

Woodland impact fee plan may be illegal

By Tony Lystra

Oct 06, 2007 - 11:32:53 pm PDT

In an effort to deal with what it considers explosive growth, the Woodland School District has once again asked Cowlitz County to impose fees on new houses built within the district's boundaries.

But the county's attorney is questioning whether the method the district has proposed for collecting the fees is legal, and it's unclear whether the district and county will be able to find a mechanism under state law for imposing the fees.

"I don't think I can approve having the county adopt an ordinance that doesn't appear legally valid," Ron Marshall, Cowlitz County's lawyer, said Friday. "I don't see a way that we would be able to approve the ordinance that they want the county commissioners to adopt."

The district has been quietly talking with commissioners about the issue in recent months. Commissioner George Raiter said the county will address the matter once the district makes a formal proposal, which could happen before the end of October.

The so-called impact fees would charge developers and home buyers \$2,750 for each new single family residence and \$675 for each new apartment.

In January, the district imposed identical fees on new homes within the city limits, as well as the portion of the district occupying Clark County. Superintendent Michael Green said the district has banked \$208,000 so far.

School officials want Cowlitz County to charge the fees on houses built outside the city but still within the Woodland School District.

Revenues from the charges, Green said, would be used to help school officials keep up with rising enrollment, which is projected to hit 2,245 students by 2012 --- a 15 percent gain over 2001.

<p>Builders oppose fees</p>	<p>"We are by far the fastest growing school district in all of Cowlitz County," Green said. "As population has moved north (from Vancouver), we're kind of that next suburb."</p>
<p>The area's building associations said last week that they oppose the idea of charging impact fees on new homes built in the portion of the Woodland School District covered by Cowlitz County. Matt Ouellette, president of the Lower Columbia Contractor's Association, said in a statement that the fees raise home prices and take money from people who have nothing to do with the school district. A family with children</p>	<p>The impact fees, he said, are "really all about fairness and asking folks to pay their own way as they come into the community."</p> <p>Much of the money, Green said, will help finance a new high school, which could cost about \$50 million. School officials plan to ask voters to approve a bond for the school's construction in March, Green said. Collecting impact fees, he said, would allow the district to ask voters for a smaller bond.</p> <p>County commissioners have twice rejected the district's request to impose the fees outside the city, once in 2000 and again in 2005. At the time, the commissioners worried the fees would apply only to a small number of new homes. They also questioned the fairness of charging them in only one portion of the county.</p> <p>This latest proposal has again raised prickly legal and policy questions.</p>

that moves to Woodland, he said, could buy an older home and, therefore, not have to pay the fees. By contrast, he said, if a retired couple with grown children bought a new home in the Woodland area, the couple would pay the charges, even though they have no impact on the school district. "It is not fair to the developer or residents in affected areas," Ouellette wrote. "Impact fees do not guarantee that the folks who are impacting infrastructure are the ones paying for infrastructure." The Clark County Building Industry Association, whose builders commonly work in Woodland, called the fees "very regressive" because the same amount is charged for homes of any price. "A lower cost home shares a disproportionate share of the burden," said Steve Madsen, the BIA's governmental affairs director. Officials in the county building and planning department estimate that requiring environmental reviews would add another 35 to 40 days to the permitting process. Madsen worries the impact fees will thus add another burden to an agency already under fire for working too slowly. The proposed fee structure, he said, could amount to "just putting an administrative cost on the county and funneling the funds to the district."

There are two ways to impose the fees in Washington, Cowlitz County officials said. The charges can be implemented under the state's Growth Management Act, which prescribes numerous development regulations on counties. They also can be imposed through the State Environmental Policy Act, or SEPA, which requires large-scale construction projects to undergo a strict review process.

Cowlitz County isn't governed by the Growth Management Act, said Mike Wojtowicz, the county's building and planning department director. So the only way to impose the fees here is under SEPA.

But Wojtowicz and other county officials say most of the housing developments built in the county are small projects that don't require SEPA review. For that reason, he estimates only about 10 percent of new houses rising in the Woodland area would be subject to impact fees.

One way to solve the problem, county and district officials said, is to mandate a SEPA review for all small housing developments within the Woodland School District. The question is whether the county can require the review for homes in only one portion of the county.

In a June letter to county officials, LeAnne Bremer, a lawyer for the district, said that method is legal under state SEPA guidelines. Under her interpretation, all homes built within the Woodland School District could be subject to SEPA review and thus need to pay impact fees.

"There needs, however, to be some rational basis for treating one area of the county different from the other," she wrote. "We believe this case can be made, since a lot of the growth in the county is occurring in and around Woodland and that the Woodland School District is particularly affected by growth compared to other school districts in the county."

But Marshall, the county's attorney, sent a letter to Bremer late last week, saying the issue is more complicated. The section of state code that Bremer quoted in her letter "has no application" to small housing developments, Marshall wrote. Such small developments, he said, are "categorically exempt" from environmental review.

Marshall said that in 2005, when the district last asked the commissioners to help it collect impact fees, he was primarily concerned with "policy questions of fairness or equity."

"I now have reason to question the legal authority for this proposed new approach," he wrote last week.

Marshall also called the district's proposed rationale for collecting the fees "somewhat untested waters."

"There are not other examples out there," he told the newspaper Friday. "There's been nobody who's gone to court and has had any kind of ruling that says, 'You can or, no, you can't, do this.' "

Any deal the commissioners strike with the school district, he said, would have to protect the county

from legal challenges and costs.

Bremer could not be reached for a response Friday.

Commissioners said they're willing to help the district, but the mechanism for collecting the fees has to be supported by state law.

"It does look like a hurdle for them," said Commissioner Kathleen Johnson, the sole commissioner to support the district's 2005 impact fee proposal. "We will probably investigate further."

Early last week, freshman Commissioner Axel Swanson said collecting impact fees will "keep property taxes lower."

"It gets us back to a pay-as-you-go system," said Swanson, who favored collecting the charges during last November's campaign. "I think it puts the cost where it belongs."

But on Friday Swanson said commissioners will clearly have to consider the issue more carefully.

"I don't know that we're back to square one," he said, "but Ron's letter certainly didn't help things."