

**CITY OF TRUTH OR CONSEQUENCES
IMPACT FEE ADVISORY BOARD
TUESDAY, JULY 11, 2017**

SPECIAL MEETING

Special meeting of the Impact Fee Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Tuesday, July 11, 2017 at 9:00 A.M.

INTRODUCTION:

PRESENT:

George Szigeti, Chairman
Jeff Dornbusch, Vice-Chairman
Ron Pacourek, Member
Gil Avelar, Member
Randy Ashbaugh, Member – Arrived at 9:02 a.m.
Sid Bryan, Member

ALSO PRESENT:

Juan Fuentes, City Manager
John Appel, City Attorney
Robbie Travis, Building Inspector
Melissa Torres, Finance Director
Jesus Salayandia, Water/Wastewater Admin. Director
Arnie Castaneda, Water/Wastewater Department Supervisor
Traci Burnette, Grant Project Coordinator
Sonya Williams, Utility Office Manager
Angela A. Torres, Deputy City Clerk

APPROVAL OF AGENDA:

Member Pacourek moved approval of the agenda.

Member Bryan seconded the motion. Motion carried unanimously.

APPROVAL OF MINUTES:

Regular meeting of Monday, June 19, 2017:

Vice Chairman Dornbusch moved approval of the June 19, 2017 minutes as submitted.

Member Pacourek seconded the motion. Motion carried unanimously.

COMMENTS FROM THE PUBLIC:

Klaus Wittern – He would hope that before any issue on the agenda is addressed, all members of the board be provided with a significant amount of information, as well as partake in discussion about this statute, because he does not feel that the city properly complied with any of the requirements under the statutes, other than appointing and creating the board way back in 2006. There have not been any studies of any kind made that are required under the statutes, and he would hope that the board would get some significant insight into that process that is required under the statute.

NEW BUSINESS:

Discussion/Action: Consideration to approve reimbursement request – Arnie Castaneda, Water/Wastewater Division Supervisor:

Chairman Szigeti- Reminded the board that Member Ashbaugh has pending litigation against the City in regards to the Impact Fees. Even though Member Ashbaugh is not recusing himself from the discussion, everyone on the board must keep that fact in mind as we go through these deliberations. The purpose of this meeting is not to debate what has, or has not happened in the past. We are here to conduct the business and responsibilities of this board, and to do it in compliance, to the best of our ability, with the codes as they are written. What has happened in the past is not the issue here; it's what we are doing right now that is important. So with that being said, Mr. Castaneda can you please quickly refresh our memories.

Water/Wastewater Division Supervisor Castaneda- He had recently reviewed his presentation regarding reimbursement of the Impact Fees during the Water/Wastewater budget hearing. They have recently had a lot of problems with equipment breaking down, as well as normal wear and tear, and the Water/Wastewater budget has paid for a lot of the small projects up front. However, they have deficiencies with the systems in both Water and Wastewater because the systems are old. We're trying to do some upgrades with some grant funding but, we are still lacking funds. We have put aside buying new equipment, new vehicles, new pumps, and new pieces of equipment because the budget does not allow it. What we were asking for in his previous presentation was reimbursement from the Impact Fees to put into the Wastewater budget so we can supplement the budget to fix, repair and/or replace any piece of equipment that is broken down at this time. During the budget process there were a lot of things both he and Jesus Salayandia broke down that was needed to continue to operate both the Water and Wastewater systems. They had to scratch more than half of the items out because they didn't have the budget for it. Whether or not the Impact Fees were handled correctly is not his expertise, but he can tell you that they deficient in both water and waste water. Some pieces of equipment have been neglected due to the budget, and there is going to come a time when the

equipment is going to be break down. Everybody will open up their faucet and there will be no water, then what happens? We are trying to avoid that. We are trying to find options so that we don't find ourselves in a crisis later on.

Member Avelar- If you had the need, then why didn't you all ask for the money in the new budget?

Water/Wastewater Division Supervisor Castaneda- They did ask for funding. They have a list of 20 or 30 things they would like to replace or repair in both the Water and Wastewater Department, but the budget does not allow it. The revenue that is coming in is not sufficient to replace all of this equipment.

Vice-Chairman Dornbusch- What is the most critical piece of equipment that you feel is prone to failure?

Water/Wastewater Division Supervisor Castaneda- "Any piece of equipment such as pumps." For instance we have three (3) wells that are down right now. We are working on Well #7 and hopefully we addressed that with the fiscal year 2016/2017 budget. That well should be in line by the end of the week, but we still have Well # 8 and Well #4 down. Right now we have the North Date lift station operating with one pump because the other one burned out. If the pump that is on there now goes out, then we are going to have sewer flowing in front of Restaurants. We have check valves, and effluent pumps at the Wastewater Treatment Plant that cost \$5000, that they had to "put a band aid on" to try and get through the fiscal year, and right now there are two of them that are leaking.

Vice Chairman Dornbusch – The pump at the lift station says it all. That pump needs a backup, as do all lift stations.

Water/Wastewater Division Supervisor Castaneda- As you know, in the Water/Wastewater business, if you have a pump, you should always have a backup, because you don't want to get into a situation where if one pump goes down, then what do you do?

Member Avelar- It just seems to him that the City would somehow find that funding, because they would appreciate that need. When he was in the Electric Department he used to get in trouble for having "X" amount of transformers in the back, but as you say, if you have a problem, you can't tell somebody "sorry we don't have that transformer, so you are going to have to be out of power until we can procure one."

City Manager Fuentes- Let me address that comment/question. Member Avelar you bring up a very good point. That is what staff has been trying to do for the past couple of years. I want to circle back to a statement that was made by Member Pacourek at one of our prior Commission Meetings in regards to the rates. Why are they adjusted automatically? The reason for that is, for the last couple of years, staff has been working hard not just with funding agencies, but also within their own systems and trying to adjust the rates so that it can provide the financial resources to replace some of that equipment. For many years the city neglected to adjust those rates. For those of you who may be familiar with the budget; for example the Wastewater was being subsidized by the Electric Division for years, and slowly they got out of that, it is no longer being subsidized by the Electric Division. It takes time, but the rates had to be adjusted. So that is what staff is working on right now. When we deal with Water and Wastewater it is a very expensive infrastructure fix. We're talking about thousands of dollars. This is not replacing a vehicle; this is replacing water pumps and lift stations that cost thousands of dollars. For a one time fix you are looking at maybe \$25,000 to \$50,000 for just one item, but yet, you have aging infrastructure everywhere. The rates will in itself help build that revenue stream, and that reserve for

these projects. What we are requesting now is that over the years, the systems have put in the funds out of their own reserves to pay for some of these needs that qualify under the Impact Fees, and that is the question that is before you. Slowly they are addressing those things, but it is going to take time. That's why it is so critical that we keep the automatic increase, because it is helping them build that reserve for the Water, Wastewater, and Solid Waste.

Chairman Szigeti- How much is the capacity at the Wastewater Treatment Plant going to increase when this project is complete?

Water/Wastewater Division Supervisor Castaneda- I think we will be going up to about a 25% increase.

Chairman Szigeti- We have the engineering report which addresses the Impact Fees that sited the Wastewater Treatment Plant upgrade increase in capacity as justification for the Impact Fees.

Water/Wastewater Division Supervisor Castaneda – The list on the presentation that was highlighted in green are the items that qualify for reimbursement, and there are other items on there that we found did not qualify.

City Attorney Appel – He would like to clarify one point. He believes one item on the list, which was the w-2 tank rehabilitation on cemetery road, is actually a water upgrade as opposed to a wastewater upgrade. Your Capital Improvements Plan listed that at \$100,000. We are recommending reimbursement of only \$100,000 because that is what is in your ICIP right now. He would like to point out that they in fact have \$1,349,614.84. You might want to consider amending your capital improvements plan at some point, because he thinks that more of that would be reimbursable if it was in your plan.

Chairman Szigeti- Asked if the board members had any further questions.

Member Pacourek – The plan from Engineering Incorporated had no date on it so he called the number and it turns out, that engineering "outfit in no longer in business. However, he did get a hold of a man named Wade Myers (who is now with a different company) and Mr. Myers pulled up this file in the database, and the date showed August of 2006. The data in here is 11 years old, and he is sure that absolutely nothing out of this data has changed in 11 years. He just wanted to make that point.

Chairman Szigeti – What City Attorney Appel was pointing out is that the cost and figures in here are 11 years old and that's why we have such things as the Water Tank Upgrade. We cannot go beyond what's listed in that PER.

City Attorney Appel – That is your current Capital Improvements Plan. That is the most recent document.

Member Pacourek- Shouldn't this have been updated?

City Attorney Appel- That is something this committee needs to do and you need to do it promptly, because it is supposed to be done ideally every 5 years. First you need to look at what are called your land use assumptions, and decide whether the assumptions that were made in that PER are still reasonable and accurate. Although the city has grown, it has grown in the same sort of pattern that was anticipated in 2006, and it may not be necessary to change your land use assumptions, and the capital

improvements plan. More than likely, you will find areas where the land use assumptions may need to be modified, and therefore the capital improvements plan should be modified, and if so, that's the recommendation that you make to the Commission.

Chairman Szigeti- We would have to schedule a meeting specifically for that purpose.

Member Ashbaugh- It calls by law in the New Mexico Development Fees Act that there has to be workshops and meetings on it.

Member Pacourek-There is supposed to be a separate interest bearing account that Impact Fees are in. Which bank is that through?

Finance Director Torres- The bank is First Savings.

Member Pacourek – What is the balance?

Finance Director Torres – I would have to look at that balance. I am not too sure sir. We have over 50 accounts.

Member Pacourek- In this, they are asking for \$300,000. Is there \$300,000 in this account to cover that and where did the money come from?

Finance Director Torres – Yes sir there is. The majority of the money in that account came from the Veterans Home Impact Fee which was collected in the 2016/2017 fiscal year. She believes the amount was an estimated \$210,000.

Water/Wastewater Division Supervisor Castaneda- To clarify, we are asking up to \$300,000. At this point with the state of the Water and Wastewater System, if there is a smaller amount that the Board feels comfortable with, then we will take that.

Member Ashbaugh- According to the New Mexico Development Fees Act, under:
5-8-5. Items not payable by fee: (B) repair, operation or maintenance of existing or new capital improvements or facility expansions;

It seems to him that a lot of these things are more repairs than they are upgrading. Repairs, operation or maintenance of existing or new capital improvements or facility expansions; has to go through the Development Fee Act, which is not in this study from 2006. He would like for the board to know that he spoke with Raymond Ruffini who was on the Planning & Zoning Commission in 2007, and Mr. Ruffini said that they never even voted on this thing that was made in 2006. They never enacted or did a study for Capital Improvements or voted on a Capital Outlay Plan. He feels that all of his fellow members are very wise people, but the law is the law, and that's all he is going to say.

Chairman Szigeti- The purpose of what we are doing now is to either recommend approval of the expenditure or to vote against it.

Member Bryan- He would like to agree on how Chairman Szigeti started the meeting. The past is the past, and it seems like if we delay I this there is a chance it could be higher at a later rate just like it was before.

Member Bryan made a motion to recommend approval as requested by Arnie Castaneda.

Motion seconded by Vice Chairman Dornbusch.

George Szigeti, Chairman - Voted Aye
Jeff Dornbusch, Vice-Chairman - Voted Aye
Ron Pacourek, Member – Voted Nay
Gil Avelar, Member – Voted Aye
Randy Ashbaugh, Member – Recused himself from the vote.
Sid Bryan, Member – Voted Aye

Motion carried. 4 to 1 vote.

COMMENTS FROM THE BOARD:

Chairman Szigeti – In light of what City Attorney Appel has said, and comments made that this study is out of date; it is the responsibility of this body to review and assist with updating this information. He thinks that should be the next item of business that this board takes on. However, it is probably something we don't want to jump into next week. We'll take a little time to do some research, but we should convene again for the purpose of discussing the review of the land use assumptions, and the Capital Improvements Plan.

City Manager Fuentes- He and City Attorney Appel feel that one of the things staff needs to do, which could also help in this process, is to seek out professionals such as an engineering firm or perhaps also some financial analyst to be part of the process. He thinks that will be one of the things that staff will be working toward.

City Attorney Appel – I definitely agree with that, and as we discussed with some of you earlier, this does need to be done. The data is really old and it is time to look at the land use assumptions, and determine what changes need to be made to update the Capital Improvements Plan with the assistance of qualified professionals, which is defined in the act, which basically does include planners and financial advisers as well as engineers.

Chairman Szigeti – So with that in mind should we set a time for another meeting?

City Manager Fuentes- I think it would be a good idea if we meet again right before the PUAB meeting so that staff can update you on the status of the procurement of professional services. That way we can keep everyone up to date on what staff is doing, and how we are proceeding forward.

Chairman Szigeti – Recommended that the next meeting be held prior to the next Public Utility Advisory Board Meeting, on August 21st starting 5pm.

Member Ashbaugh- He would like the board to know that this Impact Fee money is held in something similar to an escrow by the city. It's really not the city's money, and us as an Impact Fee Board have the responsibility to be sure we have a proper capital outlay plan, and we are supposed to monitor for all the expenditures, and we have not monitored any of the expenditures over the last 10 years. Are the funds in the bank in individual accounts? That money is put in individual accounts to state that that

money is put in by a “payee” and that the city has a fiduciary responsibility like an escrow agent to be sure they’re spent right, and he thinks the action they took is not in compliance.

Member Pacourek- Had a question about Ordinance 571. In the code it states:

Items payable by fee: An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions; and Items not payable by fee: 2)

Repair, operation or maintenance of existing or new capital improvements or facility expansions;

Is the facility expansions considered either? Is it paid or not paid?

City Attorney Appel- Facility expansions are items that are in the capital improvements plan that are necessary to expand the facilities and make them available to our new connections that are included. However, you are absolutely correct. It cannot be used simply to enhance, repair or even to do minimal upgrades on existing facilities. We went through and looked at all of these capital expenses for the past 7 years and disallowed those that were for repair, or modification of existing facilities that did not clearly expand the capabilities of the system.

Member Pacourek – He looked up the definition of Impact Fees on Wikipedia and it says it is for new development. According to the last census, our County has lost 1000 people, and he has not really seen any new development.

Building Inspector Travis - Impact Fees are for new development, but we also have a ton of infill lots that never had service to them, so those are developable, as well as mobile homes coming in that are setting on a lot that has never had utilities hooked to them, so it’s not just new construction. Its other stuff too.

City Attorney Appel- Typically Impact Fees are imposed in a limited area where for example, a new subdivision where new services are needed. However, the New Mexico Development Fees Act specifically authorizes what the City of Truth or Consequences has chosen to do, which is to develop a plan that looks at infill, and other expansion of need throughout the entire municipality. So your Impact Fee area is the entire Municipality of Truth or Consequences, basically everything within the city limits. Other municipalities such as Albuquerque, Rio Rancho, and Corrales have chosen to go a different route and use them only for new developments that are on the outskirts that need complete new mains, and so forth. So that is why it is very important for you all to do the exercise that we have gone through, and make sure that you distinguish between those improvements that are needed to expand the capacity of the system for infill and for new structures such as those for the Wastewater Phase 2 which is still ongoing.

COMMENTS FROM STAFF:

Building Inspector Travis – He would just like to say that he knows that things have not been done in the past, even before a lot of our times. We caught it half way through it, and we’re trying to pick it up, straighten things out, and get that handled. But please keep in mind, just as Arnie and Jesus were saying, if we don’t have Impact Fees, and we let developers and builders not pay those, somebody else is going to have to pay for it and that’s going to be the citizens. So he thinks that is something we really want to keep in mind. We do want to get it corrected, and have everything up and running right. That’s our intent, it has gone on too long without having things up and right, but we do have to have Impact Fees no matter what. Every other Municipality and City has them. And just to correct one thing, the amount of Impact Fees paid for the Veterans Home was \$201,000.

ADJOURNMENT:

There being no further business to come before the Impact Fee Advisory Board, George Szigeti, Chairman, declared the meeting adjourned.

APPROVAL:

PASSED AND APPROVED this 19th day of March 2018, on a motion duly made by Sid Bryan, seconded by Jeff Dornbusch and carried.



George Szigeti, Chairman
Impact Fee Advisory Board