

ORDINANCE NUMBER 07- 28

AN ORDINANCE ESTABLISHING AN EQUITABLE IMPACT FEE FOR THE PURPOSE OF PLANNING AND FINANCING ROAD AND STREET INFRASTRUCTURE NEEDED TO SERVE NEW DEVELOPMENT IN THE TOWN OF WESTFIELD

WHEREAS, the Town Council of the Town of Westfield (“Town”) finds that it is reasonable and necessary to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the Town by providing for an equitable program to fund the capital costs of new road and street infrastructure necessary to serve newly developing areas of the Town; and

WHEREAS, the Town Council finds that it is reasonable and necessary to promote the orderly development of the Town by establishing standards by which the Town may require that new development shall pay a Traffic Impact Fee representing the development’s proportionate share of the capital cost of new road and street infrastructure necessary to serve new development in the Town; and

WHEREAS, the Town Council finds that new development should not be required to pay a fee for the capital costs of new road and street infrastructure greater than the development’s proportionate share of the capital costs of such infrastructure which is needed to serve such development; and

WHEREAS, the Town has caused to be prepared a comprehensive Traffic Impact Fee Analysis Report (“Traffic Impact Analysis”) by HNTB Corporation (“HNTB”) which is included as Exhibit A to this Ordinance and made a part hereof; and

WHEREAS, the cost of implementing the thoroughfare improvement recommendations of the Traffic Impact Analysis in its entirety exceeds (1) the income capacity of the Town through its ad valorem property tax receipts and other tax distributions allocated to road and street improvements relative to the prioritized chronological need of the Town for such improvements; (2) the general obligation bond capacity of the Town based upon its net assessed valuation; and (3) the revenue bond potential of the Town based upon any existing means of acquiring revenue related to such improvements; and

WHEREAS, because of the size of the Town, considering both its population and geographic area, as well as the distribution of public and private institutions, services and other facilities throughout the Town, any road or street improvement benefits all citizens of the Town equally; and

WHEREAS, it has been the stated objective of the Town that the Traffic Impact Analysis should result in the determination of a Traffic Impact Fee which meets the requirements of Indiana state law; and

WHEREAS, the Westfield Traffic Impact Fee Committee, at its meeting on November 1 2007, approved and forwarded its recommendation of a per trip fee and corresponding per residence impact fee to the Westfield Advisory Plan Commission; and

WHEREAS, the Westfield Advisory Plan Commission properly noticed, advertised and conducted a public hearing on the recommended traffic impact fee from the Traffic Impact Fee Committee on _November 26, 2007_; and

WHEREAS, having given due deliberation to the Traffic Impact Analysis prepared by HNTB, the Westfield Advisory Plan Commission has recommended its adoption and the adoption of a traffic impact fee for the Town to the Town Council; and

WHEREAS, the purpose of this Ordinance is declared as expressly not to deter growth, remedy existing infrastructure deficiencies or pay for maintenance or other “non-capital costs.”

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of the Town of Westfield, Hamilton County, Indiana as follows:

Section 1. Conditional Repeal and Limitation on Imposition of Traffic Impact Fee. This Ordinance shall expire and become void five (5) years after its effective date, as required by IC 36-7-4-1340, unless action is undertaken to replace it consistent with the provisions of Indiana law which contemplates a replacement impact fee ordinance.

Section 2. Establishment of Impact Zone.

a. There is hereby established for the Town two (2) road and street infrastructure Impact Zone, Zone 1 located East of US 31 and Zone 2 located West of US 31, the borders of which are co-terminus with the existing corporate boundary of the Town of Westfield, Hamilton County, Indiana, as they may be extended from time to time through annexation, over all of which the Town exercises planning and zoning jurisdiction. The Town Council specifically finds that there is a functional relationship between the components of the road and street thoroughfare element of the Traffic Impact Analysis and that such road and street improvement recommendations provides a reasonably uniform benefit to all of the citizens of the Town throughout the Impact Zones as of the effective date of this Ordinance. The Council further finds that all areas within the Impact Zones are contiguous, as required by IC 36-7-4-1316.

b. Except as provided below, this Ordinance shall apply uniformly to all developments within the Impact Zones hereby established for which the Town of Westfield may require a structural building permit and which creates a need for new or additional road and street infrastructure. This Ordinance shall not apply to:

- i. developments meeting the requirements set forth in IC 36-7-4-1322(g);
- ii. improvements which do not require a structural building permit;

- iii. improvements which do not create a need for new or additional road and street infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences, or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed; and
- iv. the replacement of a destroyed or partially destroyed improvement; provided, however, that the replacement improvement does not create a need for new and additional road and street infrastructure over and above the infrastructure needed for the original improvement prior to the destruction or partial destruction thereof.

Section 3. Zone Improvement Plan.

a. As a condition to the adoption of this Ordinance, the Town Council engaged HNTB to conduct a comprehensive and detailed traffic impact analysis of the Town. The Town Council now hereby finds that the resulting study and database constitute a sufficient study to constitute two zone improvement plans. The Town Council hereby adopts the Traffic Impact Analysis prepared by HNTB, dated November 2007, as the Town's Zone Improvement Plan and finds that the Zone Improvement Plan contains the following elements:

- i. A description of the nature and location of existing infrastructure in the Impact Zones.
- ii. A reasonable determination of the current level of service for the Impact Zones.
- iii. A reasonable determination of the community level of service provided within the Impact Zones.
- iv. Reasonable estimates relating to the nature and location of development that is expected within the Impact Zones during the planning period, which, for purpose of this Ordinance, is defined to be a period of ten (10) years commencing with the effective date of this Ordinance.
- v. A reasonable estimate of the nature, location, sequencing, and timing of the road and street thoroughfare requirements and costs necessary to provide the community level of service for the development contemplated in paragraph iii. hereof.
- vi. A reasonable estimate of the share of the road and street thoroughfare costs identified in paragraph iv. hereof that will be used to:
 - (1) raise the current level of service for existing development or provide service to existing development; or
 - (2) provide service to new development.

- vii. A reasonable estimate of revenues that:
 - (1) Are from sources other than Traffic Impact Fees; and
 - (2) Will be used to finance the cost identified in paragraph vi. (1) above.
- viii. A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

b. The Town Council hereby specifically adopts the Zone Improvement Plan as an official part of the Comprehensive Plan of the Town of Westfield, pursuant to IC 36-7-4-500 *et seq.*

Section 4. Establishment of Road Traffic Impact Fee.

a. Based upon the Traffic Impact Analysis, the Town Council finds, determines, establishes and adopts that the cost per twenty-four hour trip for Zone 1 is in the amount of \$? and for Zone 2 is in the amount of \$? . This equates to traffic impact fee of \$? per single family residence for Zone 1 and \$? per single family residence for Zone 2, and this amount is hereby adopted as the traffic impact fee for the Town. The number of twenty-four (24) hour trips are to be based upon calculations taken from latest version of the ITE Trip Generation Manual, a study published by the Institute of Transportation Engineers (“ITE”).

b. The Town Council hereby makes as a part of the record of these proceedings all of the data collected, calculations made, and conclusions reached by HNTB in the process of developing the Traffic Impact Analysis, and specifically instructs the employees of the Town to make such data and all other information gathered and used in preparing the Traffic Impact Analysis publicly available as a public record of the Town for review during the Town’s regular business hours. The Town Council further authorizes HNTB to sell or otherwise distribute copies of the Traffic Impact Analysis and any of the other data collected upon which it relied, at a cost reasonably intended to compensate them for the cost of reproduction only.

c. In the event that any parcel of real estate considered in the creation of the Zone Improvement Plan undergoes a change in use, redevelopment, or modification which requires an improvement location permit, and creates a need for new infrastructure, a Traffic Impact Fee will only be assessed for the increase in the burden on infrastructure.

Section 5. Credit in Lieu of Payment; Exemptions.

a. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance shall have the option of financing, constructing and dedicating actual road and street thoroughfare infrastructure instead of paying all or part of the Traffic Impact Fee which may be due, so long as such financing, construction and dedication are accomplished pursuant to the thoroughfare improvement plan of the Town and in accordance with the road and street specifications for such road or street to be improved in force within the Town at that time. Such fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit upon a verified certification from a registered engineer, architect or contractor of the actual

costs of planning, financing, constructing and dedicating such road and street thoroughfare improvements or infrastructure to the Town. Such certification shall be presented prior to the issuance of any structural building or improvement location permit. In the event the actual cost of such planning, financing, construction and dedication do not equal the amount of the Traffic Impact Fee due pursuant to the calculation provided for in the schedule set forth in Section 4 hereof, the remaining balance shall be due by such fee payer to the Town in accordance with the provisions this Ordinance.

b. Credits against Traffic Impact Fees otherwise due shall be allowed pursuant to this Section 5 for all infrastructure and improvements constructed or furnished in accordance with IC 36-7-4-1313 and 1335 since [REDACTED] ? [REDACTED]. A fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided above.

c. Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from paying the Traffic Impact Fee if they repair or replace the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed structure. In the event it creates any additional burden, the Traffic Impact Fee shall be calculated based only on the increased burden created by the structure.

Section 6. Traffic Impact Fee Due Upon Issuance of Structural Building Permit. The Traffic Impact Fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a structural building permit by the Town. It is understood that a structural building permit is synonymous with the term “structural building permit” as used in IC 36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise. The entire Traffic Impact Fee which is calculated pursuant to the terms of this Ordinance shall be due at the time of permit issuance unless the amount of the fee upon calculation is greater than Five Thousand Dollars (\$5,000), in which case an installment plan may be requested by the applicant in accordance with the terms of IC 36-7-4-1324.

The Westfield Impact Fee Review Board, established herein, shall establish specific rules for installment payments consistent with Indiana law. The interest rate on any installment plan or deferred payment shall be the pre-judgment rate of interest set forth in the Indiana Code.

If a fee payer so requests, the amount of the Traffic Impact Fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the structural building permit, whichever is earlier. For purposes of this Section 6, “assessment” means the act of calculating the amount of the Traffic Impact Fee which shall be due. The Town shall make such assessment within thirty (30) days of the date of such voluntary request or at the issuance of the structural building permit with or without a request.

Section 7. Lien Rights Established. Pursuant to IC 36-7-4-1325, the Town of Westfield acquires a lien against the real estate which is the subject of the Traffic Impact Fee on the date the structural building permit is issued. Upon final adoption, this Ordinance shall be recorded

and, thereafter, it shall constitute constructive notice of the lien rights of the Town. The Town may, in its discretion, file a specific instrument setting forth its statutory lien rights with respect to a parcel of real estate which is the subject of an installment payment of a Traffic Impact Fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

Section 8. Form of Receipt. The Clerk-Treasurer of the Town shall issue a receipt for any and all Traffic Impact Fees collected, and the form of such receipt shall be as follows:

RECEIPT
Office of Clerk – Treasurer

_____ Fund

Westfield, IN _____ 20__

RECEIVED FROM _____ \$ _____
 THE SUM OF _____
 ON ACCOUNT OF _____

Clerk/Treasurer

Payment type & amount

Cash _____ Check _____ M.O. _____
 E.F.T. _____ C.C./B.C. _____ Other _____

Section 9. Appeals.

a. Any fee payer who believes itself to be aggrieved by the calculation of the Traffic Impact Fee may appeal from such calculation to the Westfield Impact Fee Review Board created hereafter and the Westfield Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden presenting either of the following propositions:

- i. A fact assumption used in determining the amount of the Traffic Impact Fee is incorrect; or
- ii. The amount of the Traffic Impact Fee is greater than the amount allowed under IC 36-7-4-1320, 1321, and 1322.

Upon conclusion of the presentation of evidence, the Westfield Impact Fee Review Board shall make a determination within not more than thirty (30) days, upon the facts presented and may make such adjustments in the Traffic Impact Fee as they believe are appropriate under the circumstances, if any.

b. An appeal under this Section 9 must be filed not later than thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with the Clerk-Treasurer's office, together with a filing fee in the amount of One Hundred Dollars (\$100). The filing fee shall be refunded in full (1) if the Petition for Review is granted and the Traffic Impact Fee is eliminated, reduced or adjusted by the Westfield Impact Fee Review Board, by independent action of the Town, or by a court having jurisdiction, and (2) if the reviewing body determines that the amount of the fee, reductions, or credits was arbitrary or capricious. The Petition for Review shall be in a form calculated to inform the Westfield Impact Fee Review Board of the nature of the complaint, the parties to the action, and the relief requested. In addition, the petition shall describe the new development on which the Traffic Impact Fee has been assessed, all facts relating to the assessment of the Traffic Impact Fee, and the reasons petitioner believes that the amount of the Traffic Impact Fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

c. The Town shall not deny the issuance of a structural building permit on the basis that the Traffic Impact Fee has not been paid or condition issuance of the permit on the payment of the Traffic Impact Fee. If the Traffic Impact Fee totals One Thousand Dollars (\$1,000) or less, the Town may require the fee payer to pay the Traffic Impact Fee or initiate an appeal under this Section 9 before the structural building permit is issued.

Section 10. Establishment of Road and Street Thoroughfare Fund.

a. The Town Council hereby establishes the Road and Street Thoroughfare Fund of the Town of Westfield. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized for the purposes set forth herein. The Fund shall consist initially of one account based upon the current existence of one Impact Zone. In the event, and only in the event, that an additional Impact Zone for the Town is created hereafter, a separate account shall be maintained for each separate Impact Zone established with the Town. Interest earned on the Fund or on any account within the Fund shall be deposited and maintained within the Fund or the separate account. The Clerk-Treasurer of the Town shall maintain records of the Fund or any account which may be established therein, and shall make an annual report of the Fund and accounts which shall be available to the public and fee payers, upon request.

b. Pursuant to IC 36-7-4-1332(e), the Clerk-Treasurer is designated as the Town official responsible for acting upon refund requests. In order to facilitate refunds when they may be due, the Clerk-Treasurer is directed to identify the purpose of any Traffic Impact Fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

Section 11. Use of Traffic Impact Fees Collected Pursuant to this Ordinance. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the Town, acting by and through its Town Council, which, for purpose of this Ordinance, is identified as the “infrastructure agency” contemplated by IC 36-7-4-1317:

- a. Providing funds to be utilized by the Town for the purpose of paying the capital costs of new road and street infrastructure that is necessary to serve the new development within the corporate limits of the Town and that is identified in the Zone Improvement Plan;
- b. An amount not to exceed five percent (5%) of the annual collections of the fee may be utilized for expenses incurred by the Town for the consulting services used to establish this Ordinance;
- c. To pay any refund due pursuant to the terms of this Ordinance; and
- d. To pay the debt service cost on an obligation issued to provide new road and street infrastructure described in paragraph (a) herein.

Section 12. Establishment of Westfield Impact Fee Review Board.

a. There is hereby created the Westfield Impact Fee Review Board, whose members shall be appointed by the Town Council, consisting of three (3) citizen members. A member of the Westfield Impact Fee Review Board may not be a member of the Westfield Advisory Plan Commission. One member of the Westfield Impact Fee Review Board shall be a real estate broker licensed in the State of Indiana, one member shall be an engineer licensed in the State of Indiana, and the third member shall be a certified public accountant. Each member shall serve at the pleasure of the Town Council for calendar year terms commencing with their initial appointment and concluding on December 31st of the year in which he or she is appointed, unless reappointed.

b. In the event of a conflict of interest or other condition which causes a duly appointed member of the Westfield Impact Fee Review Board to disqualify himself or herself on any matter before the Board, such member shall notify the Town Council in writing of their intent not to participate in such matter. Thereafter, the Town Council may appoint a temporary replacement member for the limited purpose of hearing that petition for which the regular member is disqualified. Any such replacement member shall meet the qualifications of the member he or she is replacing.

c. The Westfield Impact Fee Review Board shall have only those duties and responsibilities established in IC 36-7-4-1338. Upon the organization of the Westfield Impact Fee Review Board, the members shall establish rules of procedure to the extent they are consistent with Indiana state law and, specifically, to provide the ways and means to carry out the specific provisions of this Ordinance regarding petitions for review, refunds, credits, and other matters. The rules shall specifically provide that in the event that no development occurs or only a portion of the anticipated development occurs, a refund in whole or in part of such fee paid shall be made, with interest. The Board may impose reasonable requirements to insure that, in fact, no development has occurred, or something less than what was paid for is all that will occur on the real estate which was the subject of the initial assessment.

d. Members of the Westfield Impact Fee Review Board shall serve without compensation. At their first meeting, they shall elect from their membership a chairperson who shall serve until his or her replacement has been duly elected. At the first meeting after the first day of January in each year, the membership shall elect from the then duly appointed members a chairperson. The chairperson shall be responsible for leading the Board in conducting its business.

Section 13. IC 36-7-4-1300 Series. The Town Council specifically acknowledges the existence of Indiana statute IC 36-7-4-1300 *et seq.*, which regulates the imposition of Traffic Impact Fee ordinances by municipal corporations within the State of Indiana. It is the intent of the Town to comply with this law, and this Ordinance shall be construed in all respects to be consistent with it. The substantive and procedural requirements of IC 36-7-4-1300 *et seq.* shall control in the event of any conflicts with this Ordinance.

Section 14. Amendment and Review. The Traffic Impact Fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the Town has no control. The Town Council shall, therefore, not less than once each year, cause a review to be made by Town staff or consultants, as may be required, to determine the continuing validity of the Traffic Impact Fee, the Impact Zone, and the Zone Improvement Plan. The Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with the rational nexus test to continue, to insure that procedural due process is maintained or enhanced, and to ensure that this Ordinance meets the requirements of Indiana Code 36-7-4-1300 series. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Town's Comprehensive Plan.

Section 15. Effective Date. This Ordinance shall be effective six (6) months following its adoption in accordance with Indiana law.

Section 16. Savings Clause. If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 17. Construction of Clause Headings. The clause headings appearing herein have been provided for convenience and reference and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clause to which they pertain.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

ADOPTED AND PASSED THIS ___ DAY OF ___, 2007, BY THE WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD TOWN COUNCIL
Hamilton County, Indiana

WESTFIELD TOWN COUNCIL

<u>Voting For</u>	<u>Voting Against</u>	<u>Abstain</u>
_____ J. Andrew Cook	_____ J. Andrew Cook	_____ J. Andrew Cook
_____ Jack Hart	_____ Jack Hart	_____ Jack Hart
_____ John Dippel	_____ John Dippel	_____ John Dippel
_____ Bob Smith	_____ Bob Smith	_____ Bob Smith
_____ Ron Thomas	_____ Ron Thomas	_____ Ron Thomas
_____ Robert Horkay	_____ Robert Horkay	_____ Robert Horkay
_____ Joseph Plankis	_____ Joseph Plankis	_____ Joseph Plankis

ATTEST:

Clerk-Treasurer, Cindy Gossard

This ordinance prepared by
Brian J. Zaiger, Attorney at Law
KRIEG DEVAULT, LLP
12800 North Meridian
Carmel IN 46032
317-238-6266