

IMPACT FEE COMMITTEE MINORITY REPORT

This MINORITY REPORT is the result of several meetings that took place according to Section 14-13-1-4.

The following is our response to the committee meetings:

According to Council Bill No. O-10-19 Amending Chapter 14, Article 13, ROA 1994; The committee was suppose to be made up of Five (5) members engaged in the real estate, development or building industries, which may include architects, consulting engineers, real estate attorneys, and planning and development consultants. It is important to note that the Impact Fee Committee experienced an overabundance of representation from the pro-development and/or anti impact fee community. Frank discussions on the importance of internalizing development costs to the specific development responsible for the those costs were rare or nonexistent. Consequently the three committee members listed at the bottom of this document feel obliged to communicate to the City Council the most important points that were not addressed by the committee's recent vote to accept the proposed bills Council Bill O-12-38, R-12-98 and OC-12-7

Committee Members typically in attendance:

Chris Youngblood - Engineering consultant

David Schaffer - General Contractor/Commercial Construction

Kurt Browning - Commercial Contactor

Donald Power - Commercial/Jaynes Group.

Paul Cauwels - Commercial Contractor

Jim Folkman - Home Builders Association

David Newell - DR Horton - Residential Construction

As you can see, seven members of the committee were from the construction industries which the city might want to correct the next time a committee is needed for an impact fee study.

The other appointed members attending were;

Pat Baca - Community Representative

Clyde Wheeler - Community Representative

Kim Armano - Community Representative

Richard Hix - Community Representative

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Also in attendance were City Staff consisting of Gilbert Montano, Gerald Romero, Tony Loyd, Kevin Curran, Blake Whitcomb, Barbara D'Onofrio and Linda Evans. Not all of the City Staff were in attendance each meeting time.

The City of Albuquerque Legal Staff provided guidance in accordance with the Open Meetings Act which were often times misunderstood and clarified by correspondence dated April 20, 2012. However, it seemed that the public attendees were only from the development community besides the committee members. One meeting had City Council Chair (Trudy Jones) in attendance who from information relayed by the Chair person (Paul Cauwels) acted in an advisory role for committee suggestions that may have been in accordance with protocol. However, notice to the public at large might be an important approach to get other input and ideas for consideration other than just the development community comments that were observed from this impact fee committee.

AREAS OF DISAGREEMENT

In the September 2, 2012 meeting the chair person assisted in drafting a motion that the committee reject the entire Duncan Report with a 7-2 vote with Richard Hix and Pat Baca voting against the motion. Kim Armano was not present for this vote.

At the October 2, 2012 Impact Fee Committee meeting the Final Draft Report provided by Duncan & Associates dated September 2012 was not discussed nor reviewed at the committee meeting. However, we were asked to vote on Council Bills 0-12-38, R-12-98 and Oc-12-7 at the request of Trudy Jones according to the chair person Paul Cauwels. The bills being presented were sponsored by Council Chair Trudy Jones according to copies provided of each bill. After several minutes of discussion the bills were put to a vote of the attending members with a 6-2 vote and Kim Armano and Richard Hix voting against the proposed Council Bills and Pat Baca abstaining his vote.

Council Bill 0-12-38 page 10, line 5 states: Findings and Declarations.

(A) "The city is committed to the funding and provision of capital facilities necessary to cure any deficiencies that may exist in already developed areas of the city".

(B) "Such facilities shall be provided by the city using existing funding sources allocated for such facilities, other than impact fees, including, but not limited to, the general fund, general obligation bonds, special assessment districts and metropolitan redevelopment districts".

*By these findings and declarations the tax payers will be the source of paying to cure these deficiencies. Even though improvements may be in place in developed areas, a change in use that generates stress on an existing infrastructure, police, fire protection or parks should be paid for by impact fees or the only cure would be to put the burden on tax payers. Page 15, line 21, (D) Nothing in 14-19-1 et seq. shall prevent the city from requiring a developer to construct reasonable project improvements in connection with the new development. We have concerns that this Ordinance may only apply to new construction and leave infill areas of the city at risk. However, we encourage the City Council to provide guidance on when existing infrastructure is impacted by new development or change in land use within existing neighborhoods and how Impact Fees might be assessed on these type of developments.

Page 10, line 30;

(H) The City Council, after careful consideration of the matter, hereby finds and declares that it is in the best interest of the general welfare of the city and its residents to impose impact fees upon new development in order to finance capital improvements in the designated service areas which demand is created by the new development.

Page 11, line (O) The City Council has carefully considered the land use assumptions and capital improvements plan report (Impact Fee Study) dated September 2012, prepared by Duncan Associates for the City of Albuquerque titled "Impact Fee Land Use Assumptions and Capital Improvements Plan, 2012-2022", and further finds that said Impact Fee Study sets forth reasonable and equitable methodologies and assumptions consistent with the New Mexico Development Fees Act for the update of the road, park, open space, trail, fire and police impact fees for the City of Albuquerque.

*By the foregoing statements it would be understood that the City Council did not act on the Impact Fee Committee motion to reject the Duncan & Associates report by their agreeing to the report methodologies and assumptions.

Page 2 of the Duncan & Associates Final Draft under Exemptions.

"Given that the amount of the fee reduction may exceed the relatively low cost beyond current code requirements needed to qualify, and the likelihood that many builders would build green in the absence of the exemption to secure a marketing advantage, this exemption may act more as a subsidy than an incentive. The problem with impact fee waivers is that they are often perceived as not costing the City anything. "It is recommended that all impact fee waivers/exemptions be eliminated".

*We recommend that this part of the Duncan Report be followed and that the city no longer provide a waiver for Green Path Homes or commercial green construction from impact fees nor by any other ordinances or actions be taken by the City Council at a later date waiving impact fees for Green Path Construction.

Page 31, line 1

(d) Except as otherwise provided 14-19-1 et seq., excess credits shall not constitute a liability of the city, and the city shall not be obligated to reimburse excess credits.

*There have been bills suggesting the city pay any credits back to the holder if not used within a certain period of time. We suggest that the city follow the rule that the city shall not be obligated to reimburse excess credits that have not been used, however we believe these credits should be available for use in other areas.

Page 31, line 8

(f) Excess credits must be applied for, used, sold or redeemed, if at all, within seven years after their issuance; provided that excess credits issued prior to or within one year September 23, 2009 shall be permitted to be used, sold or redeemed within nine years after their issuance.

* We believe the seven year period from date of issuance is reasonable, however an extension of time may be warranted due to economic trends. The credits are a risk the developer or builder took at the time much like any other risk in the real estate business which may or may not be profitable.

IF NOT DEVELOPERS/BUILDERS THEN THE TAX PAYERS WILL BE PAYING FOR THE TOTAL COST OF ANY INCREASED INFRASTRUCTURE COSTS ALONG WITH THE CITY:

WHY SHOULD THE CITY AND TAX PAYERS CONTINUE TO SUBSIDIZE DEVELOPMENT ON THE PRETENSE THAT DEVELOPERS WILL BUILD IN ANOTHER AREA IF THE CITY OF ALBUQUERQUE CONTINUES ASSESSING IMPACT FEES?

THE MARKET WILL DRIVE NEW CONSTRUCTION AND GROWTH WITH NO EVIDENCE AS NOTED IN THE DUNCAN REPORT IMPACT FEES STOP GROWTH.

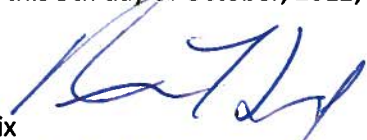
*As members of the Impact Fee Committee, we feel the charge for impact fees should not be reduced by 50% from the fees suggested in the Duncan & Associates Report. Any further reductions will create a burden to the city and tax payers and relieve the development community of paying their obligated share per the Ordinance.

*The proposed fees that are associated with O-12-38 are so small that city will have significant deficiencies to contend with that will ultimately be a burden to the tax payers who will have to pay for these deficiencies in infrastructure, parks, roads, drainage or other costs associated with development.

*The City paid approximately \$150,000 for the Duncan & Associates Report and Council Bill O-12-38 has acknowledged acceptance of this report, so we feel the Council should follow the report and assess impact fees according to the report and not make changes as though no report was acknowledged.

Signed on this 9th day of October, 2012;

Richard Hix



Kim Armano



Pat Baca

