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# The Almanac

## Refunds look unlikely for Atherton's road fee

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Atherton has had a problem with some of its construction-related fees in recent years. Amid threats of litigation, the off-haul fee was dropped and a business license tax targeting subcontractors was re-worked. In both cases, the town issued refunds.

It doesn't look like that will be the case with the town's controversial road-impact fee, meant to cover the cost of repairing roads battered by construction trucks. The fee, 0.71 percent of the project's valuation, is charged to builders as part of the permitting process.

Amid complaints and threats of lawsuits, Atherton officials commissioned a consultant to do an update study of the road-impact fees, but the results have been delayed.

"They did a draft and we were not particularly happy with the amount of reduction of the fee," said Public Works Director Duncan Jones at a special Atherton City Council meeting held July 28.

So the consultant has been sent back to the drawing board, with revised study results now expected in September.

The problem, according to Mr. Jones, is that consultant Kimley-Horn used in its calculations a number from the Metropolitan Transportation Commission representing the theoretical degradation of the streets.

"I looked at it, and our pavement degradation is more than the MTC (number), because of all of the construction trucks on our residential streets," he said.

Mr. Jones said that when he ran the numbers himself, the revenue brought in by the road-impact fee is on par with what the town has been spending to maintain its streets over the past three years.

"My initial calculation is that we are pretty much dead-on," he said.

According to Mr. Jones, in Atherton, residential construction is similar in intensity to commercial construction, with residential streets bearing the brunt of construction impacts.

In other cities, commercial construction mainly impacts large arterial roads, he said in his report to the council. So other cities don't experience the kind of wear-and-tear on residential roads that Atherton does, making the MTC's number too low.

Kimley-Horn is going to re-evaluate the road fees based on the actual amount spent by the town to maintain its roads -- about \$500,000 a year for the past several years, said Mr. Jones. Once the roads are in better condition, they will be less prone to damage and less expensive to maintain, he said.

"We'll change the fee slightly for the next few years," Mr. Jones said. "But basically, I think we're in pretty good shape."

That didn't appease the two members of the public who showed up at the 9 a.m. meeting to talk to the council about the road-impact fee.

"There's no question that construction activity has some impact, but it's ludicrous to think that it has the only impact (on roads)," said Atherton resident Joe Comartin. "It's not fair that those who are building homes in Atherton bear the burden of the entire town's streets."

Atherton resident Carol Flaherty, who has built several homes in Atherton, said that the road-impact fee is clearly an illegal tax.

"The fundamental flaw is that you assumed that construction trucks go on every street in Atherton, and that is ludicrous. Do you know how many cul-de-sacs there are?" she asked the council. "To make this study valid you have to put a factor in that construction trucks are not on every street."

Council members Charles Marsala, Elizabeth Lewis and Kathy McKeithen also raised questions about whether the road-impact fee study took into consideration other sources of wear-and-tear on the roads -- increased garbage and recycling truck traffic, delivery vehicles, and ground water or other geological conditions.

Mr. Marsala said that the amount of deterioration to the roads depends on the type of construction being done, particularly if it involves hauling dirt off-site.

City Attorney Wynne Furth said that the town can't take into account the precise scope of each and every project in determining its fees.

"It's not possible to set a fee exactly so that no one is paying any more than (his) impact," she said. "It's like an insurance pool; it's the most accurate that's practical."

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