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County Commission OKs new impact fees with nod to commercial development

By Jake Martin
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St. Johns County commissioners voted 4-1 on Tuesday to adopt a new impact fee schedule reflecting their oft-repeated commitment to attracting and bolstering commercial development — by including a substantial subsidy for all non-residential building categories.

Commissioner Paul Waldron voted alone in dissent, saying prior to the vote that he would be in favor of immediate implementation of the updated fees rather than the phased-in approach the board was taking. He said implementing the increases over time was needlessly leaving millions of dollars on the table considering the board has openly discussed the matter of raising the fees for well over a year.

Impact fees, which are levied on developers to offset the costs of providing additional public services for new development, are meant to be a fair way to pay for the increased strain on roads, schools, fire/police services and parks. However, builders have argued increasing the fees too much could negatively impact the county's ability to attract businesses as well as new residents, thus jeopardizing future job growth and ad valorem and sales tax revenues.

Throughout a wide-ranging and lengthy debate on consultant James C. Nicholas' latest impact fee assessment for the county, which included recommendations to generally increase fees on residential and non-residential construction, commissioners have repeatedly expressed apprehension about raising impact fees on commercial building.

At their Feb. 20 meeting, commissioners threw their support behind a fee schedule reflecting a reduction in fees for non-residential development of 40 percent from what Nicholas had proposed.

Nicholas had told commissioners if they chose not to implement his recommendations fully, they would have a gap to fill with other revenue sources, thus bringing the county back to something resembling its original problem. He said his recommendations were calculated considering all available revenues, including the additional half-cent sales tax increase passed by county voters in 2015 for school capital projects, which, he said, is why the school impact fees went down in most categories.

According to county documents, a 40 percent reduction would result in flat or reduced impact fees for 14 non-residential categories and modest increases in the remaining 12 non-residential categories. Altogether, these reductions would translate into an annual budget impact of about $725,000.

Per board direction, the county will use non-ad valorem revenues from General Fund reserves to subsidize the reductions.

Meanwhile, residential fees are proposed to be restructured from using two size categories — 1,800 square feet and under, and over 1,800 square feet — to seven size categories. These new categories break down as follows: under 800 square feet; 801 to 1,250 square feet; 1,251 to 1,800 square feet; 1,801 square feet to 2,500 square feet; 2,501 to 3,750 square feet; 3,751 to 5,000 square feet and over 5,001 square feet.

Most residential developments would see an increase in what they contribute toward services provided by the county, ranging between 15 and 68.9 percent. Only homes under 800 square feet would be paying less, with an 11 percent decrease overall. Others would see increases ranging from about 3.1 percent (for homes 1,801 to 2,500 square feet) to 68.9 percent (for homes 5,000 square feet and up).

Despite months of public discourse, the board only on Monday received a memo from an attorney retained by unidentified clients expressing a number of concerns about how the county's impact fees are being collected and spent.

On the issue of buying down the fees due from non-residential development, attorney Albert Franson, a partner at Franson Iseley Rendzio in Jacksonville, said in his memo that state law requires new growth to pay its fair share.

"Whether characterized as a 'buy down' or any other name, the net effect of a buy down is that residential developers and contractors are paying more than its fair share of the additional capital facilities that may be required by new growth in violation of state law," the memo says.

Franson continues by saying "such discriminatory preferences" are typically accompanied by reports and research showing the additional tax contribution caused by non-residential development outweighs the impact fee to be assessed, and that no such detailed analysis exists.

He says state law provides that impact fees can only be used to fund “infrastructure necessitated by new growth,” but that impact fees imposed and collected in the past as well as the proposed new impact fees include amounts that are not for capital improvements.

He notes Nicholas’ memo’s recommendation that certain costs to train and equip additional officers should be recouped through impact fees. He also claims the county “improperly collected and expended” over $5 million in impact fees related to training and equipping new officers from 2001 through 2017 and that it appeared additional funds may have been used for maintenance and repair.

Franson closes by saying he and his clients believe the county is liable for millions of dollars of impact fees that were “improperly collected and expended and subject to a lawsuit seeking declaratory relief and refund of same.” He said they would prefer postponement of implementation of the new impact fees to analyze and address the issues rather than pursuing litigation.

“Nobody is saying that police officers and first responders aren’t necessary; that’s a great thing,” Franson told commissioners on Tuesday. “The issue here is how do you pay for that?”

Suzanne Konchan, growth management director for the county, said using impact fees for training of additional officers has been a “consistent practice” in the county for over a decade. She said training costs are “appropriately treated as human capital” in the impact fee program and that monies were not going toward operational or maintenance expenses.

Paolo Soria, assistant county attorney, said the county is able to use public monies for economic development incentives, including down payment of fees, taxes and other similar costs. He said the county will be directing the dollar amounts toward addressing new growth that were recommended in Nicholas’ study, only buying down the impact on non-residential development.

Commissioner Jimmy Johns, referencing a staff analysis, said it would take the county only about 7 years to see a return on investment (in the form of ad valorem revenues) on buying down the impact fees for most non-residential categories.

“If we’re encouraging development for our non-residential tax base, that’s the whole purpose of implementing this,” he said, adding the analysis did not include sales tax revenues.

The phased-in approach adopted by the board will be effective in July, at which point the updated fees would be collected with a 25 percent reduction for all land use types, and then stepping up to the full amount on Jan. 1, 2019. School impact fees will be assessed at 100 percent of the study findings from the get-go.

Impact fees were last updated in 2010, although there have been annual adjustments made based on construction cost indexing.