

INDIAN RIVER COUNTY, FLORIDA
M E M O R A N D U M

TO: Jason E. Brown; County Administrator
FROM: Stan Boling, AICP; Community Development Director
DATE: December 4, 2018
SUBJECT: Follow-up on Request by Kim Gilbert to Waive Impact Fees for a Child Care Facility Located in the City of Vero Beach at 1728 and 1730 24th Street

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of December 11, 2018.

BACKGROUND

At its meeting of November 13, 2018, the Board of County Commissioners (Board) considered a request by Kim Gilbert (representing Kiducation, Inc. dba Oxford Academy) to waive impact fees for the child care facility known as Oxford Academy located at 1728 and 1730 24th Street within the City of Vero Beach. Earlier this year, through a chain of events it was discovered that a previous owner/applicant had failed to apply for building permits or payment of impact fees in 2002 and 2004 when he obtained City site plan approval to change the facility use from an ALF to a child care facility. At the November 13, 2018 meeting, Ms. Gilbert stated that prior to obtaining the facility in 2008 she had due diligence performed and the impact fee payment was not disclosed. Based upon that fact and the length of time that had passed, she asked that the Board waive the impact fee payment now due (\$7,930.78). After hearing from Ms. Gilbert, by consensus the Board directed staff to coordinate with Ms. Gilbert and Commissioner Solari, and bring back information for the Board to consider at its December 11, 2018 meeting.

Since November 13, County staff has performed more research on the impact fee payment matter, coordinated with City staff, Commissioner Solari, and Ms. Gilbert. The Board is now to consider Mrs. Gilbert's request and staff's evaluation.

ANALYSIS

In 1986 impact fees were adopted county-wide as provided in Title X (Impact Fee Ordinance) of the County Code and implemented through inter-local agreements between the County and the cities and school board. In the current impact fee interlocal agreement between the County and the City of Vero Beach (approved in 2005) the City is responsible for appointing City staff to coordinate with County staff and developers to ensure compliance with the Impact Fee Ordinance while the County is responsible for reviewing applications for credits, refunds, exemptions, and appeals. With respect to Ms. Gilbert's request, under the Ordinance and the agreement, the Board has authority to hear the request for an impact fee waiver even though the project lies within the City of Vero Beach. The Building Department serves both the County (unincorporated area) and the City of Vero Beach.

Since the November 13 Board meeting, staff has updated the abbreviated timeline provided in the November 13 meeting back-up. The updated timeline is attached, formatted to show new information and details in underlining (see Attachment 1). Staff has also provided a site plan project concurrency/impact fee payment flowchart for projects in the County and a flowchart for projects in the City (see Attachments 2 and 3). The City flowchart was recently updated by City after meeting with County staff.

As indicated in the updated timeline, in 2002 and 2004 when the City granted change of use site plan approval for the child care facility, City staff followed a procedure whereby approval was granted and then the previous owner/applicant was instructed to contact the Building Department for obtaining a building permit (2002 and 2004 instructions) and to complete a concurrency application with a City sign-off and submit that application to County Planning for processing (2004 instructions). The previous owner/applicant never contacted the Building Department or County Planning yet began the child care operation and eventually sold it Lisdan Enterprises in 2004 which later sold to the current owner. No permit or C.O. was requested or issued. The 2008 zoning confirmation letter issued by the City, at the time due diligence was being performed for the current owner, addressed zoning and site plan approval but did not address any other items. As required by state law and licensing requirements periodic inspections of the site by Fire Prevention have been conducted since 1995 for both the ALF and child care uses. County staff discovered the unresolved impact fee issue in 2018 when the current owner applied for a deck permit after which the current owner applied for concurrency as direct by County staff. County staff then researched the use history of the parcel and worked with City staff to determine the highest impact fee credit allowed.

County staff has determined that the best case impact fee liability for the current owner/applicant (lowest fee) is under the current impact fee schedule and results in a fee of \$7,930.78. If the previous owner had paid impact fees in 2002 and 2004 as required by code, the best case scenario for the owner/applicant at that time (lowest fee) would have been \$12,929.81.

County site plan procedures for projects in the unincorporated area prevent release of an approved site plan unless project impact fees are paid and concurrency is obtained. With respect to County zoning confirmation letters for sites within the unincorporated area, zoning and use confirmation include verification of a valid site plan approval, permitting, and issuance of a C.O. which also verifies compliance with impact fee requirements. Updated City procedures include a requirement that conditional concurrency (no impact fees paid at that time) be issued prior to City site plan approval. County and City staff are coordinating to put in place more effective City/applicant/County coordination with respect to payment of impact fees.

Staff's position is that the subject case is unusual and possibly unique in that a City site plan applicant simply failed to complete a process as instructed by City staff, leading to a violation of the Impact Fee Ordinance. That violation, which was not known to City or County staff, involves a change of use generating increased impacts with no payment of impact fees to help off-set the public improvements necessary to mitigate those impacts. The impact fee ordinance is based on payment of fees for every project generating impacts, without exception, including County projects. Every new County building facility developed since adoption of impact fees included payment of those fees by the County and even incentivized development such as affordable housing and target industries require impact fee payment from some funding source. Consequently, the impact fees owed must be paid by someone; they cannot be simply waived.

County staff believes that the current owner/applicant relied on a City zoning confirmation letter and was unaware of the impact fee issue, and City staff and County staff were unaware as well. Given the unusual and extraordinary circumstances of this particular case, staff believes that an impact fee payment liability exists and must be paid but that payment could be deferred via an agreement executed by the owner/applicant and the County. The county Attorney has confirmed that such an agreement could defer payment until the facility is sold. Such a deferral could be deemed to comply with the intent of the impact fee ordinance.

RECOMMENDATION

Staff recommends that the Board of County Commissioners:

1. Deny the request to waive impact fees, and
2. Determine that the subject case constitutes a unique set of circumstances justifying a special accommodation for impact fee payment, and
3. Direct the County Attorney in coordination with the Community Development Director to prepare an impact fee payment deferral agreement between the owner/applicant and the County, delaying impact fee payment until the subject child care facility is sold.

ATTACHMENTS

1. Updated timeline
2. Indian River County Concurrency Flowchart
3. City of Vero Beach Concurrency Flowchart