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**MEMORANDUM**

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**TO:** PLANNING BOARD  
**FROM:** JULIET T.H. WALKER, PLANNING DIRECTOR *JTW*  
**SUBJECT:** ADDITIONAL STAFF RECOMMENDATIONS FOR MAY 21, 2020  
PLANNING BOARD MEETING  
**DATE:** MAY 20, 2020 (REVISED MAY 21, 2020)

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**IV. CITY COUNCIL REFERRALS**

**A. Portsmouth Housing Authority – Release of Reverter**

This item has been postponed to the June meeting.

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**B. Request for Report Back Regarding Impact Fees**

At the March 16, 2020 City Council meeting, the Council voted to request that the City Manager, Legal Department, Fees Committee and Planning Board review and report back regarding suggested development impact fees proposed by Councilor Kennedy and any other feedback related to impact fees.

Councilor Kennedy has proposed the following for consideration in this review:

For projects over two units the following impact fees would apply:

- 1-Bedroom or 1,000 sq. ft. or less \$25,000/unit
- 2-Bedrooms or 1,500 sq. ft. or less \$50,000/unit
- 3-Bedrooms or 2,000 sq. ft. or less \$75,000/unit
- 4-Bedrooms or 2,500 sq. ft. or less \$100,000/unit
- 5-Bedrooms or 3,000 sq. ft. or less \$125,000/unit

At the April 23, 2020 Planning Board meeting, the Board voted to request that the Planning and Legal department staff prepare a report back to the Planning Board on the legal process for establishing impact fees and any additional studies that would be required in order to incorporate them into the City's local land use regulations.

### Establishing Impact Fees and How they Can be Used:

In order to enact impact fees locally, there are two key steps that would need to occur:<sup>1</sup>

(1) establish a methodology by which proportionate impact fees can be calculated for each type of new development and for each type of public capital facility being assessed;

(2) enact a local impact fee ordinance to provide a process under which the fees are assessed and collected as new development occurs, and through which the fees are accumulated and applied to capital project needs.

It is important to note that impact fees cannot be used to correct *existing* deficiencies, only for new costs that are directly attributable to growth (e.g. expansion of capital facilities). Furthermore, impact fees cannot be used for operating and maintenance costs of providing municipal services or for the cost of simply upgrading the quality of existing facilities.

Finally, impacts fees are required to be expended on the identified capital cost within a period of six years. If they are not, then they have to be refunded.

### Developing and Managing the Impact Fee Methodology

In order to be legally defensible, the local methodology used to establish impact fees must show that the fee is tied to a proportional share of the capital improvement needs and that there is a reasonable relationship between the fee being charged and the demands placed on capital facilities by any development being assessed a fee. There is a great deal involved in the up front process to establish impact fee formulas and communities typically engage with a qualified expert to undertake the analysis required to develop the formula and methodology.

Impact fee formulas differ by community, but generally follow a similar structure, as illustrated below.

[Number of units of new development (dwellings, sq. ft. commercial space, etc.)]  
x [Capital facility area or capacity needed per unit of new development]  
x [Cost of capital facility per unit area or capacity]  
= Gross capital facility cost per unit of new development  
- [Portion of gross capital cost paid by non-local funds]  
- [Credits for tax and other payments toward capacity by new development]  
= Net impact fee assessed to the new development

Impact fee formulas should be kept reasonably up to date so that they reflect current capital costs. Communities will typically revisit the methodology every few years to correct identified errors and review all variables in the impact fee formula. There are also ongoing administrative costs associated with tracking and allocating impact fees.

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<sup>1</sup> See Southern NH Planning Commission, "Impact Fee Development for NH Communities", 1999.

### Facilities Eligible for Impact Fee Assessment

NH RSA 674:21,V specifically limits the imposition of impact fees to capital facilities “owned or operated” by the municipality and the fees collected have to be expended solely for the capital improvement for which it was collected. The following facilities are eligible for impact fee expenditures.

- Water treatment and distribution facilities;
- Waste water treatment and disposal facilities;
- Sanitary sewers;
- Storm water, drainage and flood control facilities;
- Public road systems and rights-of-way;
- Municipal office facilities;
- Public school facilities, including the municipal share of capital facilities of a cooperative or regional school district of which the municipality is a member;
- Public safety facilities;
- Solid waste collection, transfer, recycling, processing and disposal facilities;
- Public library facilities; and
- Public recreational facilities, not including public open space.

For each type of capital facility that will be the subject of impact fees, the community must develop its own objective assessment of the current and future demand on that municipal facility by land use category. Such an assessment will need to establish a methodology for estimating the proportional demand generated by a development on each municipal service.

### Capital Cost Contributions (“Exactions”) versus Impact Fees

State law allows certain types of “exactions” to be authorized through subdivision and site plan review approvals for site-specific capital costs on a case-by-case basis. Examples include requiring a fee contribution to upgrade a traffic signal or construction of a public sidewalk. The adoption of an impact fee ordinance does not preclude the use of a capital cost contribution procedure properly authorized by local subdivision or site plan review regulations. Capital cost contributions at the subdivision and site plan stage are generally limited to specific improvements identified at or near the site of the new development; they are not appropriate for centralized capital costs. The Planning Board currently requires capital cost contributions for many of the projects that receive site plan review approval. Attached to this document is a summary of the types of improvements or pay in lieu of improvements that the Planning Board has required in the past few years.

### Process

Communities who have successfully implemented impact fees in New Hampshire generally work with an outside expert to undertake the required analysis and research that is involved in establishing a legally defensible impact fee ordinance. The process should also include a cost/benefit analysis to the City of implementing impact fees in place of or in addition to exactions. Based on inquiries from other communities who have recently completed such a process, Planning staff estimates the analysis and development of the local ordinance and methodology would cost between \$30,000 and \$50,000 and would take about 6 months to complete. As with any other zoning amendment, adoption of an impact fee ordinance would require that the Planning Board

conduct a public hearing and make a recommendation to the City Council which would then require three readings.

**Planning Staff Recommendation**

1) Establishment of Impact Fees

A) If the Board does not support establishing impact fees, an appropriate vote would be to recommend that the City Council not consider establishing impact fees at this time.

**OR**

B) If the Board does support establishing impact fees, an appropriate vote would be to recommend that the City Council consider establishing impact fees and to follow the recommended process outlined below.

2) Impact Fee Process

Vote to recommend that if the City Council decides to consider establishing impact fees at this time, the Council request that the City Manager work with City staff to develop a scope of work and estimate of cost for services to contract with a qualified expert to complete an impact fee analysis and develop a recommended methodology for the City.

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**C. Conservation Easement for 107-acre property adjacent to the Bellamy Reservoir**

The City's Water Division has been actively identifying and protecting properties adjacent to the City's surface water supply, the Bellamy Reservoir. The City has partnered with Southeast Land Trust (SELT) for the negotiation, due diligence, installment payments of the Purchase Price, and completion of a conservation easement on an approximately 107-acre portion of the Property owned by Mary Ellen Duffy in order to benefit the protection of one of the City's primary water supplies.

At the May 4, 2020 City Council meeting, the Council took the following actions:

- 1) Execute a Purchase and Sale Agreement for the purchase of the 107-acre conservation easement on land owned by Mary Ellen Duffy in Madbury;
- 2) Refer the acquisition of the 107-acre conservation easement to the Portsmouth Planning Board for a recommendation back to the City Council;
- 3) Enter into Grant Agreement with the State of New Hampshire to accept up to \$287,000 from the NH Drinking Water and Groundwater Trust Fund to be use towards the purchase of this conservation easement; and
- 4) Establish a public hearing date for a supplemental appropriation for the purchase of the conservation easement through the allocation of funds

**Planning Staff Recommendation**

Vote to recommend that the City Council proceed with acquisition of a conservation easement for the 107-acre property in Madbury owned by Mary Ellen Duffy.