

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Briefing Regarding Timing Of impact Fee Payment

DEPARTMENT: Planning and Development **DIVISION:** Impact Fees/Concurrency

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Agenda Date 12/10/02 Regular ☐ Consent ☐ Work Session ☐ Briefing ☒
Public Hearing – 1:30 ☐ Public Hearing – 6:00 ☐

MOTION/RECOMMENDATION:

Information Item

BACKGROUND:

-- --- THE FIRST IMPACT FEE ORDINANCES REQUIRED COLLECTION PRIOR TO C.O.

March 24th, 1987, Seminole County adopted its first Impact Fee Ordinance that provided for the imposition of countywide road impact fees. This Ordinance and two that followed, Fire/Rescue and Library Impact Fees, required collection of fees prior to the issuance of the Certificate of Occupancy. The City Interlocal Agreements also required payment at time of C.O.

IMPACT FEE ORDINANCES ARE AMENDED TO REQUIRE COLLECTION OF FEES PRIOR TO ISSUANCE OF BUILDING PERMIT.

March 30, 1992, the Seminole County Land Development Code was amended to change the timing of payment of impact fees from the issuance of the C.O. to our current Ordinance which requires payment of impact fees at the time of the issuance of the Building Permit. This change was the result of the following:

- (1) In 1985, the Florida Legislature adopted the "Growth Management Act" which required facility impacts for development to be tested and encumbered concurrent with development and not after. This resulted in Seminole County adopting a Concurrency Management Ordinance and a Concurrency Management-System process. It is this process that requires facility capacity encumbrance/reservation to be made prior to the issuance of a final Development Order. Building Permits are a type of final development order and the last development order to be issued on a

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Other: _____
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property. Developments that are vested due to prior agreements addressing impacts are not required to be tested or reserve capacity.

- (2) Many C.O.'s were issued without payment of the impact fees. This was due in part to the County's inability to control the City's administrative processes and the County not having an automated process that would prohibit the issuance of a C.O. prior to the payment of fees. Over 1,870 properties did not pay the impact fees when due and had notices/liens filed against them in the Seminole County Public Record Books. It should be noted that staff time spent to monitor payment, prepare the notice/lien papers, correspondence with the property owner and Title Companies for payoff, etc. was substantial. (With minor adjustments to the current computer program utilized for the building permit process, the system may be programmed to prohibit issuance of a C.O. without first collecting the impact fees. However, not all projects obtain C.O.'s.)

April 15, 1992, the City Interlocal Agreements for all seven Seminole County Cities were amended to change the timing of payment to agree with the amended impact fees Ordinances for payment as a condition of the issuance of a Building Permit.

STAFF CONDUCTS AN IMPACT FEE SURVEY FOR TIMING OF PAYMENT.

July 1999, thirty-three (33) Florida cities and twenty-two (22) counties were surveyed for the timing of payment of impact fees. It was found that only four (4) cities (Bradenton, New Smyrna Beach, St. Petersburg and Melbourne) collect impact fees at the time of C.O. Those cities stated that it generally worked well. It was also noted that most cities provide water and sewer to its customers and the payment of fees were tied in with the utility connections. Seven (7) of the twenty-two (22) counties surveyed collect impact fees at the time of C.O. Four (4) counties (Pinellas, Osceola, Marion and Brevard County) indicated that it generally worked well and three (3) counties identified problems with the process as follows:

- Required the hiring of more personnel. (Manatee County)
- No administrative process in place to collect fees. They relied on the cities to collect their own fees and to process notices of non-payment. (Volusia County).
- Creates lag time between when the facilities are needed and when the impact fees are available to fund the facilities (Sarasota).
- Dispute of fees delaying the issuance of the C.O.
- Once the CO. is issued the fees are difficult to collect.
- Enforcement through the Code Enforcement Board or by legal action is costly and timely.
- Several survey participants indicated that impact fee issues should be dealt with earlier in the development process rather than at the time of C.O.

CURRENT PROCESS IN PLACE FOR DEFERRING PAYMENT OF IMPACT FEES:

For county and city projects having a valid public purpose such as projects of economic development or job growth, the Land Development Code allows the developer to enter into an agreement to defer payment of impact fees for up to 180 days from the date of the issuance of the Building Permit but no later than the issuance of the Certificate of Occupancy. County staff coordinates and prepares a draft agreement that is presented to the BCC for review and approval. Targeted areas as identified by our Economic Development Department would qualify for the BCC's consideration of deferred fees, including community redevelopment areas.

FURTHER AREAS FOR CONSIDERATION IDENTIFIED BY STAFF:

Should the existing impact fee collection process be modified to allow collection at the time of the issuance of the Certificate of Occupancy instead of at time of building permit issuance, the following areas of concern have been identified by staff:

1. Collecting impact fees at C.O. creates additional administrative processes.

Issued Building Permits would need to be monitored to ensure that the impact fees are paid when due. This would be possible with the impact fees that are collected by the County Building Division as our current HTE AS-400 computer system can be adjusted to prohibit the issuance of a C.O. prior to payment. However, this would not be possible for the county impact fees that are collected by the cities, as we do not have the ability to prevent city staff from issuing C.O.'s without payment. This was a major problem for County staff in the past and it should be noted that the majority of the notices/liens that were filed for non-payment of fees were for properties developed within a municipality. Should the timing of payment be changed to C.O., it would necessitate additional staff in order to carryout the increased workload.

2. Failure to pay impact fees prior to the C.O. for single-family residential permits may place a burden on the new property owner.

It is possible for the burden of payment to shift from the Builder to the prospective homeowner should the Builder transfer title of the property to the prospective homeowner prior to payment of fees. The new property owner would then be responsible (according to Seminole County Code) for payment. If the impact fees are not paid, a lien would be placed on the property. Most financial institutions include the impact fees in the loan and provide them to the Builder with the payment for the Building Permit Application.

3. Impacts of development occur at the time of building permit issuance and not at time of CO.

---Reservation of facility capacity is encumbered-upon payment of the impact fees. To defer payment until C.O. may delay the receipt of impact fee funds needed for capital projects. Additionally, Seminole County could be placed in a position where they are essentially granting the developer a line of credit for the construction of the facility infrastructure. This would conflict with the County's Concurrency Review Process.

4. Seminole County Land Development Code and the City Interlocal Agreements would need to be amended.

The current Ordinances and City Inter-local Agreements require payment at time of Building Permit. A change to the payment at the time of C.O. would require an amendment to the Ordinance and amendments to the existing Inter-local Agreements.

STAFF RECOMMENDATIONS:

Due to issues encountered by the County in the past when collecting impact fees at the time of C.O. and to the Concurrency requirement for facility reservation concurrent with the issuance of a final Development Order, staff recommends that the timing of payment remain at the time of Building Permit issuance. However, in order to assist the limited number of projects of economic development and public purpose, staff recommends that the Board of County Commissioners authorize staff to pursue an administrative process which would allow the County Manager to review and approve agreements to defer the payment of impact fees for up to 180 days or at time of C.O., whichever occurs first; and also authorize staff to amend the Land Development Code to consider the same. The Land Development Code currently requires that the BCC and the developer enter into an agreement for the deferral of the fee and the agreements presented to the BCC as a scheduled item on the BCC's agenda. Through the establishment of an administrative approval process, building permits can be issued and economic development projects can be initiated and completed without the additional time associated with BCC approval, and therefore serve the community's interest much sooner. It also provides an opportunity for the developer to accelerate project schedules.