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CITY OF COVINGTON SPECIAL MEETING AGENDA CITY COUNCIL STUDY SESSION

Council Chambers – 16720 SE 271st Street, Suite 100, Covington

Tuesday, June 12, 2012 - 6:15 p.m.

****Please note meeting start time ****

GENERAL INFORMATION:

The study session is an informal meeting involving discussion between and among the City Council, Commission (if applicable) and city staff regarding policy issues. Study sessions may involve presentations, feedback, brainstorming, etc., regarding further work to be done by the staff on key policy matters.

CALL CITY COUNCIL STUDY SESSION TO ORDER

ROLL CALL

APPROVAL OF AGENDA

PUBLIC COMMENT *Persons addressing the Council shall state their name, address, and organization for the record. Speakers shall address comments to the City Council, not the audience or the staff. Public Comment shall be for the purpose of the Council receiving comment from the public and is not intended for conversation or debate. Public comments shall be limited to no more than four minutes per speaker. If additional time is needed a person may request that the Council place an item on a future agenda as time allows.*

ITEM(S) FOR DISCUSSION

1. Park Impact Fee Presentation (Thomas)
by Randy Young of Henderson, Young & Company

ADJOURN

Any person requiring disability accommodation should contact the City of Covington at (253) 638-1110 a minimum of 24 hours in advance. For TDD relay service, please use the state's toll-free relay service (800) 833-6384 and ask the operator to dial (253) 638-1110.

***Note* A Regular Council meeting will immediately follow at approximately 7:00 pm**

Agenda Item 1

Covington City Council Study Session

Date: June 12, 2012

SUBJECT: ANALYSIS AND REPORT ON PARK IMPACT FEES.

RECOMMENDED BY: Richard Hart, Community Development Director
Scott Thomas, Parks & Recreation Director

ATTACHMENT(S):

1. Analysis & Report of Park Impact Fee and Park Fee-in-Lieu
2. Letter from City Attorney on Levying of Park Impact Fees

PREPARED BY: Richard Hart, Community Development Director

EXPLANATION:

The City Council has level-of-service goals for parks. As these goals are not currently being met, and as the existing deficit will increase as the population grows, the city seeks to identify funding for park acquisition and development. At its budget review meeting last October 31, 2011, the City Council asked staff to research the park impact fee issue and provide detailed information on the existing city authority for both impact fees and fees-in-lieu for parks, as well as how the city might proceed with collecting both types of fees to support our future park system.

Community Development and Parks & Recreation staff have spent several months doing research on and analysis of CMC 18.35.160 which was adopted in 2002 and authorizes payment of a fee-in-lieu of a dedication of land for required recreation space within new subdivisions, and CMC 18.122.030, which was adopted in 2006 and authorizes levying park impact fees against new growth and development.

The attached memorandum and analysis of the park impact fee issue provides a detailed report on both the park fee-in-lieu program currently being implemented and the park impact fee system adopted in 2006 that has not yet been implemented, based upon the advice of the then-city attorney in November 2007. (See Attachments #1 and #2) City staff has also arranged for a power point presentation as part of our report by Randy Young from Henderson, Young & Co., a well respected consultant from Redmond, Washington, who does impact fee assessment studies for local governments justifying appropriate fee schedules prior to adopting of impact fee programs.

ALTERNATIVES:

None, as this analysis and report is for information only as requested by Council.

FISCAL IMPACT:

There are no new impacts until the city actually implements a park impact fee program.

CITY COUNCIL ACTION: ___Ordinance ___Resolution ___Motion XOther

REVIEWED BY: Community Development Director, Parks & Recreation Director, Finance Director, City Manager, City Attorney

Memo

To: Members of the Covington City Council
From: Richard Hart, Community Development Director
Scott Thomas, Park Director
Date: June 12, 2012
Re: Park Impact Fee Issues Overview

Introduction

The purpose of this memo is to provide the City Council with an overview on the issue of park impact fees, as well as information on the current process for collecting fees in lieu of dedication of parks and recreation space in a new development. In addition, this memo outlines the process needed to implement collection of an impact fee and methods by which the City of Covington can actually collect fees from new development to help cover the costs of parks, recreation facilities and open space.

Park Fee-in-Lieu and Park Impact Fee Overview

Development projects are responsible for constructing infrastructure necessary and directly related to the needs of a specific development such as streets, sidewalks, utilities and recreation space. These infrastructure requirements are outlined in the city code and are generally necessary for the health, safety and welfare of the citizens who live in the development. In some cases, cities are allowed to accept a fee-in-lieu of providing the required infrastructure, if there is a basis or rationale (sometimes called nexus) for accepting a fee-in-lieu of the actual dedication of land and construction of a park or open space infrastructure within the existing development. In the City of Covington, we have a provision in our Municipal Code (CMC 18.35.160) that allows a developer to pay a fee-in-lieu of recreation space instead of constructing the actual neighborhood park or recreation facility within their development.

Funds collected by the city from a developer under the fee-in-lieu of dedication of recreation space must be held in a reserve account and expended on agreed upon capital improvements. The fee-in-lieu must also be expended within five years or be refunded with interest. Court decisions, such as *Vintage Construction Company, Inc. v. City of Bothell*, 83 Wn. App. 605 (1996), have required cities to demonstrate that the fee be related to the value of the land that might otherwise be dedicated.

The city also has a Park, Recreation Facilities and Open Space Impact Fee provision ("Park Impact Fee"), in CMC 18.122, which is intended to be collected from all development and expended on identified park capital facilities that are generally not located within the site of the specific development project, but which are necessitated by the development project. Impact fees are charges assessed against new development projects that attempt to recover the proportional cost incurred by the city in providing the public facilities that provide service to the community at large but also serve the new development. Impact fees are used to fund the acquisition or construction of

park, recreation or open space facilities, which will proportionally benefit the new development. Impact fees cannot be used to correct existing deficiencies in park or open space facilities or for on-going operational costs.

Generally, impact fees do not recover the full cost of a new facility since these fees must be directly and proportionately related to impacts associated with new development.

It should be noted that fee-in-lieu payments are collected in a lump sum at the time of final approval of a subdivision, while park impact fees are collected at a later date; at the time a building permit(s) is (are) issued. If development is slow or not occurring and building permits are not issued, then the park impact fees are not collected.

Although CMC 18.122 has included the provision for collecting an impact fee since 2006, the impact fee was not collected at the time based on our then-city attorney's opinion that we need to conduct a rate study to justify such impact fees. A comprehensive rate study is needed to provide the formula for determining how much a particular development should be required to pay in impact fees. Without such documentation supporting the assessment of the park impact fees, city staff in consultation with the city attorney and the Parks and Recreation Commission chose to only collect fees-in-lieu of open space and not pursue collection of a park impact fee to avoid the possibility of an applicant successfully challenging such a park impact fee assessment.

Allocation of Funds for the "Fee-in-lieu"

The city has been collecting "fee-in-lieu of" for open space since 2001. From 2001–2008, the city collected approximately \$200,000 in fees, which went to various parks such as Friendship Park, Crystal View Park, Gerry Crick Skate Park, Jenkins Creek Park and the Aquatic Center. In 2008, there was a zero balance in the park fee-in-lieu account. From 2008 to date, the city has collected \$28,992.78. These fees were transferred into the Covington Community Park account and have been spent on that project.

Collecting Fee-in-Lieu of Parks and Open Space

Washington State Law Authority

The fee-in-lieu of parks and open space option is a voluntary program for cities and is authorized under RCW 82.02.020.

Under Washington state subdivision law, cities and towns can ensure that developers install appropriate improvements, including parks, recreation, and playground improvements, through their power to approve or disapprove proposed subdivisions. When the dedication of land is not practical or feasible, some cities, including Covington, have provided for the collection of fees from developers in lieu of land dedications pursuant to "voluntary agreements" adopted under RCW 82.02.020. The fees collected must be expended within five years or be refunded with interest. The fee-in-lieu collection process needs to be calculated and related to the value of the land that should have otherwise been dedicated.

Covington Municipal Code Authority

CMC 18.35.160, adopted in 2002, provides the authority for the city to enter into a voluntary agreement with a developer to allow a payment in lieu of a dedication of land for the required recreation space.

To date, the determination for collecting a fee-in-lieu, as opposed to the developer providing the park has been a community development staff decision with the support of the public works and parks departments. When a development project is submitted the staff evaluates that requirement for an

onsite recreation space within the development. If the development is not located within an area identified in the comprehensive plan for a neighborhood park, the city suggests that the developer provide a fee-in-lieu for the required park and recreation space.

It has been staff experience, through the development process, that providing the required onsite recreation space is generally the last thought by developers, and is squeezed into the minimum size required, the developer is not typically interested in maintaining the infrastructure. If the park or recreation space is maintained by the HOA, then they want to make the park private and available only to their neighborhood residents. If it's a public park, they want the city to maintain the park. Given restraints on the maintenance budget, it was determined that unless a neighborhood park was shown in the comprehensive plan, or the developer was willing to maintain a public park, then the city should collect a fee-in-lieu of the park space and use that money to develop more neighborhood parks.

On-site recreation space required (CMC 18.35.150)	
Development type	On-site recreation required
Residential subdivision (4 units/acre or more)	450 sq. ft./unit
Townhouses (8 units or less/per acre)	450 sq. ft./ unit
Town houses (greater than 8 units per acre)	100 sq. ft./unit
Manufactured home park	260 sq. ft./ unit
Multifamily dwelling units greater than 8 units per acre)	100 sq. ft./unit
Senior housing or other age-restricted facilities	200 sq. ft./unit or as required by the funding agency whichever is greater.

Parks, Recreation & Open Space Fee-in-Lieu Calculation

The methodology for collecting parks fees-in-lieu is based on the park space required multiplied by a cost per square foot of the land and improved value. Attached is an example of the fee-in-lieu calculation sheet.

Collecting Park Impact Fees

Washington State Law Authority

Impact fees are charges that are assessed against new development in an attempt to recover the cost incurred by a city in providing the public facilities required to serve the new development and the people who will occupy the new development. Impact fees are specifically authorized under RCW 82.02.050-82.2.090. Four types of public facilities can be the subject of impact fees: “(1) public streets and roads; (2) **publicly owned parks, open space and recreation facilities (bold type added)**; (3) school facilities; and (4) fire protection facilities in jurisdictions that are not part of a fire district.”

Park impact fees give Covington the ability to charge for the cost of public facilities that are “system improvements” (i.e., that provide service to the community at large) as opposed to “project improvements” (i.e. on-site improvements and provide service for a particular development). In addition, impact fees provide the ability to charge small-scale development their proportionate share of impacts to the need for park facilities.

Impact fees:

1. Must be limited to system improvements that are reasonably related to the new development;
2. Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development;

3. Must be used for system improvements that will reasonably benefit the new development; and
4. Must be expended or encumbered within ten years. Impact fees may be held longer for "an extraordinary and compelling reason."([RCW 82.02.070\(3\)](#))

The impact fee amount shall be based on a formula or other method of calculating the fee that determines the proportionate share for the new development. Local governments must establish reasonable service areas (one area, or more than one, as determined to be reasonable by the local government), and then local governments must develop impact fee rate categories for various land uses such as single family residential, multi-family residential, or mixed-use developments that actually generate a need for parks or open space in a more urban mixed-use setting such as a downtown. Impact fee rates must provide a credit for the value of dedicated land, improvements or construction provided by the developer (if such facilities are in the adopted Community Facilities Plan and are required as a condition of development approval).

Methodology

There are generally two methods of determining impact fees: the "standards-driven" approach and the "improvements-driven" approach. The standards-driven method uses the adopted standards (for parks usually expressed as acres, miles, number of playfields, etc. per 1,000 people) to arrive at the need for additional park space and recreation facilities to serve each increment of population growth.

The improvements-driven method starts with a list of planned projects and requires the identification of specific growth-related portions of those planned projects. The sum total of growth-related project costs, with adjustments for outside funding, becomes the impact fee basis under this approach.

Developers who are liable for impact fees can submit data and/or analysis to demonstrate that the impacts of the proposed development are less than the impacts calculated in the current rate study adopted by a city.

Impact fees must be expended on public facilities listed in a Community Facilities Plan or Element (CFP) within a city's Comprehensive Plan or used to reimburse the government for the unused capacity of existing facilities. The CFP must be consistent with the Growth Management Act (GMA) and identify existing deficiencies in facility capacity for current development, capacity of existing facilities available for new development and additional facility capacity needed for new development. RCW 82.02.050 (2) prohibits impact fees that charge 100% of the cost, but does not specify how much less than 100%, leaving that determination to the local governments.

The local government collecting impact fees must separate the impact fees from other monies, expend the money on the identified CFP projects within 10 years, and prepare annual reports of collections and expenditures.

Impact Fee Approaches of Other Washington Cities

Many cities in Washington have park impact fees, most of which are only charged against new residential development. However, several Washington cities assess park impact fees on nonresidential development: Burlington, Lynden, Mountlake Terrace, and Redmond. Mountlake Terrace only collects from non-residential development within its Town Center service area. Most jurisdictions that impose impact fees on commercial and industrial development base the fee on square footage, but using the number of employees as a method of assessment is another possibility. Perhaps the reason few communities in Washington impose fees on commercial and

industrial development is because it's easier to show the direct relationship (nexus) between the number of residents (park users) and the resulting impacts.

Conclusions

There are various methods for collecting fees to help support park development. In order to determine the appropriate method a city should determine the intent and goal for the collection and allocation of the fees.

City Wide Park Impact Fee

A comprehensive study of the Covington municipal code provisions and their justification will need to be done in order to address some of the past concerns about the City's adopted park impact fees; to provide a comprehensive review of the interrelationship of the fee-in-lieu program for on-site recreation space and the park impact fee programs; and to evaluate any gaps or overlaps. This study would require the city to review and update the existing level of service standards for parks, recreation facilities, open spaces, and trails for any existing deficiencies. It would need to revisit the planned improvements outlined in the Parks Element of the Comprehensive Plan and anticipate the demands on existing and future parks from new development. The study will also need to identify the method of calculating the impact fees (formula) based on the future facilities identified in the CFP and the demand by the new development. Staff contacted a couple of consulting firms with experience performing park impact fee studies in similar jurisdictions in Washington. They estimated that depending on the final scope of services, the cost for a similar study in Covington could range from \$40,000 to \$50,000. The City would also need to make a substantial commitment in staff time, similar to that spent on the traffic impact fee study, which was about 15% of the time for a staff person from community development and from public works, for about 18 months.

Park Impact Fee Addressing the Need for a Downtown Public Plaza

In light of the Downtown Element of the City's Comprehensive Plan DTP 8.1, "Develop public plaza, park and usable open space areas to serve both residents and employees in the downtown area," the city may want to consider a downtown park impact fee as part of this impact fee program analysis. It seems a good case could be made for impacts generated by commercial and office establishments (lunch time and after work use of parks and plaza open space) in addition to the need generated by multi-family residential development as part of mixed-use developments in the downtown.

A smaller scale impact fee study could be conducted that would evaluate only the downtown zones and establish a connection between the amount of commercial, office and multi-family residential development anticipated and the need for new public parks, plaza and open space to meet those needs. Funds collected within this zone would only go toward the development of the public plaza and downtown parks and open space. The study would have to evaluate the needs and identify the methodology of how the fee would be assessed.

In this scenario, the residential park fee-in-lieu system would remain for residential development, until such time the city could fund a much larger scale city-wide impact fee study and amend the municipal code accordingly.

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TO: Richard Hart, Covington Planning Manager

FROM: Amy Jo Pearsall, Covington City Attorney *AP*

CC: Members of the Covington Parks Commission

DATE: November 2, 2007

RE: Park Fees

The purpose of this memo is to provide information regarding both Growth Management Act-based park impact fees and Covington Municipal Code-based fees in lieu of open space.

GMA-based fees

Impact fees are charges assessed by the City against new development projects that attempt to recover the cost incurred by the City in providing the public facilities required to serve the new development. Impact fees are only used to fund facilities, such as parks, that are directly associated with the new development. They may be used to pay the proportionate share of the cost of public facilities that benefit the new development; however, impact fees cannot be used to correct existing deficiencies in public facilities. In Washington, impact fees are authorized, in part, under the GMA (Chapters 36.70A and 82.02 RCW). GMA-based impact fees are only authorized for certain public facilities such as publicly owned parks, open space, and recreation facilities.

Chapter 14.92 of the Covington Municipal Code (CMC) authorizes the City to charge park impact fees pursuant to the GMA. In adopting this park impact fee chapter, the City Council indicated that the assessment of these fees would be in an orderly and uniform manner and required common formulae and administrative processes for the levying of those fees. In general, setting fee schedules for impact fees is a complex process typically involving comprehensive rate studies.

CMC-based fees

Open space requirements within a development are authorized by RCW 58.17.110. Specifically, before a preliminary plat may be approved, there must be a finding that the public use and interest proposed to be served by the establishment of the subdivision provides for open spaces.

Realizing that sometimes open space is neither feasible nor valuable based upon the amount of open space that can be provided, the City is authorized to accept a fee in lieu of the required open space.

In accordance with RCW 58.17.110, CMC 18.35.150 requires on-site open space for recreational use. However, when certain requirements are met, an applicant may opt for the payment of fees in lieu of this open space requirement pursuant to 18.35.160.

Interaction of GMA-based fees and CMC-based fees

While it is clear from the information above that both GMA-based fees and CMC-based fees in lieu of open space are authorized, it may not be clear how and/or if they can be applied to a single development. RCW 58.18.110 provides guidance.

RCW 58.17.110 indicates that in addition to the open space dedication required for subdivision approval, GMA-based impact fees may be required as a condition of subdivision approval. As a result, it becomes clear that when a subdivision is required to provide for open space, and that the subdivision will have a direct impact on a new park, the City may require the applicant to provide both the open space and pay its proportionate share of impact fees for the new park. If this subdivision also meets the conditions outlined in CMC 18.35.160 and is eligible for payment of fees in lieu of open space, it would be possible for the City to collect both fees in lieu of open space as well as park impact fees.

Current practice

Currently, the City has been collecting only fees in lieu of open space and not park impact fees. While the City has adopted the necessary legislation to begin collecting park impact fees, it is not clear that the necessary rate studies have been conducted to provide a formula for determining when and how much a particular development should be required to pay in impact fees. Staff has conducted research into the legislative history of the park impact fee code adoption and has been unable to locate a comprehensive rate study used to determine the current impact fee formula. Until such a rate study has been conducted, it may be difficult for the City to explain the current impact fee formula.

Conclusion

Both impact fees and fees in lieu of open space are authorized by state statute. Under certain circumstances, it would be possible to collect both impact fees and fees in lieu of open space from one development. However, until there is documentation supporting the current park impact fee formula, staff has chosen to collect only the fees in lieu of open space to avoid the possibility of an applicant challenging to the imposition of park impact fees.

If you have any questions or require additional information regarding this topic, please let me know.