2428 Salisbury Road, West Bend, WI

This property is a barrier to the expansion of the City of West Bend Northwest Interceptor Sewer.

A lawsuit to stop the expansion of the City sewer system on N. River Drive was eventually won on appeal by the Town in 2002. This sewer project was needed to connect the Glen Ivy subdivision to the City system and allow the City to disconnect the lift station for the Glen Ivy subdivision. The City of West Bend does not want lift stations. This lawsuit stopped the City of West Bend from running the sewer along the West Side of the Milwaukee River, down N. River Drive in Young America.

The City of West Bend Interceptor Sewer 2020 plan (map #5) indicates a future sewer to run on the East side of the Milwaukee River in the area along Young America. The Town wanted to stop this Interceptor Sewer as well.

Impact Fee/Park funds were collected from developers of lots in the Town of Barton for over 40 years. As indicated in the State of Wisconsin Statutes, these funds must be used or returned to the current owners. The State of Wisconsin allowed the timeline for the use of this money to be set by the municipality.

In 1994, The State authorized Towns, Cities and Villages to set up their own timeline to use the funds. Our ordinance (Chapter310) gives the Town Board the direction for Impact fee/Park funds.

At the Town Board monthly meeting on February 21, 2007, a motion was made to pursue availability of a parcel to purchase for future parkland. The vote was unanimously approved.

The previous owner of the current park property, Mr. Krell whose deteriorating health and inability to maintain his property, offered to sell that property to the Town of Barton.

Town Board monthly meeting on September 17, 2007, a motion was made to authorize the Chairman to sign an offer to purchase for the property at the recommendation of the Town attorney, approved 4 in favor, 1opposed.

At the Town Board monthly meeting on September 17, 2007, Town Attorney Tim Andringa suggested an amendment to the ordinances regarding Impact Fees (07-005).

A Special Town Meeting was held on November 14, 2007, regarding the possible purchase of a property with the Town Impact Fees. Discussion was held and vote taken to move forward with the purchase, 14 voted in favor of the purchase, 2 opposed the purchase.

This property was purchased from Krell in December 2007 for $239,000 with funds from the Impact fees/Park funds. ~~This property was designated as a Town Park. The entire purchase was handled by the Town Attorney.~~ This property was purchased with the intention of a potential future park. The entire purchase was handled by the Town Attorney.

During 2016 Chairman Bertram had begun acquisition discussions with the estate co-owners of 20 acres of vacant land located South and adjacent to the Park Property on Salisbury Road in the Town of Barton. The Town Board had an appraisal done and was working with the owners as well as looking into grants (Washington Ozaukee Land Trust) to purchase it as their price was three times the amount of the Impact fee fund. Negotiations halted as the Town would not pay $750,000 for the 20 acres. The current Town Board has continued discussions to purchase or trade the park property for their vacant land. As of late 2024, owners of the vacant land still wanted $750,000. The Town will continue in discussions and negotiations.

The park property was first rented to a town employee with an agreement that he would act as the caretaker. As caretaker, his rent was reduced to offset requirements to maintain the building (unless professionals were required), all yardwork, lawn care, landscaping and snow removal.

The rent was initially set at $800 per month. This amount was below market rate of $1200. The rent today is $1,600 per month and the subsequent caretaker/tenants have the same responsibilities. The rent has been raised as the market rents changed. These rent funds are listed on the annual Town budget.

There have been a number of caretakers over the years with the current caretaker occupying the property since September 2020.

Appendix B

RESOLUTIONS FROM TOWNS REGARDING THE REVISED WEST BEND SANITARY SEWER SERVICE AREA

TOWN OF BARTON TOWN BOARD RESOLUTION NO. 98-01 REGARDING THE PROPOSED EXPANSION OF THE CITY OF WEST BEND SANITARY SEWER SERVICE AREA

WHEREAS, the Town of Barton, pursuant to the provisions of Section 60.22(3), 61.35, and 62.23(1) of the Wisconsin Statutes, has created a Town Plan Commission; and

WHEREAS, it is the duty and function of the Town Plan Commission, pursuant to Section 62.23(2) of the Wisconsin Statutes, to make and adopt a master plan for the physical development of the Town of Barton; and

WHEREAS, pursuant to Section 62.23(3)(b) of the Wisconsin Statutes, the Town of Barton Plan Commission, on the 10th day of July, 1995, adopted the report entitled *Town of Barton Land Use Plan* as an element of the Town's master plan to serve as a guide for the future development of the Town of Barton; and

WHEREAS, the Town Board of the Town of Barton concurred with the Town Plan Commission and the objectives, policies, and plan set forth in the report entitled *Town of Barton Land Use Plan* dated June 1995 and the Town Board of the Town of Barton on the 10th day of July 1995, adopted the report entitled *Town of Barton Land Use Plan* as an element of the Town's master plan to serve as a guide for the future development of the Town of Barton; and

WHEREAS, the proposed *Town of Barton Land Use Plan* calls for continued Town of Barton governance and Town boundary maintenance over the entire geographic area currently defined as the Town of Barton, the preservation of Town open space and agricultural lands, the use of planned transitional areas between urban land uses and rural land uses, and the continuation of the Town's rural character in planned locations within the Town of Barton; and

WHEREAS, the Southeastern Wisconsin Regional Planning Commission adopted its Planning Report No. 45 titled *A Regional Land Use Plan for Southeastern Wisconsin: 2020* on December 3, 1997 including Map 10 titled "Recommended Land Use Plan for the Southeastern Wisconsin Region: 2020" which depicts the extent and amount of urban growth in the City of West Bend and environs--including portions of the Town of Barton; and

WHEREAS, the Town Board of the Town of Barton finds, with recommendation of the Town Plan Commission, that:

1. The proposed planned year 2020 sanitary sewer service area delineation indicated on Maps 5 and 6 of the draft of Community Assistance Planning Report No. 35 (2nd Edition) titled *Sanitary Sewer Service Area for the City of West Bend and Environs* (undated) is in conflict with and inconsistent with the adopted *Town of Barton Land Use Plan*.

2. The proposed planned year 2020 sanitary sewer service area delineation indicated on Maps 5 and 6 of the draft of Community Assistance Planning Report No. 35 (2nd Edition) titled *Sanitary Sewer Service Area for the City of West Bend and Environs* (undated) appears to be inconsistent with the extent and amount of urban growth indicated for the Town of Barton on Map 10 titled "Recommended Land Use Plan for the Southeastern Wisconsin Region:

2020" of SEWRPC Planning Report No. 45 titled *A Regional Land Use Plan for Southeastern Wisconsin: 2020*.

BE IT RESOLVED that the Town of Barton Town Board, with recommendation of the Town Plan Commission, hereby recommends to the Southeastern Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources, and the City of West Bend that the proposed City of West Bend sanitary sewer service area (as it pertains to the Town of Barton) not be expanded beyond what is already indicated on Map 6 of SEWRPC's Community Assistance Planning Report No. 35 (1st Edition) titled *Sanitary Sewer Service Area for the City of West Bend* (dated December 1982).

BE IT FURTHER RESOLVED that the Town Clerk transmit a certified copy of this resolution to the Southeastern Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources, and the City of West Bend for their consideration and action thereupon.

Adopted this 4th day of May, 1998 by the Town Board of the Town of Barton.

Russell C. Abel, Chairman
Town of Barton

ATTESTATION:

Suzi Landeene, Town Clerk
Town of Barton

percent larger than the currently adopted sewer service area as set forth in SEWRPC Community Assistance Planning Report No. 35 as amended. All of the proposed additions to the West Bend sewer service area lie adjacent to the current sewer service area. The nearest other public sanitary sewer system, the Village of Jackson, as currently approved, is located approximately three miles south of the southerly limits of the proposed sewer service area boundary. Plans for expansion of the Village of Jackson sewer service area to serve the proposed Washington County Fair Park site, located about 1/2 mile south of the revised West Bend sewer service area, were under consideration for approval in 1998 by the Wisconsin Department of Natural Resources.

SEWAGE TREATMENT PLANT CAPACITY IMPACT ANALYSIS

The City of West Bend sewage treatment facility has a design hydraulic loading capacity of 9.0 million gallons per day (mgd) on an average annual flow basis. The average annual flow rate in 1997 was about 4.5 mgd. The increase in sewered population from about 30,000 persons in 1995 to about 50,500 persons, assuming full development of vacant lands within the sewer service area as envisioned under the City's land use plan, is estimated to result in a flow rate between 7.6 and 8.5 mgd on an average annual basis, with the total flows being somewhat dependent upon the sewage flows generated by new commercial and industrial land uses. Thus, the existing sewage treatment plant should have adequate capacity to treat sewage flows from the expanded sewer service area.

PUBLIC REACTION TO THE REFINED SANITARY SEWER SERVICE AREA

On May 6, 1998, a public hearing on the proposed revisions to the West Bend sanitary sewer service area was held at the West Bend City Hall. The hearing was jointly sponsored by the City of West Bend and the Regional Planning Commission. Minutes of the public hearing, which was very well attended, are reproduced in Appendix A.

A review of the public hearing record indicates the following:

1. The proposed revisions to the West Bend sanitary sewer service area were supported by two organizations, including the West Bend Economic Development Corporation and the West Bend Builders Association, and 18 citizens. One of the latter group also supported adding more land to the planned sewer service area on the west side of the City north of STH 33.

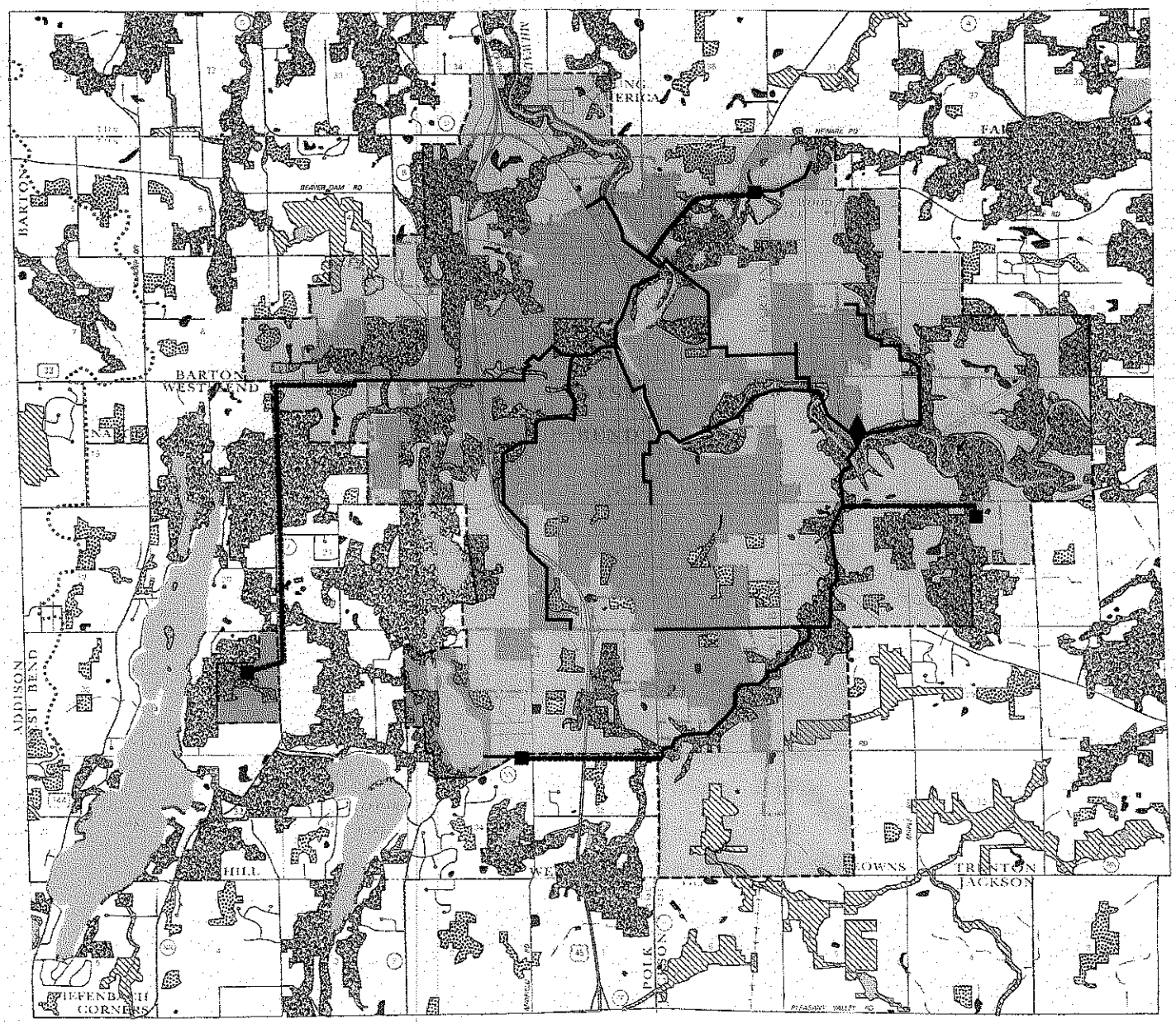
2. The proposed revisions to the West Bend sanitary sewer service area were opposed by public officials from the Towns of Barton, Trenton, and West Bend and by eight citizens. The three Towns submitted formal resolutions in support of their positions. These resolutions are reproduced in Appendix B.

In reviewing the record of the public hearing, the City of West Bend and the Regional Planning Commission gave particular attention to the formal positions of the three Towns concerned. This review resulted in the following findings:

1. The Town of Barton's objections to the proposed expansion of the West Bend sanitary sewer service area are rooted in concerns over the diminishment of Town territory and inconsistencies between the areal extent of urban land uses reflected on the sewer service area map and such uses as identified in the year 2020 regional land use plan and the Town of Barton land use plan. Inconsistencies between land use plans prepared by an incorporated municipality, such as the City of West Bend, and an unincorporated municipality, such as the Town of Barton, are the norm. Wisconsin local government law inevitably creates such conflicts, encouraging incorporated municipalities to plan for extraterritorial jurisdictional areas in towns on the assumption that such lands likely will some day be annexed. Conflicts between local land use plans are not a basis for withholding approval of sewer service area plans. Rather, the major constraint attendant to the approval of sewer service area plans imposed under Wisconsin law relates to there being a reasonable relationship between the supply of developable land included within the perimeter of such an area and the amount of growth, in terms of population and employment, anticipated for that area. The adopted regional land use plan provides for a reasonable range of growth. As noted earlier in this report, the present West Bend sewer service area proposal falls within that growth range and, accordingly, meets that planning constraint.

2. The Town of Trenton's objections to the proposed expansion of the West Bend sanitary sewer service area are rooted in concerns that the proposed expansion of the service area is in excess of anticipated needs by the year 2020. As noted above,

AMERICA



Map 5

CITY OF WEST BEND PLANNED SANITARY SEWER SERVICE AREA: 2020

LEGEND

- PRIMARY ENVIRONMENTAL CORRIDOR
- SECONDARY ENVIRONMENTAL CORRIDOR
- ISOLATED NATURAL RESOURCE AREA
- WETLANDS AND SURFACE WATER AREAS LESS THAN FIVE ACRES IN SIZE
- EXISTING SANITARY SEWER SERVICE AREA: 1995
- PLANNED SANITARY SEWER SERVICE AREA: 2020
- PLANNED SANITARY SEWER SERVICE AREA BOUNDARY
- LANDS WITHIN THE PLANNED SANITARY SEWER SERVICE AREA INELIGIBLE FOR SEWER SERVICE
- EXISTING PUBLIC SEWAGE TREATMENT FACILITY
- EXISTING TRUNK SEWER
- EXISTING FORCE MAIN
- EXISTING PUMPING STATION
- PROPOSED TRUNK SEWER
- 1995 CITY OF WEST BEND CIVIL DIVISION BOUNDARY

GRAPHIC SCALE
0 1/2 1/2 1 MILE
0 1000 2000 3000 4000 FEET

Source: SEWRPC.

December, 1994

Volume 1, Issue 1

Wisconsin's New Impact Fee Law

by Brian W. Ohm, J.D.

Cities, villages, towns and counties in Wisconsin have a new tool to assist them in addressing the impacts of new development on the fiscal health of the community. With the passage of 1993 Wisconsin Act 305 in 1994, Wisconsin became one of a growing number of states to pass enabling legislation for impact fees. Beginning on May 1, 1995, a local government seeking to use impact fees must comply with the requirements of the new law which is codified at section 66.55 of the Wisconsin Statutes. Impact fees are financial obligations imposed on a developer by a local government as a condition of development approval.

The concept that new development should pay its own way is not new to Wisconsin. Local governments in Wisconsin have traditionally used such techniques as dedication of land for parks and streets or fees in lieu of dedication under the subdivision process to require that new development contribute a larger share of the costs of public improvements which are made necessary by the new development. However, impact fees are a much more flexible and sophisticated approach to private funding of public infrastructure than previously available methods. For example, unlike dedication and fees in lieu which apply only to residential subdivisions, impact fees can be applied to all types of new development. Also, impact fees can finance *off-site* improvements, whereas dedications, fees in lieu, and special assessments are typically limited to funding on-site improvements.

The new law is noteworthy for several reasons. First, the new law clarifies the authority of local governments to use impact fees to finance highways and other transportation facilities, sewage treatment facilities, storm and surface water handling facilities, water facilities, parks and other recreational facilities, solid waste and recycling facilities, fire and police facilities, emergency medical facilities, and libraries.

Historically, local governments in Wisconsin have been reluctant to use impact fees for such a comprehensive list of public facilities. In addition, the law provides that a portion of the impact fees may cover related legal, engineering, and design costs. On the other hand, the new law forbids the use of impact fees to finance facilities owned by a school district.

Second, the new law allows *counties* to have a more direct role in the development process, regardless of where new development occurs in a county. Counties can use the new law to require that new development which is occurring within a city, village, or town, pays for the impacts that it has on the need for new county facilities, such as parks and roads. Counties have not had an effective mechanism for recovering these costs directly from new development in the past. Unlike cities, villages, and towns, counties do not have authority to impose special assessments and have limited ability to use dedications and fees in lieu under the subdivision process. Now, counties can establish an impact fee program. Indeed, it is easy to envision circumstances when it might make most sense to enact impact fees at the county level rather than at the local level. Often public facilities within one community need to be expanded because of new development occurring in another community. The ability of counties to enact impact fees to pay for new county facilities required by new growth makes it possible, for the first time, to take account of growth impacts on communities beyond the boundaries of the community where development is occurring -- and in so doing to take a more regional approach to growth management.

To be in a position to enact an impact fee ordinance, a local government must first prepare a needs assessment for public facilities the local government anticipates financing with impact fees. The critical importance of preparing a needs assessment is highlighted by recent

decisions of the United States Supreme Court. In Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987), the Court ruled that the "type" of condition imposed must address the same "type" of impact caused by the new development. Moreover, in Dolan v. City of Tigard, 114 S.Ct. 2309 (1994), the Court ruled that any condition imposed by a local government, such as a fee, must bear a "rough proportionality" to the impact created by the new development. In other words, the fee cannot unreasonably exceed the burden or impact created by the new development. Similar standards were articulated by the Wisconsin Supreme Court many years ago in Jordan v. Village of Menomonee Falls, 28 Wis.2d 608, 127 N.W.2d 442 (1966).

As these court rulings indicate, local governments bear the burden of proving that the need for additional facilities (that they propose to meet with impact fees) results from new development, and not from deficiencies related to existing development. It is therefore essential, prior to adopting an impact fee ordinance, to prepare a *needs assessment*, which inventories existing public facilities and identifies existing deficiencies in the quantity or quality of those public facilities. (Since impact fees cannot be used to address existing deficiencies in public facilities, other means of financing, such as special assessments, will need to be used to correct such deficiencies.) The needs assessment must identify the level of service for public facilities within the local government. Examining service levels in light of growth projections will enable a local government to identify additional public facilities which will be required because of new development. Finally, the assessment must include a detailed estimate of the capital costs of providing the additional public facilities. This figure provides the basis for establishing the actual fee, and ensures that the fee does not exceed the proportionate share of the capital costs required to serve new development.

An important aspect of the new impact fee law is that it allows a local government to impose different impact fees on different types of land development and on different geographically defined zones within the political subdivision. This enables local governments to use impact fees in a coordinated fashion, consistent with other public policy objectives. For example, the law expressly allows a community to provide for an exemption from, or a reduction in, the amount of impact fees on land development that provides low-cost housing. Similarly, a community could decide that preservation of its central business district was a critical priority. With the proper justification in the needs assessment, the community could decide not to charge impact fees in the central business district, while charging them in other areas.

Wisconsin's new impact fee law contains additional requirements that local governments need to be aware of when adopting an impact fee ordinance. For example, impact fee ordinances must specify reasonable time periods within which impact fees will be spent. If the impact fees are not expended within this time frame, they must be refunded to the current owner of the property. The ordinance must also specify a procedure for a developer to contest the amount, collection or use of the impact fee charged by the governing body. Finally, the law requires that local governments provide credits for money received from other sources to ensure that double funding of facilities does not occur. Impact fees must be reduced by the amount of any federal or state money a local government receives for the public facilities for which the impact fees are imposed. Impact fees must also be reduced by the amount of any special assessments, special charges, required land dedications or fees in lieu that a developer is required to pay. However, the law does not prevent local government from financing public facilities by any other means authorized by law.

Communities that hope to have the legality of their impact fees upheld in court have a strong incentive to plan, and to prepare a sound assessment of the need for capital improvements related to anticipated future development. The better the planning, and the greater the adherence to established capital improvements plans and services standards, the easier it will be for an impact fee program to withstand a legal challenge.
(*Edited by G.B.*)

Brian Ohm is an Assistant Professor, and UWEX Land Use Law Specialist at the UW-Madison Department of Urban and Regional Planning.

mation not later than May 1, 2022. The department shall make such information available to the public annually in the report described in par. (a) (intro.).

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18, 32; 2013 a. 20; 2015 a. 55, 60, 301; 2017 a. 59; 2019 a. 10; 2021 a. 55.

A city was authorized to enact a room tax. The gross receipts method was a fair and reasonable way of calculating the tax. Blue Top Motel, Inc. v. City of Stevens Point, 107 Wis. 2d 392, 320 N.W.2d 172 (1982).

Under sub. (1m) (am), this section favors expenditures to construct or improve convention facilities. However, sub. (1m) (am) only addresses when a municipality may impose a room tax rate of greater than eight percent and is irrelevant when the city has not exceeded that maximum. The only restrictions the rest of the statute places on the use of room tax monies are found in sub. (1m) (d), which directs a municipality to spend a certain percentage on tourism promotion and development, which means the promotion and development of travel for recreational, business, or educational purposes. English Manor Bed & Breakfast v. Great Lakes Cos., 2006 WI App 91, 292 Wis. 2d 762, 716 N.W.2d 531, 05-1358.

66.0617 Impact fees. (1) DEFINITIONS. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10 percent of capital costs may consist of legal, engineering and design costs unless the municipality can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10 percent of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities, vehicles; or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a municipality under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a municipality or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a municipality.

(e) "Municipality" means a city, village, or town.

(f) "Public facilities" means all of the following:

1. Highways as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing, and distributing water, parks, playgrounds, and land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

2. Notwithstanding subd. 1., with regard to impact fees that were first imposed before June 14, 2006, "public facilities" includes other recreational facilities that were substantially completed by June 14, 2006. This subdivision does not apply on or after January 1, 2018.

(g) "Service area" means a geographic area delineated by a municipality within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the municipality.

(2) GENERAL. (a) A municipality may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a municipality to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a municipality shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the municipality on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a municipality may impose and collect impact fees only under this section.

(3) PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a municipality shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) PUBLIC FACILITIES NEEDS ASSESSMENT. (a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a municipality shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the cumulative effect of all proposed and existing impact fees on the availability of affordable housing within the municipality.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the municipality at least 20 days before the hearing under sub. (3).

(5) DIFFERENTIAL FEES, IMPACT FEE ZONES. (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the municipality and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the municipality. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) STANDARDS FOR IMPACT FEES. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(am) May not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed.

(b) May not exceed the proportionate share of the capital costs

that are required to serve land development, as compared to existing uses of land within the municipality.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(fm) May not include expenses for operation or maintenance of a public facility.

(g) Except as provided under this paragraph, shall be payable by the developer or the property owner to the municipality in full upon the issuance of a building permit by the municipality. Except as provided in this paragraph, if the total amount of impact fees due for a development will be more than $75,000, a developer may defer payment of the impact fees for a period of 4 years from the date of the issuance of the building permit or until 6 months before the municipality incurs the costs to construct, expand, or improve the public facilities related to the development for which the fee was imposed, whichever is earlier. If the developer elects to defer payment under this paragraph, the developer shall maintain in force a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality. A developer may not defer payment of impact fees for projects that have been previously approved.

(7) LOW-COST HOUSING. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the municipality.

(7r) IMPACT FEE REPORTS. At the time that the municipality collects an impact fee, it shall provide to the developer from which it received the fee an accounting of how the fee will be spent.

(8) REQUIREMENTS FOR IMPACT FEE REVENUES. Revenues from each impact fee that is imposed shall be placed in a separate segregated interest-bearing account and shall be accounted for separately from the other funds of the municipality. Impact fee revenues and interest earned on impact fee revenues may be expended only for the particular capital costs for which the impact fee was imposed, unless the fee is refunded under sub. (9).

(9) REFUND OF IMPACT FEES. Except as provided in this subsection, impact fees that are not used within 8 years after they are collected to pay the capital costs for which they were imposed shall be refunded to the payer of fees for the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8). Impact fees that are collected for capital costs related to lift stations or collecting and treating sewage that are not used within 10 years after they are collected to pay the capital costs for which they were imposed, shall be refunded to the payer of fees for the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8). The 10-year time limit for using impact fees that is specified under this subsection may be extended for 3 years if the municipality adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the 10-year limit, it needs an additional 3 years to use the impact fees that were collected. The resolution shall include detailed written findings that specify the extenuating circumstances or hardship that led to the need to adopt a resolution under this subsection. For purposes of the time limits in this subsection, an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality under sub. (6) (g).

(10) APPEAL. A municipality that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the municipality.

History: 1993 a. 305; 1997 a. 27; 1999 a. 150 s. 524; Stats. 1999 s. 66.0617; 2005 a. 203, 477; 2007 a. 44, 96; 2009 a. 180; 2017 a. 243.

An association of developers had standing to challenge the use of impact fees. As long as individual developers had a personal stake in the controversy, the association could contest the use of impact fees on their behalf. Further, individual developers subject to the impact fees do have the right to bring their own separate challenges. Metropolitan Builders Ass'n of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Sub. (6) allows a municipality to impose impact fees for a general type of facility without committing itself to any particular proposal before charging the fees. The needs assessment must simply contain a good-faith and informed estimate of the sort of costs the municipality expects to incur for the kind of facility it plans to provide. Sub. (9) requires impact fees ordinances to specify only the type of facility for which fees are imposed. A municipality must be allowed flexibility to deal with the contingencies inherent in planning. Metropolitan Builders Ass'n of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Subs. (2) and (6) (b) authorize municipalities to hold developers responsible only for the portion of capital costs whose necessity is attributable to their developments. A municipality cannot expect developers' money to subsidize the existing residents' proportionate share of the costs. If impact fees revenues exceed the developers' proportionate share of the capital costs of a project, the municipality must return those fees to the current owners of the properties for which developers paid the fees. Metropolitan Builders Ass'n of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

When the plaintiff home builders association alleged a town enacted an impact fee ordinance that disproportionately imposed the town's costs on development and the ordinance contained a mechanism for appealing these issues, but the association did not use it, the circuit court did not erroneously exercise its discretion when it concluded the association should have used the ordinance's appeal process before bringing its claims to court. St. Croix Valley Home Builders Ass'n v. Township of Oak Grove, 2010 WI App 96, 327 Wis. 2d 510, 787 N.W.2d 454, 09-2166.

The primary purpose of a tax is to obtain revenue for the government as opposed to covering the expense of providing certain services or regulation. A "fee" imposed purely for revenue purposes is invalid absent permission from the state to the municipality to exact such a fee. A "fee in lieu of room tax" that did not help the city recoup its investment in a development but rather was a revenue generator for the city that was collected from the owners of condominiums in a specific development who chose not rent their units to the public was imposed without legislative permission and was therefore an illegal tax. Bentivenga v. City of Delavan, 2014 WI App 118, 358 Wis. 2d 610, 856 N.W.2d 546, 14-0137.

Rough Proportionality and Wisconsin's New Impact Fee Act. Ishikawa. Wis. Law. Mar. 1995.

66.0619 Public improvement bonds: issuance. (1) A municipality, in addition to any other authority to borrow money and issue its municipal obligations, may borrow money and issue its public improvement bonds to finance the cost of construction or acquisition, including site acquisition, of any revenue-producing public improvement of the municipality. In this section, unless the context or subject matter otherwise requires:

(a) "Debt service" means the amount of principal, interest and premium due and payable with respect to public improvement bonds.

(b) "Deficiency" means the amount by which debt service required to be paid in a calendar year exceeds the amount of revenues estimated to be derived from the ownership and operation of the public improvement for the calendar year, after first subtracting from the estimated revenues the estimated cost of paying the expenses of operating and maintaining the public improvement for the calendar year.

(c) "Municipality" means a county, sanitary district, public inland lake protection and rehabilitation district, town, city or village.

Dick said he received information from Sheriff Schmidt that a fully loaded cement truck crossed the Woodford Bridge last Friday. Two residents saw the truck and stopped him when he attempted to re-cross, so they got the name of the trucking company. Dick called the company and they denied at first, then admitted their driver had been in the area. The bridge will be checked out for any damage to it structurally.

The Clerk read a letter from the County on the availability of topographical mapping.
The Clerk read a letter from Tim re: amending town's ordinance on impact fees. The clerk was told to ask Tim to draft an amendment for the Oct. meeting.
The Clerk reminded the board it would soon be budget time and October 29th at 7:30 was set for the Finance Committee meeting.
Russ Prust said the Historical Society was holding an "Old Settler's Banquet" in February. It would be the Town of Barton and the historical Village of Barton. They are planning on sending out flyers to the town residents.

10. Action necessary to convene into Closed Session, pursuant to Sec. 19.85(1)(e) to deliberate or negotiate the purchase of public properties, investment of public funds, conducting other specified public business whenever competitive or bargaining reasons requires a closed session.

Mike Dricken made a motion to convene into Closed Session, pursuant to Sec. 19.85(1)(e) to deliberate or negotiate the purchase of public properties, investment of public funds, conducting other specified public business whenever competitive or bargaining reasons requires a closed session. Joe Peters seconded. Vote by roll call:

Jerry Meulemans – aye; Mike Dricken – aye; Dick Bertram – aye; Joe Peters – aye; Russ Prust – aye. Motion carried by unanimous vote.

11. Reconvene Open Session.

Mike Dricken made a motion to reconvene Open Session. Russ Prust seconded. Motion carried, unanimous.

12. Discussion and action on Closed Session discussions.

Mike made a motion to authorize Chairman Dick Bertram to confer with Town Attorney and to authorize Chairman Bertram to sign an offer to purchase on Town Attorney's recommendation to purchase property pursuant to Sec. 19.85(1)(e). Russ Prust seconded. Motion carried on a vote of four (4) in favor and one (1) opposed. Joe Peters opposed the motion.

IX. Adjournment.

There being no further business to discuss, Joe Peters made a motion to adjourn the Town Board Monthly meeting of September 18, 2007. Russ Prust seconded the motion. Motion carried, unanimous. The meeting adjourned at 9:26 P.M.

Respectfully submitted,

Aggie B Pruner

Aggie Pruner, Clerk

Dick said that Kaerek Homes was having trouble selling the lots because of them being "condominium" single-family lots. They went to a meeting at the City of West Bend and asked Dick to attend. They asked the city of they could be allowed to do a conventional subdivision. Mayor Bade told them it would be hard to do and expensive. He was not encouraging to say the least. Kaerek called Dick and told him that they would leave the subdivision as a condo. What they are asking for is to use the Town's Transfer Station for garbage and to have their roads plowed by the town.
Dick asked what the board's opinion on this would be. They weren't in favor of this.

9. Firecall

One firecall on Norman Drive, a shed. The board felt this was accidental.

10. Announcements and Correspondence.

Dick said he received the annual firecall statement from the West Bend Fire Dept. The Town had 6 firecalls from 2006.
Clerk Aggie Pruner said that she found a notice on the front door on Jan. 31 from Wisconsin Tax Solutions. They were acting for three residents who where challenging the assessments/tax rates of vacant residential properties from 2005 and 2006. They were looking for an adjustment on their taxes for these years and a reduction in assessments as well. Aggie said that the time to challenge assessments for this time frame is long past and this is not the way to do it. She said she sent a copy to Town Attorney to make sure she wasn't missing any thing, and also to Assessor Don Peters to keep him informed.

Aggie received information from Omnni Associates on Annexations and why they occur; if anyone wanted to read the information she would have it in her office.

Aggie said that she came across information on temporary beer licenses from the Wisconsin Municipal Clerks Association, which she belongs to. They state that the group selling the beer is the group who should hold the temporary beer license. Aggie said that the Town Board recently changed this to be the owner of the property. This will be looked into and be in a future agenda.

The Land Use Plan Mapping meeting will be a joint meeting with the Town Board and the Plan Commission for the Multi-jurisdictional effort and will be held on May 10th. Several board members requested that the start time be 7:00 p.m.

Aggie told the Board that she had a meeting with the DNR on the Recycling Program for the Town. Basically everything is fine, a few recommendations were given, one of which was to update the Town's Ordinance with more current information. This needs to be done by June 30, 2007. Also the Town will be asked to start requiring multi-family and businesses to be compliant with recycling by giving them information.

11. Action necessary to convene into Closed Session, pursuant to Sec. 19.85(1)(e) to deliberate or negotiate the purchase of public properties, investment of public funds, conducting other specified public business whenever competitive or bargaining reasons requires a closed session.

Jerry made a motion to convene into Closed Session, pursuant to Sec. 19.85(1)(e) to deliberate or negotiate the purchase of public properties, investment of public funds, conducting other specified public business whenever competitive or bargaining reasons requires a closed session. Russ Prust seconded. Vote by roll:

Jerry Meulemans – aye; Mike Dricken – aye; Dick Bertram – aye; Joe Peters – aye; Russ Prust – aye. Motion carried unanimous.

Reconvene Open Session.

Russ Prust made a motion to reconvene into Open Session. Mike Dricken seconded. Motion carried unanimous.

Discussion and action on Closed Session discussions.

It is the consensus of the Board to authorize the Chairman to pursue the availability of a parcel to purchase for future parkland.

IX. Adjournment.

There being no further business to discuss, Mike Dricken made a motion to adjourn the Town Board Monthly meeting of February 21, 2007. Joe Peters seconded the motion. Motion carried, unanimous. The meeting adjourned at 10:40 P.M.

Respectfully submitted,

Aggie Pruner

Aggie Pruner, Clerk

Ed Gregiore said that he didn't feel enough notice was given to the Town's people about this meeting, that a posting in the legal section wasn't enough and that the meeting should be adjourned to another night so notice can be given to more people.

Wally Jacquet said that he feels what was done was enough and it was time to move on.

Don Maurer asked about the septic system and the possibility of a caretaker living there. Dick said that an inspection will have to be done on the septic and well and that they will need to be habitable or repaired if not. These are the next steps that will be taken if the Town Board is authorized to proceed with the purchase.

Wally Jacquet made a motion to authorize the Town Board to move forward with the purchase of property. David Mies seconded. Motion carried on a vote of 14 in favor and 2 opposed. Ed Gregiore and Paul Richter opposed.

Don Maurer made a motion to adjourn the November 14, 2007 Special Town Meeting. Ed Gregiore seconded. Motion carried, unanimous. Meeting adjourned at 8:23 p.m.

Respectfully submitted,

Aggie Pruner,
Clerk