

ORDINANCE 2020-O-11

AN ORDINANCE OF JOHNSON COUNTY, INDIANA ESTABLISHING AN EQUITABLE IMPACT FEE FOR THE PURPOSE OF PLANNING AND FINANCING ROAD AND STREET INFRASTRUCTURE NEEDED TO SERVE NEW DEVELOPMENT IN JOHNSON COUNTY, INDIANA

WHEREAS, in accordance with IC § 36-7-4-1300 *et seq.*, Johnson County (the “County”) and the Town of Bargersville (the “Town”) have caused to be prepared by A&F Engineering (“A&F”) the Johnson County and Town of Bargersville Road Impact Fee Zone Improvement Plan (the “Zone Improvement Plan”);

WHEREAS, the Board of Commissioners (“Board”) of Johnson County, Indiana (“County”) finds that it is reasonable and necessary to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the County by providing for an equitable program to fund the capital costs of new road and street infrastructure necessary to serve newly developing areas of the County;

WHEREAS, the Board finds that it is reasonable and necessary to promote the orderly development of the County by establishing standards by which the County may require that new development shall pay a road impact fee, in accordance with IC § 36-7-4-1300 *et seq.*, (“Impact Fee”) representing the development’s proportionate share of the capital cost of new road and street infrastructure necessary to serve new development in the County;

WHEREAS, the Board finds that new development should not be required to pay a fee for the capital costs of new road and street infrastructure greater than the development’s proportionate share of the capital costs of such infrastructure, which is needed to serve such development;

WHEREAS, it has been the stated objective of the County that the analysis contained in the Zone Improvement Plan supports and should result in the implementation of an Impact Fee, which meets the requirements of Indiana Law;

WHEREAS, the Town has planning and zoning jurisdiction over the portion of the Zone Improvement Area within the municipal limits of the Town;

WHEREAS, the County has planning and zoning jurisdiction over the portion of the Zone Improvement Area within unincorporated Johnson County;

WHEREAS, the Town and Johnson County have entered into an Interlocal Agreement concerning the maintenance of roads and streets within the Town limits;

WHEREAS, the County pursuant to the Interlocal Agreement for road maintenance has jurisdiction over certain roads and streets within the Town limits that are within the Zone Improvement Area;

WHEREAS, the Johnson County Advisory Plan Commission, having given due deliberation to the Zone Improvement Plan prepared by A&F, adopted its Resolution 2020-01 in support of the Impact Fee;

WHEREAS, the Town of Bargersville Advisory Plan Commission, having given due deliberation to the Zone Improvement Plan prepared by A&F, adopted its Resolution 2020-01 in support of the Impact Fee; and

WHEREAS, the purpose of this Ordinance is not to deter growth, remedy existing infrastructure deficiencies, or pay for maintenance or other “non-capital costs.”

NOW THEREFORE, BY IT ORDAINED AND ENACTED by the Board of Commissioners of Johnson County, Indiana, as follows:

Section 1. Conditional Repeal and Limitation on Imposition of Impact Fee.

This Ordinance shall expire and become void five (5) years after its effective date, as required by Ind. Code § 36-7-4-1340, unless action is undertaken to replace it consistent with the provisions of Indiana law, which contemplates a replacement impact fee ordinance.

Section 2. Establishment of Impact Zone.

- a. There is hereby established for the County a road and street infrastructure Impact Zone (as defined in Ind. Code § 36-7-4-1307), the borders of which are depicted on **Exhibit A**, attached hereto and incorporated herein. The Town has planning and zoning jurisdiction over the area within the Town limits depicted on Exhibit A. The Board specifically finds that there is a functional relationship between the components of the road and street thoroughfare element of the Zone Improvement Plan and that such road and street improvement recommendations provide a reasonably uniform benefit to all of the citizens of the County throughout the Impact Zone as of the effective date of this Ordinance. The Board further finds that all areas within the Impact Zone are contiguous, as required by Ind. Code § 36-7-4-1316.
- b. Except as provided below, this Ordinance shall apply uniformly to all developments within the Impact Zone hereby established for which the County may require a structural building permit and which create a need for new or additional road and street infrastructure. This Ordinance shall not apply to:
 1. Development meeting the requirements set forth in Ind. Code § 36-7-4-1322(g);
 2. Improvements which do not require a structural building permit;

3. As set forth in Ind. Code § 36-7-4-1314(b), improvements which do not create a need for new or additional road and street infrastructure, including the erection of a sign, construction of a fence, or interior renovation of a building not resulting in a change in use.
 4. The in-kind replacement of a destroyed or partially destroyed improvement; provided, however, that the replacement does not create a need for new and additional road and street infrastructure over and above the infrastructure needed for the original improvement prior to the destruction or partial destruction thereof, based on the development calculation outlined in Section (3)(a) of this Ordinance.
- c. The Board hereby makes as a part of the record of these proceedings all of the data collected, calculations made, and conclusions reached by A&F in the process of developing the Zone Improvement Plan, and specifically instructs the employees of the County to make such data and all other information gathered and used in preparing the Zone Improvement Plan publically available as a public record of the County for review during the Town's regular business hours. The Board makes the specific finding that this Ordinance is the result of the advice it received from A&F.

Section 3: Establishment of Impact Fee.

- a. Based upon the analyses contained in the Zone Improvement Plan, the Board finds, determines, establishes, and adopts the Impact Fee schedule attached hereto as **Exhibit B** and incorporated herein. This equates to \$2,571.64 per single-family detached residence, of which \$2,531.52 is the calculated Road Impact Fee and \$40.12 is the calculated Culvert/Bridge Impact Fee, and this amount is hereby adopted as the Impact Fee for the Impact Zone. For other types of development, the numbers of twenty-four (24) hour trips are to be based upon calculations taken from the latest version of the ITE Trip Generation Manual, a study published by the Institute of Transportation Engineers ("ITE").
- b. In the event that any parcel of real estate developed at the time of the adoption of this Ordinance undergoes a change in use, redevelopment, or modification, which requires an improvement location permit, and creates a need for new infrastructure, an Impact Fee will only be assessed for the increase in the burden on infrastructure based on the latest ITE.
- c. If the applicant has appealed the Impact Fee to the Appeal Board, the County shall not deny the issuance of a structural building permit on the basis that the Impact Fee has not been paid or condition issuance of the permit on the payment of the Impact Fee. If the Impact Fee totals One Thousand Dollars (\$1,000) or less, the County may require the fee payer to pay the Impact Fee or initiate an appeal under Section 8 before the structural building permit is issued.

Section 4: Credit in Lieu of Payment; Exemptions.

- a. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance may have the option of financing, constructing, and dedicating actual road and street thoroughfare infrastructure instead of paying all or part of the Impact Fee, which may be due, so long as such financing, construction, and dedication:
 1. Are accomplished pursuant to the Thoroughfare plan of the County, and the ordinances and standards of the Town;
 2. Are made in accordance with the road and street specifications for such road or street to be improved in force within the Impact Zone at that time; and
 3. Are approved by the appropriate jurisdiction.

Such fee payer, or other person or entity providing the infrastructure or improvement, may be given credit upon a verified certification from a registered engineer, architect, or contractor of the actual costs of planning, financing, construction, and dedicating such road and street thoroughfare improvements or infrastructure to the appropriate jurisdiction County. Such certification shall be presented prior to the issuance of any structural building or improvement location permit. In the event the actual cost of such planning, financing, construction and dedication do not equal the amount of the Impact Fee due pursuant to the calculation provided for in the schedule set forth in Section 3 hereof, the remaining balance shall be due by such fee payer to the County in accordance with the provisions of this Ordinance.

- b. Credits against Impact Fees otherwise due shall be allowed pursuant to this Section 4 for all infrastructure and improvements constructed or furnished in accordance with Ind. Code §§ 36-7-4-1313 and 1335. A fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided above.

Section 5: Impact Fee Due Upon Issuance of Structural Building Permit.

- a. The Impact Fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a structural building permit by the County. It is understood that a structural building permit is synonymous with the term "structural building permit" as used in Ind. Code § 36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise. The entire Impact Fee, which is calculated pursuant to the terms of this Ordinance shall be due at the time of permit issuance

unless the amount of the fee upon calculation is greater than Five Thousand Dollars (\$5,000), in which case an installment plan may be requested by the applicant in accordance with the terms of Ind. Code § 36-7-4-1324.

- b. The Johnson County Impact Fee Review Board (the "Review Board"), as identified in Section 8 herein, shall establish specific terms for installment payments consistent with Indiana law. The interest rate on any installment plan or deferred payment shall not exceed the pre-judgment rate of interest set forth in the Indiana Code. Interest shall only accrue on the portion of the impact fee that is outstanding and does not begin to accrue until the date the structural permit is issued for the development or the part of the development on which the Impact Fee is imposed as provided for in Ind. Code 36-7-4-1324(c).
- c. If a fee payer fails to pay all or part of an installment payment when due and payable the County may impose a penalty in an amount equal to 10% of the installment payment that is overdue. Further the County may impose interest on the penalty amount at the pre-judgment rate of interest set forth in the Indiana Code. The amount of the installment payment shall be increased on the first pay that installment payment is overdue.
- d. If a fee payer so requests, the amount of the Impact Fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the structural building permit, whichever is earlier. For purposes of this Section 5, "assessment" means the act of calculating the amount of the Impact Fee, which shall be due. The County shall make such assessment within thirty (30) days of the date of such voluntary request or at the issuance of the structural building permit with or without a request.

Section 6. Lien Rights Established.

Pursuant to Ind. Code § 36-7-4-1325, the County acquires a lien against the real estate which is subject to the Impact Fee on the date the structural building permit is issued. Upon final adoption, this Ordinance shall be recorded and, thereafter, it shall constitute constructive notice of the lien rights of the County. The County may, in its discretion, file a specific instrument setting forth its statutory lien rights with respect to a parcel of real estate, which is the subject of an installment payment of an Impact Fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

Section 7. Form of Receipt.

The Johnson County Department of Planning and Zoning shall issue a receipt for any and all Impact Fees collected, and shall include the following information:

- (a) Fee Payer;

- (b) Date;
- (c) Payment amount;
- (d) Real estate location;
- (e) Remaining balance (if any).

Section 8. Appeals; Johnson County Impact Fee Review Board.

- a. The County hereby establishes the Johnson County Impact Fee Review Board. Members shall be appointed in accordance with Ind. Code § 36-7-4-1338, and shall serve terms coterminous with this Ordinance. Members may be re-appointed.
- b. Any fee payer who believes itself to be aggrieved by the calculation of the Impact Fee may appeal from such calculation to the Review Board and the Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of presenting either of the following propositions:
 - i. A fact assumption used in determining the amount of the Impact Fee is incorrect; or
 - ii. The amount of the Impact Fee is greater than the amount allowed under Ind. Code §§ 36-7-4-1320, 1321, and 1322.
- c. An appeal under this Section 8 shall be filed not later than thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with Johnson County Planning & Zoning, together with a filing fee in the amount of One Hundred Dollars (\$100). The filing fee shall be refunded in full:
 - (1) if the Petition for Review is granted and the Impact Fee is eliminated, reduced, or adjusted by the Review Board, by independent action of the County, or by a court having jurisdiction; or
 - (2) if the reviewing body determines that the amount of the fee, reductions, or credits was arbitrary or capricious.
- d. The Review Board shall prescribe a form for the Petition for Review, which shall be clear to a layperson and at minimum shall require the Petitioner to describe the new development on which the Impact Fee has been assessed, all facts relating to the assessment of the Impact Fee, and the reasons petitioner believes that the amount of the Impact Fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.
- e. The Review Board shall prescribe a form upon which the County shall respond to a Petition for Review, which shall require the County to indicate:
 - (1) agreement or disagreement with each item indicated on the petition for review under subsection (c), above; and
 - (2) the reasons the County believes that the amount of the fee assessed is correct.

- f. Immediately upon the receipt of a timely filed Petition for Review, the Review Board shall provide a copy of the Petition for Review to the County. The County shall not later than thirty (30) days after the receipt of the Petition for Review provide to the Review Board its Response. The board shall immediately forward a copy of the response form to the petitioner.
- g. Upon conclusion of the presentation of evidence, the Review Board shall make a determination within not more than thirty (30) days, upon the facts presented and may make such adjustments in the Impact Fee as they believe are appropriate under the circumstances, if any. An aggrieved Petitioner may appeal to the Johnson County Circuit or Superior Courts for a trial de novo, in accordance with Ind. Code § 36-7-4-1333(g).

Section 9. Road and Street Impact Fund.

- a. The County has established a Road and Street Impact Fee Fund (the “Fund”) in compliance with Ind. Code § 36-7-4-1329.
- b. Pursuant to Ind. Code § 36-7-4-1332(e), the Director of Planning and Zoning is designated as the official responsible for acting upon refund requests. In order to facilitate refunds when they may be due, the Director of Planning and Zoning is directed to identify the purpose of any Impact Fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

Section 10. Use of Impact Fees Collected Pursuant to this Ordinance.

The Town and County have entered into an interlocal agreement concerning the maintenance of certain roads within the Town limits by Johnson County. A copy of the Interlocal Agreement for Road Maintenance is attached hereto, made a part hereof and marked as **Exhibit C**. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the purposes identified in Ind. Code § 36-7-4-1330, only by the Town in coordination with Johnson County. For the purpose of this Ordinance, Johnson County is identified as the “infrastructure agency” contemplated by Ind. Code § 36-7-4-1317. The Town and County have entered into an Interlocal Agreement concerning the use of the Impact Fees. A copy of which is attached hereto, made a part hereof and marked as **Exhibit D**.

Section 11. 1300 Series Impact Fees.

The Board specifically acknowledges the existence of Ind. Code §§ 36-7-4-1300 through 36-7-4-1342 (the “1300 Series”) which regulates the imposition of Impact Fee ordinances by municipal corporations within the State of Indiana. It is the intent of the Board to comply with this law, and this Ordinance shall be construed in all respects to be consistent with it.

The substantive and procedural requirements of the 1300 Series shall control in the event of any conflicts with this Ordinance.

Section 12. Effective Date.

This Ordinance shall be effective on August 9, 2021, at least six (6) months following its adoption as required by Indiana law.

Section 14. Savings Clause.

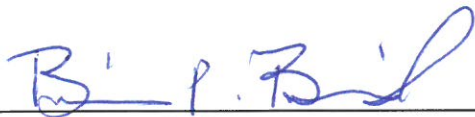
If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 15. Construction of Clause Headings.

The clause headings appearing herein have been provided for convenience and reference and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clause to which they pertain.

So approved this 28th day of January 2021.

BOARD OF COMMISSIONERS OF JOHNSON COUNTY, INDIANA



Brian P. Baird, Chair



Kevin M. Walls, Member

Ronald H. West, Member

Attest: 

Pamela J. Burton