



TOWN BOARD WORK SESSION MEETING

November 16, 2015 – 6:00 P.M.

Town Board Chambers

301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.

Members of the public in attendance who have a question related to an agenda item are requested to allow the Town Board to discuss the topic and then be recognized by the Mayor prior to asking their question.

AGENDA

1. Discussion regarding Chapter 17, Article XV of the Municipal Code pertaining to Road Impact Fee “look-back” provisions
2. Home Occupations that Involve the Tutoring of more than Two Students
3. Future meetings agenda



MEMORANDUM

Date: November 16, 2015
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Scott Ballstadt, AICP, Director of Planning
Subject: Discussion regarding Chapter 17, Article XV of the Municipal Code pertaining to Road Impact Fee "look-back" provisions
Item #: 1

Discussion:

Article XV of Chapter 17 of the Municipal Code establishes a system for the imposition of road impact fees within the Town to assure that new development contributes its proportionate share of the cost of providing, and benefits from the provision of, road capital improvements within the benefit area. Since the adoption of Ordinance 2001-1092 and subsequent update with Ordinance 2008-1318, road impact fees have been collected and have allowed the Town to improve the Town's major road system as defined in the Municipal Code.

Road impact fees are typically collected upon the issuance of a building permit that will result in increased traffic-generating development. However, the code also requires payment of road impact fees based on increased traffic generation and the historic use of the property whether or not the new use involves changes to the building or property.

For example, if a lower traffic 2,000 square foot sit-down restaurant (road impact fee = \$7,784) were to be converted to a higher traffic fast food restaurant (road impact fee = \$18,644), the Town would charge road impact fees equal to the difference between the fees (\$10,860) for the same 2,000 square foot space. While the methodology regarding increased traffic is sound and works in theory, it has been very problematic to track and maintain consistency in practice.

Turnover in existing leasable space can be frequent and the Town is often not contacted when existing buildings are occupied by new tenants. The Town relies on the submittal of a business license and owners are not always aware of the need for a license. When the Town does receive a business license for a higher traffic generating use, the business owner is oftentimes caught unaware that a road impact fee is retroactively due for utilizing existing space.

There have also been cases where the Town has been contacted by a new business wishing to locate in an existing building and, when given the road impact fee estimate, they have chosen not to locate in Windsor. In other cases the new business has requested approval of a waiver of the road impact fees.

Due to the administrative challenges associated with tracking changes in historical use of buildings and resulting inconsistencies, staff would propose that the road impact fee "look-back"

provisions be eliminated. Instead, the road impact fees should be applied when new buildings are constructed or when square footage is added to an existing building or site.

The enclosed “Proposed Revisions to Chapter 17, Article XV” document outlines the proposed code changes.

Recommendation:

Staff recommends that the Town Board direct staff to prepare an ordinance amending Chapter 17, Article XV of the Municipal Code for consideration.

Attachments: Proposed Revisions to Chapter 17, Article XV
Municipal Code Chapter 17, Article XV - Road Impact Fees

PROPOSED REVISIONS TO CHAPTER 17, ARTICLE XV
(Road Impact Fee Ordinance “look-back” provisions)

Issue: The administrative burdens of calculating, negotiating and re-calculating Road Impact Fees (RIF’s) for redevelopment/re-use of existing square footage is not justified by the sums recovered. In those cases in which the preliminary redevelopment fee quote is substantial, the developer often walks away, leaving the property undeveloped.

Proposed solution: Calculate RIF for construction of *new square footage* and *new dwelling units* only, based on the use proposed at that time.

1. Revisions to definitions (Section 17-15-40).

Delete definition of “*Existing traffic-generating development*”. This language ties to a look-back date of January, 2002.

POINT: If we are only assessing a fee for new square footage, the “most-intense use of the property” will not be considered. We will measure only the newly-constructed square footage.

Revise definition of “*Traffic-generating development*” to read:

... land development designed or intended to permit a use of the land that will contain ~~or convert to more dwelling units or additional dwelling units or additional~~ floor space ~~than the most intensive use of the land on or after January 1, 2002.~~

POINT: We are only assessing RIF’s for *new* dwelling units or *new/additional* square footage.

2. Revisions to substantive Code language.

Revise Section 17-15-50 (a).

Time of fee obligation and payment. Any person or entity, including any government body, that causes the commencement of traffic-generating development within the incorporated area of the Town shall be obligated to pay a road impact fee pursuant to the terms of this Article. The fee shall be determined and paid to the Road Impact Fee Administrator at the time of issuance of a building permit for the development or, if a building permit is not required for the development or use, upon the Town's approval of any development or use that is the last application required prior to development or use of the land. The fee shall be computed separately for the amount of construction activity covered by the permit if the building permit is for less than the entire development. ~~If the fee is imposed for a traffic-generating development that increases traffic impact because of a change in use, the fee shall be determined by computing the difference in the fee schedule between the new traffic-generating development and the existing traffic-generating development.~~ The obligation to pay the impact fee shall run with the land.

POINT: We will not assess fees for changes in use of existing square footage.

Revise Section 17-15-50 (b) (1), exemptions.

- (1) Alterations or expansion of an existing building where no additional dwelling units are created ~~or square footage added, the use is not changed and where no additional vehicular trips will be produced over and above that produced by the existing use.~~
- (2) The construction of accessory buildings or structures which will not ~~add dwelling units or square footage to produce additional vehicular trips over and above that produced by~~ the principal building or use of the land.
- (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same ~~size and use, provided that no additional trips will be produced over and above that produced by the original use of the land~~ square footage or number of dwelling units.

POINT: We are not assessing a fee unless new dwellings or square footage is being added.

3. Revision to the Refunds section, Sec. 17-15-90 (b) (3). This is not related to the look-back revisions, but the current language has the Town paying five percent (5%) on any refunds triggered by our failure to spend fee revenue. That rate may have been viable back in the early-2000's, but is out of line with current market rates.

When the Road Impact Fee Administrator determines the refund application is complete, it shall be reviewed within thirty (30) days and shall be approved if it is determined that the fee payer or a successor in interest has paid a fee which has not been spent within the period of time permitted under this Section. The refund shall include the fee paid plus interest ~~of five percent (5%) per year at a rate equal to the prime rate as published in the Wall Street Journal or similar reliable finance market source, plus two percent (2%) for the applicable period.~~

POINT: This language has us tied to the Prime Rate, with a small factor for the “time value of money” to the developer.

ARTICLE XV - Road Impact Fees

Sec. 17-15-10. - Title, authority and application.

- (a) Title. This Article shall be known and may be cited as the "Road Impact Fee Ordinance."
- (b) Authority. The Town has the authority to adopt this Article pursuant to the Home Rule Charter and, to the extent applicable, Section 29-20-104.5, C.R.S.
- (c) Application. This Article shall apply to all lands within the incorporated limits of the Town.

(Ord. 2008-1318)

Sec. 17-15-20. - Intent and purpose.

- (a) Intent. This Article is intended to implement and be consistent with the Road Impact Fee Study of 2001 and the Road Impact Fee Update 2007, prepared by Duncan Associates in association with Felsburg Holt & Ullevig.
- (b) Purpose. The purpose of this Article is to establish a system for the imposition of road impact fees within the Town to assure that new development contributes its proportionate share of the cost of providing, and benefits from the provision of, road capital improvements within the benefit area.

(Ord. 2008-1318)

Sec. 17-15-30. - Level of service standard (LOS).

The Town shall endeavor to ensure that the major road system operates at Level of Service "C" (LOS C) or better.

(Ord. 2008-1318)

Sec. 17-15-40. - Definitions.

Certain words or phrases unique to this Article shall be construed as herein set out, unless it is apparent from the context that they have a different meaning.

Building permit means that building permit issued in accordance with this Code before any building or construction activity can be initiated on a parcel of land.

Capacity means the maximum number of vehicles that have a reasonable expectation of passing over a given section of a road during an average weekday at the desired LOS, expressed in terms of vehicles per day.

Existing traffic-generating development means the most intense use of land on or after January 1, 2002.

Expansion of the capacity of a road includes any widening, intersection improvement, signalization or other capital improvement designed to increase the existing road's capacity to carry vehicles.

Fee payer means a person commencing traffic-generating development who is obligated to pay a road impact fee in accordance with the terms of this Article.

Level of Service (LOS) means a qualitative measure describing operational conditions, from "A" (best) to "F" (worst), within a traffic stream.

Major road system means all major roads located in the Road Impact Fee Benefit Area established in Section 17-15-80 below and depicted in Appendix 17-A, which is incorporated herein by this reference.

Non-site-related improvements means road capital improvements that are not site-related improvements.

Person means an individual, corporation, governmental agency or body, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest or any other entity.

Road capital improvement includes the transportation planning, preliminary engineering, engineering design studies, land surveys, alignment studies, engineering, permitting and construction of all necessary features for any road on the major road system, undertaken to accommodate additional traffic resulting from new traffic-generating development, including but not limited to:

- a. Construction of new through lanes.
- b. Construction of new bridges.
- c. Construction of new drainage facilities in conjunction with new road construction.
- d. Purchase and installation of traffic signals, including new and upgraded signalization.
- e. Construction of curbs, gutters, sidewalks, medians and shoulders.
- f. Relocating utilities to accommodate new road construction.
- g. The construction and reconstruction of intersections.
- h. The widening of existing roads.
- i. Bus turnouts.
- j. Acceleration and deceleration lanes.
- k. Interchanges.
- l. Traffic control devices.

Road Impact Fee Administrator shall be the Town Manager or a person designated by the Town Manager to be responsible for administering this Article.

Road Impact Fee Study refers to the study entitled "Road Impact Fee Study," dated September 2001, as amended and updated by the "Road Impact Fee Update," dated October 2007, or a subsequent similar study that describes the data, assumptions and methodology used to calculate the net cost to accommodate the additional traffic generated by new development on the major road system.

Site-related improvements means those road capital improvements and right-of-way dedications that provide direct access to the development. Direct access improvements include, but are not limited to, the following:

- a. Driveways and streets leading to and from the development.
- b. Right- and left-turn lanes leading to those driveways and streets.
- c. Traffic control measures for those driveways.
- d. Internal local streets.

Reimbursement is not provided for site-related improvements under the terms of this Article.

Traffic-generating development is land development designed or intended to permit a use of the land that will contain or convert to more dwelling units or floor space than the most intensive use of the land on or after January 1, 2002.

Traffic-generating development, commencement of, occurs upon the issuance of a building permit or, if a building permit is not required for the development, upon the approval for any development application that is the last application required prior to development or use of land.

Trip means a one-way movement of vehicular travel from an origin (one [1] trip end) to a destination (the other trip end).

Trip generation means the attraction or production of trips caused by a certain type of land development.

Vehicle miles of travel (VMT) means the combination of the number of vehicles traveling during a given time period and the distance (in miles) that they travel.

(Ord. 2008-1318; Ord. 2009-1356)

Sec. 17-15-50. - Imposition of fee.

- (a) Time of fee obligation and payment. Any person or entity, including any government body, that causes the commencement of traffic-generating development within the incorporated area of the Town shall be obligated to pay a road impact fee pursuant to the terms of this Article. The fee shall be determined and paid to the Road Impact Fee Administrator at the time of issuance of a building permit for the development or, if a building permit is not required for the development or use, upon the Town's approval of any development or use that is the last application required prior to development or use of the land. The fee shall be computed separately for the amount of construction activity covered by the permit if the building permit is for less than the entire development. If the fee is imposed for a traffic-generating development that increases traffic impact because of a change in use, the fee shall be determined by computing the difference in the fee schedule between the new traffic-generating development and the existing traffic-generating development. The obligation to pay the impact fee shall run with the land.
- (b) Exemptions. The following shall be exempt from the terms of this Article. An exemption must be claimed by the fee payer at the time of application for a building permit.
 - (1) Alterations or expansion of an existing building where no additional dwelling units are created, the use is not changed and where no additional vehicular trips will be produced over and above that produced by the existing use.
 - (2) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above that produced by the principal building or use of the land.
 - (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, provided that no additional trips will be produced over and above that produced by the original use of the land.
- (c) Establishment of fee schedule.
 - (1) Any person who causes the commencement of traffic-generating development, except those persons exempted or preparing an independent fee calculation study pursuant to Section 17-15-60 below, shall pay a road impact fee in accordance with the following fee schedule. The descriptions of the land use codes in the most current edition of the report titled, "Trip Generation," prepared by the Institute of Transportation Engineers (ITE) shall be used to determine the appropriate land use type.

Road Impact Fee Table

Land Use Type	Unit	Fee/Unit
Residential		
Hotel/motel	Room	\$1,524
Mobile home park	Site	1,103
Multi-family	Dwelling	1,483
Single-family detached	Dwelling	2,115
Retail/Commercial		
Auto sales/service	1,000 sq. ft.	\$2,760
Bank	1,000 sq. ft.	4,169
Bldg materials, etc.	1,000 sq. ft.	6,653
Convenience store	1,000 sq. ft.	7,396
Discount store	1,000 sq. ft.	5,061
Furniture store	1,000 sq. ft.	761
Movie theatre	1,000 sq. ft.	5,889
Restaurant, fast food	1,000 sq. ft.	9,322
Restaurant, sit-down	1,000 sq. ft.	3,892
Shopping center/general retail	1,000 sq. ft.	3,476
Office/Institutional		
Day care center	1,000 sq. ft.	\$1,997

Elementary/secondary school	1,000 sq. ft.	346
Hospital	1,000 sq. ft.	3,693
Nursing home	1,000 sq. ft.	1,280
Office, general	1,000 sq. ft.	2,840
Office, medical	1,000 sq. ft.	6,074
Place of worship	1,000 sq. ft.	1,915
Industrial		
General heavy industrial	1,000 sq. ft.	\$ 386
General light industrial	1,000 sq. ft.	1,799
Mini-warehouse	1,000 sq. ft.	645
Oil and gas extraction site	Per State- permitted wellhead	1,032
Warehouse	1,000 sq. ft.	1,279

- (2) If the type of traffic-generating development for which a building permit is requested is not specified on the fee schedule, the Road Impact Fee Administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. The Road Impact Fee Administrator shall be guided in the selection of a comparable type of land use by:
- a. Using trip-generation rates contained in the most current edition of the report titled, "Trip Generation," prepared by the Institute of Transportation Engineers (ITE), articles or reports appearing in the ITE Journal or studies or reports done by the U.S. Department of Transportation or Colorado Department of Transportation and applying the formula set forth in Section 17-15-60 below; or
 - b. Computing the fee by use of an independent fee calculation study as provided in Section 17-15-60 below.
- (d) Predevelopment review impact fee calculation. Any person contemplating establishing a traffic-generating development may request a preliminary determination of the impact fees due from such development. A person requesting a predevelopment review impact fee calculation shall complete and submit to the Road Impact Fee Administrator the proper application form and an application fee. Using the information regarding the proposed traffic-generating land development activity as submitted on the application, the Road Impact Fee Administrator will provide, within fifteen (15) days

of the date of submittal of the completed application, a preliminary calculation of the road impact fees due for the proposed traffic-generating development.

(Ord. 2008-1318; Ord. 2009-1356; Reso. 2009-93; Reso. 2010-69; [Ord. 2015-1494, § 1](#))

Sec. 17-15-60. - Independent fee calculation study.

(a) General.

- (1) The impact fee may be computed by the use of an independent fee calculation study at the election of the fee payer or at the election of the Road Impact Fee Administrator, should the Administrator conclude that the nature, timing or location of the proposed development make it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.
- (2) The cost of preparation of an independent fee calculation study that is performed at the election of other than the Road Impact Fee Administrator shall be the sole responsibility of the fee payer. The Town shall be responsible for the cost of the preparation of an independent fee calculation study performed at the direction of the Road Impact Fee Administrator.
- (3) Any person who requests an independent fee calculation study shall pay an application fee to the Town to cover all costs incurred by the Town and associated with the review and decision by the Town on such independent fee calculation study.

(b) Formula.

- (1) The independent fee calculation study for the road impact fee shall be calculated by the use of the following formula:

FEE	= VMT × NET COST/VMT
VMT	= TRIPS × % NEW × LENGTH ÷ 2
NET COST/VMT	= COST/VMT - CREDIT/VMT
COST/VMT	= COST/VMC × VMC/VMT
Where:	
VMT	= Vehicle miles of travel placed on the major road system during an average weekday
TRIPS	= Average daily trip ends
% NEW	= Percent of primary trips, as opposed to pass-by or diverted-linked trips
LENGTH	= Average length of a trip on major road system
÷2	= Avoids double counting trips for origin and destination

COST/VMC	= Average cost to create a new vehicle mile of capacity (VMC) based on planned improvements
VMC/VMT	= The system-wide ratio of capacity to demand in the major roadway system, which shall be 1.00
CREDIT/VMT	= Revenue credit per VMT, based on net present value of other revenues generated by new development and used for capacity-expanding road improvements in the benefit area

- (2) The fee calculation shall be based on data, information or assumptions contained in this Article or independent sources, provided that:
- a. The independent source is an accepted standard source of transportation engineering or planning data or information;
 - b. The independent source is a local study on trip characteristics carried out by a qualified traffic planner or engineer pursuant to an accepted methodology of transportation planning or engineering; or
 - c. The percent new trips factor used in the independent fee calculation study is based on actual surveys prepared in the Town or a comparable jurisdiction.
- (c) Procedure.
- (1) An independent fee calculation study shall be undertaken through the submission of an application for the consideration of an independent fee calculation by a potential fee payer. The Road Impact Fee Administrator shall submit such an application for any proposed land development activity where the Road Impact Fee Administrator has elected to have an independent fee calculation study performed.
 - (2) Within ten (10) days of receipt of an application for the consideration of an independent fee calculation study by a fee payer, the Road Impact Fee Administrator shall determine if the application and the independent fee study are complete. If the Road Impact Fee Administrator determines that the application and the study are not complete, a written statement specifying the deficiencies shall be sent by mail to the person submitting the application. The application shall be deemed complete if no deficiencies are specified. The Road Impact Fee Administrator shall take no further action on the application until it is deemed complete.
 - (3) When the Road Impact Fee Administrator determines that the application and the independent fee study are complete, the Road Impact Fee Administrator shall render a written decision within twenty (20) days on whether the fee should be modified and, if so, what the amount should be, based on the standards set forth in Subsection (d) below.
- (d) Standards. If, on the basis of generally recognized principles of impact analysis, it is determined that the data, information and assumptions used by the applicant to calculate the independent fee calculation study satisfy the requirements of this Section, the fee determined in the independent fee calculation study shall be deemed the fee due and owing for the proposed traffic-generating development. The adjustment shall be set forth in a fee agreement. If the independent fee calculation study fails to satisfy the requirements of this Section, the fee applied shall be that fee established for the traffic-generating development in Subsection 17-15-50(c) of this Article.
- (e) Appeal of independent fee calculation study decision.

- (1) A fee payer affected by the administrative decision of the Road Impact Fee Administrator on an independent fee calculation study may appeal such decision to the Town Board by filing with the Road Impact Fee Administrator, within ten (10) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The Road Impact Fee Administrator shall place the appeal on the Town Board's agenda at a regularly scheduled meeting.
- (2) The Town Board, after a hearing, shall have the power to affirm or reverse the decision of the Road Impact Fee Administrator. In making its decision, the Town Board shall make written findings of fact and conclusions of law and apply the standards set forth in Subsection (d) above. If the Town Board reverses the decision of the Road Impact Fee Administrator, it shall direct the Road Impact Fee Administrator to recalculate the fee in accordance with its findings. In no case shall the Town Board have the authority to negotiate the amount of the fee or waive the fee. The decision of the Town Board shall be final, subject only to judicial review pursuant to Colorado law.

(Ord. 2008-1318)

Sec. 17-15-70. - Reimbursements.

(a) General standards.

- (1) Any person initiating traffic-generating development may apply for reimbursement for the cost of construction of non-site-related road capital improvements that are on the major road system. No reimbursements shall be provided for right-of-way costs, since such costs were not included in calculating the road impact fees.
- (2) The Town may enter into a reimbursement agreement with any person initiating traffic-generating development who proposes to construct non-site-related road capital improvements that are on the major road system. The reimbursement agreement shall provide proportionate reimbursement, which may take place over more than one (1) year, based on the availability of Town-wide road impact fee revenues set aside for the purpose of reimbursements. The Road Impact Fee Administrator may adopt policies and procedures, including road improvement reimbursement submittal requirements, regarding reimbursements and reimbursement agreements, consistent with the provisions of this Article.

(b) Amount of reimbursement. Reimbursement shall be in an amount equal to the fair market value of the construction to be estimated at the time of application or the value of the contribution or payment at the time it is made for construction of a non-site-related road capital improvement on the major road system.

(c) Procedure for reimbursement review.

- (1) The determination of any reimbursement shall be undertaken through the submission of an application for reimbursement agreement, which shall be submitted to the Road Impact Fee Administrator.
- (2) The application for a reimbursement agreement shall include the following information:
 - a. If the proposed application involves a reimbursement for any monetary contribution, the following documentation must be provided:
 1. A certified copy of the development approval in which the contribution was agreed;
 2. If payment has been made, proof of payment; or
 3. If payment has not been made, the proposed method of payment.
 - b. If the application for reimbursement agreement involves construction:

1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed Colorado engineer or contractor.
 2. The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, costs of plans and specifications, surveys of estimates of costs and of revenues, costs of professional services and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.
- (3) Within ten (10) days of receipt of the proposed application for reimbursement agreement, the Road Impact Fee Administrator shall determine if the application is complete. If it is determined that the application is not complete, the Road Impact Fee Administrator shall send a written statement to the applicant outlining the deficiencies. The Road Impact Fee Administrator shall take no further action on the application for reimbursement agreement until all deficiencies have been corrected or otherwise settled.
 - (4) Once the Road Impact Fee Administrator determines that the application for reimbursement agreement is complete, it shall be reviewed within thirty (30) days. The application for reimbursement agreement shall be approved if it complies with the standards set forth in Subsections (a) and (b) above.
 - (5) If the application for reimbursement agreement is approved by the Road Impact Fee Administrator, a reimbursement agreement shall be prepared and signed by the applicant and the Town. The reimbursement agreement shall specifically outline the basis for the reimbursement, the time by which any construction shall be completed and the dollar reimbursement the applicant shall receive. The reimbursement agreement shall provide for annual interest to commence upon the Town's preliminary acceptance of the improvements, in an amount equal to the Town's annual rate of return on the pooled investments of the Town.
- (d) Appeal of reimbursement decision. A person affected by the decision of the Road Impact Fee Administrator regarding reimbursements may appeal such decision to the Town Board by filing with the Road Impact Fee Administrator, within ten (10) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The Road Impact Fee Administrator shall place such appeal on the Town Board's agenda at a regularly scheduled meeting. The Town Board, after a hearing, shall affirm or reverse the decision of the Road Impact Fee Administrator based on the standards set forth in Subsections (a) and (b) above. If the Town Board reverses the decision, it shall direct the Road Impact Fee Administrator to readjust the reimbursement in accordance with its findings. The decision of the Town Board shall be final, subject only to judicial review pursuant to Colorado law.

(Ord. 2008-1318)

Sec. 17-15-80. - Benefit area.

- (a) Establishment. The entire incorporated area of the Town, as well as areas outside the jurisdictional limits that are within the Town's Growth Management Area Boundary, including the I-25/SH 392 interchange, is established as a single road impact fee benefit area. The current location of the Growth Management Area Boundary is shown in Appendix 17-A.
- (b) Expenditure. The expenditure of impact fee funds shall be limited to those road capital improvement projects in the benefit area.
- (c) Establishment of trust fund. The Town hereby establishes the Road Impact Fee Trust Fund for the purpose of ensuring that fee payers receive sufficient benefit for road impact fees paid.
- (d) Deposit in trust fund. All road impact fees collected by the Town shall be immediately deposited into the trust fund. All proceeds shall be invested in an interest-bearing account. All income derived from

these investments shall be retained in the trust fund until transferred or spent, whichever is appropriate. Record of the trust fund account shall be available for public inspection.

- (e) First-in, first-out accounting. For the purposes of determining whether impact fee funds have been spent or encumbered, the first fees collected shall be considered the first monies spent or encumbered.
- (f) Annual recommendation for expenditure of fees. Each year, at the time the annual budget is reviewed, the Road Impact Fee Administrator shall recommend to the Town Board appropriations to be spent from the trust fund. After review of the recommendation, the Town Board shall approve or modify the recommended expenditures of the trust fund monies. Expenditures shall be made from the trust fund only for road capital improvement projects in the benefit area. Each year a minimum of twenty-five percent (25%) of the funds collected shall be designated for reimbursement of amounts owing on the capital contribution reimbursement agreements more fully described in Paragraph 17-15-70(a)(2) of this Article. Any amounts not appropriated from the trust fund, together with any interest earnings, shall be carried over to the following fiscal period in accordance with the policies and procedures adopted pursuant to Paragraph 17-15-70(a)(2).
- (g) Annual report on expenditures. Each year, after the decision of the Town Board about the expenditure of impact fee appropriations, the Road Impact Fee Administrator shall prepare an annual report identifying the projects for which the Town Board has approved funds.

(Ord. 2008-1318)

Sec. 17-15-90. - Refund of fees not spent.

- (a) General. Any fees collected shall be returned to the fee payer or the fee payer's successor in interest, if the fees have not been spent within ten (10) years from the date the building permit for the development was issued, along with interest of five percent (5%) per year. Fees shall be deemed to be spent on the basis of the first fee collected being the first fee spent.
- (b) Refund procedure. The refund shall be administered by the Road Impact Fee Administrator and shall be undertaken through the following process:
 - (1) A refund application shall be submitted within one (1) year following the end of the tenth year from the date on which the building permit was issued on the proposed development. The refund application shall include the following information:
 - a. A copy of the dated receipt issued for payment of the fee.
 - b. A copy of the building permit.
 - c. Evidence that the applicant is the successor in interest to the fee payer.
 - (2) Within ten (10) days of receipt of the refund application, the Road Impact Fee Administrator shall determine if it is complete. If the Road Impact Fee Administrator determines that the application is not complete, a written statement specifying the deficiencies shall be forwarded by mail to the person submitting the application. Unless the deficiencies are corrected, the Road Impact Fee Administrator shall take no further action on the refund application.
 - (3) When the Road Impact Fee Administrator determines the refund application is complete, it shall be reviewed within thirty (30) days and shall be approved if it is determined that the fee payer or a successor in interest has paid a fee which has not been spent within the period of time permitted under this Section. The refund shall include the fee paid plus interest of five percent (5%) per year.
- (c) Appeal of refund decision. A fee payer affected by a decision of the Road Impact Fee Administrator may appeal such decision to the Town Board by filing with the Road Impact Fee Administrator, within ten (10) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The Road Impact Fee Administrator shall place such appeal on the Town

Board's agenda. The Town Board, after a hearing, shall affirm or reverse the decision of the Road Impact Fee Administrator, based on the standards set forth in this Section. If the Town Board reverses the decision of the Road Impact Fee Administrator, it shall direct the Road Impact Fee Administrator to readjust the refund in accordance with its findings. In no event shall the Town Board have the authority to negotiate the amount of the refund. The decision of the Town Board shall be final.

(Ord. 2008-1318)

Sec. 17-15-100. - Review every five years.

- (a) At least once every five (5) years, the Road Impact Fee Administrator shall recommend to the Town Board whether any changes should be made to the Road Impact Fee Update 2007 and this Article. The purpose of this review is to analyze the effects of inflation on actual costs, to assess potential changes in needs, to assess any changes in the characteristics of land uses and to ensure that the road impact fees will not exceed a proportionate share.
- (b) In years when a comprehensive update is not performed, the fee schedule shall be adjusted to account for construction cost inflation, pursuant to the provisions of this Section. The Road Impact Fee Administrator shall calculate adjustments to the impact fee rates by multiplying them by a ratio, the numerator of which is the most recently available two-year moving average of the annual Colorado Construction Cost Index by the Colorado Department of Transportation, and the denominator of which is the same index for a period one (1) year earlier than the numerator. The adjusted fee schedule shall become effective upon the approval thereof by the Town Board. The Road Impact Fee Administrator shall make the adjusted impact fee schedule publicly available.

(Ord. 2008-1318)

Sec. 17-15-110. - Existing agreements.

Any existing agreements for credits or front-ending agreements under the provisions of this Article, in effect prior to the effective date of the ordinance codified herein, shall remain in full force and effect or, in the alternative, such credits and front-ending agreements may be converted to reimbursement agreements consistent with the provisions of this Article, at the election of the holder of the credits or beneficiary of the front-ending agreement. Any such election shall be made within one (1) year of the effective date of the ordinance codified herein.

(Ord. 2008-1318)

Sec. 17-15-120. - Other reimbursement agreements.

Nothing contained herein shall be deemed to preclude the Town from entering into reimbursement agreements with persons constructing roads and highways within the benefit area.

(Ord. 2008-1318)

Sec. 17-15-130. - Effective date.

Except as otherwise provided herein, the ordinance codified herein shall become effective April 1, 2008. The Town Board is hereby authorized to delay or defer the effective date of the implementation of the fees established by said ordinance by a resolution adopted contemporaneously with the final approval of said ordinance.



MEMORANDUM

Date: November 16, 2015
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
Scott Ballstadt, AICP, Director of Planning
From: Paul Hornbeck, Associate Planner
Subject: Review and discussion regarding Section 16-10-20(1)i. regarding tutoring or instruction of no more than two students at any one time
Item #s: Work Session # 2

Background:

The purpose of this work session is to present a proposed code amendment pertaining to the number of students allowed with home occupations. The code currently limits the number of students to two (2) at any one time. Home occupations with students is the only type of home occupation that limits the number of customers.

As was discussed at the previous work session on September 28, 2015, this amendment is being considered at the request of a resident, Ms. Robin Flores, who operates a home-based music lesson business with more than two students at any one time. To understand the potential impact Town-wide, staff has determined that the Town currently has three licensed businesses in commercial locations that teach music and two home occupations that teach music, each with two or fewer students.

Ms. Flores had previously operated in Loveland, apparently with an approved business license but unaware that Loveland also has a limit on the number of students. Upon moving to Windsor, Ms. Flores forgot to apply for a business license and her case was brought to the Town's attention due to a neighbor's complaint about parking associated with the home occupation. Her business is part of a national curriculum that targets teaching groups of four to eight students at a time. She was granted a variance from this code section in March, 2015, by the Board of Adjustment with an expiration of December 31, 2015. The Board felt this was an equitable solution to allow her existing business to continue to operate while a code amendment was considered by the Town Board.

Under the proposed code language below, home occupations with tutoring or instruction of two or fewer students would continue to be allowed subject to the existing regulations and approval process. Home occupations with more than two students would require approval of a Conditional Use Grant by the Town Board and would be subject to additional requirements in Sec. 16-7-50(d).

Proposed Changes to Sec. 16-10-20. - Home occupations.

- (1)i. In the event a home occupation involves tutoring or instruction, no more than two (2) students may be present at the dwelling unit at any one (1) time without approval of a Conditional Use Grant.

Proposed addition of Sec. 16-7-90

November 16, 2015

Town Board– memo – Home Occupations

- (d) In addition to meeting all standards set forth in this section and Sec. 16-10.20 [Home Occupations], a home occupation involving tutoring or instruction of more than two (2) students present at the dwelling unit at any one time, shall:
- (1) Be limited to tutoring or instruction of school-aged children;
 - (2) Not exceed eight (8) students present at the dwelling unit at any one (1) time;
 - (3) Make available one (1) on-site parking space per every two (2) students;
 - (4) Be limited to hours of operation between 7:00 a.m. and 8:00 p.m.;
 - (5) Be limited to no more than fifteen (15) hours per week;
 - (7) Comply with all State of Colorado child care licensing requirements, including requirements for licensing exemption status.; and
 - (8) Agree to inspections in order to ensure that all applicable building and fire codes are met

Recommendation

Consider the code language presented and provide direction to staff on the issue.



FUTURE TOWN BOARD MEETINGS

Work Sessions & Regular Meetings will be held in the Board Chambers unless otherwise noted.

November 23, 2015 6:00 p.m.	Town Board Work Session Cancelled
November 23, 2015 7:00 p.m.	Town Board Meeting
November 30, 2015	Fifth Monday
December 7, 2015 6:00 p.m.	Town Board Special Meeting
December 14, 2015 5:30 p.m./1 st floor conference room	Board/Manager/Attorney Monthly Meeting Broadband discussion/presentation
December 14, 2015 7:00 p.m.	Town Board Meeting
December 21, 2015 6:00 p.m.	Town Board Work Session
December 28, 2015	Town Board Work Session & Meeting Cancelled
January 4, 2016 6:00 p.m.	Town Board Work Session RTA Update 2016 Water Efficiency Plan Draft Report
January 11, 2016 5:30 p.m./1 st floor conference room	Board/Manager/Attorney Monthly Meeting
January 11, 2016 7:00 p.m.	Town Board Meeting Kern Board Meeting
January 18, 2016 6:00 p.m.	Town Board Work Session Joint work session with Planning Commission
January 25, 2016 6:00 p.m.	Town Board Work Session
January 25, 2016 7:00 p.m.	Town Board Meeting

Additional Events

December 3, 2015; 7 am	Legislative Breakfast
December 11, 2015; 6 pm	2015 Employee End of the Year Banquet

Future Work Session Topics

Band shell update