Jennifer J Hayden
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ORDINANCE 06-15

AN ORDINANCE OF THE TOWN OF WESTFIELD CONCERNING AMENDMENT TO CHAPTER 40, ARTICLE II OF THE MUNICIPAL CODE OF THE TOWN OF WESTFIELD, INDIANA

WHEREAS, the cost of constructing and improving roadways is highly proportional to usage derived from increased developments in the community; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission held a public hearing and the Westfield Town Council approved Ordinance 94-7 on June 13, 1994 which established an Impact Fee for roads and street improvements attributable to new developments within the corporate limits of the Town of Westfield; and

WHEREAS, the procedures for amending an Impact Fee Ordinance are contained in IC 36-7-4-1300; and

WHEREAS, Ordinance 94-7 was subsequently amended by Ordinance 04-21 and Ordinance 04-29; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission and the Impact Fee Advisory Committee have reviewed certain information prepared by HNTB; and

WHEREAS, such Impact Fee will apply to only certain improvements and developments within the corporate limits of the Town; and

WHEREAS, the Impact Fee Advisory Committee, at its meeting on July 20, 2006, reached a consensus to forward the recommendations of HNTB to the Westfield Town Council; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission did properly advertise and conduct a public hearing on the amendment of Impact Fees on July 24, 2006;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA:

Section 1. Chapter 40, Article II of the Municipal Code of the Town of Westfield, Indiana is hereby amended by the addition of language which is underlined and the removal of language which is stricken through:

ARTICLE II. ROAD AND STREET IMPROVEMENT IMPACT FEE

Sec. 40-31. Establishment of impact zone; application of article.

~~(a)~~ There is hereby established a road and street infrastructure impact zone, the borders of which are coterminous with the existing corporate limits of the town, as they may be extended from time to time through annexation, and over which the town exercises planning and zoning jurisdiction. All areas within the impact zone are contiguous as required in IC 36-7-4-1316. Except as provided below, this article shall apply uniformly to all developments within the impact zone hereby established for which the town may require a structural building permit and which creates a need for a new and additional infrastructure. This article shall not apply to:

(A) Developments meeting the requirements set forth in IC 36-7-4-1322(g);

(B) Improvements which do not require a structural building permit;

(C) Improvements which do not create a need for new and additional transportation 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;

(D) The replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional transportation infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof.

~~(b) This article shall also not apply to improvement location permits for signs, residential accessory buildings, fences, expansion of an improvement where the use and intensity has not changed, renovation that does not change the use or intensity and replacement of destroyed or partially destroyed improvements.~~

~~(c) This article shall also not apply to a single-family dwelling that is located on a lot in a subdivision which is more than 80 percent developed as of the effective date of the ordinance from which this article is derived (January 1, 1995).~~

Sec. 40-33. Establishment of road impact fee.

(a) It has been determined that the 200~~3~~6 calculation of the cost per trip is in the amount of $~~296~~ 470.00. Notwithstanding the evidentiary basis for such calculation, the cost per trip shall be set at $~~110~~ 188.00. For a single family residence the road impact fee is based upon 9.57 trips per 24-hour period which calculates to $~~1053~~ 1800.00 per residence. Calculations for other types of construction shall be based upon the current edition of the Trip Generation Report, published by the Institute of Transportation Engineers.

(b) The town council does hereby make as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached in the revision of the zone improvement plan, and specifically instructs the Westfield Public Works Department to make such data and other information inclusively available to anyone for review during regular business hours.

(~~b~~c) If any parcel of real estate considered in the creation of the zone improvement plan undergoes a change in use, redevelopment or a modification which requires an improvement location permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on the infrastructure.

Sec. 40-34. Credit and exemptions.

(a) Credits against impact fees otherwise due shall be allowed pursuant to this section for all infrastructure and improvements constructed or furnished in accordance with IC 36-7-4-1313 and IC 36-7-4-1335. In addition, 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. 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 a contractor of the actual costs of planning, financing, constructing and dedicating such road and street thoroughfare improvements to the town. Such certification shall be presented prior to the issuance of the improvement location permit. If the actual cost of such planning, financing, construction and dedication do not equal the amount of the impact fee due, the remaining balance shall be due pursuant to section 40-35. If the actual cost exceeds the amount of the impact fee, no reimbursement shall occur. Actual cost must be verified by invoices and backup documentation.

(b) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. Any fee payer requesting a credit under this section shall enter into a Road Impact Fee Agreement with the town in substantially the form attached hereto as Exhibit A.

(c) The amount of credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (b). However, at the time the amount of a credit is determined under subsection (b), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

(~~c~~d) An impact fee shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(~~d~~e) Any person or entity otherwise obligated to pay the fee established by this article whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from said 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 of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

(f) This ordinance does not prohibit the town from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to the town.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments.

Sec. 40-35. Impact fee due upon issuance of an improvement location permit.

(a) The impact fee imposed shall be due and payable upon the issuance of an improvement location permit. The entire fee which is calculated pursuant to this article shall be due at such time unless the amount of the fee upon calculation is greater than $5,000.00, in which case an installment plan may be requested by the applicant in accordance with the terms set forth in IC 36-7-4-1324(a), (b) and (d).

~~(b) The impact fee review board established in section 40-43 shall establish specific rules consistent with IC 36-7-4-1324.~~ The interest rate on any installment plan or deferred payment shall be the prejudgment rate of interest as established by law.

(~~c~~b) The amount of the impact fee shall be assessed upon the ~~submission and subsequent approval of a development plan by the Westfield-Washington Township plan commission.~~ approval by the Public Works Department of a ~~development~~ construction plan or upon the issuance of an improvement location permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due.

Sec. 40-38. Appeals.

(a) Any fee payer who believes itself to be aggrieved by the calculation of the impact fee may appeal from such calculation to the impact fee review board, created in section 40-43, and the impact fee review board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

(1) A fact assumption used in determining the amount of an impact fee ~~trip generation of the development~~ is incorrect; or

(2) The amount of the impact fee is greater than the amount allowed under IC 36-7-4-1320, IC 36-7-4-1321 and IC 36-7-4-1322.

(b) Upon conclusion of the presentation of evidence, the 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 impact fee as it believes are appropriate under the circumstances, if any.

(c) An appeal under this section 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 $100.00. The filing fee shall be refunded in full if:

(1) The petition for review is granted and the impact fee is eliminated, reduced or adjusted by the impact fee review board, by independent action of the town or by a court having jurisdiction; and

(2) The reviewing body determines that the amount of the fee, reductions or credits were arbitrary or capricious.

The petition for review shall be in a form calculated to inform the 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 impact fee has been assessed, all facts related to the assessment of the impact fee and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

(d) The town shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee. If the impact fee totals $1,000.00 or less, the town may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

Sec. 40-41. Use of impact fees collected.

~~The impact fees collected under the provisions of this article shall be applied to implementing the zone improvement plan as adopted herein, or as hereafter amended. Should~~Any and all fees collected pursuant to the provisions of this article may be utilized for the following purposes only by the town, acting by and through its town council: ~~the collection of fees be less than the amount necessary to implement the zone improvement plan, the town council shall be authorized to apply such fees on a pro rata basis in conformance with the plan objectives.~~

(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 5% of the annual collections of the fee to be utilized for expenses incurred by the town for the consulting services used to establish this article;

(C) To pay any refund due pursuant to the terms of his article;

(D) To pay the debt service cost on an obligation issued to provide new road and street infrastructure described in (A) above.

Sec. 40-43. Impact fee review board.

(a) There is hereby created the impact fee review board to be appointed by the town council and consisting of three (3) citizen members. A member of the review board may not be a member of the Westfield-Washington Township plan commission. One member of the review board shall be a real estate broker licensed in the state. One member shall be an engineer licensed in the state. 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 the initial appointment and concluding on December 31 of the year in which the member is appointed, unless reappointed.

(b) In the event of a conflict of interest, or other condition which causes a duly appointed member of the review board to disqualify himself on any matter before the review board, such member shall notify the town council in writing of his intent not to participate in such matter. Thereafter, the town council may appoint a 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 is replacing.

(c) The review board shall have only those duties and responsibilities established in IC 36-7-4-1338, as from time to time amended. Upon the organization of the review board, the members shall establish rules of procedure to the extent they are consistent with state law, and specifically, to provide the ways and means to carry out the specific provisions of the enabling statute regarding petitions for review, refunds, credits and the like. Said rules shall specifically provide that if 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 review board may impose reasonable requirements to ensure that, in fact, no development has occurred, or something less than that which was paid for is all that will occur on the real estate which was the subject of the initial assessment.

(d) Members of the review board shall serve without compensation. At the review board's first meeting, they shall elect from their membership a chairperson who shall serve until his replacement has been duly elected. At the first meeting after January 1 in each year, the membership shall elect from the then duly appointed members a chairperson. The chairperson shall be responsible for conducting the business of the board.

Secs. 40-46. Compliance with House Enrolled Act No. 1647.

The council specifically acknowledges the existence of a law adopted by the General Assembly of the state which regulates the imposition of impact fee ordinances by municipal corporations within the state. It is the intent of the town to comply with such legislation, and this article shall be construed in all respects to be consistent with the Act. The substantive procedural requirements of IC 36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the council.

Secs. 40-47. Penalty.

(a) Any person or persons, firm, or corporation whether as principal, agent, employee, or otherwise, who violates any of the provisions of this article may be prosecuted pursuant to IC 36-7-4-1000 et seq.

(b) The town may impose civil monetary fines or penalties for violations of this article which may be enforced by the designated enforcement entity in accordance with the procedures outlined in this Code.

Secs. 40-468—40-50. Reserved.

Sec. 2. This ordinance shall be in full force and effect in accordance with the Indiana Law, upon its passage by the Town Council, its publication in accordance with the law, and upon the passage of any application waiting period, all as provided by the laws of the State of Indiana.

ADOPTED AND PASSED THIS 11 DAY OF Dec, 2006, BY THE WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD TOWN COUNCIL

Voting For	Voting Against	Abstain
Robert J. Smith	Robert J. Smith	Robert J. Smith
John B. Hart	John B. Hart	John B. Hart
David Mikesell	David Mikesell	David Mikesell
Teresa Otis Skelton	Teresa Otis Skelton	Teresa Otis Skelton
Ron Thomas	Ron Thomas	Ron Thomas

ATTEST:

Clerk-Treasurer, Cindy J. Gossard

This Ordinance prepared by:
Sue A. Beesley
Bingham McHale LLP

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law"

Signed

EXHIBIT A

ROAD IMPACT FEE CREDIT AGREEMENT

WHEREAS, it is the desire of the Town of Westfield to foster the development and improvement of its street and road infrastructure through a cooperative effort with the development community; and

WHEREAS, it is the desire of the development community to assist the Town of Westfield in its efforts to improve the street and road infrastructure; and

WHEREAS, it is the desire of the following developers to make said infrastructure improvements in accordance with all applicable ordinances, statutes, and guidelines set forth by the Town of Westfield and the State of Indiana.

NOW, THEREFORE:

Developer Name
Address
City, State, ZIP

By: (Developer/Representative)

DOES HEREBY AGREE AND UNCONDITIONALLY ENTER INTO THE FOLLOWING COOPERATIVE AGREEMENT WITH THE TOWN OF WESTFIELD:

[1] The **DEVELOPER**, as indicated herein, acknowledges an obligation to the **TOWN** pursuant to the Town's Road Impact Fee Ordinance, _____, to provide the Town in cash value of $_____, in-kind improvements in partial or total satisfaction of said amount for the following street(s) or road(s):

[2] The DEVELOPER, having expressed its intent to make off-site improvements to said street(s) or road(s) within 18 months, the parties do now agree as follows:

a) The obligation to pay the Road Impact Fee shall be deferred until completion of said improvements, by the DEVELOPER, for the project noted above;

b) Upon completion of said improvements, the DEVELOPER shall certify and submit paid receipts for said improvements, and such certified total shall be deemed a credit in partial or total satisfaction of the Road Impact Fee due.

c) To the extent that there remains a balance due at the time of certification of paid receipts, the DEVELOPER shall make payable to the TOWN any remaining balance of the Road Impact Fee due.

[3] This agreement is strictly conditioned upon completion of said road improvements within the time period stated above. Failure to complete such improvements shall negate the deferral granted hereby, resulting in immediate payment of the total impact fee due.

[4] The DEVELOPER specifically and unconditionally acknowledges and agrees that the Town's Road Impact Fee as applied to its development, bears a reasonable relationship to the demand for the improvements outlined above, resulting directly from the projects being undertaken by the DEVELOPER and their impact on traffic and the affected street(s) or road(s).

Agreed to this _____day of _____, 20____

_____
Developer

_____
Director, Westfield Public Works
Bruce Hauk

_____
Westfield Town Manager
Jerry Rosenberger

Attest:

_____
Cindy J. Gossard, Clerk-Treasurer

ORD. 06-15

Dec. 14, 2006

ORDINANCE 06-15
AN ORDINANCE OF THE TOWN OF WESTFIELD CONCERNING AMENDMENT TO CHAPTER 40, ARTICLE II OF THE MUNICIPAL CODE OF THE TOWN OF WESTFIELD, INDIANA

WHEREAS, the cost of constructing and improving roadways is highly proportional to usage derived from increased developments in the community; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission held a public hearing and the Westfield Town Council approved Ordinance 94-7 on June 13, 1994 which established an Impact Fee for roads and street improvements attributable to new developments within the corporate limits of the Town of Westfield; and

WHEREAS, the procedures for amending an Impact Fee Ordinance are contained in IC 36-7-4-1300; and

WHEREAS, Ordinance 94-7 was subsequently amended by Ordinance 04-21 and Ordinance 04-29; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission and the Impact Fee Advisory Committee have reviewed certain information prepared by HNTB; and

WHEREAS, such Impact Fee will apply to only certain improvements and developments within the corporate limits of the Town; and

WHEREAS, the Impact Fee Advisory Committee, at its meeting on July 20, 2006, reached a consensus to forward the recommendations of HNTB to the Westfield Town Council; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission did properly advertise and conduct a public hearing on the amendment of Impact Fees on July 24, 2006;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA:

Section 1. Chapter 40, Article II of the Municipal Code of the Town of Westfield, Indiana is hereby amended by the addition of language which is underlined and the removal of language which is stricken through:

ARTICLE II. ROAD AND STREET IMPROVEMENT IMPACT FEE

Sec. 40-31. Establishment of impact zone; application of article.

There is hereby established a road and street infrastructure impact zone, the borders of which are coterminous with the existing corporate limits of the town, as they may be extended from time to time through annexation, and over which the town exercises planning and zoning jurisdiction. All areas within the impact zone are contiguous as required in IC 36-7-4-1316. Except as provided below, this article shall apply uniformly to all developments within the impact zone hereby established for which the town may require a structural building permit and which creates a need for a new and additional infrastructure. This article shall not apply to:

(A) Developments meeting the requirements set forth in IC 36-7-4-1322(g);

(B) Improvements which do not require a structural building permit;

(C) Improvements which do not create a need for new and additional transportation 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;

(D) The replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional transportation infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof.

Sec. 40-33. Establishment of road impact fee.

(a) It has been determined that the 2006 calculation of the cost per trip is in the amount of $470.00. Notwithstanding the evidentiary basis for such calculation, the cost per trip shall be set at $188.00. For a single family residence the road impact fee is based upon 9.57 trips per 24-hour period which calculates to $1800.00 per residence. Calculations for other types of construction shall be based upon the current edition of the Trip Generation Report, published by the Institute of Transportation Engineers.

(b) The town council does hereby make as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached in the revision of the zone improvement plan, and specifically instructs the Westfield Public Works Department to make such data and other information inclusively available to anyone for review during regular business hours.

(c) If any parcel of real estate considered in the creation of the zone improvement plan undergoes a change in use, redevelopment or a modification which requires an improvement location permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on the infrastructure.

Sec. 40-34. Credit and exemptions.

(a) Credits against impact fees otherwise due shall be allowed pursuant to this section for all infrastructure and improvements constructed or furnished in accordance with IC 36-7-41313 and IC 36-7-4-1335. In addition, 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. 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 a contractor of the actual costs of planning, financing, constructing and dedicating such road and street thoroughfare improvements to the town. Such certification shall be presented prior to the issuance of the improvement location permit. If the actual cost of such planning, financing, construction and dedication do not equal the amount of the impact fee due, the remaining balance shall be due pursuant to section 40-35. If the actual cost exceeds the amount of the impact fee, no reimbursement shall occur. Actual cost must be verified by invoices and backup documentation.

(b) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. Any fee payer requesting a credit under this section shall enter into a Road Impact Fee Agreement with the town in substantially the form attached hereto as Exhibit A.

(c) The amount of credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (b). However, at the time the amount of a credit is determined under subsection (b), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

(d) An impact fee shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(e) Any person or entity otherwise obligated to pay the fee established by this article whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from said 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 of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

(f) This ordinance does not prohibit the town from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to the town.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments.

Sec. 40-35. Impact fee due upon issuance of an improvement location permit.

(a) The impact fee imposed shall be due and payable upon the issuance of an improvement location permit. The entire fee which is calculated pursuant to this article shall be due at such time unless the amount of the fee upon calculation is greater than $5,000.00, in which case an installment plan may be requested by the applicant in accordance with the terms set forth in IC 36-7-4-1324(a), (b) and (d).

The interest rate on any installment plan or deferred payment shall be the prejudgment rate of interest as established by law.

(b) The amount of the impact fee shall be assessed upon the approval by the Public Works Department of a construction plan or upon the issuance of an improvement location permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due.

Sec. 40-36. Appeals.

(a) Any fee payer who believes itself to be aggrieved by the calculation of the impact fee may appeal from such calculation to the impact fee review board, created in section 40-43, and the impact fee review board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

(1) A fact assumption used in determining the amount of an impact fee is incorrect; or

(2) The amount of the impact fee is greater than the amount allowed under IC 36-7-4-1320, IC 36-7-4-1321 and IC 36-7-4-1322.

(b) Upon conclusion of the presentation of evidence, the 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 impact fee as it believes are appropriate under the circumstances, if any.

(c) An appeal under this section 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 $100.00. The filing fee shall be refunded in full if:

(1) The petition for review is granted and the impact fee is eliminated, reduced or adjusted by the impact fee review board, by independent action of the town or by a court having jurisdiction; and

(2) The reviewing body determines that the amount of the fee, reductions or credits were arbitrary or capricious.

The petition for review shall be in a form calculated to inform the 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 impact fee has been assessed, all facts related to the assessment of the impact fee and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

(d) The town shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee. If the impact fee totals $1,000.00 or less, the town may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

Sec. 40-41. Use of impact fees collected.

Any and all fees collected pursuant to the provisions of this article may be utilized for the following purposes only by the town, acting by and through its town council:

(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 5% of the annual collections of the fee to be utilized for expenses incurred by the town for the consulting services used to establish this article;

(C) To pay any refund due pursuant to the terms of his article;

(D) To pay the debt service cost on an obligation issued to provide new road and street infrastructure described in (A) above.

Sec. 40-43. Impact fee review board.

(a) There is hereby created the impact fee review board to be appointed by the town council and consisting of three (3) citizen members. A member of the review board may not be a member of the Westfield-Washington Township plan commission. One member of the review board shall be a real estate broker licensed in the state. One member shall be an engineer licensed in the state. 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 the initial appointment and concluding on December 31 of the year in which the member is appointed, unless reappointed.

(b) In the event of a conflict or other condition which causes a duly appointed member of the review board to disqualify himself on any matter before the review board, such member shall notify the town council in writing of his intent not to participate in such matter. Thereafter, the town council may appoint a 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 is replacing.

(c) The review board shall have only those duties and responsibilities established in IC 36-7-4-1338, as from time to time amended. Upon the organization of the review board, the members shall establish rules of procedure to the extent they are consistent with state law, and specifically, to provide the ways and means to carry out the specific provisions of the enabling statute regarding petitions for review, refunds, credits and the like. Said rules shall specifically provide that if 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 review board may impose reasonable requirements to ensure that, in fact, no development has occurred, or something less than that which was paid for is all that will occur on the real estate which was the subject of the initial assessment.

(d) Members of the review board shall serve without compensation. At the review board's first meeting, they shall elect from their membership a chairperson who shall serve until his replacement has been duly elected. At the first meeting after January 1 in each year, the membership shall elect from the then duly appointed members a chairperson. The chairperson shall be responsible for conducting the business of the board.

Secs. 40-46. Compliance with House Enrolled Act No. 1647.

The council specifically acknowledges the existence of a law adopted by the General Assembly of the state which regulates the imposition of impact fee ordinances by municipal corporations within the state. It is the intent of the town to comply with such legislation, and this article shall be construed in all respects to be consistent with the Act. The substantive procedural requirements of IC 36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the council.

Secs. 40-47. Penalty.

(a) Any person or persons, firm, or corporation whether as principal, agent, employee, or otherwise, who violates any of the provisions of this article may be prosecuted pursuant to IC 36-7-4-1000 et seq.

(b) The town may impose civil monetary fines or penalties for violations of this article which may be enforced by the designated enforcement entity in accordance with the procedures outlined in this Code.

Secs. 40-468—40-50. Reserved.

Sec. 2. This ordinance shall be in full force and effect in accordance with the Indiana Law, upon its passage by the Town Council, its publication in accordance with the law, and upon the passage of any application waiting period, all as provided by the laws of the State of Indiana.

ADOPTED AND PASSED THIS 11 DAY OF **December**, 2006, BY THE WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD TOWN COUNCIL
Voting For: Robert J. Smith
Voting For: John B. Hart
Voting For: David Mikesell
Voting For: Teresa Otis Skelton
Voting For: Ron Thomas
Voting Against: None
Abstain: None
ATTEST:
Clerk-Treasurer, Cindy J. Gossard
This Ordinance prepared by:
Sue A. Beesley
Bingham McHale LLP

12/14 40053443

STATE OF INDIANA
SS:
COUNTY OF HAMILTON
IN THE HAMILTON CIRCUIT COURT.
CAUSE NO. 29C01-0604-MF-340
ABN AMRO MORTGAGE GROUP, INC.
Plaintiff,
vs.
JOEY L. BURGESS;
BLUEVIEW CORPORATION;
DISCOVER BANK;
Defendants

NOTICE OF SHERIFF'S SALE

TO: JOEY L. BURGESS, OWNER OF THE FOLLOWING-DESCRIBED REAL ESTATE AND TO THE PUBLIC AT LARGE:

By virtue of the certified copy of Decree of Foreclosure to me directed by the Clerk of the Hamilton Circuit Court, Hamilton County, Indiana, in the above-captioned cause:

a) rendering judgment against JOEY L. BURGESS in the sum of $94,359.48, said judgment being in favor of ABN AMRO Mortgage Group, Inc. in said amount, plus the costs and accruing costs of the above-described action;

06-15

Dec. 14, 2006

ORDINANCE 06-15
AN ORDINANCE OF THE TOWN OF WESTFIELD CONCERNING AMENDMENT TO CHAPTER 40, ARTICLE II OF THE MUNICIPAL CODE OF THE TOWN OF WESTFIELD, INDIANA

WHEREAS, the cost of constructing and improving roadways is highly proportional to usage derived from increased developments in the community; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission held a public hearing and the Westfield Town Council approved Ordinance 94-7 on June 13, 1994 which established an Impact Fee for roads and street improvements attributable to new developments within the corporate limits of the Town of Westfield; and

WHEREAS, the procedures for amending an Impact Fee Ordinance are contained in IC 36-7-4-1300; and

WHEREAS, Ordinance 94-7 was subsequently amended by Ordinance 04-21 and Ordinance 04-29; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission and the Impact Fee Advisory Committee have reviewed certain information prepared by HNTB; and

WHEREAS, such Impact Fee will apply to only certain improvements and developments within the corporate limits of the Town; and

WHEREAS, the Impact Fee Advisory Committee, at its meeting on July 20, 2006, reached a consensus to forward the recommendations of HNTB to the Westfield Town Council; and

WHEREAS, the Westfield-Washington Township Advisory Plan Commission did properly advertise and conduct a public hearing on the amendment of Impact Fees on July 24, 2006;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA:

Section 1. Chapter 40, Article II of the Municipal Code of the Town of Westfield, Indiana is hereby amended by the addition of language which is underlined and the removal of language which is stricken through:

ARTICLE II. ROAD AND STREET IMPROVEMENT IMPACT FEE

Sec. 40-31. Establishment of impact zone; application of article.

~~(a)~~ There is hereby established a road and street infrastructure impact zone, the borders of which are coterminous with the existing corporate limits of the town, as they may be extended from time to time through annexation, and over which the town exercises planning and zoning jurisdiction. All areas within the impact zone are contiguous as required in IC 36-7-4-1316. Except as provided below, this article shall apply uniformly to all developments within the impact zone hereby established for which the town may require a structural building permit and which creates a need for a new and additional infrastructure. This article shall not apply to:

(A) Developments meeting the requirements set forth in IC 36-7-4-1322(g);

(B) Improvements which do not require a structural building permit;

(C) Improvements which do not create a need for new and additional transportation 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;

(D) The replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional transportation infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof.

~~(b) This article shall also not apply to improvement location permits for signs, residential accessory buildings, fences, expansion of an improvement where the use and intensity has not changed, renovation that does not change the use or intensity and replacement of destroyed or partially destroyed improvements.~~

~~c) This article shall also not apply to a single family dwelling that is located on a lot in a subdivision which is more than 80 percent developed as of the effective date of the ordinance from which this article is derived (January 1, 1995).~~

Sec. 40-33. Establishment of road impact fee.

(a) It has been determined that the ~~2096~~ calculation of the cost per trip is in the amount of ~~$295~~ 470.00. Notwithstanding the evidentiary basis for such calculation, the cost per trip shall be set at ~~$110~~ 138.00. For a single family residence the road impact fee is based upon 9.57 trips per 24-hour period which calculates to ~~$1053~~ 1800.00 per residence. Calculations for other types of construction shall be based upon the current edition of the Trip Generation Report, published by the Institute of Transportation Engineers.

(b) The town council does hereby make as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached in the revision of the zone improvement plan, and specifically instructs the Westfield Public Works Department to make such data and other information inclusively available to anyone for review during regular business hours.

(~~b~~c) If any parcel of real estate considered in the creation of the zone improvement plan undergoes a change in use, redevelopment or a modification which requires an improvement location permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on the infrastructure.

Sec. 40-34. Credit and exemptions.

(a) Credits against impact fees otherwise due shall be allowed pursuant to this section for all infrastructure and improvements constructed or furnished in accordance with IC 36-7-4-1313 and IC 36-7-4-1335. In addition, 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. 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 a contractor of the actual costs of planning, financing, constructing and dedicating such road and street thoroughfare improvements to the town. Such certification shall be presented prior to the issuance of the improvement location permit. If the actual cost of such planning, financing, construction and dedication do not equal the amount of the impact fee due, the remaining balance shall be due pursuant to section 40-35. If the actual cost exceeds the amount of the impact fee, no reimbursement shall occur. Actual cost must be verified by invoices and backup documentation.

(b) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. Any fee payer requesting a credit under this section shall enter into a Road Impact Fee Agreement with the town in substantially the form attached hereto as Exhibit A.

(c) The amount of credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (b). However, at the time the amount of a credit is determined under subsection (b), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

(~~c~~d) An impact fee shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(~~d~~e) Any person or entity otherwise obligated to pay the fee established by this article whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from said 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 of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

(f) This ordinance does not prohibit the town from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to the town.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments.

Sec. 40-35. Impact fee due upon issuance of an improvement location permit.

(a) The impact fee imposed shall be due and payable upon the issuance of an improvement location permit. The entire fee which is calculated pursuant to this article shall be due at such time unless the amount of the fee upon calculation is greater than $5,000.00, in which case an installment plan may be requested by the applicant in accordance with the terms set forth in IC 36-7-4-1324(a), (b) and (d).

~~(b) The impact fee review board established in section 40-43 shall establish specific rules consistent with IC 36-7-4-1324.~~ The interest rate on any installment plan or deferred payment shall be the prejudgment rate of interest as established by law.

(~~c~~b) The amount of the impact fee shall be assessed upon the ~~submission and subsequent approval of a development plan by the Westfield-Washington Township plan commission.~~ approval by the Public Works Department of a ~~development~~ construction plan or upon the issuance of an improvement location permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due.

Sec. 40-38. Appeals.

(a) Any fee payer who believes itself to be aggrieved by the calculation of the impact fee may appeal from such calculation to the impact fee review board, created in section 40-43, and the impact fee review board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

(1) A fact assumption used in determining the amount of an impact fee ~~trip generation of the development~~ is incorrect; or

(2) The amount of the impact fee is greater than the amount allowed under IC 36-7-4-1320, IC 36-7-4-1321 and IC 36-7-4-1322.

(b) Upon conclusion of the presentation of evidence, the 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 impact fee as it believes are appropriate under the circumstances, if any.

(c) An appeal under this section 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 $100.00. The filing fee shall be refunded in full if:

(1) The petition for review is granted and the impact fee is eliminated, reduced or adjusted by the impact fee review board, by independent action of the town or by a court having jurisdiction; and

(2) The reviewing body determines that the amount of the fee, reductions or credits were arbitrary or capricious.

The petition for review shall be in a form calculated to inform the 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 impact fee has been assessed, all facts related to the assessment of the impact fee and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

(d) The town shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee. If the impact fee totals $1,000.00 or less, the town may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

Sec. 40-41. Use of impact fees collected.

~~The impact fees collected under the provisions of this article shall be applied to implementing the zone improvement plan as adopted herein, or as hereafter amended. ShouldAny and all fees collected pursuant to the provisions of this article may be utilized for the following purposes only by the town, acting by and through its town council: the collection of fees be less than the amount necessary to implement the zone improvement plan, the town council shall be authorized to apply such fees on a pro rata basis in conformance with the plan objectives.~~

(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 5% of the annual collections of the fee to be utilized for expenses incurred by the town for the consulting services used to establish this article;

(C) To pay any refund due pursuant to the terms of his article;

(D) To pay the debt service cost on an obligation issued to provide new road and street infrastructure described in (A) above.

Sec. 40-43. Impact fee review board.

(a) There is hereby created the impact fee review board to be appointed by the town council and consisting of three (3) citizen members. A member of the review board may not be a member of the Westfield-Washington Township plan commission. One member of the review board shall be a real estate broker licensed in the state. One member shall be an engineer licensed in the state. 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 the initial appointment and concluding on December 31 of the year in which the member is appointed, unless reappointed.

(b) In the event of a conflict of interest, or other condition which causes a duly appointed member of the review board to disqualify himself on any matter before the review board, such member shall notify the town council in writing of his intent not to participate in such matter. Thereafter, the town council may appoint a 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 is replacing.

(c) The review board shall have only those duties and responsibilities established in IC 36-7-4-1338, as from time to time amended. Upon the organization of the review board, the members shall establish rules of procedure to the extent they are consistent with state law, and specifically, to provide the ways and means to carry out the specific provisions of the enabling statute regarding petitions for review, refunds, credits and the like. Said rules shall specifically provide that if 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 review board may impose reasonable requirements to ensure that, in fact, no development has occurred, or something less than that which was paid for is all that will occur on the real estate which was the subject of the initial assessment.

(d) Members of the review board shall serve without compensation. At the review board's first meeting, they shall elect from their membership a chairper-son who shall serve until his replacement has been duly elected. At the first meeting after January 1 in each year, the membership shall elect from the then duly appointed members a chairperson. The chairperson shall be responsible for conducting the business of the board.

Secs. 40-46. Compliance with House Enrolled Act No. 1647. The council specifically acknowledges the existence of a law adopted by the General Assembly of the state which regulates the imposition of impact fee ordinances by municipal corporations within the state. It is the intent of the town to comply with such legislation, and this article shall be construed in all respects to be consistent with the Act. The substantive procedural requirements of IC 36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the council.

Secs. 40-47. Penalty.

(a) Any person or persons, firm, or corporation whether as principal, agent, employee, or otherwise, who violates any of the provisions of this article may be prosecuted pursuant to IC 36-7-4-1000 et seq.

(b) The town may impose civil monetary fines or penalties for violations of this article which may be enforced by the designated enforcement entity in accordance with the procedures outlined in this Code.

Secs. 40-~~46~~8—40-50. Reserved.

Sec. 2. This ordinance shall be in full force and effect in accordance with the Indiana Law, upon its passage by the Town Council, its publication in accordance with the law, and upon the passage of any application waiting period, all as provided by the laws of the State of Indiana.

ADOPTED AND PASSED THIS 11 DAY OF December, 2006, BY THE WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

ATTEST:
Clerk-Treasurer,
Cindy J. Gossard

(S-12/14-4637420)