

Monrovia residents say impact fee elimination would be developer boon

By Bethany Rodgers News-Post Staff | Posted: Sunday, November 17, 2013 2:00 am

Critics of a 1,510-home project in Monrovia are asking whether talk of changing county growth policies will lead to letting developers off the hook for millions in school construction fees.

The proposed Monrovia Town Center is projected to add 840 students to surrounding schools, and county law requires the developer to put up an estimated \$20.6 million in impact fees to expand classroom space for the newcomers.

Opponents of the Town Center project say the impact fees will fall far short of paying for even one new school. However, they also worry that if county officials eliminate impact fees, this developer contribution for schools will drop to zero.

"Instead, the costs will be borne by county residents," Steve McKay, a Monrovia resident, testified at a recent public hearing.

County officials and community stakeholders are set to start brainstorming next week on the best ways to deal with growth in the county. The group has formed amid discussion of eliminating the county's impact fees and replacing them with a transfer tax levied when properties are sold.

Commissioners President Blaine Young has suggested that a transfer tax would spread the cost of infrastructure more equitably across all homeowners rather than placing the burden on new development. On Friday, he said he might favor a hybrid approach that would leverage both transfer tax and impact fees to collect money for school and library construction.

The question is how such a change would affect existing development plans. Many had been projected to generate millions in impact fees. If the fees are reduced or eliminated, Young says these projects wouldn't necessarily get a pass.

For instance, county leaders could set up transitional provisions so projects already in the building pipeline would have to pay the impact fees now charged, said Kathy Mitchell, assistant county attorney.

"The proposal is not designated to be a windfall ... for any particular developer," Young said.

Former county commissioner John L. Thompson Jr. begs to differ.

"My prediction is that the Monrovia Town Center properties will pay neither an impact fee nor a transfer tax," Thompson said.

His conclusion stems from an analysis of a proposed development rights and responsibilities agreement between the county and Monrovia Town Center developers. The drafted 25-year agreement would lock the project into current county approvals and requirements so the development would be protected from certain types of changes by future elected leaders. It also lays out the developer responsibilities to the county.

As currently written, the agreement would commit the developer to paying impact fees "in accordance with the fee schedule in effect at the time of the issuance of the building permits." The drafted document is silent on the transfer tax.

If the county overhauls its fee structures, Thompson said he fully expects attorneys for the Town Center to argue that their clients aren't bound to pay either the nonexistent impact fees or a transfer tax that wasn't mentioned in their development agreement.

Mitchell said the drafted DRRA for Monrovia Town Center does stipulate that the developer "shall pay all fees ... required by Frederick County at the rate in effect at the time the fee is due." With this provision, a transfer tax created by county officials might apply to property sales at the Town Center, Mitchell said.

In addition, because the Town Center plan fails school-capacity tests at the elementary, middle and high school levels, the developers must contribute an estimated \$14.3 million in mitigation fees on top of any impact fees. County officials are not interested in lightening mitigation fees, Young said.

Rand Weinberg, an attorney representing the Town Center developers, said because a proposal altering the county's fee structure hasn't even been crafted yet, there's no way to tell what its effect might be. However, he said a change conceivably could leave Town Center developers paying impact fees on top of transfer taxes, increasing their overall contributions toward infrastructure.

McKay believes it is disingenuous for the county to tout potential impact fee revenues while simultaneously discussing the impact fee's elimination, he said.

"I just think it's negotiating in bad faith," said McKay, president of the citizens group Residents Against Landsale Expansion.

No changes to the county's fee structure are likely to come in the near future, Young said, and the growth task force's findings might not get acted upon until the next county administration.

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