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Date:

August 22, 2011

To:

Town of Rollinsford
Board of Selectmen

Re:

Rollinsford Impact Fee Ordinance

As part of our agreement for services regarding impact fees for public schools in Rollinsford, I reviewed the existing impact fee ordinance (a section of the zoning ordinance) that enables the Town to assess such fees under conditions specified therein. The purpose of this review was to assure that the ordinance language is consistent with certain changes to RSA 674:21, V that became effective in 2004, and to identify any potential conflicts with the typical method of calculation of school impact fees and their assessment.

This memo outlines possible changes to the Rollinsford Impact Fee Ordinance. Most of the changes are related to clarification and updating. In my opinion, the current ordinance would not preclude the Town from assessing a school impact fee for facilities that are operated by the local school district. The comments that follow and suggested changes relate to both housekeeping and updating measures, and changes that may support more flexibility in the eventual assessment of a school impact fee or other fees.

Section 13.2.2 - Findings

6. Recommended change: Delete the phrase “growth related” and modify the last part of the sentence to read “in proportion to the facility demands of new development.”
7. Recommended change: delete this paragraph. In another part of the ordinance, the Town already retains its capacity or findings of premature or scattered subdivisions. In addition, the language contained here could be interpreted to suggest that if impact fees are implemented, then they eliminate the possibility that new development could necessitate an excessive expenditure of public funds.
- 8.b. Presently, the ordinance refers to the capital facilities of the Town of Rollinsford or the Rollinsford School District as a subject of impact fee assessment. The current ordinance enables the Town to assess school impact fees facilities operated within the Rollinsford Grade School (currently grades K-6) overseen by the Rollinsford School District. At present, other grades are served under an AREA agreement with the Somersworth School District. New Hampshire RSA 674:21 V limits impact fee assessments to a proportionate share of the capital facilities of a school district (including regional or cooperative school districts) of which the Town is a member. Under an AREA agreement, the Town is not a member of a regional or

cooperative school district. Therefore, if the Town wished to assess school impact fees for other grades, it could only be done only if those grades were served by the local school district or by a regional or cooperative school district that Rollinsford joins. To expand potential authority for impact fee assessment, the phrase in 8.b could be modified by adding (after the phrase "school district"): "...or a cooperative or regional school district of which the Town of Rollinsford becomes a member."

Section 13.2.6 - Waivers

1. The ordinance allows for waivers of school facility impact fees for residential units that are restricted to occupancy by senior citizens aged 62 or older. This requirement is fine as is, but many senior developments incorporate age restrictions for persons aged 55 or older. Waivers could be granted for those units that are specifically restricted to that age group, in most cases without resulting in situations where any significant school enrollment is generated. Typical developments using age restriction covenants specify that at least 80% of the units in such a development be occupied by households in which at least one person is age 55 or older. While that requirement does not necessarily limit school children from residing in that household, it is common for municipalities to require developments that use age restrictions to limit all the units in such a development to persons 55 or older. Depending on Town policies, the age threshold could probably lowered from 62 to 55 and still be proportionate and equitable. However, the Town need not change the provision unless it wants to provide more flexibility.
5. The ordinance enables fee payers to submit independent studies to be considered by the Planning Board as an alternate amount of assessment. These can become time consuming for the Board, but provide maximum potential capacity for applicants' concerns to be considered.
6. This waiver clause deals with the grandfathering situation, with respect to plat or site plans approved by the Planning Board. I would suggest the following change be made regarding the phrase "effective date of this section." Substitute the phrase "effective date of relevant impact fee schedules applicable to the property." The reason for this change is that the effective date of the *ordinance* may be quite different from the effective dates of *fee schedules* adopted by the Planning Board pursuant to the regulation. It is the effective date of the fee schedule adopted by the Planning Board that is important to establishing whether certain lots are grandfathered against assessment of impact fees on construction therein (for up to four years).

Note here the changes made in 2004 to New Hampshire RSA 674:39. The revised statute essentially provides a four-year exemption period protecting a recently approved subdivision or site plan from the imposition of an impact fee assessment. However, that period of protection extends for only four years from the date of subdivision or site plan approval. Construction within an approved plat or subdivision that occurs beyond the four-year period would be subject to impact fees, even though the plat or site plan was approved prior to the effective date of the fee schedule.

Section 13.2.7 - Payment of Impact Fee

Recommended change: delete the second sentence of the first paragraph The Town cannot compel the impact fee payment to occur prior to or at the time of issuance of a building permit. Currently, the language of RSA 674:21 V indicates that fees are first assessed at the subdivision or site plan stage. The term "assessed" means that the fee amount is determined at that point in time in cases where Planning Board action is needed to approve the development. The assessed amount remains fixed for the four-year grandfathering period of that subdivision or site plan. Development that occurs in such a subdivision beyond the four-year period would be subject to the fee in effect at the time of building permit application.

The actual collection of the impact fee is to take place at the point a Certificate of Occupancy is issued. The Board *may* enter into a accept mutually agreement alternative schedules of collection. Therefore, the remainder of the paragraph can remain as is.

Recommended change: paragraph two of this section should be deleted. The section here is based on a previous version of RSA 674:21 V and the language that it refers to has been deleted from the statute.

Section 13.2.8 - Appeals

In some communities, a two-tiered appeals process is provided in order to accommodate administrative appeals. These are normally handled by the Zoning Board of Adjustment and are managed similar to the appeals of administrative decisions on other zoning points. The purpose of this is to allow administrative decisions of the building inspector to be appealed on matters such as the classification of the property, determination of the impact fee amount in the schedule that is applicable, or other administrative challenges.

Any appeal to the Planning Board based on its actions, such as decisions on waivers or initial assessment at subdivision or site plan stage, is performed by the Planning Board and would continue to be appealed to the Superior Court in the manner provided in the current ordinance. A two-tiered administrative appeal is not necessary, but allowing for the administrative appeal does enable some potential relief for minor points of administrative decision to be adjudicated without going to court.

Also with respect to appeals to the Planning Board, my impression is that the ordinance provides ample opportunity for alternative methods of assessment based on the waiver section. An extension waiver section essentially enables an “appeal” to be taken based on alternative assessments and other credits. Therefore, the appeal to the Superior Court on other matters seems to be valid here.

Other Comments

A global change that might be considered would be to change the references to “fee payer” throughout the ordinance. The word is defined at 13.2.3 as: “The applicant for the issuance of a permit that would create new development as defined in this section.” One alternative being used in some ordinances is to refer to the subject of an impact fee as an “assessed property.” This helps make it clear than impact fee assessment is an assessment to a property rather than a person. It also helps clarify the means of refund in the case of fees not appropriated within the specified time limit. In these cases, fees are refunded to the property owner of record and not to the original “fee payer” or applicant.

In summation, the existing impact fee ordinance would be valid in supporting school impact fees for K-6 facilities, or for a broader grade range if those grades were served directly by the Rollinsford School District. In order to include grade 7-12 facilities in an impact fee schedule, those grades would need to be served either by the local district or by a regional or cooperative district of which the Town becomes a member, and the relevant sections of the ordinance modified accordingly.

Sincerely yours,



Bruce C. Mayberry, Manager
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