



Town Council Workshop

Monday, January 27, 2020 at 7:00 pm

CALL TO ORDER, PRAYER & PLEDGE

ROLL CALL

1. Workshop Action

Continuation of Discussion for Impact Fees for New Construction

Study Requirement Information from Attorney

Attachments:

- Agenda Report 1 (TownCouncilMtgWS0127_2020_sw.pdf)
- Agenda Report 2 (towncouncilminutes_1205_2019.pdf)

ADJOURNMENT

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Published on 12/23/2019
at 8:47 AM

TOWN OF MALABAR

COUNCIL WORKSHOP MEETING

MONDAY, JANUARY 27, 2020

7:00 P.M.

MALABAR TOWN HALL

2725 MALABAR ROAD

MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. WORKSHOP ACTION: Continuation of Impact Fees for New Construction
 - Study Requirement Information from Attorney
- D. ADJOURNMENT

If any individual decides to appeal any decision made by this Council with respect to any matter considered at this meeting, a verbatim transcript may be required and the individual may need to insure that a verbatim transcript of the proceeding is made (FS 286.0105). The Town does not provide this service.
In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town Clerk at 727-7764 at least 48 hours in advance of this meeting.

RE: Malabar workshop in Jan

kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Tue 12/24/2019 11:32 AM

To: Debby Franklin <townclerk@townofmalabar.org>

Effective July 2019, the Florida Legislature amended the impact fee law and added some changes, 2019-160 (and companion bill 2019-165). As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth. Examples of capital facilities include the provision of additional water and sewer systems, schools, libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

The Act prohibits local governments from requiring the payment of impact fees prior to issuing a property's building permit. The bill also codifies the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.

Additionally, the bill requires any impact fee ordinance earmark impact fee funds for capital facilities that benefit new residents and prohibits the use of impact fee revenues to pay existing debt unless specific conditions are met. The bill provides that certain statutory provisions related to impact fees do not apply to water and sewer connection fees.

The City of Lakeland held an impact fee workshop in October 2019 and the following was discussed. The Lakeland City Commission collaboratively approved and established impact fees for new construction projects. Impact fees are charges assessed to new homes and businesses that affect municipal services/infrastructure such as police, fire, parks and transportation. The thought is growth pays for itself. However, there are shortfalls within transportation and parks because the cost associated with providing this crucial infrastructure has risen sharply over the past few decades, especially in the areas of construction and land acquisition. For example, new transportation and improvement projects are at a \$182 million deficit. This calculation is based on daily trips generated, length of trips, new travel estimates, road conditions, new project demands and other factors. Impact fees. Without the implementation of impact fees this deficit could grow even larger.

Consulting firm Tindale Oliver provided a detailed analysis using consumption-based impact fee methodology. This methodology is commonly used throughout Florida as a way for growth to help pay for infrastructure through impact fees. Impact fees are established for various uses that include new construction for single-family residential, multi-family, office, warehouse and retail. Impact fees are calculated based on the cost to deliver transportation, parks, fire and law enforcement services.

*Residential and multi-family impact fees are per unit or dwelling. Office, warehouse, retail and light industrial impact fees are calculated per 1,000 sq.ft.

City of Titusville has the following Impact Fees:

- a. Police \$ 69.86
 - b. Fire \$332.66
 - c. Public Works \$114.98
 - d. City Hall Expansion \$ 8.68
- TOTAL: \$526.18

I believe the City of Titusville uses PMG Associates, Inc as its consultant phone: (954) 427-5010 fax: (954) 480-8836

Karl W. Bohne, Jr.
Schillinger & Coleman, P.A.
1311 Bedford Drive
Melbourne, FL 32940
321-255-3737 Telephone
321-255-3141 Facsimile

Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

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From: Debby Franklin [mailto:townclerk@townofmalabar.org]

Sent: Monday, December 23, 2019 9:47 AM

To: kbohne@fla-lawyers.com

Subject: Re: Malabar workshop in Jan

They thought you might know of examples. I will also ask the clerks.

Debby K. Franklin

Certified Municipal Clerk

Town Clerk Treasurer

townclerk@townofmalabar.org



Town of Malabar

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www.TownofMalabar.com

From: kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Sent: Monday, December 23, 2019 9:10 AM

To: Debby Franklin <townclerk@townofmalabar.org>

Subject: RE: Malabar workshop in Jan

Am I to research the cost of such a study?

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From: Debby Franklin [<mailto:townclerk@townofmalabar.org>]

Sent: Monday, December 23, 2019 8:55 AM

To: 'Karl Bohne' <kbohne@fla-lawyers.com>; Red Tail <todm@redtaildg.com>

Subject: Malabar workshop in Jan

Hi Karl, here is the agenda for the workshop on the last Monday in January. As Council discussed at Council 12/2/19, they want more information about how to hire a vendor (the process) to perform the study on imposing impact fees on new construction that can be defended in court per your nexus comment. Also, CM White and Ball both wanted an estimate of what such a study would cost so they could compare the financial impact to current residents (cost of study) vs. the financial benefit that would be realized.

The draft minutes of 12/2/19 are attached. It is item 13.a. on last page. I have copied Tod on this as well in case he has information on the cost analysis that would be helpful to Council.

Debby K. Franklin

Certified Municipal Clerk

Town Clerk Treasurer

townclerk@townofmalabar.org



Town of Malabar

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Malabar, FL 32950

www.TownofMalabar.com

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SCOPE OF SERVICES

Brevard County Impact Fee Update Study

The Board of County Commissioners of Brevard County wishes to update the rate structure for the County's seven impact fee programs. These include:

1. Correctional Facilities
2. Educational Facilities
3. Emergency Medical Service Facilities
4. Fire/Rescue Facilities
5. Library Facilities
6. Solid Waste Disposal Facilities
7. Transportation Facilities

The following tasks constitute the Scope of Services.

TASK 1: Data Collection and Methodology Review

Upon receipt of the Notice To Proceed, the Consultant will prepare and forward to the County Project Manager a data needs memo for each of the seven impact fee programs. The County Project Manager will assemble as much of the requested data as possible and have it available at the kickoff meeting. The Consultant will facilitate a kickoff meeting with key members of County and School Board staff to receive available information related to the project, identify and discuss major technical and policy issues, coordinate staff/Consultant responsibilities, and refine the project schedule. The County will provide to the Consultant, without charge, copies of all relevant plans, studies, and documents needed to perform the project tasks. The Consultant will summarize data gaps and responsibilities resulting from the kickoff meeting.

Subtask 1.1: Inventory of Existing and Planned Facilities

Based on information provided by the County, the Consultant will compile a capital asset inventory of existing and planned facilities for each of the seven impact fee programs.

TASK 2: Impact Fee Technical Analysis

This task involves the development of an impact fee rate equation for each of the seven impact fee programs. The rate equation shall include a demand component, cost component and credit component.

Subtask 2.1: Calculation of Demand Component

The consultant will review the existing level of service for each of the seven programs and calculate a demand factor for each land use in existing rate schedule.

Subtask 2.2: Calculation of the Cost Component.

The consultant will review available cost data for each of the programs and calculate cost factors for each of the impact fee rate equations.

Subtask 2.3: Calculation of Credit Component

For each of the seven program areas, the consultant will review historical, non-impact fee revenue streams used to fund new capacity. Based on this review the consultant will calculate the credit factor for each of the impact fee rate equations.

Subtask 2.4: Development of Impact Fee Rate Equations and Calculation of Rate Schedules

The consultant will incorporate the demand, cost and credit factors into an updated impact fee equation for each of the seven impact fee programs. Utilizing the updated rate equation, the consultant will calculate an update rate for each of the land uses in the rate schedule. For Solid Waste Disposal, this task also requires development of a published rate schedule for non-residential land uses.

TASK 3: Technical Report

Upon completion of TASK 2, the consultant will prepare a draft Technical Report encompassing the seven impact fee program areas. The report for the Educational Facilities Impact Fee program shall also be published under separate cover for presentation to the School Board of Brevard County. Upon completion of Subtask 4.2 and 4.3, the consultant shall prepare a Final Technical Report incorporating any changes necessary to the draft report. The Final Technical Report for the Educational Facilities Impact Fee program shall also be published under separate cover for presentation to the School Board of Brevard County. All reports shall be published both electronically and in hard copy.

TASK-4 – MEETINGS AND PRESENTATIONS

This task includes meetings and presentations for the project, as summarized below.

Subtask 4.1 – Kickoff Meeting

The consultant shall attend a meeting with County and School Board staff to kickoff the project and discuss data needs and methodologies as appropriate. It is anticipated that the first part of this meeting will be with the County Project Manager and County Management staff. The second part of this meeting will include individual meetings with each involved department to review the data collection needs and availability of requested data.

Subtask 4.2 – Meeting with School Board

The consultant shall attend a meeting with the School Board of Brevard County to present the conclusions and recommendations contained in the Draft Technical Report for the Educational Facilities Impact Fee program.

Task 4.3 – Workshop and Presentation for Board of County Commissioners

The consultant shall attend a workshop with the Board of County Commissioners to present the conclusions and recommendations contained in the Draft Technical Report.

Task 4.4 – Public Hearing for Ordinance Adoption by the Board of County Commissioners

The Consultant shall attend the public hearing for the adoption of the revised impact fee ordinances.

FW: Cost of Impact Fee Study

kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Mon 1/6/2020 9:05 AM

To: Debby Franklin <townclerk@townofmalabar.org>

📎 1 attachments (16 KB)

2013 SCOPE OF SERVICES.docx;

Although the County's study did include items that we would not be pursuing, you can see from the below and attached that the study was quite expensive. If you take the 7 items that were studied and divide by 7 each element would seem to have cost over \$22,000.00. While this calculation is not made with any precise mathematical certainty, I would venture to guess that a basic impact fee study would run between \$25,000.000 and \$40,000.00. Again that is just my best guess based upon what I have been able to determine.

Karl W. Bohne, Jr.
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From: Swanke, Stephen M [mailto:Steve.Swanke@brevardfl.gov]

Sent: Monday, January 6, 2020 8:42 AM

To: kbohne@fla-lawyers.com

Cc: Bentley, Eden <Eden.Bentley@brevardfl.gov>

Subject: Cost of Impact Fee Study

Mr. Bohne,

Brevard County commissioned an Impact Fee Update Study in FY2013/14 which was completed in FY2014/15. The total cost of the study was \$160,000. The specific impact fee programs that were updated include: correctional facilities, public educational facilities, emergency medical services facilities, fire/rescue facilities, library facilities, solid waste disposal facilities and transportation facilities. A copy of the scope of services is attached for your information.

If you have specific questions regarding the scope or the study, please reach out to me.

Stephen M. Swanke

Program Manager
Brevard County Planning & Development Department
(321) 633-2070 ext 58298
(321) 350-8298 direct line

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RE: impact fees

kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Mon 1/6/2020 8:19 AM

To: 'Bentley, Eden' <Eden.Bentley@brevardfl.gov>

Ok thanks.

Karl W. Bohne, Jr.
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From: Bentley, Eden [mailto:Eden.Bentley@brevardfl.gov]

Sent: Monday, January 6, 2020 8:11 AM

To: kbohne@fla-lawyers.com

Subject: RE: impact fees

All I remember is that it was very expensive. I'll check with Steve Swanke and see if he has exact numbers for you.

From: kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Sent: Sunday, January 5, 2020 4:36 PM

To: Bentley, Eden <Eden.Bentley@brevardfl.gov>

Subject: impact fees

I know this is an open ended question, but do you have any knowledge on the cost to do an impact fee study.? I know a lot goes into a study but I am trying to see what the cost of a study would be .

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MEMBER'S ROSTER**01/02/20**

	NAME	TITLE
1	ACEVEDO, NICKOLAS	Pay Driver
2	AUSTIN, MICHAEL	Volunteer Firefighter
3	BARKLEY, DANIEL	Pay Lieutenant
4	BAUMAN, JOSHUA	Volunteer Firefighter
5	BORDA, SEAN	Pay Driver
6	BRAUN, FRITZ	Volunteer Firefighter
7	BUIGUES, ARIEL	Volunteer Firefighter
8	COLLINS, CHRISTIAN	Volunteer Firefighter
9	DOOLEY, WILLIAM	Volunteer Firefighter
10	ENDICOTT, ROBERT	Volunteer Firefighter
11	FELD, NICHOLAS	Volunteer Firefighter
12	FOLEY, MICHAEL	Chief
13	GIANANTONIO, JOSEPH	Deputy Chief
14	HOLLEY, KENNETH	Volunteer Firefighter
15	HOOKER, JOSEPH	Pay Lieutenant
16	JOSHNICK, BLANCA	Administrative Assistant
17	LANDOLFI, DOMINICK	Volunteer Firefighter
18	MURPHY, ANDREW	Volunteer Firefighter
19	MYERS, RUSSELL	Volunteer Firefighter
20	NACHREINER, BRYCE	Volunteer Firefighter
21	PHANG, DAVID	Pay Driver
22	PICKARD, BEAU	Volunteer Firefighter
23	POTTS, THOMAS	Pay Lieutenant
24	RILEY, KEVIN	Pay Lieutenant
25	RUNK, ROBERT	Volunteer Firefighter
26	SCHNEIDER, KEITH	Pay Driver
27	SMITH, CRISTINE	Volunteer Firefighter
28	STRONG, VICKY	Volunteer Firefighter
29	VAIL, BRIAN	Volunteer Firefighter
30	WEYMOUTH, JORDAN	Volunteer Firefighter
31	WILSON, THOMAS	Volunteer Firefighter



GRAPHIC © GETTY IMAGES

FUNDING

Special Assessments

Flexible revenue source is distinct from ad valorem taxes

by Chris Roe
Bryant Miller Olive PA

Special assessments are a Home Rule revenue source available to cities and counties to fund all or some portion of the costs of capital improvements or essential services.

Many types of improvements and services can be funded through assessments including fire protection; street lighting; utility undergrounding; stormwater and solid waste; road and sidewalk improvements; water, sewer and reuse infrastructure; beach renourishment; and property assessed clean energy (PACE) assessments to fund energy conservation improvements for private property owners.

There are two basic requirements under Florida law for a valid special assessment:

- ▶ The assessed property must receive a *special benefit* from the improvement or service funded by the assessment. The special benefit can include an increase in the property's market value and also heightened use and enjoyment of the property.
- ▶ The assessment must be *fairly and reasonably apportioned* among the properties receiving the special benefit.

The procedure for imposing a special assessment typically involves mailed notice of the proposed assessment to affected property owners and a public hearing. After conducting the public hearing and considering public input, the governing board votes on a resolution to approve the assessment and the method of collection.

Capital project assessments are usually collected over a defined term of years, and the annual installments end when the project is completely paid for, often by retiring any bonds that were issued to finance the project. Annual service assessments such as fire and stormwater may continue from year to year until discontinued at the discretion of the governing board.

One of the primary advantages of a special assessment program is flexibility. For instance, the governing board has wide discretion in choosing an apportionment method that best meets local needs and is not required to follow a statutory formula or use the same system adopted by other communities. In fact, assessments can be allocated by any method so long as the governing board determines the method is, on the whole, fair and reasonable.

While an assessment can fully fund the cost of a given project or service, the governing board may choose to fund only a portion of the cost, with the balance paid by other available funds. In many cases, the ability to partially fund through assessments can address and even eliminate community concerns that the assessment amount per property is too high, thereby increasing the likelihood that implementation of the assessment program will be successful.

Assessments are also flexible with respect to the collection mechanism. They can be direct billed to the affected property owner or collected using the *uniform method* by which the charge is included as a “non-ad valorem assessment” on the annual property tax bill mailed by the county tax collector each November. In most cases, the uniform method is preferable since enforcement responsibility is transferred to the tax collector.

Not all governmental services and improvements can be funded through an assessment. For example, with limited exceptions, law enforcement and emergency medical services can't be assessment-funded because the courts have determined those services primarily benefit people instead of property. By that same reasoning, government administration buildings such as a new city hall facility can't be funded by an assessment.

While the ongoing annual administration of an established assessment program is relatively easy, the first-time imposition of the assessment can present challenges. As noted above, assessments require mailed notice of the public hearing to each affected property owner describing the amount of the assessment proposed for his or her property. The mailed notice acts as an invitation to participate in the public hearing.

In most cases, the property owners who accept the invitation are those opposed to the assessment. Complaints in opposition vary, but the following are common:

- ▶ “We don't need this improvement or service.”
- ▶ “Find another way to pay for it.”
- ▶ “The apportionment method is unfair or regressive.”
- ▶ “We can't deduct the assessment from our income taxes the way we can with property taxes.” This statement may not be true. Property owners should seek advice on this point from their tax advisors.

Perhaps the most common objection is that the property owner is on a fixed income and can't afford to be hit with *another tax*. While an assessment may be similar to a property tax, Florida courts have specified that special assessments are not taxes and are distinguishable in several respects. There is no requirement that taxes convey a special benefit to the property, only that the taxes are authorized by law and imposed on a uniform basis. Assessments must be earmarked and can be spent only for their intended purpose, whereas property taxes can be spent to advance any public purpose.

The formula for calculating property taxes is determined by state law, whereas the assessment formula is determined by local discretion. Ad valorem tax exemptions generally don't apply to special assessments, though some assessment exemptions may be adopted at the discretion of the governing board.

Perhaps the greatest difference between taxes and assessments is that by paying an assessment, the property owner is directly paying for a service or improvement that provides a tangible and special benefit to his or her property in the form of new sidewalks or paving of their street, etc., whereas the services or improvements resulting from payment of their property taxes may not be so obvious or direct.

While assessments are thus legally and technically distinct from taxes, the explanation as to the difference may be of little comfort to property owners in the context of the public hearing. With careful and deliberate planning during the implementation process, however, that objection and others can be effectively addressed to increase the likelihood that the assessment program, and therefore the improvements or services to be funded, will be successfully implemented. In that case, a special assessment program can provide a powerful and flexible revenue source for Florida cities and counties, as the hundreds, if not thousands, of assessment programs throughout the state can attest.



Chris Roe is a shareholder in Bryant Miller Olive's Tallahassee office and is board certified by The Florida Bar in City, County and Local Government Law. His experience includes the development, implementation and maintenance of special assessment programs throughout the state. He

successfully represented the City of Cape Coral at trial and in its Supreme Court appeal regarding the validity of citywide special assessments imposed to fund fire protection services and facilities and the new apportionment methodology based on availability of service.

One of the primary advantages of a special assessment program is flexibility.

MALABAR COUNCIL WORKSHOP MEETING
December 05, 2019 1:30 PM

This meeting of the Malabar Town Council was held at the Malabar Town Hall, 2725 Malabar Road, Malabar, Florida.

A. CALL TO ORDER:

The meeting was called to order at 1:30 pm with P&P led by Chair Mayor Reilly.

B. COUNCIL:

COUNCIL CHAIR:	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DAVID SCARDINO, excused
	DANNY WHITE
MANAGER:	MATT STINNETT
ATTORNEY:	KARL BOHNE
ENGINEER:	MORRIS SMITH
BLDG DEPT MANAGER:	DENINE SHEREAR
DEPUTY CLERK:	RICHARD KOHLER
CLERK/TREASURER:	DEBBY FRANKLIN

C. ROAD WORKSHOP Continued from 7/29/19

Chair turned over to Clerk.

Clerk reminded Council of Attorney's findings presented on 7/29/19. Town must be able to defend their requirement for right-of-way dedications. Attorney had suggested Council consider a review and possible reclassification of road types, widths and definitions of the reasons for the improvements. The improvements do have a value. If challenged, the requirement for the dedication must be able to show that it is tied to a public improvement.

From July WS, Council directed staff to measure the road widths and make recommendations for changes to requirements and classifications. Local streets are lanes and generally serve 2 to 12 driveways with the average being six. LaCourt and Eva Lanes are exceptions as they were lanes that were converted to collectors. The current widths for unpaved roadways vary from 10 to 19 feet. In keeping with the rural character of Malabar, would Council consider a reduced right-of-way width that would still provide for drainage but require a narrower travelway.

In reviewing some planning references, it was suggested that narrower roadways and a corresponding requirement for trees along the roadway would better enhance the rural character of Malabar.

Required in Code

Recommendation:

Local unpaved road right-of-way width requirement is 60'

reduce to **25'** & 50'(lanes)

- There are no known local streets that comply

Minor collector paved road right-of-way width requirement is 70' reduce to **50'** (Atz, Hall)

- Hall, Atz, Benjamin and Old Mission are all 50' or less in ROW width

Major collector paved road right-of-way width requirement is 100' reduce to **70'** (Weber, Corey)

- Corey and Weber are both at 70' – Marie is at 50' – 70'
- Corey and Marie north of Malabar should not be major collectors.

Arterials – remain at 150' (Babcock, Malabar, US 1)

The actual roadway width would follow the requirements referenced in the road improvement package which have already been adopted.

Clerk said changing the classifications would need to be changed in both the LDC and also the Comp Plan. Council can direct staff to start working on these changes acknowledging that the Comp Plan amendment would take six months minimum. Council can start with the LDR.

Variance language – reinsert into street improvement code (Chap 13) and add requirements:

- Requirement to record Order stipulating the parcel will be responsible for future road improvement fair share cost
- Requirement to pave if roadway to that point has been paved
- Requirement for road bond for future needs?

Council discussed BOA variance vs. a waiver by Council. After discussion, staff was directed to draft the ordinance to call it a waiver and leave authority with Council – not a variance for BOA.

Chair Reilly, without objection, adjourned the workshop meeting at 2:43pm.

BY: original signed
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

Debby Franklin, C.M.C.
Town Clerk/Treasurer

Approved: 1/14/2020