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WHATCOM COUNTY COUNCIL  
**Planning and Development Committee**

November 25, 2003

The meeting was called to order at 3:10 p.m. by Committee Chair Seth Fleetwood in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Dan McShane  
Laurie Caskey-Schreiber

Absent:

None

Also Present:

**COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

**1. DISCUSSION WITH PLANNING AND DEVELOPMENT SERVICES DIRECTOR HAL HART REGARDING IMPACT FEES (AB2003-331)**

Hal Hart, Planning and Development Services Director, introduced the presenters.

Phil A. Olbrechts, Ogden, Murphy, Wallace PLLC, submitted a copy of his Power Point presentation (*on file*). The impact fee statutes are a good place to start to learn about impact fees. An impact fee is a method of requiring developers to pay for development. They can charge impact fees for transportation, parks, and school improvements, based on the impact of the development on those services. Impact fees can be charged during any time in the development process. The potential revenue from impact fees in Whatcom County could be from a couple hundred thousand dollars to a couple million dollars, depending on how big they want to make the program.

He read from his Power Point presentation. Voluntary agreements, used in Whatcom County, are negotiated with the developer and are very project-specific. There has to be a direct link between the impacts and improvements. It doesn't allow much for planned infrastructure development. The Local Transportation Act is almost the same as impact fees. No one has opted for that method because there has to be a proven direct link between project impacts and reimbursement. Courts are more lenient with impact fees. Impact fees are treated like a tax. It's still under debate whether a jurisdiction can charge impact fees under the State Environment Policy Act (SEPA). SEPA is not the best way to collect revenues for systematic improvements to infrastructure. The Transportation Benefit District Act allows the quasi-municipal corporation to have property levies that go beyond the one percent yearly limit, if a vote of the public approves.

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1           Only counties and cities have the authority to adopt impact fees for schools,  
2 even though the money goes straight to the school. The school districts are subject  
3 to the whim of the local jurisdictions. In the past, he's required the school district  
4 to assume all liability for collecting the fees and to agree to not sue the jurisdiction  
5 for collecting the fees improperly. The impact fees can only fund infrastructure and  
6 capital facilities, not administration.

7  
8           Caskey-Schreiber asked if they are putting themselves at-risk by identifying  
9 existing deficiencies in infrastructure. Olbrechts stated that's precisely why counties  
10 and cities are to do that. The legislature is very concerned that new development  
11 not pay for existing problems. To comply with that rule, they have to know what  
12 their existing problems are. They have to find other funding sources to fix existing  
13 problems.

14  
15           The Comprehensive Plan analysis will probably be the most expensive and  
16 complicated part of the process to set up an impact fee ordinance. It involves policy  
17 decisions at the Comprehensive Plan level, such as deciding levels of service and  
18 necessary infrastructure. The statutes are specific about what has to be in an  
19 impact fee ordinance. They will find a lot of similarity from one jurisdiction to  
20 another. A schedule of impact fees is usually done on a per trip basis. Some codes  
21 provide one number for single family homes or multifamily homes. They don't have  
22 to treat everyone the same. They can charge impact fees for commercial uses, for  
23 example, and not residential uses. A major policy decision is who would be subject  
24 to impact fees and who would be exempt. There should be an appeal process. A  
25 service area is the area where development is subject to impact fees. There can be  
26 more than one service area, and areas that aren't subject to impact fees.

27  
28           There is case law that impact fees don't have to show direct relationship.  
29 They can be more general. For example in one jurisdiction, school impact fees were  
30 used to fund schools on another side of town. Courts said that the development  
31 only has to impact the school district as a whole.

32  
33           McShane asked if SEPA mitigation fees must be refunded if they aren't used.  
34 Olbrechts stated SEPA doesn't have that limitation. In order to avoid vulnerability  
35 of legal challenges to the validity of SEPA mitigation fee, most counties, including  
36 Whatcom County, combines them with the voluntary agreement, which require  
37 reimbursement of unspent money plus interest within five years.

38  
39           A development's impact fees don't vest. Developments that already have  
40 permit applications can be subject to a new impact fee ordinance. There's a lot of  
41 flexibility when the fees can be charged and collected. Legal challenges to the  
42 ordinances are common when first adopted. Developers always find something to  
43 argue about. Cities and counties will survive a challenge if they aren't trying to get  
44 away with too much. The best source of information on the weaknesses of an  
45 ordinance is the developers and others who are opposed to the ordinance. Impact  
46 fee ordinances don't require a public hearing, but it's a good idea. They aren't  
47 considered development regulations and are not required to go through Planning

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1 Commission review. They aren't subject to review by the Growth Management  
2 Hearings Board. The City of Woodinville impact fees also collect for the planning of  
3 capital facilities.  
4

5 Caskey-Schreiber asked if assessing an impact fee for the time it takes to  
6 make the Comprehensive Plan amendment and the filing fee charged for a  
7 Comprehensive Plan amendment would be considered double dipping. Olbrechts  
8 stated the Comprehensive Plan charge would cover administrative and staff time.  
9 The impact fee would pay for the capital facilities only. If the Comprehensive Plan  
10 amendments for impact fees are county-generated, and developers paid for it, then  
11 clearly the County should include that staff time in the impact fee.  
12

13 Caskey-Schreiber asked how they go about assessing what development is  
14 needed in areas before growth is allowed. Olbrechts stated it's done through the  
15 Comprehensive Plan process. They can have different levels of service in different  
16 areas of the county, depending on what everyone wants and feels is appropriate.  
17

18 Caskey-Schreiber asked if the first course of action is to go the subareas and  
19 ask what the dream scenarios are for an ideal community. Olbrechts stated  
20 revisiting the visioning process that was done for the original Comprehensive Plan  
21 wouldn't be required for this. If they don't revisit the visioning process, it may not  
22 reflect the desires of the community as much.  
23

24 Hart stated the subarea plans will list options for funding their "perfect  
25 scenarios" for infrastructure for the next twenty years. The next step would be to  
26 work with the Engineering Division, look at the service area that is applied to the  
27 subarea, which is a stand-alone urban growth area (UGA) that is not part of a city,  
28 and apply the appropriate level of service. They would come back with a  
29 recommendation for the board.  
30

31 Olbrechts stated the community visioning is linked to the level of service.  
32

33 Roy stated the visioning process has been done in one of the subareas. She  
34 asked if they consider emergency medical services as part of the impact fees for fire  
35 departments. Olbrechts stated it's only for the capital equipment, but is not for  
36 services.  
37

38 Roy asked if parking lots are included in the category that allows impact fees  
39 for streets and roads. Olbrechts stated he thinks it would be.  
40

41 Dick McKinley, City of Bellingham Public Works Director, submitted a  
42 handout of the City of Bellingham Transportation Improvement Program (*on file*).  
43 He discussed his background work in other jurisdictions. The essence of the City of  
44 Bellingham's impact fee system is that it's driven by the Six-Year Transportation  
45 Improvement Program (TIP). They list all the projects and funding sources they  
46 plan for in the next six years. A question is whether a project on the TIP adds  
47 capacity and satisfies the new demand. If a road can't handle new development, an

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1 improvement to the road had better add the capacity back to the road. A two-lane  
2 road that is overlaid, but remains a two-lane road is not eligible for funding from  
3 transportation impact fees (TIF's). A two-lane road that is widened to a four-lane  
4 road or a two-lane road with new bike and pedestrian facilities add capacity, and are  
5 more eligible for funding. He provides information each year to his City Council on  
6 what other cities charge for impact fees and the total amounts collected. He also  
7 calculates annually the City of Bellingham's TIF percentage as the entire cost of  
8 capacity-increasing capital improvements they've built. They can't spend 100  
9 percent of TIF's on a project. There is no project that only serves 100 percent of a  
10 development that is TIF eligible.

11  
12 A developer has two kinds of projects requirements. One requirement is for  
13 project improvements related to the development site. In addition, the  
14 developments put a demand on the larger, greater system, such as the arterial  
15 street network and pedestrian trail network. It's the larger, greater systems for  
16 which they collect impact fees. Don't make the developer do all the construction,  
17 only pay the fair share for capacity improvements. Separate the direct  
18 requirements for a site and the larger system issues. Right now, the City of  
19 Bellingham has 12 percent of growth-related capital improvements that are paid for  
20 by TIF's. Many folks suggest that number is too low. That's a policy matter. If  
21 there is ever a case where a TIF collected should be 100 percent of the cost of the  
22 system improvements, they shouldn't collect TIF's for the road. They should just  
23 make the developer build it as a project requirement up front. It's not a system  
24 improvement, it's a development-specific improvement.

25  
26 The City of Bellingham is divided into different zones in the city. They  
27 charge TIF's for each zone based on the growth-related projects in that zone, for six  
28 years in the past and six years in the future. There is a 12-year window for the  
29 TIF's. The rates for the different zones depend directly on what the facilities are in  
30 that zone. Zone 11 is Barkley Village, which had a development agreement that  
31 had a different means to pay their share of the TIF. It has a TIF rate of zero. The  
32 TIF rate is applied per trip during peak trip hours.

33  
34 The retail TIF rates are the lowest because retail has more drive-by trips  
35 instead of destination trips. Retail customers will stop while driving by, on the way  
36 to somewhere else.

37  
38 *(Clerk's Note: End of tape one, side A.)*

39  
40 McKinley continued to state the City Council will consider TIF rates for 2004  
41 with a multiplier, which simply makes the 12 percent higher than 12 percent.

42  
43 One of the ways the City provide credits for system improvements to a  
44 developer is to pay for part of a project on the six-year TIP, dollar for dollar. For  
45 example, if a developer must pay \$120,000 for the TIF, the developer can instead  
46 agree to pay for or build a project on the TIP that is estimated at the same amount.  
47 The project on the TIP must be a TIF-eligible project by being reasonably

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1 geographically related to the project. In reality, the developer may be able to do  
2 the project for less than \$120,000. That is an incentive to the developer to take on  
3 a project on the TIP instead of paying the TIF in cash.  
4

5 If a road is falling apart and is below capacity, the jurisdiction can't make the  
6 developer pay for the cost of rebuilding existing roads that are lousy.  
7

8 The issue of level of service has to do with concurrency. Concurrency says  
9 that if the adopted level of service of a particular road is reduced due to a new  
10 development, the developer could have to mitigate the level of service back to its  
11 adopted level.  
12

13 He read from his presentation (*on file*). The per trip fee is the agreed upon  
14 standard to determining impacts from different uses. They can't use TIF money for  
15 maintenance. There should be more than one zone that is set up. The more zones  
16 there are, the more difficult it is to spend the impact fee money in the proper place  
17 within the six-year timeframe. If there are 40 zones, they may only collect a little  
18 money in each zone, but not accumulate enough money to actually go build a  
19 project in that zone.  
20

21 McShane asked if the City looks at the different zones when developing its  
22 six-year plan to make sure there is a project applicable to each zone. McKinley  
23 stated they do. They don't restrict themselves to spending the money in the zone  
24 because the city is a smaller geographic area. The City ordinance is not written that  
25 way. The County would have a harder time making the argument that a  
26 development near Sumas would pay for infrastructure in the Birch Bay area, for  
27 example.  
28

29 The Institute of Transportation Engineers manual is the standard. They will  
30 also want to build into a system for jurisdictions to allow a developer to do an  
31 independent traffic study if the developer doesn't agree with the numbers in the  
32 manual. It has to be a study that the County's staff accepts. The developers will  
33 want that flexibility in the ordinance.  
34

35 When figuring out impact fees, remember who the customer is. A customer  
36 could be a project applicant, impacted neighbors, or others. There are many  
37 customers that have different, and occasionally conflicting, needs. Pay attention to  
38 that when they craft the system.  
39

40 Figure out how much the County is spending on growth-related, capacity-  
41 increasing capital improvements, and then figure out how much that is from  
42 development that is driving the demand for the improvements. That is a way to  
43 start setting fees.  
44

45 If the County does this, work with the development industry from day one.  
46 They also need the capacity-increasing improvements. If the roads are terrible, no  
47 one will buy their developments.

1  
2 The more accurate and fair a system is, the more difficult it is to administer.  
3 Balancing fairness and accuracy with simplicity is a policy issue to work through  
4 with staff. Lots of people use outside consultants in developing the ordinance. It  
5 provides a good, objective, third-party view. It's common to do that. There is a lot  
6 of analysis that goes into it. Hiring a consultant is also a value when working with  
7 the development community. The last issue would be the number and location of  
8 the zones.

9  
10 Caskey-Schreiber asked if the City has used impact fees for parks or  
11 recreation facilities. McKinley stated there are connection fees, not impact fees, for  
12 sewer and water. They collect impact fees for schools. There are impact fees  
13 collected for trails and parks.

14  
15 McShane stated there is a lot of development in the County that the City  
16 can't charge impact fees for, even though there are traffic impacts to the City.  
17 McKinley stated that's correct. However, the City charges the equivalent of impact  
18 fees when a development in the County wants water or sewer service from the City.  
19 Part of their utility service extension contract calls for them to pay the equivalent  
20 TIF's. That is done by voluntary agreement.

21  
22 McShane stated they can only do that in the urban fringe areas. Water  
23 districts may not be able to make that agreement. He asked if there are any  
24 counties that charge impact fees, and then turns some of the money over to a city  
25 that's impacted because the city is allowing growth. Olbrechts stated that rather  
26 than turn the money over, the cities and counties would get together and agree to  
27 spend money on roads that traverse the boundary. There are regional roads, such  
28 as Hannegan Road.

29  
30 Caskey-Schreiber asked how the City figures out assessment fees for  
31 Western Washington University. McKinley stated he'd have to look at the State  
32 laws. He's not sure. It depends on whether the project is located on-campus or  
33 off-campus.

34  
35 Olbrechts stated the Growth Management Act requires coordinated planning,  
36 which includes interlocal agreements that govern annexation issues, such as impact  
37 fees. Snohomish County has interlocal agreements with its cities about the  
38 disposition of impact fees once areas are annexed into a city. If impact fees are to  
39 be used on infrastructure improvements that end up in a city, those impact fees will  
40 automatically be transferred to the city. Make sure the city has a right of refusal, so  
41 it doesn't receive impact fees five years and 11 months after they're collected.  
42 There are examples of how to put those interlocal agreements together.

43  
44 They can use impact fees to pay for improvements that have already been  
45 constructed. If the County already has park facilities in place that will be used by  
46 new development, the development is subject to impact fees. The impact fee level  
47 of service standard for parks is a number of acres of park per capita. Another valid

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1 impact fee is for a service facility, such as a swimming pool that serves the entire  
2 county. The impact fee laws are straightforward. If they follow them clearly, there  
3 won't be a problem. Once they start pushing the envelope, they may run into  
4 problems.

5  
6 Caskey-Schreiber asked if impact fees can be used to acquire park land and  
7 open space land. Olbrechts stated they can. Greenways and trails are also  
8 included.

9  
10 Hart asked if bike trails would be questionable. Olbrechts stated he's heard  
11 there is a debate about them, which is a surprise. He's heard that some people are  
12 contesting it.

13  
14 McKinley stated anyone can contest anything. That's why he emphasizes the  
15 question of whether they are adding capacity. They have to know how park land  
16 fits into their formula for level of service and adding capacity.

17  
18 McShane asked if there are ways of measuring transportation capacity  
19 regarding sidewalks and bike lanes. There is a level of service for cars and roads.  
20 McKinley stated there are measurements for those now. If the County hires a  
21 consultant, figuring out the bicycle and pedestrian standards is one of the things the  
22 County would task the consultant to do.

23  
24 McShane stated that pedestrian capacity has an influence on the overall  
25 capacity for the street. Ideally, increased capacity for bikes and pedestrians would  
26 reduce the need for capacity for streets. McKinley stated this is about having the  
27 cost of system improvements be borne by the parties that should bear them. That's  
28 the reason they charge impact fees. Everyone will pay their fair share. They may  
29 or may not find a way to create social change. In the City of Bellingham, there is a  
30 solid incentive to build on the west side of Interstate 5 because the infrastructure is  
31 already there so the impact fees are less.

32  
33 McShane stated it's an opportunity to use impact fees to do pedestrian-  
34 related projects, which would ideally reduce the number of cars on the road and  
35 increase the total capacity of people who are moving. A simple scenario is for a  
36 developer to build a bike lane from a development to downtown, so anyone riding a  
37 bike wouldn't have to drive. That would take a lot of cars off the road, and the  
38 developer would therefore have an agreement to not pay impact fees. McKinley  
39 stated they might look at that if the development doesn't include driveways,  
40 garages, or vehicles in the development.

41  
42 McShane stated other people who are not living there would choose to ride a  
43 bicycle or the bus. McKinley stated they would end up with fewer headaches in  
44 reality if they put that in trails and call it part of the park system.

45  
46 Olbrechts stated the other fringe area relating to capacity is bus and multi-  
47 model improvements.

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1  
2 Joe Rutan, County Road Engineer, stated he's been dealing with this issue  
3 with the County Road Administration Board lately. The important thing regarding  
4 bike lanes is how one packages and sells the concept. If a bike lane is parallel to a  
5 road and connects two parks, it can be sold as a recreational facility and is not  
6 eligible for road funds. If the bike land can be sold as a transportation facility, it  
7 may be eligible for road funds. Ancillary facilities such as park and rides are not  
8 part of the road system, but bike routes may be a part of the system, and sidewalks  
9 are definitely part of the road system.

10  
11 McShane stated they couldn't charge impact fees for a railway from  
12 Bellingham to Lynden to take cars off the road. Rutan stated that is not a road  
13 purpose.  
14

15 McShane asked if that's something they should take into consideration when  
16 dealing with transportation funding and how they think of transportation. With  
17 TIF's, they are stuck with cars. Rutan stated they could include bike lanes as a  
18 transportation part of the road network and feel comfortable with TIF's.  
19

20 Roy stated that if a bike lane is sold as a recreational amenity, they could  
21 use parks funds. Rutan stated that's correct. It wouldn't be on the six-year  
22 transportation improvement plan.  
23

24 Roy stated the City talked about transportation impact fees. There are other  
25 types of impact fees. They have been focusing on just one type of fee. They may  
26 be able to use park impact fees to fund bike trails. She asked if the County needs  
27 to decide whether or not to collect fees for all the services and facility improvements  
28 or just one fee for service. Bellingham is doing just two services. McKinley stated  
29 the City has fees for transportation and schools. It may be more difficult for the  
30 County to collect impact fees for schools because there are multiple districts in the  
31 county. The City has only one school district to deal with. The impact fee for fire  
32 services are only for areas that are not part of a fire district. There aren't many, if  
33 any, areas of the county that aren't included in a fire district.  
34

35 Roy stated they have options to collect money for a variety of things, not  
36 just transportation. They could collect different portions of this in different parts of  
37 the county. If they want to collect impact fees for parks in a resort commercial  
38 area, for example, they could not collect it in other areas. Olbrechts stated that's  
39 right.  
40

41 Roy stated they don't have to do everything the same throughout the  
42 county. Olbrechts stated the County has to incorporate the schools' capital facilities  
43 plans into the County's capital facilities plan to justify the impact fees. In that  
44 instance, the County only has to authorize collection.  
45

46 Fleetwood asked what the County should do first to get this process started.  
47 Olbrechts stated the first thing is to figure out which types of impact fees they want

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1 to use. Next, they have to focus on the Comprehensive Plan amendments, which  
2 can only be done annually. It takes some time to put those plans together that  
3 would include visioning and levels of service decisions.

4  
5 Hart stated it might be better to do this in a well-thought out way for 2005.

6  
7 Olbrechts stated 80 percent of the work is done at the Comprehensive Plan  
8 level. They also have to talk about impacts to affordable housing. They are talking  
9 about several thousand dollars of added cost to the house. They could exempt  
10 affordable housing in the ordinance. Once they figure out the fees they will focus  
11 on and the service areas, it's time to get the consultants and attorney's involved.  
12 Putting the ordinance together can be done anytime after the Comprehensive Plan  
13 amendment. That is the easy part.

14  
15 McShane stated ordinances included a needs-based affordable housing  
16 exemption. Another idea is thinking about where the exemptions will go. Ideally,  
17 those houses should be located where the cost of living is lower. The City has an  
18 element of that in its ordinance.

19  
20 Fleetwood asked if there are examples of counties who have used impact  
21 fees in areas other than in urban growth areas. Olbrechts stated there are.

22  
23 McShane stated they should be open to the idea of working cooperatively  
24 with all the cities for a mutual benefit.

25  
26 Caskey-Schreiber stated there is a complication with the fact that traffic  
27 corridors are used federally as future commercial truck corridors for the border. It  
28 will be difficult to figure out the County's responsibility to solve the capacity issue on  
29 that route. She asked how that works. Rutan stated the County can't collect funds  
30 for a State route or a city route. The County pays its pro-rated share for signals on  
31 State routes.

32  
33 Caskey-Schreiber stated the six-year reimbursement rule could be  
34 problematic when they have to work with partnerships beyond the County's control.

35  
36 Fleetwood asked which counties have the most impact fees with the highest  
37 percentage of total cost. Olbrechts stated its probably King County. He'd have to  
38 look at the list.

39  
40 Hart stated his list says King County, Snohomish County, and then Clark  
41 County. Those are the larger metropolitan counties that have had these fees for the  
42 longest.

43  
44 McShane stated impact fees enable a lot of growth.

45  
46 *(Clerk's Note: End of tape one, side B.)*

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1           McKinley stated his suggestion is for the County to hire Mr. Olbrechts or  
2 someone to look at the Capital Facilities chapter of the Comprehensive Plan before it  
3 gets renewed, then give money to staff to hire a consultant to deal with the kinds of  
4 questions the Council is asking. He suggested that they have someone take a quick  
5 look at the Capital Facilities chapter of the Comprehensive Plan by the end of the  
6 year. They can work on basic impact fees first, and then work on other impact fees  
7 in the future. One of the first thing they need to do is set up a group in the  
8 development community to work with.  
9

10  
11           **OTHER BUSINESS**

12  
13           There was no other business.  
14

15  
16           **ADJOURN**

17  
18           The meeting adjourned at 4:50 p.m.  
19

20  
21  
22           \_\_\_\_\_  
23 Jill Nixon, Minutes Transcription  
24

25           ATTEST:

26           WHATCOM COUNTY COUNCIL  
27           WHATCOM COUNTY, WASHINGTON  
28

29  
30  
31           \_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Seth Fleetwood, Committee Chair