HJR 178 / SJR 70: Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities
December 4, 2009

The joint subcommittee held its third meeting of 2009 at the General Assembly Building in Richmond. Legislative members in attendance were Chairman Athey, Vice-Chairman Vogel, Delegates Oder, Miller, and Toscano and Senators Lucas and Herring. Members who serve ex officio in attendance were Nick Donahue, Assistant Secretary of Transportation and designee for the Secretary of Transportation, and Alleyn Harned, Assistant Secretary of Commerce and Trade and designee for the Secretary of Commerce.

James “Jim” B. Duncan, FAICP, *President*, Duncan Associates

Mr. Duncan began his presentation on impact fees by first describing the evolution of impact fees in America. He characterized the 1970s as an era of frustration because of rapid urbanization, 1980s as an era of acceleration because of declining state and federal assistance, the 1990s as an era of maturation because of increased state enabling legislation and use of "smart-growth"-oriented impact fees, and the 2000s as the second era of frustration because of the violate real estate markets and skyrocketing infrastructure costs and fees. Next, Mr. Duncan then detailed the elements, in his opinion, of the perfect legislation authorizing impact fees. Under the label of "rational nexus," Mr. Duncan stated that the impact fees must be used for a need found in plans and projections, must benefit the capital improvement program or impact fee service area, and must be imposed fairly. However, Mr. Duncan noted several procedural and substantive issues that affect the drafting of the perfect impact fee legislation. Substantive issues, on the one hand, include the earmarking of impact fees, setting the amount of an impact fee, defining facilities as eligible to be funded by impact fees. On the other hand, procedural issues include collection and refunding impact fees, waivers and exemptions from assessment of the impact fees, and the timing of imposition of impact fees.

Arthur C. “Chris” Nelson, Ph.D., FAICP, *Presidential Professor*,
University of Utah College of Architecture & Planning

Professor Nelson's presentation to the joint subcommittee was an overview of impact fees. He first noted safeguards that must accompany the use of impact fees, including, (1) the spending of impact fees "within reasonable proximity" and "within a reasonable period of time;" and (2) the using of impact fees for facilities being impacted. He then discussed the use of impact fees. Namely, Dr. Nelson stated that impact fees, when best used, (a) are "dedicated to expanding infrastructure capacity;" (b) cannot be used for operations or maintenance; (c) "accommodate new development without raising property, sales, transfer, or other taxes," (d) "often leverage federal and state grant funds" and (e) facilitate economic development" (e.g., "water, sewer, drainage, roads [are] needed to facilitate growth" and "schools, parks, libraries, and public safety facilities [are] needed to attract and retain competitive labor force"). Then, Dr. Nelson provided an example of how impact fees are to be determined using basic calculations (e.g., defining the level of service and subtracting from the total cost any nonlocal money, dedicated local funds, other funds, and in-kind contributions). In addition, Professor Nelson explained that local impact fees may be imposed to promote infill and redevelopment, economic development, and workforce housing. Examples of such promotions include New Mexico "enabl[ing] waiver of impact fees for affordable housing;" and "Atlanta waiv[ing] impact fees for economic development in enterprise zones."

Carson Bise, AICP, *President*, TischlerBise

Mr. Bise delivered the third presentation to the joint subcommittee. He first discussed the current funding options for local capital improvements in Virginia, which include state and federal contributions, local general fund funding, the acceptance of cash proffers, the collection of road impact fees, and funding associated with establishing service districts and community development authorities. Mr. Bise then gave an overview of cash proffers. One, he stated cash proffers are a form of conditional zoning, i.e., a "one-time, voluntary monetary commitment by property owner/developer at [the] time of rezoning." Two, the cash "proffer passes with the ownership of the property," but the "development impacts being mitigated may or may not be directly related to the development at issue." Then, Mr. Bise discussed his perceived "challenges of current road impact fee authority." According to Mr. Bise, road impact fee authority is being threatened by the dwindling of state transportation funds, onerous Code provisions, noninvolvement by localities in reversing declining levels of service, etc. Moreover, Mr. Bise noted that elected officials like the flexibility of the proffer system because they can better (i) negotiate "bricks and mortar" improvements, (ii) collect for nonresidential development, and (iii) feel that their jurisdiction has been successful accepting proffers. He further noted that "cash proffer amounts per unit are high and keep increasing." Mr. Bise concluded that the collection of impact fees and the collection of cash proffers can be done in a single locality and even highlighted Stafford County as a locality doing both; however, he suggested that impact fees could be charged for certain components and cash proffers could be accepted for other components.

Next Meeting

The next meeting of the joint subcommittee is scheduled for January 12, 2010.

Chairman:
The Hon. Clifford Athey

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