



Developers challenge road-impact fees

By JOHN STANG/Daily Inter Lake

Kalispell's proposed road-impact fees could jeopardize the huge Glacier Town Center project, its developer said Tuesday.

"If they stay with the current rates, they may make a financial burden on the project to make it financially unfeasible," said Chad Wolford, a partner in Wolford Development Montana, which plans to build Glacier Town Center.

According to Ken Kalvig, Wolford Development's Kalispell attorney, "I can tell it will have a significant impact on the project to the tune of several million dollars."

Kalvig later estimated that the project could pay as much as \$6 million in road-impact fees during its 20-year construction period.

Wolford, Kalvig and others spoke at a Tuesday meeting of critics and potential critics of the Kalispell government's proposed road-impact fees.

About 30 people attended. They included a half dozen legislators and legislative candidates, as well as builders, developers and business people.

An impact fee is a one-time charge on a new home or commercial building that is built in or annexed into Kalispell. Its purpose is to help the city pay the extra capital costs of serving that structure.

A committee briefed the City Council on March 31 on its recommended road-impact fees. The council is scheduled to discuss those recommendations Monday at a workshop.

Wolford encouraged those at Tuesday's meeting to "reasonably and rationally" lobby the City Council to change the current proposal.

"Let the [city] officials know that this is not acceptable. ... I don't oppose [impact fees] blanketly, but I want them realistic," Wolford told the crowd.

At Tuesday's gathering, criticisms of the proposed impact fees were:

- Commercial projects — especially the huge ventures in northern Kalispell — would pay the lion's share, while residential projects would pay much less.
- Kalispell's proposal allegedly does not earmark the road-impact fees to tackle only improvements stemming from new construction.
- Uncertainty exists about how some commercial ventures would be classified for impact-fee purposes.
- Claims that the current proposal would drastically slow down commercial development in Kalispell.

On Wednesday, Merna Terry, chairwoman of the city's impact fee advisory committee, and City Attorney Charles Harball said the committee never specifically targeted commercial ventures to pay the bulk of the road-impact fees.

A basic premise behind the proposed road-impact fees is that a building that creates a high traffic volume pays more than a building that produces little new traffic. That's why a commercial building — which wants to attract traffic — would pay more than a house.

The committee used some universally accepted traffic engineering formulas and figures involving the types of homes, types of businesses, square footages, and a few other factors.

"It's strictly driven by the engineering science that's out there," Harball said.

Terry said: "It's not based on any biases on the committee's part. It's based on the statistics" from traffic engineering texts.

Harball said the fees' critics need to employ their own traffic engineers to provide figures to challenge the fee committee's numbers. And Terry welcomed the critics' input to the committee and the city council.

"It's up to the City Council and the political world to decide what should be done," she said.

Several months ago, the City Council approved — without controversy — impact fees to pay for extra police and fire stations and vehicles, water lines, sewers and drainage.

The city government is dealing with Kalispell's rapid growth that stretches dollars, resources and people extremely thin. The city faces cutting \$1 million from its general fund — a fund that impact fees are not eligible to go to — just to balance the upcoming fiscal 2008-09 budget.

The council balked once at approving road-impact fees that council members believed were too high. The council sent the proposal back to its impact fee advisory committee. That committee submitted a new set of fees last month.

The most expensive proposed impact fee for a new home is \$997 for a single-family house.

The proposed commercial fees can run from a few thousand dollars to a few million dollars — depending on the business venture and its size.

“The reason we’re here for the traffic impact fees is because it is so large,” Phil Harris, developer of Hutton Ranch Plaza on U.S. 93 North, said on Tuesday.

Wolford’s Glacier Town Center covers 485 acres north of West Reserve Drive. It eventually is supposed to include about 1.8 million square feet of commercial space, including a 577,000-square-foot shopping center scheduled to open in late 2009 or early 2010.

The project also includes 632 homes — a mix of apartments, townhouses and single-family houses.

Wolford said he probably won’t be able to transfer the road-impact fee costs onto the shopping center’s tenants or other commercial tenants. He said corporations looking at Glacier Town Center would likely not come if they have to pay for road-impact fees as part of their leases. And Wolford Development Montana does not want to shoulder the current impact fees — as proposed — by itself.

“That means I have no choice but to pull my project,” Wolford said.

There is a time crunch involved.

Wolford hopes to break ground for Glacier Town Center in mid- to late summer. If any construction — such as the main shopping center — obtains building permits prior to the council adopting road-impact fees, those projects don’t have to pay the fees.

Kalvig crunched his own numbers — using the proposed impact fee formulas and figures — to argue that commercial development would pay the bulk of the road payments.

Kalvig used city figures to calculate that:

- Kalispell had \$40.8 million worth of residential construction and \$37.5 million worth of commercial construction in 2007. That included 322 houses, townhouses and apartments.
- The 322 homes would have generated about \$260,000 in 2007 if road-impact fees existed last year.
- Commercial structures built in 2007 would have generated \$1.14 million if road-impact fees existed last year.
- Last year’s construction of the Hutton Ranch Plaza’s 6,600-square-foot food court building would have generated \$244,286 in road-impact fees, almost as much as the 322 residences.

“I have a hard time believing Mr. Harris’ food court has as much impact as 322 residences,”

Kalvig said.

Harris said: "This whole plan is aimed at the three of us," referring to Hutton Ranch Plaza, Glacier Town Center and Spring Prairie Center.

Harball and Terry said those projects were not singled out in any impact fee committee discussions.

Also speaking Tuesday was Helena attorney Michael Kakuk, who — while working for the Montana Business and Industrial Association — helped write the bill that evolved into the state's impact-fee law in 2005. Wolford hired Kakuk to attend Tuesday's meeting.

However, Kakuk said his opinions Tuesday were independent of Wolford's and the state business association's views on Kalispell's road-impact fee situation.

Kakuk said Kalispell's impact-fee efforts follow a pattern set by every other Montana jurisdiction that has installed impact fees — and he contended that all those impact fees violate the 2005 state law.

"I've never seen a [Montana] impact fee that I thought was legal," Kakuk said.

Kakuk said Kalispell's and the other jurisdictions' common mistakes were:

- Impact fees are supposed to only pay for capital improvements prompted by the new homes and commercial buildings — not to fix existing problems. So in this case, Kalispell should not spend road-impact fee money to fix street problems that exist regardless of whether new construction goes through, he said.
- Impact fee money should be kept separate from other road money — and used only to mitigate effects from the project that paid that specific fee. Any excess money should be refunded to the individual project that paid the fee, Kakuk said.
- Questions exist on defining a specific geographical area whose traffic would be affected by an individual commercial venture. Kakuk argued that the entire city of Kalispell cannot be designated as a single specific affected area.

However, Harball said the city government is aware that impact-fee money cannot be used to address existing street problems.

He said the city's proposed transportation plan update — which the council is studying in anticipation of an adoption vote in the near future — outlines the existing traffic problems that impact fees cannot be used to address.

The city government will have to divide a street improvement project into existing deficiencies and problems caused by new construction and allocate impact fee money and non-impact fee money to it proportionately.

Harball also argued against splitting Kalispell into separate districts, with impact fee money going solely to improvements within each development's particular district. He noted that Kalispell businesses are trying to attract a large amount of customers from beyond the town's borders, meaning those out-of-town drivers will use streets all over the city.

"The traffic engineers said it doesn't make any sense to divide Kalispell into [impact fee] zones. It's a small town," Harball said.

Kakuk said all these points could be litigated — or fine-tuned in the 2009 state legislative session.

Harris said he thinks Kalispell's government has hinted that such litigation would clear up some haziness on these issues.

"Ultimately, I feel the city is trying to force us to file litigation to resolve this," Harris said.

Kakuk replied: "That would be a worst-case scenario."

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