



Town of Gorham
PLANNING BOARD WORKSHOP NOTES
November 17, 2008

A workshop meeting of the Gorham Planning Board was held on Monday, November 17, 2008, at 6:00 p.m. in the Municipal Center Council Chambers, 75 South Street, Gorham, Maine.

In attendance were Susan Robie, Chairperson, Douglas Boyce, Thomas Fickett, Thomas Hughes, Mark Stelmack, Michael Parker, and Edward Zelmanow. Also present were Town Planner Deborah Fossum, Town Attorney Natalie Burns, Recreation Director Cindy Hazelton, and Mark Eyerman of Planning Decisions.

1. APPROVAL OF THE SEPTEMBER 8, 2008 WORKSHOP NOTES.

There were no comments or corrections to the September 8, 2008 Workshop Notes.

2. CHAIRMAN'S REPORT

There was no Chairman's Report.

3. DISCUSSION OF PROPOSED AMENDMENTS TO THE LAND USE AND DEVELOPMENT CODE; CHAPTER VII, IMPACT FEES FOR:

A. Section II, Middle School Facilities Impact Fee #1, effective July 1, 2009.

Proposed amendment to eliminate Section II, Middle School Facilities Impact Fee #1 effective July 1, 2009.

Ms. Robie suggested that the Board members state their positions on the impact fees, beginning with the Middle School Facilities Impact Fee. She noted that she is not in favor of eliminating the fee.

Mr. Hughes said he is not in favor of keeping the Middle School impact fee, stating that there was no impact fee when the bond issue was passed for the Middle School costs. He said the voters knew what they were getting at that point in time when they passed the bond, that taxes would be affected, but the impact fee came after that in order to lessen the taxes. He also said that he does not believe it is fair for someone to move into an existing house and not pay that impact fee, but moving into a new house requires payment of the fee.

Mr. Fickett asked what basically would happen if the impact fee is repealed. He would be interested in knowing where the money would come from if the fee goes away.

Mr. Parker said that the Planning Board has the responsibility of trying not to make a political issue of what we like and what we don't like, and the Board should try to make sure that any recommendation it makes for an impact fee is paid for by the people who affect the impact fee. That is, if someone moves in with children who will go to the Middle School then they should be paying the fee. This particular impact fee does not now pass the cause and effect, straight-faced philosophical test. He said he thinks the Council was looking for a user fee, which could be one of the other alternatives considered by the Planning Board.

Mr. Zelmanow said that to address the issue of user fees for families whose children will use the school, the question is how far to carry that out for other municipal services. Does it mean that everyone who uses the 911 service has to have a credit card in hand. He said that the community as a whole is responsible for certain municipal services that are being provided and one of those services is schools. As for the difference between a family moving into a new house and one who moves into an already existing house and basically what appears to be discrimination, while that first family moving into the new house might not have an impact on the school, the next family that moves in could have an impact. Basically the fees need to be taken up front in anticipation of events down the line. Insofar as the possible impact on housing values is concerned, if schools are not adequately funded to grow along with development and expansion of the base

of school age children, then schools will be overcrowded, more run down, and that will depress housing values. He said he did some research on line and read reports from the Wharton School of Finance, and noted one statement that for a housing market to be efficient, a standard economic theory holds that the price of housing must include all the benefits and costs that the development brings or imposes on society. He said he is in favor of leaving the impact fee as it currently stands.

Mr. Boyce said he would be in favor of considering other mechanisms to obtain the funds that the current impact fee provides and is open to hearing what other options Mr. Eyerman can suggest.

Mr. Stelmack said that he is favor of keeping the impact fee as there was good logic to the planning that provided for it when it went to effect. He said he is not inclined to undo something that was done methodically and in a logical way, but he is open to other alternatives.

Ms. Robie spoke to the Council's comment about elderly people being subject to the impact fee, noting that housing developments which are restricted to people of a certain age, 55, carry no impact fee, and at age 50, 90% of the impact fee is not charged. She said that the fee is not based on people but on the increase in housing stock, because people come and go, but if you have 1000 houses you have a potential of a certain percentage of children in those houses. She said that a comment that the impact fee is slowing growth in Gorham is not supported by the data, in fact, the opposite is true: all growth is slowing but growth in Gorham is slowing less.

Mr. Hughes said he is more against the way and the timing of the impact fee. The original bond that the voters passed allowed for a 300-pupil expansion without an impact fee, and it was fully expected that would be in the tax base. He would have been more in favor of an impact fee once the 900 student level was reached, which is when the impact starts costing more money. He said there should have been more thought as to *when* the impact went into effect; he does not question the methodology but believes that the impact fee was implemented too soon.

Mr. Eyerman responded to a query from Mr. Stelmack that the 10/01/08 state enrollment figures reported that the enrollment at the Middle School was 694 students.

Mr. Eyerman said that according to the numbers he was given through September 30, 2008, the Middle School impact fee has resulted in about \$1.36 million in fees being paid to the Town. The Town has transferred, or will in the current budget year transfer the majority of that amount to pay off the debt on the Middle School. After this year's money is paid out of this year's budget, there would still be \$172,000 balance in the impact fee account. The receipts of that money peaked in 2003 at about \$25 million; they have been going down as the number of housing units being built to pay the fee has gone down. For the current year, meaning 2009 budget year, the Town has budgeted \$200,000 to be taken out of the impact fee account and transferred to pay off the debt service. The Town's debt service costs for the local share of the Middle School includes 3 pieces: a basic cost for building a 750 student capacity school shared between the Town and State (20% Town and 80% State), 100% of certain items which the Town wanted included for which the State would not pay, and 100% of the costs for the additional 150 student capacity and related increase in other facilities to go from 750 students to 900 students. To answer the question about the loss of revenue from the impact fee, that revenue has to come from some other place, probably from the general tax payer, although there may be other alternatives that can be considered.

Mr. Eyerman said that whether you agree with impact fees, the shift in impact fees is who pays for the cost of expanded facilities needed to service growth. In the original impact fee methodology, if one considered what the enrollment would be without residential growth, there were estimates that the Middle School enrollment would decline to 500-550 students and remain there. If the Town wasn't experiencing residential growth of 100 or 120 or 140 units a year and didn't anticipate growth in the future, it would probably choose to build a 550-600 student middle school, not a 750 student school as the State approved, or a 900 student school as

was approved locally. Based on that, the impact fee was based on the differential local costs of going from a 600 student school with no growth to a 900 student school, which was actually built.

Mr. Eyerman said it is his understanding that user fees cannot be used for general purpose education, that the State constitution requires municipalities to raise money for and to fund an educational system meeting State standards, and that forecloses the use of user fees for educational purposes. He said that some communities use user fees for what might be called the “ancillary” things such as participation in extracurricular activities, sports, field trips, but in terms of basic education, the use of user services to pay for educational facilities or services was probably unconstitutional. He noted that the Town Attorney was nodding in agreement with that position.

Mr. Eyerman said that he is not sure there is an alternative to the impact fee for the Middle School. The question for the Town is a set of policy questions: one is who should pay for the additional cost – should it be paid for by the general taxpayer? As Mr. Hughes said, when the taxpayers voted for the Middle School they knew they were going to have to pay for it, but with some portion being paid for by new development, which by and large drove the School Committee’s decision to build a larger school. If some of the cost is to be transferred to development, probably the only model for doing that is an impact fee.

Ms. Burns confirmed that the statute is the sole means of raising money for schools other than general taxes. Mr. Hughes asked if it were possible or legal or practical to put the impact fee “on hold” until the Middle School population reaches 800 or 850. Mr. Eyerman said that the impact fee is paying for the capacity that has already been built, but there is no reason why the Town could not amend the impact fee ordinance that would say that the fee only has to be paid if the Middle School enrollment is greater than 700 or 750 students. He said the bigger question is really the question of fairness and equity: is it fair if a house is built in January of 2009, \$2200 is paid in impact fees and then the Town suspends the impact fee, but in July someone else builds a house and does not pay the fee. In his opinion, that takes the inequities in the current system and only magnifies them, and there is a danger of making it more inequitable.

Mr. Parker asked over how many years will the Town be paying its share of costs associated with the Middle School. Mr. Eyerman replied that it structured so that when the Town recovers so much money or when the capacity is met, paying the fee is stopped.

Ms. Fossum commented that already one developer has asked how quickly the ordinance change might occur, that he would not pull a building permit yet if the change were to happen soon.

Ms. Robie asked Ms. Burns if the Town is at any risk that money already collected from this impact fee could be sued to be returned to people who paid it. Ms. Burns said that she is not aware of any communities in the State that have adopted impact fees and later repealed them before the improvement was entirely funded. She said, speaking legally, that she believes that any governmental entity can always repeal an ordinance, including repealing a fee or at the State level repealing a type of tax, without having to refund the money. However, politically, she said that a municipality that repeals an impact fee faces the very real possibility that the next step will be that people will want their money. She said that there is no legal obligation to do so once the funds have been expended that they have to be repaid but she does believe that will be the next question that is posed to the Town.

Mr. Hughes asked who initially paid the fee, the developer or the home owner? Mr. Fickett said his procedure as a developer is to have the home owner pull all the permits and pay all the fees. It was agreed that there are probably some developers who have paid the impact fee up front.

Ms. Robie said that while she understands Mr. Hughes’s concerns about the timing of the impact fee, the Board’s recommendation will be based on whether or not it believes that impact fees should be in place in the Town of Gorham.

Mr. Parker asked if one accepts that more housing in Gorham will result in the need for larger schools, which was essentially the underlying assumption for the impact fee, then what is it that the new homeowner is actually paying for, regardless of whether they have children or not. He said the new homeowner is paying for a portion of the bond that was incurred to build a larger school than was needed. He said that it would be logical to say that if that homeowner did not live in Gorham when the bond was passed, he has not been paying on the bond, while other homeowners have. He said it would be fair to assess a back payment on the new homeowner for what the rest of the citizens have been paying all along. He then described a method of assessing yearly percentage payments based on a 30-year mortgage until they reach the same point payment as the rest of the Gorham residents.

Mr. Eyerman said there is language in the State law that says “Any ordinance that imposes or provides for the imposition of impact fees must meet the following requirements: a) the amount of fee must be reasonably related to the development share of the cost of the infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.” He said that the argument could be made that Mr. Parker’s proposal meets that test, and the question is what share of the additional capacity shouldn’t be or isn’t being paid for by the property taxes. So it could be argued that in year one it could be 1/20th or 1/30th, whatever the bond term is, that in year two it would be 2/20th or 2/30th. In fact, the State handbook for impact fees speaks about that kind of system, and something could be structured to do it. The question then is that it becomes a progressively increasing fee with the passage of time because you are paying the share of the money that wasn’t paid by being here to pay property taxes.

Ms. Burns said she doesn’t believe it can be done that way. She said the statute is quite clear when it talks about what one is paying for in an impact fee, and it is one’s share of the capital cost, which in Gorham’s ordinance is based on the size the house that one builds. She said that if what one pays depends upon when you come in, you are no longer looking at someone’s share of the capital cost, you are looking at something else, what other people have paid or what other people’s impacts have been, and that is not what the statute provides for. She said she understands there is a great deal of logic to what has been proposed, but she is very concerned that it does not fall within the scope of the statute.

Ms. Robie said she does not have the same concern about the issue of equity because she thinks about it as the number of houses. If Gorham started out with a 1000 houses, statistically that will generate a certain number of children, and every house added to that stock will add more children. Leaving out houses that will not have children living in them due to association by-laws or deed restrictions also seems reasonable.

Mr. Parker said that a majority of the Council does not believe that this is a fair or equitable fee. He reiterated his proposal as being time fair and equitable. Mr. Stelmack suggested that if this idea were endorsed by the Planning Board, it would be up to a finance committee to develop a formula to work the numbers out. Mr. Parker said that such a recommendation would advise the Town Council that the current impact fee does not appear to be fair but a fair concept would be as he has described it, paying to jump in late on something that has already been paid for. Mr. Stelmack noted, however, that the Town Attorney’s counsel is that it won’t work.

Ms. Robie commented that other municipalities such as Scarborough have a straight impact fee, such as paying a fee to add a house to the housing stock. She said she does not believe that that would at some point in time cause the housing starts to dry up because there is a ramping up fee. She said she believes that if you build a house you pay a fee because you increased the housing stock.

Mr. Eyerman said that during the original discussion of the impact fee for the Middle School, there was concern about essentially the issue that Mr. Parker raises in terms of what is sometimes called double

dipping, the fact that the person who builds a new dwelling unit pays the impact fee and then also pays property taxes, a small percentage of which goes to pay the capital cost on the bond. He said it was discussed at some length when the original impact fee was put together. In one of the methodologies devised it says that the basis of the impact fee does not include the interest costs as a wash for the offset against the property tax revenues. There are many communities, although not in Maine, that have a projected property tax credit, which is exactly the inverse of what Mr. Parker is talking about. It says that of the property taxes, a certain percent goes toward the cost of the additional cost of the expanded infrastructure and therefore a credit should be issued against the amount of the impact fee, and if you don't get that credit, you are being double charged. The impact fee could be \$2200 but it could be projected that under the current tax rate one would pay \$30 a year in property taxes toward that same improvement with a 20 year credit or a 19 year credit or an 18 year credit. However, the original fee said that it would be based only on the capital construction costs, not to include the additional interest costs, and therefore was a discounted fee. He said the Town could include a property tax credit against the amount of the fee based upon the remaining life, and that could pass legal muster. He said that the Maine State Handbook, which has gone through the Attorney General's office review, proposes that an offset system can be done. He said that that if it is a 20 or 30 year term and the impact fee is already into year 6 or year 7, that would have the effect of reducing the amount of fee for current payers by something like 75 or 80 percent, depending on the term of the bond, thereby reducing the amount of revenue and hence the amount of shift there is into the general fund.

Mr. Parker suggested a modification based on the mil rate for each year up to that point; Mr. Eyerman agreed that credit could be given based on the average mil rate. In response to a query from Mr. Zelmanow, Mr. Eyerman replied that there are a number of states which require a property tax set off against an impact fee to avoid the double dipping issue. Mr. Eyerman said that the methodology agreed on for the impact fee uses the "wash" of not including interest costs as an offset against the property tax revenues..

Mr. Parker suggested that either his suggestion or that presented by Mr. Eyerman should be recommended to the Council as a means of softening the perceived "harshness" of the impact fee.

Mr. Eyerman answered a question from Ms. Robie about the impact fee going up by saying that the Town could go back and calculate in the interest costs in the base and raise the total amount of the fee and discount it proportionately. Ms. Robie explained she means over time. Mr. Eyerman said that under either proposal, the amount of the impact fee paid by the same unit after the adjustment would drop considerably, it would go from \$2200 a single family home to 25%, 30%, whatever the bond term is and how far into the term the fee is, and then it would go up every year based on the fact that the set aside is not available for the property taxes that are being paid toward the debt service cost as part of their regular tax bill. The Town does not have 2 tax bills, everyone pays the same tax rate, but a credit could be created toward the property taxes that would be paid in the future toward the amount of the impact fee.

Mr. Hughes and Mr. Parker disagreed about what the Town Council wants the Board to do about this impact fee. Ms. Fossum said that the Council cannot vote on this item until they have received a recommendation from the Planning Board, at which point they will hold a public hearing of their own. They have let their opinions be known, but that does not preclude the Board from sending back a recommendation or an alternative proposal. Ms. Robie noted that as in other cases, the Planning Board is supposed to make an independent recommendation.

Ms. Robie said it would appear that the majority of the Board seems to be in favor of keeping the impact fee. She asked each member to summarize his reasons for his belief.

Mr. Hughes said he likes the impact fee exactly as it is structured but does not believe it should be in effect at this time. He said that the timing of the impact fee makes it unfair, that the impact fee should be based on what was above and beyond that which had been voted upon initially.

Mr. Zelmanow said that the impact fee statute as written does not focus on the homeowners, it focuses on the development, that as soon as a house is built, regardless of who is moving into it, that house has an impact on that Middle School, whether it be today or tomorrow, ten or twenty years from now, someone can move into that house with children of middle school age.

Mr. Parker said he is opposed to the impact fee as it now stands but would favor it if it were tailored toward lost taxation on what it is costing to have built a larger school.

Mr. Fickett said he would like to leave the impact fee alone and does not believe the Board should attempt to “tweak” it. He said he is not sure what will happen if the fee is eliminated, where will the revenue come from to pay off the bond.

Mr. Boyce said he would leave it alone. He agrees with the premise that the development of housing stock is the driving force that creates the impact.

Mr. Zelmanow said to leave it as it is. He said that the statute focuses on the impact of building a dwelling the community, and he sees that building as the driving force, not the family inhabiting it.

Mr. Stelmack said to leave it as it is. He concurred with Mr. Boyce and Mr. Zelmanow. In addition, while there appears to be an alternative to the impact fee, it requires a lot of “tweaking” which could take a long time and perhaps to no good effect, and it would be better to keep in place the system that currently exists.

Ms. Robie said to leave it as it is. She said that the rationale of increasing the housing stock as what triggers the impact fee is a sound premise, and because dedicated elderly housing is not affected, it is equitable. She said that the elimination of the impact fee is being driven by a false set of assumptions, that housing is being impacted in the Town of Gorham when the data says that building in Gorham is being impacted less than it is in other communities. She said that she believes it is competitive with neighboring towns, and that the Town is opening itself to the risk of those people who have paid the impact fee wanting their money back. She said that she, too, is concerned about where the revenue is to come from if the impact fee is eliminated.

Ms. Fossum said that a summary of the record of the workshop should be prepared and brought to the next formal meeting of the Board; as the public hearing was postponed when the item was earlier before the Board, it can be reopened and public opinion sought. Ms. Robie said that the Board’s recommendation will be to leave the impact fee alone, based on a 5 to 2 discussion. Mr. Hughes reiterated that the creation of the impact fee covered all the bases. Ms. Robie said that a letter will be prepared to demonstrate the thinking of the Board, the discussion on suggestions on how to make the impact fee more equitable, the timing of the impact fee, but basically to say that the recommendation of the Board is to leave the impact fee as it is.

BREAK

B. Section III, Recreational Facilities and Open Space Impact Fee #2, effective July 1, 2009.

Proposed amendment to eliminate Section III, Recreational Facilities and Open Space Impact Fee #2 effective July 1, 2009 and to allow the Planning Board to consider alternate fees on subdivisions.

Ms. Robie said that at one point the Town had a provision allowing developers of subdivisions to provide a cash “in lieu” payment instead of setting aside open space and that it was eventually ruled unacceptable by the court because there was something missing. Ms. Burns said that there was a Superior Court decision that dealt with the prior ordinance ruling that there was one thing missing that did not comply with the statute; however, that was not the final decision. It went to the Law Court whose decision was that the fee needed to have been appealed when the subdivision was approved, so the Superior Court decision, while somewhat

helpful, is not a final decision. It is not known what the Law Court would have said about the ordinance, whether it would have agreed with some of the Town's other arguments in the case that it was not an impact fee ordinance, it was an exaction ordinance, or if the Law Court would have found even more than one thing wrong with it.

Ms. Robie asked Ms. Burns about mitigation fees. Ms. Burns replied that municipalities are allowed to require exactions, the perfect example being that every subdivision has to provide for its own roads. Ms. Burns said that generally those roads are offered to the municipality for acceptance, and then become municipal property. There is a Law Court case as well on fire ponds, Ms. Burns said, whether a fire pond can be required as part of a subdivision approval; the actual ownership of the pond did not go to the municipality but there was an easement over it which the Law Court approved. She says that a municipality has the ability to require that subdivisions provide certain amenities as part of the subdivision approval; an example in Gorham's ordinance is that a cluster subdivision has to provide some open space. That is something that could be required for every subdivision, that there be a certain amount of open space set aside; there could be a requirement that it be improved space for recreational purposes. Ms. Burns said that one of the things in the prior ordinance that was problematic was that what it required was not just a set aside of open space, it required that it be public open space. She said there are some other legal difficulties when things are required for the public; if the municipality is requiring a type of exaction, it must satisfy the tests set forth in certain U.S. Supreme Court cases. But a municipality can require the setting aside of open space or improved open space just for the benefit of the subdivision.

Mr. Stelmack said if the funds provided by this impact fee are not available, where will the funds come from to satisfy the need for open space and recreation. If there is no viable alternative to this, he would be in favor of keeping the impact fee as it is. Mr. Zelmanow and Mr. Boyce agreed. Mr. Fickett said he would like to keep the impact fee as is but would like to see the open space be clarified as a little better so that the open space is usable. Mr. Hughes said he is very pro this impact fee, and asked that the Recreation Director, Ms. Hazelton, comment on what the impact fee has done already. Mr. Parker said that this impact fee is cause and effect: those who occupy newly developed space lose open space, and by developing houses, a need for recreational space is created, so it is fair and is badly needed.

Ms. Fossum and Mr. Stelmack discussed the handout provided to the Board for the workshop that discusses the calculation of the impact fee and the fees that would have been collected since the adoption of the impact fee. Mr. Eyerman said that what is shown are two parts of one ordinance: one is for the acquisition or construction of recreational facilities and one part to be used for the acquisition of open space; an amount is collected that goes into two funds. Mr. Parker, Ms. Hazelton and Ms. Fossum discussed the amount of funds which were refunded as a result of the old "in lieu" per lot payments. Mr. Eyerman said that the ratio of the fee between what goes into the recreation fund versus the open space fund is about 5-1/2 to 1, an example being in 2004 \$55,000 went into the recreation account and just under \$10,000 went into the open space account.

Mr. Eyerman referenced the comments made by Ms. Burns, that what can be required of a subdivision exaction is a gray area in that clearly the Town can require of a subdivider that certain recreation facilities must be provided or certain open space to meet the needs of the people who will live in the subdivision. However, he said there is general agreement that those facilities or open space areas cannot be open to the public; the subdivider cannot be required to create public facilities as part of its development. Historically communities have told a developer that it has the option of paying funds in lieu of providing the facilities or open space that the community will use to provide other recreational facilities or open space, with "either" "or" being accepted. Those facilities, however, have to geographically benefit the people in the subdivision.

Mr. Eyerman said that one of the things done when the recreational impact fee was constructed is that it talks about using that money for facilities that have Town-wide benefit. The argument was made through Ms.

Hazelton, the Recreation Director, that the use of that money to construct additional facilities at the Middle School was needed to support Town-wide recreation programs because all of the softball or soccer leagues would use those fields, that those improvements did not benefit just one geographic area of the Town but rather had a Town-wide benefit.

In response to a query from Ms. Robie, Mr. Eyerman said it would be possible to create a mandatory recreation facility open space requirement for subdivisions which would include an "in lieu" payment provision as an "or" at the developer's choice. Ms. Burns said that the risk that would be run, which was identified at the Superior Court level in the prior case, is that whenever there is any option for payment of a fee, there is going to be a question whether that is an impact fee, and in the prior case the judge thought that it was an impact fee even though she felt it was an "in lieu" fee that was the flip side of an exaction. Ms. Burns said the judge disagreed and said it was an impact fee. Ms. Burns said what is necessary is to adopt all of the provisions of the impact fee statute for the "in lieu" fee; however, if the Board recommends that, it may not meet the test that the Council set for coming up with "alternate fees on subdivisions."

Mr. Eyerman said that another option is to significantly increase the user fee structure so that a portion of the Recreation Department budget runs a profit on operation so that that money can be used to pay for facilities development. This is an area where user fees are appropriate. He said that for an airport, for example, the combined revenue generated from parking fees, landing fees, and rent to the airlines should meet or exceed what it costs to operate the facility and pay for building the facilities.

Ms. Robie summarized the three things she believes the Board needs to discuss: 1) whether or not the Board supports the current impact fee and would recommend that the Council keep it; 2) whether the Board would provide an alternative to that impact fee that could easily be used for public recreational facilities anywhere in the Town of Gorham; and 3) the specific issue of considering alternate fees on subdivisions. She said she believes that there are two different issues: proposing a replacement for the current impact fee that is legally feasible and placing some kind of exaction on subdivisions.

Mr. Stelmack asked what are the Board's objectives, what is the Board trying to accomplish. Is the existing fee not generating enough revenue, so is the Board's objective to generate more revenue. Ms. Robie said one thing has already been established: that the Board would recommend keeping the impact fee rather than not. She asked if the Board should propose an alternative to the impact fee that is easily spent on recreational facilities available to all the citizens of Gorham that are basically public, or, based on what the Town Attorney has said, is the Board going to propose the re-imposition of some kind of open space recreation exaction on subdivisions.

Ms. Fossum said that the intent of the Council was that if they were going to repeal the impact fee ordinance that is in place now, the Planning Board is being asked to recommend something in place of it that would apply only to subdivisions.

Mr. Parker said he believed that one of the Council's objections to the current impact fee is the instance of a piece of property that is not open space and a house is built on it, an impact fee is charged with the building permit, but no open space is lost so why should an impact fee be paid to acquire open space. He said if the impact fee is applied only to building permits in a subdivision, that objection would disappear.

Ms. Burns said that would be subject to a challenge if it is an exaction for a subdivision, that is one thing, but if you allow an "in lieu" fee in place of it; then the challenge is from people who say they are not the only ones generating the need for additional open space or additional improved recreational facilities. Every new house does that, so the impact fee is designed to ensure that everyone who is having the impact is paying for it. When the "in lieu" provision is introduced, it looks more like an impact fee, but only on subdivisions.

Ms. Robie asked if subdivisions that are not clusters could be required to create active recreational space within a subdivision and allow a waiver system that if they do not want to do that, they have to fund some portion of some other project. Ms. Burns replied that they certainly be required to provide active recreation space

within the subdivision. As far as allowing a waiver based on a substitution is concerned, Ms. Burns replied that is what got challenged as being inappropriate for a variety of reasons, and one of those reasons is that there is a statute on how to collect fees for certain types of amenities including open space.

Mr. Hughes commented that the current impact fee seems to be working quite well, and his attitude is that if it isn't broken, the Board should not try to fix it. Ms. Robie agreed, and said that the Board should recommend that the Council not repeal the impact fee, but if they do repeal it, is there any attachment to subdivisions. She said that the Board could at least insist that subdivisions provide active recreation space instead of swamps. Mr. Hughes said that the problem would be that it would not support the growth of public recreation space. Mr. Parker suggested it would be of benefit to point out that it is a beneficial and equitable fee that is working well.

Ms. Hazelton said that requiring recreational space in subdivisions will not help the need for public recreation space, and note that in other jurisdictions the maintenance requirements for small recreation areas is daunting. She spoke about the study on the redesign and reconfiguration of the Chick Property Master Plan, which begins to address the PDT study that shows that the Town is 16 fields minimum deficient. She said there is a second plan in the recreation impact fee, the Little Falls Recreation Area. There are plans to meet the needs of the Town, and one has been done, the fields at the Middle School.

Mr. Hughes suggested some sort of benefit as incentives to developers of subdivisions in exchange for more open space. Mr. Eyerman said that in his experience, the management of common facilities in small scale subdivisions is a proverbial nightmare. He said it is one thing if a condo association is involved and the maintenance of open space and recreation space goes along with it, but if it is a residential subdivision with a quarter acre parcel that is supposed to be active recreational area, the chance of that having any significant recreational value is very small. He said there have been issues about liability insurance on subdivision recreational equipment, maintenance, and supervision of its use. Mr. Eyerman said that while it is a good idea at one level, in practical application, he believes it creates very real problems unless it is part of some larger scheme that the Town has developed ahead of time. He said that doesn't mean that creating incentives for developers to do more may not be a good idea but in small scale subdivisions it doesn't work well. He noted that impact fees can provide bigger open space parcels that actually can meet some long range needs and make a difference.

Mr. Eyerman suggested again the concept of user fees; Ms. Fossum suggested using the airport analogy mentioned earlier by Mr. Eyerman. Mr. Parker asked Ms. Hazelton what age groups use the recreational facilities that are envisioned; she said that she hopes it would be the entire Town, not just children or just adults only. Mr. Parker said in terms of which citizens are receiving the benefits, no open space has been purchased, so it is primarily school aged children who are benefiting with their parents coming to watch, and not all the citizens across the board are benefiting, yet they are paying the impact fee. Mr. Zelmanow said that "fairness" should be kept out of the discussion, it cannot be fair for everyone. Mr. Eyerman said Mr. Parker's comment is a fair one, and when the list of uses for which the recreational portion of the impact fee could be used was constructed, it very specifically included the execution of the Chick Property Master Plan because the number of proposed facilities in there are non-child related to include trails for walkers and providing handicapped access to some of the facilities. The Council specifically wanted to make sure that the development of the Gorham Savings Bank property was included, which is primarily a non-child oriented facility. These were to provide some level of balance.

Ms. Robie spoke about the method used by Scarborough to deal with recreational expenditures between active and passive recreation, between recreational facilities and open space, which involves a board that is charged with researching and making recommendations to the town council at specific times. She suggested that the Board recommend to the Council that the impact fee be kept and create a group that will research and make recommendations on how it is to be spent to make it more equitable for the whole population. Ms. Hazelton explained the makeup of the Recreational Advisory Committee and the Parks and Conservation Committee and their respective responsibilities.

Mr. Stelmack and Ms. Hazelton discussed the appropriateness of charging a user fee to those who use school fields and a possible disagreement about who would get that revenue.

Ms. Robie summarized the workshop discussion as follows: the Board is in favor of not repealing the impact fee, the Board does not see a viable alternative in subdivision extractions to replace the impact fee, the “in lieu” language is problematic and likely to lead to law suits, and the usefulness of small pieces of land as true recreational facilities is questionable, and there have been positive results from the impact fee. The dedication of funds between recreational facilities and open space might need to be reconsidered, and an improvement would be to have open space fund objectives and meet them when the funds are available.

Mr. Parker asked that the Board’s next discussion on open space include the possibility of assessing an open space impact fee against commercial development as well as residential development. Mr. Eyerman said it is an idea worth thinking about. Ms. Burns cautioned that the fee is not based upon the open space displaced, it is based upon the amount of open space needed to service the people who are utilizing the facility.

Mr. Eyerman cautioned that as the Town talks about the use of impact fees, it needs to be careful that it talks in terms of meeting the need for additional facilities created by new development. The use of impact fees to make up for past sins or deficiencies is probably not an appropriate use of them. Ms. Burns confirmed that it is not an appropriate use.

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2008