revitalizing construction in declining areas.

- The new mobility fee structure in Kissimmee, based upon its mobility plan, allows flexibility in funding of multimodal transportation choices, further augmenting the type of growth and infrastructure desired for a stable and healthy future economy.

- **St. Johns County** has experienced steady new growth for the past several years. It has emerged as the "Preferred place to live", in Northeast Florida. Unlike surrounding counties it did not suspend or enact a moratorium on residential impact fees, yet the number of new residential permits activated in St. John's far exceed those of any surrounding counties, making it one of the top three counties in the state for permits let - this, despite its reputation as a somewhat business 'unfriendly and anti-growth' County.

- Interviews with new residents consistently indicate their choice of location was made based upon quality of life standards: excellent public schools and excellent public park and athletic facilities. Virtually no one cited "cheaper" as the reason to move to St. Johns County.

- ***The clear message here is that quality of life and excellent schools and infrastructure influence building activity--not cheap development.***

What is relationship between current impact fees and the Comprehensive Plan amendments (Horizon 2035 Plan) currently under development in Lee County?

- Lee County is in the middle of the process of updating the Lee Plan: Horizon 2035. The culmination of county wide community input indicated that citizens want a county characterized by exceptional 'livability', supported by an emphasis on parks, open spaces, recreation, and public services, but with a wider variety of residential choices than currently offered by the development industry. Much positive response was given to mixed use, compact centers, safely accessible by walking, biking or use of transit, with ecologically, economically and socially sustainable development that liberates them from dependency on an automobile for daily functioning.

- The Transportation Element of this comp plan recently came before the LPA and was sent back to be rewritten to incorporate the seamless transition away from impact fees to a tiered or zoned mobility fee system. Based upon a countywide Mobility Plan, such as system, would provide badly needed incentives to stimulate infill and redevelopment, creating revitalizing growth and the variety of business and job opportunities inherent in stable economies. It would allow choice and flexibility in transportation planning, funding and infrastructure development, and ultimately provide citizens the freedom of choice they clearly stated as desirable.

Is Lee County's situation similar to other jurisdictions that suspended their fees?

- In many of the Florida communities that suspended fees, construction activity was almost at a standstill at the time of suspension so there were few actual revenues coming in from impact fees that would be foregone if a moratorium were put in place. In Lee County's case, the loss of revenues are real--$18.4 million of impact fees were collected over the past 2 years, and $16.4 million is projected for the next 3 years. Thus, the lost revenues are real and the shortfall will have to be covered by shifting costs to the taxpayer.

- To compound this, Lee County is possibly unique in Florida—the County borrowed against future anticipated impact fees in order to speed up major infrastructure projects at the height of the boom (Estero Community Park, North Fort Myers Rec Center, 951 Extension South ROW purchases; Bonita Beach Road widening; and Estero Parkway construction). In total, the County borrowed $52 million through a general fund revolving loan program it created, with $4.4 million in internal loan repayments due this year and next.

IMPACTS

Impact of moratorium on road impact fees:

- **Road impact fees of $6.8 million** is projected for the next 3 years. With a moratorium, those fees will not be collected.

- Road impact fees are a major source of funds for bike-ped improvements, with 5% of the road impact fees allocated to bike/ped projects. A suspension of impact fees will adversely impact on the county's ability to implement its complete streets initiative and to fund the growing list of prioritized complete streets projects recommended for funding by the Internal Complete Streets Team and the CSAC and BPAC. The current CIP funds $2.6 million in the next 2 years for stand-alone bike/ped projects, including $850,000 for the shared-use path of Fiddlesticks Rd. Funding for these projects could be in jeopardy if impact fees are suspended during this period.

- Since most of the impact fee revenues are being used to repay internal loans, there few road impact fees are allocated to new road projects in the CIP at this time. Road impact fees must accumulate over a number of years to fully fund expensive future project phases. With a impact fee moratorium no additional revenues will be building up in "the bank" for upcoming large projects, detrimentally impacting planned projects for years to come-- from the future phases of the Bonita Beach Rd. project, Burnt Store Road widening, Homestead Rd. widening, Luckett Rd., Ortiz Ave., North Air Rd. extension, to the Three Oaks Parkway extension.

Impact of moratorium on parks impact fee:

- A total of $1.5 million in park impact fees is projected for the next 3 years. With a moratorium, those fees will not be collected.

- The parks impact fee provides a source of funds to invest in parks as growth occurs. We know from the EAR public workshops that Lee County residents place a high value on parks as part of the quality of life that attracts them to Lee County. We also know from the Visitors and Convention Bureau (VCB) surveys that visitors value and frequent our park system while here on vacation.

- Without impact fees, our ability to maintain and expand our park system is threatened, which will have very real and long term consequences on our ability to attract and retain residents and businesses who are looking at quality of life features--the very reason why new residents would consider buying a home or living here.

Impacts on County's General Fund and Budget:

- As mentioned above, Lee County borrowed $52 million against future anticipated impact fees to order to speed up major infrastructure projects during the boom.
- If impact fees are suspended, then the revenues anticipated to be used to repay the internal loans would mean that $4.4 million in internal loan repayments due to the General Fund ($4.1 M for roads and $0.3 million for parks) over the next 2 years (2012-13 & 2013-14) could not be paid, creating an immediate $4.4 million shortfall in the General Fund that will need to be filled either by cuts in County operating costs or the Board will have to increase spending in the General Fund to cover the $4.4 million shortfall. (through increase tap on the Reserve Fund).

- If there were any CIP projects in the work plan that were in the same impact fee district as the project loan (see list in first bullet), then those CIP projects would be the logical place to meet the loan repayment shortfall. However, in both the cases of road and parks impact fee loans, there are no other CIP projects from those districts in the current plan. Therefore, the shortfall cannot be made up by cutting other impact fee financed CIP projects.

- The lack of loan repayment to the general fund means that the County's operating budget will be $4.4 million higher than budgeted. Either the Board has to dip into the Reserves by an additional $4.4 million or it has to cut the County Administration budget somewhere else.

- Here are some of the funds that could be used to cut the county's budget by $4.4 million:

  1. **projects in the CIP funded with gas tax and ad valorem taxes:**
     - CIP roadway landscaping projects funded with ad valorem taxes (last step in major road project being completed) budgeted in 2012-13 worth $3.6 M--Bonita Beach Rd., Colonial/Six Mile to SR 82, Six Mile widening, Summerlin/Boy Scout.
     - CIP projects funded with gas taxes: Crystal Dr. reconstruction ($1.1 M), the Crystal Drive roundabout ($575 K); or the Daniels resurfacing project ($1.7 M). The Estero Blvd. Improvement project gets some of its money from gas taxes. The Homestead Rd. Complete Streets project ($1.5 M); the Fiddlesticks shared use path ($850 K); the annual resurfacing contracts; the master bridge project, or roadway beautification on existing roadways.

  2. **Agency operating budget**s:
     - The $4.1 M transportation loan shortfall could come from LeeDOT's operating budget ($38.6 M/yr), which funds landscaping maintenance, roadway maintenance, bridge maintenance, traffic signals, toll facilities, design and engineering.
     - The $300 K parks loan shortfall could come from Parks and Rec operating budget ($25 M/yr), could come from the Extension Service, the Sports Complex line item , or from the management of beaches, boat ramps, or regional parks, the community based parks (pools, rec centers), by cutting hours, personnel, or programs.

Complicating Issues/Questions:

- How to deal with outstanding impact fee credits? (including the question of credits due to expire during a moratorium) (Note: There are $15 million in outstanding credits for roads.)

- How to compensate developers for land or infrastructure improvements with case if no impact fees coming in to provide cash?

- A suspension of impact fees would mean the county would have to forego collection of proportionate share contributions from DRI's (developments of Regional Impact) during that time.

The proposed moratorium is presented as a two-year suspension, but how can the Board make sure it does not become long term?

- Although the suspension is proposed for a limited timeframe, it is often difficult for elected officials to reinstate the fees because any elected official who votes to re-impose them will be accused of raising taxes.

- Commissioners have talked about a potential "automatic" sunset provision. Have those worked in other communities? How are they proposing to guarantee that it is only temporary? With a "sooner than later" timeline being pushed for this vote, can a "sunset" agreement be adequately prepared and vetted?

How would a 1-year review of results of such a moratorium be done?

- It has been proposed that a review of the impacts of the moratorium be done after one year of experience with a moratorium to determine whether it is having the hoped for influence on development.

- Analyzing the correlation between a suspension of impact fees and permit activity requires expert third-party analysis. It is not simply a matter of adding up permits and comparing numbers to previous year. This approach would mask what might be the natural growth in the industry.

- If the Board wants to know the true impact of a suspension, they need to insist on a review by an expert third party, such as Duncan and Nicholas, which prepared the 2010 expert analysis for the county staff.

Prepared by BikeWalkLee, Jan. 16, 2013