

**Impact Fee Advisory Committee Minutes
December 11, 2008**

Attendance:

Committee Members	Staff	Other
Janet Donahue	Bruce Bender, CAO	Ryan Morton, MBIA
Dick Ainsworth	Brentt Ramharter, Finance Director	
Jinny Iverson	Jim Nugent, City Attorney	
Collin Bangs	Jackie Corday, Open Space Manager	
Jerry Ford	Ellen Buchanan, MRA Director	
Derek Goldman	Roger Millar, OPG Director	
Jim Galipeau	Mike Kress, Transportation Planner	
Mark Muir		
John Freer		

Minutes from the November 13, 2008 meeting were approved.

Discussion of the legal difference between the Park Impact Fee and the proposed Park dedication amendments (minor subdivision and multi-dwelling) – Jackie Corday and Jim Nugent

[Proposed Parkland Dedication Regulation Amendments](#) - PowerPoint Presentation, September 2008

[Specific slides discussed at meeting](#)

Bruce Bender explained to the committee that the slides presented were the most pertinent slides for the committee. At the November meeting, Collin Bangs asked Jim Nugent to be at this meeting, and Mr. Bender also invited Jackie Corday because she is the one proposing the new fee. Mr. Bangs said the only portion that should be discussed as being an impact fee is the multi-family dwellings. The one on minor subdivisions was recently approved by law. There is clearly no subdivision when discussing multi-family dwellings.

Jackie Corday explained the project. There are different proposals currently going through the City Council process. They have already gone through the Planning Board and a hearing at City Council. One would change minor subdivisions to allow parkland dedications and one to require park land dedication for projects that don't go through subdivision review. There are developers who have a five acre piece of property and propose a 100 apartment unit on the acreage. They have no yard, and possibly have a balcony, and could be nowhere close to a park. That developer is not required to do any parkland dedication because they aren't going through the subdivision process. As more apartments and condos are being built, it is an increasing problem as there is no room for people to get outside and be active. This is a large loophole that allows developers to not contribute to the parkland system. If the developer went through the subdivision process and proposed 20 houses on the acreage, they would be required to do parkland dedication. The proposal to City Council is to close the loophole and require those developers to do parkland dedication.

The difference between the impact fee and the parkland dedication is parkland dedication is set up in state law for subdivisions to get the land itself. Some of the larger complexes, such as the Crestview Apartments on Expressway, have already built common areas that have essential functions. They were not required to build the common areas, but residents benefited from it because there is no park anywhere close. Copper Run has the 35% landscaping requirement, which has buffer strips and parking islands. The Union Apartments behind Target did create a small play area. The Great Northern Apartments behind Costco has about 6,000 square feet by the railroad tracks. The BBQ pits look out on a very noisy industrial complex and train tracks. When this is left up to the developer, sometimes they do a nice park like setting, and sometimes they don't because parkland dedication is not required. The fee is being proposed so that there will be green spaces required in these developments. If the project is large enough, the goal is to get common area on the sides. If it is a small project, the dedication of land would be small and not provide any recreation, so cash-in-lieu would be required. Cash-in-lieu would be used to build more parks, trails, etc.

Mr. Bangs said in almost all the cases, it will be cash-in-lieu and the purpose of the money is to provide park infrastructure to fulfill a demand created by the development. According to state law, that is the definition of an impact fee. When money is paid to help build infrastructure to take care of the needs of the new development, it is an impact fee. Why would this parkland dedication fee not be considered an impact fee? It is clearly different than the one in the subdivision laws that says when developing land it has to be set aside for parks. Attorney Zane Sullivan said there is no place in the law where the city has the right to get land at time of the zoning permit. Land is acquired at time of the subdivision permit. It doesn't seem to fit into the law.

Ms. Corday said this fee has been modeled after what Bozeman did. Four years ago, Bozeman's parks department staff and planning director looked at the issue of apartments being built and not having to do any parkland dedication and they were falling behind of the standards of how much parkland they should have. The city also saw it as an equity issue. Why should one developer, who is developing on five acres with 20 houses have to do parkland dedication, but the developer building 100 units on five acres doesn't have to do any parkland dedication. Bozeman amended their regulations to close the loophole. Impact fees go toward paying for new infrastructure, whereas the subdivision regulations and the new proposed fee, which is modeled after the same concept of the subdivision regulations, land acquisition is desired. If the land amount is too small, then cash-in-lieu would be required, just as it is with subdivisions.

Janet Donahue asked if impact fees can be used to purchase land. Mr. Bender said it is a legal use, but it is not how the City of Missoula uses them. Mr. Bangs said developers of apartments do pay impact fees. The reason for impact fees is to take care of the infrastructure needs created by the development. Ms. Donahue said she sees land as an infrastructure. Mr. Bangs said if there were enough impact fees, it could be used for land acquisition. It appears in the Proposed Parkland Dedication PowerPoint, that there are a lot of deficiencies and there is not enough land. They are looking at this fee to correct all the existing deficiencies. It goes completely against the idea of what new development should pay for. New development should not pay for existing deficiencies; they should pay for the need they are creating.

Jim Nugent said the impact fee law states "the amount of impact fees must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure made necessary by the new development proposal". (MCA 7-6-1602(5)(a)) He said it is a sliding scale. If someone has 20 acres and split it into five acre lots and put apartments on it, the city gets zero land for parks. That is part of the loophole. The acreage on the sliding scale is 2.5% for three to five acres. The developer is able to avoid the parkland dedication when splitting the acreage into smaller areas. They can then put intense residential development on the acreage without having parkland dedication. The elected officials of Missoula have made a decision that one of the goals to provide for the community is that park services are available. This is an invasion of trying to meet one of the community goals that are reflected in many of the plans that have been adopted by the City Council.

Ms. Donahue asked how the fees can be differentiated. Mr. Nugent said the impact fee is focused on the infrastructure needed. With the parkland dedication or cash-in-lieu, only 50% of the money can be used for maintenance. In long range planning, more neighborhood parks will be created as part of the infrastructure.

Ms. Donahue asked if something has gone to the legislature to close the loophole and Ms. Corday said no. Ryan Morton said the builders have been frustrated with what is being proposed for minor subdivisions and at time of building permits, it equates to a cash-in-lieu option. The only response that has been given is "this is the difference between parkland dedication in the statute and this is the impact fee law in the statute". The builders recognize the difference between the two, but it doesn't seem the policy reflects the difference. This is the fourth time he heard the same answer. When the city is expecting to get cash-in-lieu on all the developments, including at building permit, in effect, that is the same thing as an impact fee. That is the question the building community keeps asking. He came to the committee because a lot of the building community feels unsatisfied with the answer. Ms. Corday said she couldn't answer in any way that will satisfy Mr. Morton. She has tried to explain it the best that she can, and it is very clear that with the way it is modeled after the subdivision regulations, there is a requirement for parkland. The new proposal has the requirement for parkland. When there is a larger development, the land will be acquired, which is what is desired. Mr. Bender said the Crestview apartments would have complied with the parkland dedication. They would not have had to pay the cash-in-lieu.

Dick Ainsworth said state law allows the parkland dedication under the subdivision regulations, and there is nothing in state law that allows it for the other. Mr. Nugent said silence in state law no longer means you are prohibited from doing something. The 1972 Montana Constitution says local government, city and county, shall have the power to legally construe. The Montana Supreme Court says it is a constitutional mandate to interpret the power of the local government. Mr. Ainsworth said Ms. Corday modeled this after Bozeman's subdivision law. The difference is the subdivision law specifically says this is how to do it. Mr. Nugent said local government does have the authority to do it, she is just using that model.

John Freer said he looks at this from the functionality of it. This is a hindrance to smaller and midsize projects. Great Northern and Crestview are on larger pieces of land that have the ability

to move their density and open up that land. For smaller urban projects that are on infill, it will only be cash-in-lieu. Mr. Bangs said that in most cases, it will be cash-in-lieu. This fee will hit the part of the market that is hurting the most. People in Missoula have an extreme problem with affordable housing. The number of people who pay over 50% of revenue in rent is a terrible problem. Trying to put this fee on top of all the problems of building apartments that the people of Missoula can afford is a huge mistake. There is clearly a legal difference between subdivisions and non subdivisions. He questions whether politically, legally and economically if this fee should be assessed. He does not think it should be, and if it is, it is in fact a hidden impact fee. Ms. Corday confirmed he is not objecting to parkland dedication on larger projects, but is objecting to cash-in-lieu on smaller projects. Mr. Bangs said if it is a larger project, it would make sense to build something like the park/BBQ areas that have been discussed. Credit for it may or may not be given depending on who at the parks department decides. In most cases, it will be cash-in-lieu. Cash paid at the time of the permit is an impact fee. Mr. Nugent asked for it to be taken out of context and look at the developers that will split their land into smaller areas to go around the rules and not providing a service that adds to the quality of life that the community has come to expect. This is a discretionary decision that the elected officials have to decide.

Ms. Donahue asked how it works with homes that are built on infill. If there is land that has two 4-plexes on it, and there is room for a third, what fees would be assessed? Mr. Ainsworth said the impact fee would be assessed, plus other fees. Mr. Bender said there is a value in every dwelling. In a subdivision, they are paying double because of paying for the land that the parkland dedication will be on, and then paying the park impact fee. Mr. Nugent said the third 4-plex could be made into a recreational spot for the others. It is about community goals. Mr. Freer said the larger projects can also absorb the cost better. He asked what other options have been looked at to close the loophole other than another fee. Ms. Corday said this was modeled after the subdivision regulations. State law allows for two different models. One is the 11% or charge .03 acres per dwelling units. Bozeman did .03 acres per dwelling unit. In the draft for Missoula, .02 acres per dwelling unit was used.

Ms. Donahue asked why this hasn't been taken to the legislature and Ms. Corday said the city and county already have the authority to do it, and she wouldn't be able to take it all to the state level.

Ms. Donahue asked how the new fee would compare to the impact fee already being charged. The dollar amount, take a hypothetical of how much impact fee and cash-in-lieu would be on both a large and small project.

Jerry Ford said Bozeman has not gone through the courts, so who says Bozeman is right? Mr. Bangs said one impact fee that Bozeman implemented was challenged, and they paid a lot of money because they were wrong. The realtors got their \$20,000 in legal fees back from the City of Bozeman. Mr. Bangs said there won't be many situations where this fee will be in effect. Mr. Morton asked how land would be divided out to a park at the time of building permit. Mr. Freer said that is why 99% of it will be cash-in-lieu. Mr. Bender said land could be dedicated as part of the project. Roger Millar said it doesn't have to be a dedication. There could be a play area in part of the open space that meets the parks requirement.

Update on Bozeman's experience with a Downtown Fee

[Bozeman Correspondence](#)

[Appendix F](#) of the City of Bozeman Transportation Impact Fee Study Final Report

Mr. Bender invited Ellen Buchanan, Director of the Missoula Redevelopment Agency and Roger Millar, Director of the Office of Planning and Grants to talk about the boundary aspect for the downtown fee.

At the November meeting, the committee asked Mr. Bender to contact Bozeman with three questions about their downtown fee. The full correspondence is linked above.

1. When was the Downtown fee implemented? What is the same as your Transportation Impact Fee?
 - a. The fee was adopted in January 2008
2. What has been your experience in managing this differentiated fee? Has it been difficult or confusing for collection or builders?
 - a. There have been some questions of how the differentiated fee works. Most of the questions have focused on whether it is applied or not, which is a yes/no answer. This is because there is a defined geographic area in which it applies, it is a minor thing to check addresses before determining the fee for a particular project.
3. Has there been a noticeable decline in transportation impact fee revenue in the Downtown area?
 - a. As the differentiated fee has been recently implemented, we do not have much history with it. Although overall revenue has declined, this appears more related to changes in the economy.
4. Why did Bozeman decide to implement this fee?
 - a. They worked with a group from MSU on multi-city travel efficiency.

Bozeman has been in more of a decline than Missoula, so there isn't much experience with the fee. Dwayne Guthrie used the same basis as the MSU group did. The differentiated fee could be used as an incentive for infill development, supporting multi-modal and efficient travel and a healthy downtown.

Derek Goldman said it appears Bozeman only implemented the discounted fees for commercial development in the TED (trip exchange district), not in the residential. Mr. Guthrie said it applies to residential and commercial the same for the Missoula study.

Estimate of Revenue loss due to lower Downtown Fee

[Estimated Potential Revenue Loss - Downtown](#)

Brentt Ramharther said Mr. Guthrie gave the city some recommended levels of reduction at the November 13 meeting. Every category was reduced by 24%, except for single family detached, which is 42%. There won't be much single family detached in the downtown area. Mr. Ramharther worked with Ellen Buchanan, Director of the Missoula Redevelopment Agency and used the five levels of proposed build out according to the Downtown Master Plan. Roger Millar said this is market driven. The Estimated Potential Revenue Loss - Downtown shows a 24% reduction over time, and it shows the city would collect approximately \$4 million.

Mr. Goldman asked why Mr. Ramharter thought there would not be single family detached according to the boundary map at the last meeting. Mr. Bender said it was scaled back to the Downtown Master Plan boundaries. Ms. Buchanan said the Downtown Master Plan focuses on the core of the downtown area. Mr. Bender said that Mr. Guthrie said scaling back the boundaries is not a problem. Mr. Millar said they have been discussing tools the city could use to facilitate development and partner with the development community, and this is a great tool. If Missoula uses the same technique that Bozeman did, which is a district based on a trip exchange district, there could conceivably be other trip exchange districts within Missoula if that is decided. Mark Muir said that would work especially if the city is developing self sufficient communities within Missoula.

Jinny Iverson said at the last meeting the committee had reached the conclusion to use the Downtown Master Plan boundaries. Ms. Buchanan said one concern in trying to implement the Downtown Master Plan is what is happening with property values in the downtown areas. Businesses are building farther away from downtown because the property values are cheaper. Downtown is second and third generation construction sites that can be not very safe to build on. The cost of building downtown is \$55 - \$65 a square foot. Mr. Morton asked if the city is concerned by the revenue loss in terms of the infrastructure for completing the transportation portion of the Downtown Master Plan. Ms. Buchanan said that at \$1 million over 20 years at 100% build out, they are not concerned. The advantage of not having to build infrastructure on Mullan Road greatly outweighs it. Mr. Galipeau said it is approximately \$50,000 a year, which is a drop in the bucket, so why give this million dollar break, which means there will be a million dollars less to do the things the committee has talked about that need to be done if ultimately it really doesn't matter. Ms. Donahue said it matters more to the individual project. Mr. Galipeau said the impact fee started out as a city wide fee, now the committee is carving out a special situation, which makes the cost to the rest of the city go up. There is less money to do what needs to be done, and the city is already getting less because building is down. Mr. Millar said one reason to charge less is because there is truly less of an impact. There is less infrastructure required to be built because people are building downtown as opposed to other places. It is a break for the builder, but also for government. There is less revenue coming in but there is less facilities to build. Mr. Goldman asked if it is possible to offset the decrease by increasing fees outside the boundaries. Mr. Bangs said the point is if builders build in the boundary lines, the extra fees are needed, and everything is already in place such as water and sewer. Mr. Bender said the demand on the street usage won't be as high because more people are walking, biking, etc. Mr. Bangs said if a 30 unit condo is built, the city will lose \$21,000 impact fees. That is enough to make builders look at building within the boundary lines. Mr. Freer said a 90,000 square foot office building would be about \$24,000 deduction in impact fees, if the total build out was \$3 million, it would be 8/100 % of the cost. It is a great tool, but the amount may not be enough. It may be more effective if the discount was larger. Mr. Ramharter said he has seen what is being proposed for the millsite property and there will be some impact fee funded components that will come right off the projects. Cregg and Orange Street will need to have a traffic signal, and the impact fees can pay for that. Ms. Buchanan said beyond the amount of money it saves the developer or takes away from impact fees, it becomes a policy statement about this city. It gives incentive to build in the urban district.

Mr. Goldman said this opens the door for other neighborhoods to apply for the districts and asked Mr. Millar if there are any negatives about it the committee needs to be aware of. Mr. Millar said if it can be linked to a reduction in costs, there shouldn't be a big problem. The city needs to be diligent about making neighborhoods/districts meet a high standard and not just give it to everyone that applies. Mr. Bender gave specifics from the study that Tischler Bise did. Mr. Millar said policies and regulations need to be put into place. The advice that will need to be given to city council as the policy makers is if a district was to be created on Brooks Street today, it doesn't meet the test. If there was a pedestrian overlay or a change in zoning, etc, has it changed enough to meek the test and can an incentive be applied. Mr. Bender said that is the complexity of it. How many variable should be applied? Mr. Freer asked if a new study has to be done if there was a request for a new district. Mr. Bender said yes and Mr. Freer said it would be a significant step to take. Mr. Muir said it would be structure on the premise of the new study. There wouldn't be a specific number, they would come out of the study.

Proposed Amended Fee

[Proposed Reduced Road Impact Fee - Downtown](#)

Mr. Bender spoke on the proposed reduced road impact fee and said there is no written amended ordinance language. The committee needs to decide if this is a reasonable fee level and if the geographic area boundary where it should be. Once those two things are decided, then the actual ordinance will be developed.

Mr. Bangs made a motion to approve the concept of the fee structure as presented and the Downtown Master Plan boundary lines as presented and have an ordinance developed. Mr. Freer seconded the motion. The motion passed 8 to 1 with Mr. Ford opposing.

Ms. Donahue asked to have the amended ordinance emailed to the committee. Mr. Bender would like to call this the Downtown Transportation Impact Fee. Mr. Ramharter said it would be January before this could go to City Council, and then if they want to go forward, a public hearing date will be set for about 3 – 4 weeks out, then an implementation date of March in the earliest if it passes.

Mr. Bender said a draft will be sent to the committee to comment on, and then once responses have been received, it will be taken to council. The committee will be made aware of when it will be heard in council meetings, so if members want to attend the meetings, they can.

Other Comments

Mr. Bangs asked if the committee wanted to do anything with the parks fee. He said his idea would be to send the motion forward that the impact fee committee looked at the park fee and are suspicious of it. Mr. Ainsworth said he thinks it is an impact fee also. He doesn't argue there is a loophole that needs to be closed, but the way they are going about it, it is an impact fee. Mr. Muir said the alternative to the park fee is to restructure the impact fee on multi-family dwelling buildings. Mr. Freer asked what other options were investigated to close the loophole. Ms. Donahue said one option is to increase the impact fee on multi-family dwelling. Mr. Morton said there is a landscaping requirement already, and Ms. Iverson said it could be a larger fee. Mr.

Bender said the problem with working with the impact fee is there has to be a study done to back up any adjustment.

Ms. Iverson asked where this presentation has been given. Mr. Bangs said it has gone through the Planning Board, who voted 100% against it. It then went to PAZ and had a public hearing and City Council sent it back to committee. There was another public hearing, and it has now been taken off the schedule. Mr. Ainsworth said it has been presented to the realtors and builders.

Mr. Ainsworth made the motion that the city council be made aware that the committee looked at the parks fee and feels it appears to be an impact fee. There is a loophole there for multi-family dwellings, and therefore needs to be addressed through the impact fee process. Jerry seconded the motion. The motion passed 8 to 1 with Mr. Goldman opposing.

Mr. Bender suggested submitting a comment to PAZ committee regarding the committees' position.

Mr. Bender said once the minutes are done, they need to be reviewed and approved by the committee. Once that is done, this motion will go to the PAZ committee by email.

Respectfully Submitted
Melani Coyle