



Kohl's Opts Out of Kalispell Location, Adding Fuel to Debate

## Despite Council Vote, Impact Fee Issue Not Going Away

By Dan Testa, 4-01-09

Anyone attending the March 23 Kalispell City Council meeting could be forgiven for questioning whether the vote earlier in the month to adopt transportation impact fees actually happened. As the meeting began, a spokesman for the business community railed against the fees, asserting that the new policy violated the state and federal constitutions. A member of the Impact Fee Advisory Committee then argued that the new policy needed to be delayed



Caption: The lot where Kohl's was going to build is seen in this photo composite on the north side of Kalispell. - Lido Vizzutti/Flathead Beacon

by a year or more, while someone else on the same committee spoke in support of the fees. Several others said the traffic impact fees were a good compromise.

Yet all this dialogue on the issue of traffic impact fees occurred, not only several weeks after the council voted in favor of the policy, but on a night when the issue wasn't even an item on the council's agenda. Later that week, two major retailers with long-term plans to build in Kalispell – Kohl's and PetSmart – backed out, shuttering the third-phase of the Spring Prairie Center development.

The Kohl's decision was driven mainly by its purchase of 27 stores previously owned by the retail chain Mervyns, allowing Kohl's to move into those locations more cheaply and in bigger markets. But Spring Prairie developer Mark Goldberg partially attributed the deal collapsing to the two-year debate within the city over traffic impact fees, which added a big unknown to a decision by Kohl's to open in Kalispell.

"We could have executed it last year but the impact fee thing held everything up," Goldberg said. "It's not the only reason but it's certainly a very central part of it."

All of which indicates that while some may think the highly contentious issue of traffic impact fees might be settled, the March 9 vote was more likely just the end of one chapter in the years-long debate. The next chapter began at last week's meeting, when Mark Lalum, on behalf of the Kalispell Chamber of Commerce and others, submitted a petition with the names of more than 120 people opposed to the traffic impact fees and asking the council to take another look at the policy it passed.

And while the Kohl's decision is certain to become a key arguing point for impact fee opponents, as the economy continues to deteriorate it grows increasingly hard to delineate between what business decisions are driven by city policy, and what decisions are influenced more broadly by the recession.

This renewed push against the traffic impact fees indicates the business community does not intend to let the issue's prominence fade. Sure enough, at the end of the meeting, Mayor Pam Kennedy asked to have a discussion of the traffic impact fees added to the agenda of an upcoming work session to look at the petition and see if any council members wish to reconsider their vote.

"Out of respect, we need to take a look at it, and make a determination as to whether and where we go from here," Kennedy said.

The petition criticizes the adopted impact fees by echoing many of the arguments made against them by members of the business community for two years now: that the traffic engineering report upon which the policy was based is deeply flawed; that the so-called "grandfather" mechanism does nothing; that it's impossible to figure out how developers might receive credit toward impact fees for the road improvement projects they are undertaking; and that the fee structure simply dumps an unfair burden on developers for the cost of necessary road improvements.

Lalum told the council their March 9 vote, "does not comport with Montana's impact fee laws nor provide enough clarity, information and detail to citizens and investors in Kalispell."

The traffic impact fee policies, to which Lalum referred, are designed to help pay for the road and infrastructure improvements necessitated by increased traffic from new development by assessing a fee on those new homes and commercial centers based on how much traffic they would generate. At the March 9 meeting the council voted 8-1 to enact the fees at 75 percent of their scheduled rate for any developer that applies for a building permit within two years, to spur construction. The council also slashed in half the road projects the traffic impact fees would help pay for, thus reducing the amount by half, from 10 projects costing \$12.4 million down to five projects with a growth-related cost of \$6.3 million.

But the passage of the traffic impact fees seemed to take many in the development community by surprise, considering a motion to table the fees failed narrowly, 5-4. Since then, there has

been a kind of “wait and see” attitude within the business community as to what effect the new policy will have, though dissatisfaction with the fees has certainly not abated.

Kalispell Chamber of Commerce President Joe Unterreiner described the petition presented to the council as a way to “keep the arguments front and center for why we think it’s going to be debilitating for job recovery in the Flathead.”

“The goal was to convey the idea that we’d like to see them revisit that and reconsider their vote,” Unterreiner said.

But Kalispell City Attorney Charlie Harball pointed out that the petition isn’t, technically, a petition, in that it has no signatures, merely typed names, many of which were culled from the membership rolls of the Chamber and other business groups.

“There’s not a single signature on it; all it is is a list of the membership,” Harball said. “The fact is, it’s really not a petition.”

The traffic impact fee policy adopted by the council can be changed at any time, Harball said, but such a move could prove difficult in that changing the already adopted policy now will simply look like council members are bending to the will of the business community – a potentially politically unpopular move.

Petitions supporting the impact fees gathered hundreds more signatures prior to the council’s March vote than the Chamber’s petition, as of this writing. And when Bozeman adopted impact fees the council there did so at a deeply reduced rate. Citizens then voted on a referendum to raise the fees when elected officials were unwilling to do so.

“It really had a backfire approach then,” Harball said. “I think our council understands that.”

As for what happens next, speculation has been rife that someone in the business community will challenge the impact fee policy in court, though Goldberg said he wasn’t planning such a move at present.

When groups submit petitions it often indicates they plan to get the issue on the ballot, Harball said, but he did not think the language submitted on the Chamber’s petition signals that intent. Unterreiner confirmed that sentiment, saying it was simply a move to keep the issue of traffic impact fees in the forefront.

“Stay tuned,” Unterreiner said. “We’ll just see how all of this moves forward.” **[End of article]**

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