



To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager

Date: July 14, 2020

Initiated By: Jennifer Readler, Claudia Husak, Angel Mumma

Re: Impact Fees

This memo is provided in response to Council Member Keeler's inquiry regarding impact fees on Thursday, June 30, 2020. CM Keeler was interested in exploring feasibility impact fees based off of a response to contact the city council # 955 (Enclosed)

The below information was provided on a previous similar question to the city in 2016 and relevant to CM Keeler's inquiry.

1. Can a city assess an impact fee on new homes and apartments, and have we considered that?

Development Impact Fees are one-time charges applied to new developments. Their goal is to raise revenue for the construction or expansion of capital facilities located outside the boundaries of the new development that benefit the contributing development. Impact fees are assessed and dedicated principally for the provision of additional/non-existing water and sewer systems, roads, libraries and parks and recreation facilities made necessary by the presence of new residents in the area. Impact fees should only be utilized when a connection can be made between the impact of new development and the need for new infrastructure to accommodate that development. Some specific examples of valid use of impact fees include, but are not limited to:

- Road construction (including signage, signalization)
- Sanitary sewer
- Parks, bike paths, and trails
- Construction or expansion of governmental facilities
- Public services structures (i.e. police, fire, EMS)
- Libraries
- Solid waste
- Equipment (mowers, trucks, plows)
- Vehicles, such as police, fire, and EMS.

On the other hand, the following are prohibited:

- Expenditures related to the operation, repair, and maintenance of public facilities
- The operational and/or personnel costs associated with the provision of public facilities
- Paying fees for any standard periodic expenditure necessary to maintain existing facilities
- The addition of new services

An impact fee must meet three constitutional tests. First, the fees must meet a substantive due process test, where the local government has the authority to assess, collect and spend impact fees for a determined public facility. Ohio courts have consistently held that the Home Rule Amendment gives municipalities the authority to impose exactions, including impact fees, provided the municipality is not statutorily forbidden from doing so, and the fees meet constitutional standards. A municipality's specific authority to impose impact fees is generally derived by local ordinance. The manner of assessment, collection, and expenditure must clearly qualify the payment as a fee and not a tax.

Second, under the equal protection test, the fees must be applied to all parties on the same basis. All new development that imposes an impact must be assessed the same kind of fees, although fees may vary by the magnitude of impacts and the fees must be rationally related to the public purpose.

Finally, the "takings" test must assure that the local authority objective is sufficiently close to the method chosen to accomplish the stated objective and that property is not "taken" without just compensation. The Supreme Court of Ohio has stated that the dual rational nexus test is the appropriate test to apply in evaluating a possible takings challenge. This test balances both the interests of local governments and developers without unnecessary restrictions. The dual rational nexus test requires a court to determine (1) whether there is a reasonable connection between the need for additional capital facilities and the growth in population generated by the subdivision; and (2) if a reasonable connection exists, whether there is a reasonable connection between the expenditure of the funds collected through the imposition of an impact fee, and the benefits accruing to the subdivision.

Housing developments specifically targeted for "empty nesters" would not facilitate the need for additional schools. The premise on which impact fees are based is that development should pay the full marginal cost of providing facilities necessary to accommodate growth.

Ohio is among the twenty-two states that have no enabling legislation for development impact fees.

2. Can that be an annual assessment?

These are typically one-time fees.

3. Can the revenue be directed to the schools?

The city is not in a legal position to impose a levy or impact fees on behalf of the schools. As previously stated, there must be a connection to the public improvements that are impacted as a result of the development. Since the school district is not able to levy an impact fee, legal counsel as well as bond counsel has advised that the City is not in a position levy a charge and then turn around and give that charge to the school district for their improvements.

4. Can the planning dept. require more empty nester housing for proposed land use [i.e., low impact on schools]?

One of the 2014-2015 City Council goals was to "...create a strategic plan that examines the current and potential future needs of residents that would provide an environment for them to remain in Dublin as they age and to remain active and engaged community members. Areas that may be considered include recreational programming, health/wellness, housing, transportation and infrastructure needs."

In concert with the 2008 Community Plan, the Planning and Zoning Commission reviews applications for land development as determined by the City of Dublin Zoning Code and Subdivision Regulations. For most applications, the Commission is a recommending body for City Council. The planning department does not have the authority to require specific uses for designated areas, but may recommend projects – such as age restricted communities – as developers bring those projects forward.

Empty nester housing implies an age specific population that could potentially qualify for a tax exemption if the community satisfies each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
- The facility or community must comply with HUD's regulatory requirements for age verification of residents.

The "housing for older persons" exemption does not protect senior housing facilities or communities from liability for housing discrimination based on race, color, religion, sex, disability, or national origin.

5. Can we require donations of land to the schools rather than just hope a developer gives some? This question arises from two areas: [a] Jerome Village bragged it was donating land for an elementary [and a middle] school, but has yet to work with the School District to absolutely locate that parcel in a workable location of benefit to the District as well as proximate to houses with kids]; and [b] Charlie Ruma at first saying he would donate the 15 acre parcel of Riviera to the schools, then making that gift vanish before final approval.

Local governments have long imposed so-called "dedication" requirements as a condition for subdivision approvals, requiring that developers dedicate land within the subdivision for roads, schools, and parks. In the case of smaller subdivisions, however, land dedication was often problematic because the dedication required in a small subdivision was too fragmentary to host a functional school or park and/or was not in a suitable location. To address this problem, local governments began to require that the developer pay a "fee in lieu of" dedication as a condition for subdivision approval of the project, then the municipality would use those funds to finance schools, parks, and other off-site improvements. These are typically assessed through impact fees as described in the response to question #1.

There are cases where New Community Authorities (NCAs) have been established to levy a charge that can go for school district 'things' – in addition to other things as well (fire stations, parking structures, etc.). However, the NCA charge is a contractual charge on top of property taxes.

In closing, it is important to remember that the City and the schools are two separate political subdivisions and the schools have the ability to tax residents (they could add an income tax based tax, or go the normal route of levies). Generally speaking, tax funds that are imposed by the City are to be used for municipal purposes, not school district purposes.

Enclosure
Contact the City Council # 955 w/response

Candace Jones

From: Candace Jones
Sent: Monday, July 20, 2020 4:43 PM
To: Candace Jones
Subject: Impact Fee (Email and answer to Contact Council 955)

From: Andrew Keeler <AKEeler@dublin.oh.us>
Sent: Tuesday, June 30, 2020 5:26 PM
To: Nick Plouck <NPlouck@dublin.oh.us>
Cc: Council Members <councilmembers@dublin.oh.us>; Dana McDaniel <dmcdaniel@dublin.oh.us>; Homer Rogers <hrogers@dublin.oh.us>
Subject: Re: Contact Dublin City Council [#955]

Nick,

Thank you for this. Well done.

I, for one, am interested in exploring the feasibility of impact fees. I've been told they are illegal In Ohio, I've been told they are of no use in Dublin, I've been told that there isn't any land left in Dublin to apply these to, and I've been told that New Albany has used them, but they call them something different.

No need for CM's to comment here, but could staff give me/us some background in an appropriate setting?

Thank you!

Andy

ANDY KEELER
COUNCIL MEMBER

CITY OF DUBLIN
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On Jun 30, 2020, at 5:12 PM, Nick Plouck <NPlouck@dublin.oh.us> wrote:

Dear Members of Council,

Please see below for the response provided regarding Contact City Council #955.

Sincerely,
Nick

From: Nick Plouck <NPlouck@dublin.oh.us>
Sent: Tuesday, June 30, 2020 5:11 PM
To: jirsch1@att.net <jirsch1@att.net>
Subject: Re: Contact Dublin City Council [#955]

Dear Mr. Jirschele,

Thank you for your comments on the Oak Park development located west of Hyland-Croy Road and south of Mitchell-Dewitt Road.

As you are likely aware, City Council voted in favor of the rezoning and preliminary development plan, as well as the plat for Oak Park, Subarea F. The request was to allow for 12 single-family homes where commercial was previously permitted.

I understand your concerns regarding traffic, however, this proposal actually decreases the amount of traffic expected as compared to the commercial development that was originally proposed for the site. Further, no roadway changes or expansions are expected to occur as a result of this rezoning.

With regards to your second point, the proposal did not significantly alter the density of Oak Park or the surrounding area, and should not have a significant impact on the Dublin City School District due to the fact that there are so few homes proposed. The School District uses their own system to forecast growth patterns and plans additions and/or new facilities accordingly. I am sure you are aware that approximately 40% of the School District is outside of the boundaries of the City of Dublin.

An impact fee is something that, if desired by City Council, may be studied and/or implemented. Thank you for that suggestion.

The City of Dublin has an agreement with the Ohio Department of Transportation for Bridge Inspection services. The Bridge Inspection services are being provided as part of ODOT's Municipal Bridge Inspection Services Program at no cost to the City. ODOT's Municipal Bridge Inspection Services program starts in 2020 and continues for three years through 2022. We have \$50,000 budgeted in our 2020 Operating Budget for programming and operating of the lighting system.

If you have any additional comments or questions please do not hesitate to follow-up!

Sincerely,
Nick Plouck

NICK PLOUCK
MANAGEMENT ASSISTANT

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From: Contact Council <no-reply@wufoo.com>

Sent: Monday, June 22, 2020 1:17 PM

To: Anne Clarke <aclarke@dublin.oh.us>; Judy Beal <jbeal@dublin.oh.us>; Jennifer Delgado <idelgado@dublin.oh.us>; Dana McDaniel <dmcdaniel@dublin.oh.us>; Candace Jones <cjones@dublin.oh.us>; Nick Plouck <NPlouck@dublin.oh.us>; Homer Rogers <hrogers@dublin.oh.us>

Subject: Contact Dublin City Council [#955]

Name * Steven Jirschele

Email * jirsch1@att.net

Address 

* 6005 Round Tower Lane
Dublin, OH 43017
United States

Phone (614) 889-5061

Number

*

Subject Residential Deveopment

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Comments *

I understand there is a public hearing today regarding a new residential development. I urge you to reject it. Not only should you reject this proposal but you must put an immediate hold on all new residential building permits. I have two reasons for this statement: 1) If Dublin has a transportation plan, it is certainly a poor plan. Our streets cannot handle the current traffic and it will only get worse if there is more residential development. And remember, we know or should know that roundabouts are not the answer to all traffic problems. 2) The Dublin school district has demonstrated their inability to maintain high academic standards as the city grows. The academic and financial burden of this growth is put on existing residents and students, not the new residents. The new residents are getting a gift from the existing residents and that is not fair.

Perhaps one solution is an impact fee for new residential construction. How about starting at \$10,000 per bedroom. The money could be split between the city for transportation improvements necessitated by the new construction and part could go the school district.

One more unrelated question. How much money has the city budgeted for the annual inspection and maintenance of the new pedestrian bridge over the Scioto River?