City Council of Peachtree City
Minutes of Special Called Meeting
November 1, 2006
6:00 p.m.

The City Council of Peachtree City held a Special Called Meeting on Wednesday, November 1, 2006, in the Floy Farr Room at the Peachtree City Library. Mayor Logsdon called the meeting to order at 6:00 p.m. Other Council Members present were: Steve Boone, Stuart Kourajian, and Judi Rutherford. Cyndi Plunkett arrived at 6:23 p.m.

Staff members in attendance included City Manager Bernard McMullen, Administrative Services Director/City Clerk Jane Miller, City Planner David Rast, and City Attorney Ted Meeker.

The purpose of the Special Called Meeting was to meet with Ravin Homes regarding the Cedarcroft impact fees. Attorneys Deron Hicks and Travis Hargrove represented Mike Rossetti of Ravin Homes.

Hicks addressed Council and said he was appealing the impact fees determined by the City in accordance with the process set forth in the City's Code of Ordinances. He continued that Ravin Homes was a family business that had been in the community since 1974. Hicks said he was not going to make a legal argument. He requested Council look at the impact fee ordinance and apply it in a fair and equitable fashion to Ravin Homes after hearing some of the circumstances.

Hicks referred to a map of the Cedarcroft subdivision and noted its three phases. Two were under construction, and one phase was still to be built. He continued that the City entered into an easement agreement in 1993 with the property owner, Grant Development, to the north of the Cedarcroft property. The City needed an easement across the northern property. At this point, the Grant Development property had not been developed. The purpose of the easement was because the Master Plan included a road to be built from GA 54 north to the City limits. In the easement agreement, the City said that the property owner to the south had proposed a road, and the City would hold that property owner to that proposal. The City also agreed to require that road to go to the Grant Development property and to dedicate the road as a public road. Hicks pointed out that Ravin Homes was not part of that easement agreement, but the agreement did impose obligations on the owner of the property.

Hicks continued that Ravin Homes submitted a plan for a mixed multi-family and single-family development in the Cedarcroft location in June 1995. In October 1995, the City adopted a moratorium to prevent that type of development. Ravin Homes, as well as another developer who proposed a similar plan around the same time, filed suit on the basis that they were vested in the development regulations in effect when the plans were submitted. In May 1996, the City and Ravin Homes settled the case. The development agreement was part of the settlement and had three important points. Ravin Homes agreed to withdraw the multi-family component of their plan in exchange for a certain single-family density and agreed to develop it all as single-family. The other agreement was that Ravin Homes agreed to build a roadway and dedicate it to the City (a later amendment extended the length of the road). Ravin Homes agreed to pay certain impact fees, which were deferred to a specific schedule.

Hicks said Ravin Homes ultimately built 2,600 linear feet of roadway. The cost was $330,000 for the actual road cost plus the land dedicated as right-of-way, which was about eight acres. Those eight acres cost Ravin Homes approximately 30 home sites. Hicks said $330,000 was a very conservative estimate of value. Ravin Homes did not need the roadway for the development and had an alternative means of getting to the property. Hicks noted that the road was on Cedarcroft's western boundary and tied into the property to the north.

Kourajian asked, if that was the case, how Ravin Homes would have gotten to the property otherwise, and why Ravin Homes built the road. Rossetti said he had an agreement with the apartment developer for access through that property. The apartment developer had an obligation to provide Ravin Homes an access to the property.

Hicks added the roadway was not essential to what Ravin Homes wanted to do. The question was whether or not Ravin Homes was entitled to a credit against the impact fees. Hicks continued that, according to the Development Impact Act and in lieu of impact fees, developers were allowed to dedicate land or a facility and receive a credit of the value against the impact fees that were to be paid. The idea was it would be somewhat revenue neutral since the City would not have to pay for the land or the facility. He emphasized that his client was talking about a credit, not an exemption. Hicks noted that state law required specific policies to be in place for exemptions. A credit was an exchange for value. The development agreement did not mention credits, and Ravin Homes had raised the issue periodically over the last five years. Now they were getting closer to the time the fees were due. The current amount that should be due was $277,000.

Hicks said that they perceived that one reason the City did not want to give a credit included the argument that a deal was a deal. There was nothing in the development agreement regarding credits and whether they would be given. The second reason, from an administrative standpoint, was that a credit could only be given for a category of facilities already identified as impact fee eligible projects. MacDuff Parkway was not in that category. Hicks said that was a self-fulfilling prophecy. MacDuff was not on the list of improvements because someone had been obligated to build it without spreading the cost among the beneficiaries. It was a circular argument. It was not on the list because Ravin Homes had to build it. If it had been on the list, then Ravin Homes would have paid an impact fee for it. The City benefited by having one builder pay for it rather than spreading an impact fee among all the beneficiaries in the service area. The bottom line was the road was a significant investment of land and cash. If the road went straight to the subdivision, there would not be an issue since Ravin Homes would have clearly benefited from the road. In the 1993 easement agreement with the northern property owner, the City said a collector road was part of the Master Plan. The City had planned a road to benefit the entire area, but not everyone had paid their pro rata share for the road. Ravin Homes had already paid some impact fees and had made a significant contribution to the City in terms of the road and land. Hicks asked Council to credit Ravin Homes against the impact fees still to be paid. He said the conservative estimate on the total of impact fees and the road was approximately $650,000, which was far in excess of what should be required considering the benefit that had been bestowed. Hicks added that they could provide the specific information and the exact calculations.

Kourajian asked when the road had been built. Rossetti said it was built between 1997 and 1999. Hicks said Rossetti agreed to an extension of 900 feet in 1999. Rutherford clarified that the apartment builder had built the portion to the first Cedarcroft entrance, and Rossetti built to the second entrance. Rossetti said RAM Development built the first part, and he contributed to the cost and supervised the construction. Rutherford said, according to what she read, the apartment developer was responsible for the cost up to the point where Ravin Homes took over the road construction. Rossetti said when he purchased the property for Cedarcroft from Joel Cowan and Floy Farr, they were obligated to build a road from GA 54 to his property. It was part of the purchase price. They stuck with that obligation when MacDuff was built to his property. The price of the land to Summit Apartments was discounted due to the road. Rossetti had a small expense for that part of the road.

Kourajian asked Rossetti why he built the road in the first place. Rossetti said former Mayor Bob Lenox negotiated and told him he would build the road. He said Lenox told him, at the time, that the City had never given impact credits for the road and would not give them. Rossetti said he served on the impact fee committee when the City first adopted impact fees. He had real insight into what the legislation required of the City and developers. Rossetti said the road was clearly an impact fee item, but that was not taken into consideration.

Rutherford asked for clarification on what portion of the road was built by Rossetti. She read from the development agreement, "RAM will dedicate and construct at no cost to the City, a proposed road identified as Line Creek Parkway (now known as MacDuff Parkway) from its intersection with Highway 54 to the first entrance of the Cedarcroft subdivision." She continued that Rossetti was responsible for an additional 900 feet. Rossetti said he was responsible for the part of MacDuff Parkway that was in front of Cedarcroft. Rossetti said that the first 1,700 feet of the road was built by RAM Development. Rast clarified the portion of the road that was built by Ravin Homes was the 900 feet from the first Cedarcroft entrance to the intersection of MacDuff Parkway with the second Cedarcroft entrance and Gatehouse Drive.

Rutherford asked Rossetti if the cost for those 900 feet was $350,000. Rossetti said there was almost eight acres of land from the north line of the subdivision to the south line of the subdivision. He said he used an estimated value of $30,000 per acre for the property. Boone asked Rossetti if he had contributed to the land purchase for the initial 1,700 feet of road. Rossetti said he had not, that the property owner was responsible for building the road to his Cedarcroft property. He estimated the "sticks and bricks" of the road construction at $160,000. Logsdon asked how they calculated that eight acres of land were used. Rast said they had to set aside the right-of-way also. Rossetti said there was 80 feet of right-of-way, plus a 75-foot buffer along the 900 linear feet, which he was required to give up. McMullen said that was approximately 3.2 to 3.5 acres. Rossetti said he could provide a breakdown of how he had arrived at the cost. He would pull a plat and give the exact measurements. McMullen added that a portion of the property was in the power line easement, and that area should be differentiated. Rossetti said he could do that also.

Kourajian asked what was west of the road. Rossetti answered that Wynnmeade was to the west. Logsdon asked if the homes in Phase 3 would border the road. Rossetti said they would. Kourajian asked what he had paid an impact fee to this point. Rossetti said the fees were deferred. He had paid a portion, $32,000, in Phase 2. All the fees were due in Phase 3. Hicks added that $277,000 in impact fees would be due.

Meeker said a copy of the staff memo was provided and asked that it be attached to the meeting minutes. He noted that none of the current Council nor he was in office at the time of the initial agreement. It had been interesting to hear what had taken place. There was no doubt the 1993 easement agreement referenced the road. There was always a concept that there would be a road, but the question was when. Roads could be programmed out 15-20 years, but development might necessitate that roads were built earlier. The core question was whether the road was a true system improvement that benefited a wider area, or if the road represented what state law referenced as a project improvement. He questioned whether the project necessitated the road's construction. He questioned whether there was an agreement for the City to do it; it was a matter of public record in 1993 when the parties litigated the issues and came to a settlement agreement. Nothing was hidden about the easement agreement or the City's obligations. However, when the developments came on board, it did necessitate the road being built sooner than the City or others had foreseen at the time. Meeker said he had been going over the documents for three years. He knew from reading the documents that the impact fee issue had not been omitted from the discussion. It was referenced in the consent order and development agreement. It was referenced in both development agreements. The language referred to the impact fees being deferred to give Rossetti time to recoup the development costs for the road and pay them at a later date. During this meeting, Meeker said he learned that the credit issue had been discussed. The discussion and the issues were the same as in 1995.

Meeker continued that state law required credit for system improvements that benefited the area as a whole, provided the City collected impact fees for that type of system improvement. Roads were not one of those improvements included in the impact fees. Meeker understood why Hicks said the argument was circular. There was a long process to impose impact fees. Projects had to be identified, then the entity had to figure out who paid for what. Meeker said the entirety of a road could not be charged to impact fees. If the West Village area was annexed and MacDuff Parkway was extended through it, there had to be credits for what was on the ground. If the area was 50% built out, then the impact fees could only total the remaining 50%. In this instance, none of the impact fees collected by the City went to roads. Most of the projects had been done. Every dollar collected for this area had already been expended. The impact fee elements included the GA 54 bridge, GA 74 cart path bridge, and public safety. State law allowed the City to reimburse itself for the completed projects by charging impact fees.

Meeker continued that Rossetti summed it up in his letter attached as Exhibit G. He was responding to a letter from James Williams, the City's Developmental Services Director at the time, and noted that Rossetti had pointed out items the City wanted that were not part of the development agreement. Rossetti expected the City to live up to its end of the development agreement, and the City expected the same from him. He said he, philosophically, had a legal problem with giving credit for impact fees when impact fees were not the type of fees normally collected. Everyone else in the area had paid impact fees. The other developers had not gotten credit. If Council agreed to give Ravin Homes a credit, it would be at the expense of the other developers. The more important issue was that they all agreed that Rossetti built the road to a certain point, then John Wieland Homes built it to Centennial. Council's decision had implications beyond the 900 feet.

Plunkett asked Meeker if he believed that Ravin Homes owed an impact fee, and if Wieland built the road and paid impact fees. Meeker said he did not believe a credit was owed either under the law or the development agreement. He said that Wieland paid impact fees for Centennial and built the road. McMullen verified that Wieland paid impact fees and did not receive any credit for the road. Meeker reiterated that roads were not identified as a capital project in terms of the capital improvement element that was the basis of the impact fee program. Rutherford asked what the other projects were. Meeker said the impact fees were collected for this service area included recreation system improvements, library expansion, Police Department building expansion, the Recreation Administration building, Leach Fire Station reconstruction, and the GA 74 bridge. McMullen added that there was a line missing in the ordinance, but the original documents included the GA 74 multi-use bridge.

Kourajian asked what was expected at this meeting. Meeker said Council could vote at this meeting, but Kourajian had asked for additional information. By doing so, Council had asked for the item to be placed on another agenda. Kourajian said he would like to get the information on how Rossetti had determined the value of the road project, and he would prefer to mull over both sides of the issue.

Logsdon asked Rossetti how long it would take to get the information. Rossetti said he could get it to Council in a few days. Hicks added that he also did not know if there were any road impact fees charged since 1995, and he wanted to research it. Rast said the ordinance had been amended to designate service areas with established impact fees. Cedarcroft was in the Line Creek service area, and the fees had increased. Rutherford asked if the impact fees collected for the Line Creek service area had changed since 1995. Rast said the reconstruction of Leach Fire Station was added in 1998. Roads were included in other service areas, but not in Line Creek.

Boone asked why there were varied impact fee requirements. Rast explained that it depended on the system improvements needed in the area. The reconstruction of the Leach Fire Station did not impact the units in Kedron. The residential developments on Crabapple Lane needed a road, so the developers were assessed an impact fee for a road.

Rossetti said that any impact had to be considered as an overall impact to the City, such as Leach Fire Station having to help with a five-alarm fire in another service area. Logsdon said that might have been a bad example. Hicks said the impact fees were not due until 2007. There had been many letters written over the years, and he would like to provide a summary of everything.

Rutherford moved to table the issue until Ravin Homes had all the information that had been requested and offered. Boone seconded. The motion was approved unanimously.

With no other business to discuss, Rutherford moved to adjourn the meeting. Boone seconded the motion. The motion carried unanimously

The meeting adjourned at 6:49 p.m.

Jane Miller, City Clerk

Harold K. Logsdon, Mayor

Pamela Dufresne, Recording Secretary

CITY OF PEACHTREE CITY

INTEROFFICE MEMORANDUM

TO: **Mayor & Council Members**

VIA: **City Manager**
Developmental Services Director

FROM: **City Planner/ Zoning Administrator** David

DATE: **October 30, 2006**

SUBJECT: **Appeal of Cedarcroft impact fee determination**
November 1, 2006 Special-called City Council Meeting

Recommendation:
Because this is an appeal of a Staff determination, the City Council will be acting as an independent body as opposed to receiving a recommendation from City Staff.

Discussion:
Ravin Homes has filed an appeal with respect to the determination of the impact fees owed for the Cedarcroft subdivision. Attached are copies of city records, city ordinances, and state law which are relevant to the appeal hearing.

The following documents are attached for your review:

A. Pre-clearance certification request letter from Ravin Homes (dated August 10, 2006).
B. Impact fee determination letter from David Rast to Michael Rossetti (dated August 30, 2006)
C. Notice of Appeal from Ravin Homes (dated September 6, 2006).
D. Consent Order and Judgment and Development Agreement (dated May 17, 1996).
E. First Modification of Development Agreement (dated February 9, 1999).
F. Letter from Jim Williams to John Moll (dated June 5, 1998).
G. Letter from Michael Rossetti to Jim Williams (dated June 8, 1998).
H. Letter from Rick Lindsey to Michael Rossetti (dated March 26, 2001).
I. Letter from Michael Rossetti to David Rast (dated August 7, 2002).
J. Letter from Rick Lindsey to Jim Williams (dated June 26, 2002).
K. Letter from Ted Meeker to Deron Hicks (dated May 8, 2006).
L. Letter from David Rast to Michael Rossetti (dated August 30, 2006).
M. Sections 307-307.14 of the Peachtree City Land Development Ordinance, which sections pertain to the imposition of impact fees within the City.
N. O.C.G.A. § 36-71-2.

O. O.C.G.A. § 36-71-4.
P. O.C.G.A. § 36-71-7.
Q. O.C.G.A. § 36-71-8.
R. O.C.G.A. § 36-71-10.
S. O.C.G.A. § 36-71-13.

Staff and the City Attorney will be present to answer any questions pertaining to this information.

Attachments

RAVIN HOMES, INC.
BUILDERS & DEVELOPERS

08/10/2006

David Rast
City Planner
Impact Fee Administrator
Planning Department – Peachtree City, Georgia
153 Willowbend Road
Peachtree City, GA 30269

Re: Preclearance Certification for Ravin Homes, Inc.

To Whom It May Concern:

Please accept this letter as Ravin Homes, Inc.'s written demand under Section 307.4 of the Development Impact Fee Ordinance of Peachtree City, Georgia for a preclearance certification of the development impact fee for the project known as CedarCroft Phase(s) 1,2,3 located off of Mc Duff Parkway, said project to be developed by Ravin Homes, Inc. Please contact me at 770-487-9608 should you require more information about this project to ensure that I receive the certification within a reasonable time as required by Section 307.4 of the Development Impact Fee Ordinance of Peachtree City, Georgia.

Thank you for your cooperation in this matter.

Sincerely,

Michael Rossetti
President Ravin Homes, Inc.

Attachment "A"

RECEIVED AUG 1 4 2006

P.O. Box 2394 • Peachtree City, Georgia 30269 • (770) 487-9608 • Fax: (770) 487-1029

ENERGY WISE HOME

PEACHTREE CITY
PLAN TO STAY™

PLANNING DEPARTMENT
153 WILLOWBEND ROAD
PEACHTREE CITY, GA 30269
PHONE: 770-487-5731
FAX: 770-631-2552
WWW.PEACHTREE-CITY.ORG

August 30, 2006

Mr. Michael Rossetti
Ravin Homes, Inc.
P.O. Box 2394
Peachtree City, GA 30269-2394

Re: Cedarcroft
Impact fee determination

Dear Mike:

Pursuant to your letter (dated August 10, 2006) requesting pre-clearance certification for the impact fees due for the Cedarcroft subdivision, we have reviewed our files and have calculated the impact fees due and payable for the overall subdivision.

The Cedarcroft subdivision is located within the Line Creek Service Area, with an established impact fee of $1,637 per residential dwelling unit. The First Modification of the Development Agreement (executed February 9, 1999) states: *"The impact fee rate paid by the Developers shall be $1,314 per unit unless said fee is not due and paid before January 1, 2004, and if said impact fees have not been paid by said date, the applicable impact fee at the time the impact fee is due and paid shall be the then-existing fee."*

Phase 1 of the overall subdivision was approved for recording on July 6, 2001 and included a total of 64 lots, which resulted in impact fees in the amount of $84,096.00 (64 lots x $1,314 per lot).

Phase 2 of the overall subdivision was approved for recording on May 10, 2004 and included a total of 82 lots, which resulted in impact fees in the amount of $107,748.00 (82 lots x $1,314 per lot). At that time, you submitted payment in the amount of $32,600.52, which was the total of all impact fees due and payable to date minus the construction costs for Phase Two of MacDuff Parkway. The documentation you provided indicated the construction costs you incurred for the construction of Phase Two of MacDuff Parkway were $159,243.48.

Phase 3 of the overall subdivision has not yet been submitted for recording, but will include a total of 72 lots. Because this phase of the subdivision is being recorded after the date identified within the First Amendment to the Development Agreement (January 1, 2004), the impact fees for Phase 3 will be calculated at the current impact fee rate of $1,637 per residential dwelling unit, which will require payment in the amount of $117,864.00 (72 lots x $1,637 per lot).

Attachment "B"

Paragraph 6 within the First Amendment to the Development Agreement states *"Ravin shall repay all impact fees deferred under paragraph three herein at the time a final plat is approved for Phase Three but not later than four (4) years after the approval of the final plat for Phase Two of Cedarcroft."*

Based on this requirement, we have determined the impact fees for Cedarcroft as follows:

Phase One	(64 lots x $1,314 per lot)	$84,096.00
Phase Two	(82 lots x $1,314 per lot)	$107,748.00
Phase Three	(72 lots x $1,637 per lot)	$117,864.00
	Sub-total	$309,708.00
	Received to date	($32,600.52)
	Total due	**$277,107.48**

These fees must be received in full before the final plat for Phase 3 can be approved for recording or no later than May 10, 2008 (no more than four years following recording of the plat for Phase 2).

Should you have any questions, please do not hesitate to contact me at (770) 487-5731.

Sincerely,

David E. Rast

David E. Rast, ASLA
City Planner

Attachments

cc: *City Manager*
Developmental Services Director
City Attorney
file

RAVIN HOMES, INC.
BUILDERS & DEVELOPERS

VIA HAND DELIVERY
Mr. David E. Rast
City Planner
Peachtree City, Georgia

September 6, 2006

Re: Cedarcroft – Impact Fee Determination

Dear Mr. Rast:

Please accept this letter as Ravin Homes, Inc.'s appeal under Section 307.13 of the Development Impact Fee Ordinance of Peachtree City, Georgia of Peachtree City's pre-clearance certification of the impact fees due for Cedarcroft subdivision as described in David E. Rast's letter to Michael Rossetti, dated August 30, 2006, a copy of which is attached hereto. Please advise immediately as to any specific appeal procedures Ravin Homes, Inc. must follow.

The first basis of this appeal is that the amount of the impact fees due under the pre-clearance certification is inequitable. Further basis for this appeal is outlined in the letters attached hereto which are incorporated by reference.

We look forward to hearing from you immediately as to any specific appeal procedures Ravin Homes, Inc. must follow in this appeal.

Sincerely,

Michael Rossetti
Ravin Homes, Inc.

I acknowledge receipt of this appeal of the pre-clearance certification for Cedarcroft that was provided to Ravin Homes, Inc. in a letter dated August 30, 2006 from David Rast, City Planner of Peachtree City to Michael Rossetti of Ravin Homes, Inc.

David E. Rast, City Planner

Date

Attachment "C"

P.O. Box 2394 • Peachtree City, Georgia 30269 • (770) 487-9608 • Fax: (770) 487-1029 ENERGY WISE HOME

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

PAUL R. CLINE and RON REESER, d/b/a CR PARTNERS; and RAVIN HOMES, INC.,

Plaintiffs,

v.

PEACHTREE CITY, GEORGIA; and ROBERT LENOX, ANNIE McMENAMIN, ED BRADFORD, CAROLINE PRICE and ROBERT BROOKS, MAYOR and MEMBERS OF THE CITY COUNCIL OF PEACHTREE CITY, GEORGIA,

Defendants.

CIVIL ACTION FILE
NO. 95V-1571(E)

FILED IN OFFICE
CLERK OF SUPERIOR COURT
FAYETTE COUNTY, GA.
'96 MAY 17 AM 11 12
W.A. BALLARD
CLERK OF SUPERIOR COURT

PAUL R. CLINE and RON REESER, d/b/a CR PARTNERS; and RAVIN HOMES, INC.,

Plaintiffs,

v.

THE CITY OF PEACHTREE CITY; and ROBERT LENOX, ANNIE McMENAMIN, JIM PACE, CAROLINE PRICE and ROBERT BROOKS, MAYOR and MEMBERS OF THE CITY COUNCIL OF THE CITY OF PEACHTREE CITY,

Defendants.

CIVIL ACTION FILE
NO. 96V-0164(E)

CONSENT ORDER AND JUDGMENT

By agreement of the parties, and after having reviewed and considered the pleadings of record, the Court hereby enters the following Consent Order and Judgment:

FACTUAL BACKGROUND

Plaintiff are real estate developers and these companion cases relate to their applications to construct residential developments on two adjacent tracts of land in Peachtree City, Georgia.

Plaintiff Ravin Homes, Inc. presented a site plan to the Peachtree City Planning Department on or about June 26, 1995 seeking approval for single and multi-family residences on the property described on Exhibit "B" to the Complaint and hereinafter referred to as the "63 Acre Tract." Plaintiff CR Partners presented a site plan to the Peachtree City Planning Department on or about September 18, 1995 seeking approval for multi-family residences on the property described on Exhibit "A" to the Complaint and hereinafter referred to as the "38 Acre Tract." Both of these tracts of land (hereinafter collectively referred to as the "Property") are now, and at all material times have been, zoned GC (General Commercial) under the 1977 Zoning Ordinance of Peachtree City, Georgia (the "Zoning Ordinance").

On or about October 5, 1995, the Mayor and City Council of Peachtree City passed a resolution declaring a moratorium on accepting applications for multi-family housing on property zoned under the GC zoning classification (the "Moratorium"); and on or about November 16, 1995, the Mayor and City Council adopted an amendment to Section 1006.3(c) and (d) of the Zoning Ordinance which had the effect of prohibiting both single family and multi-family residential uses in the GC zoning district (the "Amendment").

Plaintiffs filed these actions against the Defendants, challenging the application of the Amendment to the Property. Plaintiffs contend that they have a vested right to develop the Property in accordance with the provisions of the Zoning Ordinance in effect on the dates their respective site plans were presented to the Peachtree City Planning Department for approval, and that Defendants are without power or authority to apply the Amendment to the Property. Defendants contend that they have acted in accordance with law and have the power and authority to apply the Amendment to the Property.

The parties have engaged in negotiations in an effort to compromise and settle the disputed issues. As a result of these negotiations, Plaintiff Ravin Homes, Inc. now proposes to construct up to 220 units of single family housing on the 63 Acre Tract and Plaintiff CR Partners proposes to construct up to 399 units of multi-family housing on the 38 Acre Tract, in accordance with the conditions set forth in the Development Agreement attached to this Consent Order as Exhibit A. Counsel for all parties have notified the Court that a mutually satisfactory settlement has been reached, as set forth in the following Consent Order and Judgment, which is hereby adopted by the Court.

CONSENT ORDER AND JUDGMENT

1.

Defendants are ordered to consider and act on Plaintiffs' applications to develop the 38 Acre Tract and the 63 Acre Tract in accordance with the provisions of the Zoning Ordinance in effect prior to the adoption of the Moratorium and the Amendment, provided that Plaintiffs comply with the terms and conditions of the Development Agreement which is attached to this Consent Order and Judgment as Exhibit "A" and incorporated herein by reference.

2.

Plaintiffs' applications for development of the Property shall be reviewed and acted upon by the Peachtree City Planning Commission in accordance with their customary procedure as set forth in the Zoning Ordinance prior to the adoption of the Moratorium and the Amendment, provided that Plaintiffs comply with the terms and conditions of the Development Agreement which is attached to this Consent Order and Judgment as Exhibit "A" and incorporated herein by reference.

3.

No party shall recover monetary damages from any other party in this action. Each party shall bear its own costs and attorneys' fees.

4.

This Court shall retain jurisdiction over this matter to address any disputes which may arise in connection with the implementation of this Consent Order and Judgment.

This 17th day of July, 1996.

HONORABLE PASCHAL A. ENGLISH, JR.
JUDGE, SUPERIOR COURT OF FAYETTE COUNTY

Approved as to form and substance:

G. Douglas Dillard
Peterson Dillard Young Asselin & Powell
230 Peachtree Street, N.W., Suite 1100
Atlanta, Georgia 30319
Attorney for Plaintiffs

James H. Webb, Jr.
Webb & Lindsey
401 Westpark Court, Suite 100
Peachtree City, Georgia 30269
Attorney for Defendants

DEVELOPMENT AGREEMENT
EXHIBIT "A"

This development agreement is agreed to by CR Partners and Ravin Homes, Inc., ("Developers") to the City of Peachtree City, Georgia (the "City") to settle and resolve the issues raised in two declaratory judgment lawsuits pending in the Superior Court of Fayette County under Civil Action Nos. 95V-1571E and 96V-0164E and to provide for the orderly development of the property described herein.

1. This agreement provides for the development of the following two tracts of land which are the subject of the referenced litigation (collectively referred to as the "Property"):

   (a) A tract of approximately 38 acres along Ga. Highway 54 to be developed by CR Partners for multi-family residential use (the "38 Acre Tract"); and

   (b) A tract of approximately 63 acres adjoining the 38 Acre Tract, to be developed by Ravin Homes, Inc. for single family residential use (the "63 Acre Tract").

2. Developers agree to forego any multi-family development on the 63 Acre Tract, thereby giving up a 300 unit apartment development which was planned and approved for the 63 Acre Tract. Instead, the 63 Acre Tract will be developed by Ravin Homes, Inc. solely for single family homes, comprising up to 220 units at a density not to exceed four units per acre.

3. The multi-family housing component of the overall development will be moved to the 38 Acre Tract portion of the Property. The total number of residential units in this apartment community will not exceed 399 units and the density of the development will not exceed 14.7 units per acre.

4. Developers agree that the quality of the apartment development on the 38 Acre Tract will be equal to or better than the apartment complex in the City of Peachtree City named "Balmoral Village." In meeting the "equal to or better than" standard, the Developers agree to include the following features:
   (a) Perimeter landscape buffers at least 50 feet wide;
   (b) Heavy internal landscaping;
   (c) Landscaped areas, including buffers, comprising at least 20% of the total site;
   (d) Significant tree-save areas;
   (e) Two swimming pools;
   (f) Two lighted tennis courts or a working agreement, acceptable to the City of Peachtree City, with the Tennis Center;
   (g) A play court with basketball and volleyball capability;
   (h) A multi-purpose community room with space for parties, special events and tenant meetings;

4-18-96

(i) Two laundry areas;
(j) A fitness studio;
(k) A central trash compactor, buffered from the living units;
(l) Convenient areas for recycling solid waste;
(m) Golf cart storage and recharge areas;
(n) A covered facility for washing vehicles;
(o) A viable tenant association that can work with management and coordinate with the City; and
(p) A management group that has strict tenant rules, is willing and able to enforce those rules, is willing to work closely with the tenants to maintain and improve the project, and will participate with other management groups and City officials in a community-wide tenant improvement program.

All of the above-stated features will be accomplished in a manner that is consistent with City ordinances.

5. The City will cooperate with the Developers as it cooperates with any other developer to assist the Developers in obtaining sewer access to serve the 38 Acre Tract and the 63 Acre Tract. In the event the Developers are unable to acquire such sewer access in time to meet construction deadlines, nothing herein shall be construed to prevent Developers from seeking to obtain sewer access by other means.

6. The Developers will plan and design the development to allow access to Wynnmeade subdivision and will dedicate, at no cost to the City, sufficient right of way for such access; however, the cost of constructing the access, should the City elect to construct such access, will be borne by the City.

7. The City will not be required to pay any of the costs of infrastructure construction to serve Developers' projects. The Developers will reserve an 80-foot right of way for the proposed Line Creek Parkway and a 60 foot right of way for the proposed West Village Drive, as shown on the Conceptual Plan for Line Creek Village prepared by the Developers and submitted as part of this Development Agreement. The Developers will construct that portion of Line Creek Parkway from highway 54 north approximately 1700 feet to the entrance of the Cedarcroft subdivision to at least "Village Collector Standards" (as defined by City Ordinance) and will dedicate that road and its attendant right of way to the City at no cost to the City. The Developers will pay for and install a traffic signal and all necessary road improvements at the Georgia Highway 54 intersection with Line Creek Parkway in accordance with City and Georgia D.O.T. requirements.

8. The Developers will pay an impact fee of $1,314.00 per dwelling unit if, under City ordinances, the impact fee assessment is made no later than January 1, 1997.

9. The Developers will comply with all City Ordinances and will perform all construction at least in accordance with established city standards.

4.18.96

10. The City, at its election and at City expense, is entitled to make a subdivision entrance road connection between the Line Creek Parkway and the Wynnmeade Subdivision at or near the point where West Village Drive intersects with Line Creek Parkway. Developers will donate the right of way for this entrance to the City.

11. As part of an overall development agreement, the Developers will consent to initiate a rezoning of the Property to single family and multi-family residential classifications which reflect the actual uses of the Property, after the consent order and judgment contemplated in paragraph 14 has been entered.

12. The details of implementing this agreement will be handled by Developers and the Peachtree City Planning Commission and a site plan will be prepared and submitted to the Planning Commission for approval.

13. Developers acknowledge that, as an integral part of this Development Agreement, City Council will adopt a resolution concerning this Development Agreement (a true and accurate copy of said Resolution is attached hereto and reflects additional obligations and agreements of the parties). Developer agrees to abide by the terms of the said Resolution as though those terms were set forth herein.

14. The terms of this agreement will be incorporated into a consent order and judgment to be prepared by counsel for Developers and the City and filed in Court to resolve the two lawsuits referenced above.

Executed this 18TH day of ~~March~~ APRIL, 1996.

C R PARTNERS

BY: ______________________

RAVIN HOMES, INC.

BY: ______________________

DEVELOPMENT AGREEMENT
EXHIBIT "A"

This development agreement is agreed to by CR Partners and Ravin Homes, Inc., ("Developers") to the City of Peachtree City, Georgia (the "City") to settle and resolve the issues raised in two declaratory judgment lawsuits pending in the Superior Court of Fayette County under Civil Action Nos. 95V-1571E and 96V-0164E and to provide for the orderly development of the property described herein.

1. This agreement provides for the development of the following two tracts of land which are the subject of the referenced litigation (collectively referred to as the "Property"):

    (a) A tract of approximately 38 acres along Ga. Highway 54 to be developed by CR Partners for multi-family residential use (the "38 Acre Tract"); and

    (b) A tract of approximately 63 acres adjoining the 38 Acre Tract, to be developed by Ravin Homes, Inc. for single family residential use (the "63 Acre Tract").

2. Developers agree to forego any multi-family development on the 63 Acre Tract, thereby giving up a 300 unit apartment development which was planned and approved for the 63 Acre Tract. Instead, the 63 Acre Tract will be developed by Ravin Homes, Inc. solely for single family homes, comprising up to 220 units at a density not to exceed four units per acre.

3. The multi-family housing component of the overall development will be moved to the 38 Acre Tract portion of the Property. The total number of residential units in this apartment community will not exceed 399 units and the density of the development will not exceed 14.7 units per acre.

4. Developers agree that the quality of the apartment development on the 38 Acre Tract will be equal to or better than the apartment complex in the City of Peachtree City named "Balmoral Village." In meeting the "equal to or better than" standard, the Developers agree to include the following features:
    (a) Perimeter landscape buffers at least 50 feet wide;
    (b) Heavy internal landscaping;
    (c) Landscaped areas, including buffers, comprising at least 20% of the total site;
    (d) Significant tree-save areas;
    (e) Two swimming pools;
    (f) Two lighted tennis courts or a working agreement, acceptable to the City of Peachtree City, with the Tennis Center;
    (g) A play court with basketball and volleyball capability;
    (h) A multi-purpose community room with space for parties, special events and tenant meetings;

(i) Two laundry areas;
(j) A fitness studio;
(k) A central trash compactor, buffered from the living units;
(l) Convenient areas for recycling solid waste;
(m) Golf cart storage and recharge areas;
(n) A covered facility for washing vehicles;
(o) A viable tenant association that can work with management and coordinate with the City; and
(p) A management group that has strict tenant rules, is willing and able to enforce those rules, is willing to work closely with the tenants to maintain and improve the project, and will participate with other management groups and City officials in a community-wide tenant improvement program.

All of the above-stated features will be accomplished in a manner that is consistent with City ordinances.

5. The City will cooperate with the Developers as it cooperates with any other developer to assist the Developers in obtaining sewer access to serve the 38 Acre Tract and the 63 Acre Tract. In the event the Developers are unable to acquire such sewer access in time to meet construction deadlines, nothing herein shall be construed to prevent Developers from seeking to obtain sewer access by other means.

6. The Developers will plan and design the development to allow access to Wynnmeade subdivision and will dedicate, at no cost to the City, sufficient right of way for such access; however, the cost of constructing the access, should the City elect to construct such access, will be borne by the City.

7. The City will not be required to pay any of the costs of infrastructure construction to serve Developers' projects. The Developers will reserve an 80-foot right of way for the proposed Line Creek Parkway and a 60 foot right of way for the proposed West Village Drive, as shown on the Conceptual Plan for Line Creek Village prepared by the Developers and submitted as part of this Development Agreement. The Developers will construct that portion of Line Creek Parkway from highway 54 north approximately 1700 feet to the entrance of the Cedarcroft subdivision to at least "Village Collector Standards" (as defined by City Ordinance) and will dedicate that road and its attendant right of way to the City at no cost to the City. The Developers will pay for and install a traffic signal and all necessary road improvements at the Georgia Highway 54 intersection with Line Creek Parkway in accordance with City and Georgia D.O.T. requirements.

8. The Developers will pay an impact fee of $1,314.00 per dwelling unit if, under City ordinances, the impact fee assessment is made no later than January 1, 1997.

9. The Developers will comply with all City Ordinances and will perform all construction at least in accordance with established city standards.

10. The City, at its election and at City expense, is entitled to make a subdivision entrance road connection between the Line Creek Parkway and the Wynnmeade Subdivision at or near the point where West Village Drive intersects with Line Creek Parkway. Developers will donate the right of way for this entrance to the City.

11. As part of an overall development agreement, the Developers will consent to initiate a rezoning of the Property to single family and multi-family residential classifications which reflect the actual uses of the Property, after the consent order and judgment contemplated in paragraph 14 has been entered.

12. The details of implementing this agreement will be handled by Developers and the Peachtree City Planning Commission and a site plan will be prepared and submitted to the Planning Commission for approval.

13. Developers acknowledge that, as an integral part of this Development Agreement, City Council will adopt a resolution concerning this Development Agreement (a true and accurate copy of said Resolution is attached hereto and reflects additional obligations and agreements of the parties). Developer agrees to abide by the terms of the said Resolution as though those terms were set forth herein.

14. The terms of this agreement will be incorporated into a consent order and judgment to be prepared by counsel for Developers and the City and filed in Court to resolve the two lawsuits referenced above.

Executed this 30 day of ~~March,~~ April 1996.

C R PARTNERS

BY: ____________________

RAVIN HOMES, INC.

BY: ____________ Pres.

FIRST MODIFICATION OF DEVELOPMENT AGREEMENT

This First Modification of Development Agreement (the "Agreement") is agreed to by Ravin Homes, Inc. ("RAVIN"), and RAM-PTC, LLC ("RAM"), collectively hereinafter "Developers", with the City of Peachtree City, Georgia (the "City") to further clarify, explain ambiguities, settle and resolve issues arising out of that certain Developers Agreement entered into between CR partners, Ravin Homes, Inc. and the City dated April 30, 1996.

The Developers Agreement was made a part of a certain Consent Order and two (2) declaratory judgment lawsuits pending in the Superior Court of Fayette County under Civil Action File NOS. 95V-1571E and 96V-0164E. Certain issues have evolved pursuant to the development of the property and the parties hereto desire to further clarify disputes regarding several paragraphs of the Development Agreement. Any conflicts between said paragraphs and this First Modification shall be controlled by this Modification. The parties also agree that this First Modification be made a part of the Consent Order entered by Judge Paschal A. English, Jr., Judge, Superior Court of Fayette County on the 17th day of May 1996, so that the same be amended and modified as hereinafter set forth.

The parties do therefore agree as follows:

1. RAM will dedicate and construct, at no cost to the City, a proposed road identified as Line Creek Parkway from its intersection with Highway 54 to the first entrance of the Cedarcroft subdivision (hereinafter "Phase One" as identified on a conceptual site plan attached hereto, marked Exhibit "A" and by reference incorporated herein and made a part hereof) which is approximately 1,700 feet. Line Creek Parkway, for the

RDM

Attachment "E"

purposes of this Agreement, will consist of an 80-foot right-of-way with two (2) paved lanes of road and a landscaped median. The Parkway will be designed as a collector road in accordance with the construction drawings dated March 17, 1998, which are currently on file with the City, and it shall be built to the standards currently contained in the City Land Development Ordinance for paving standards for Major Collector Roads. For all purposes herein the construction of any and all roadways shall be generally in the location and in accordance with the conceptual site plan of Exhibit "A" and shall be constructed in accordance with the paving standards applying to "major collector"(s) as defined in City Ordinances.

2. In addition to the road construction mentioned in paragraph one herein, RAVIN shall construct and extend Line Creek Parkway an additional approximate 900 feet (hereinafter "Phase Two" as identified on Exhibit "A") to the second entrance of Cedarcroft Subdivision, said extension and its right-of-way shall be dedicated to the City at no cost to the City and shall be constructed in accordance with the same design standards and construction criteria as specified for in Phase One. Phase Two shall be constructed within six (6) months of the completion of Phase One.

3. All costs of right-of-way, roadway construction and landscaping for Phase One and Phase Two shall be paid for by the Developers. However, all impact fees for the initial phases of Cedarcroft shall be deferred by the City in an amount equal to, but not exceeding, the cost of the construction of the road of Phase Two only. Any fees owed in excess of the construction road costs shall be due and payable prior to the approval of the final plat for each phase. The value of the right-of-ways for both

RDM

phases and cost of construction of Phase One shall not be used or included in the calculations of the amount of the impact fees being deferred. Upon completion of the finished roads, the Developers will dedicate the finished roads and right-of-ways to the City for Phase One and Phase Two at no cost to the City. If, at the time the Phase One final plat for Cedarcroft is approved, the Phase Two road of Line Creek Parkway has not been completed, the estimated construction costs for the Phase Two road will be the amount of impact fees deferred (to be determined by the road contractor's estimate), and once the actual costs of said road are determined the deferred impact fees will be adjusted to reflect said actual costs.

4. The impact fee rate paid by the Developers shall be $1,314.00 per unit unless said fee is not due and paid by January 1, 2004, and if said impact fees have not been paid by said date, the applicable impact fee at the time the impact fee is due and paid shall be the then-existing impact fee.

5. The City desires to connect Line Creek Parkway with an east/west road to Wynnmeade Subdivision. Developers shall reserve the right-of-way and shall donate to the City at no cost to the City on demand of the City for said connection any portion of said right-of-way owned by developers to the extent developers own land necessary for said right-of-way. The cost of the construction of said connection shall be the exclusive obligation and responsibility of the City.

6. RAVIN shall repay all impact fees deferred under paragraph three herein at the time a final plat is approved for Phase Three but not later than four (4) years after the approval of the final plat for Phase Two of Cedarcroft.

RDM

7. The City may desire to extend Line Creek Parkway from the second entrance of Cedarcroft Subdivision to the northernmost end of the Developers' property (hereinafter "Phase Three" as identified on Exhibit "A"). RAVIN will dedicate an 80-foot right-of-way to the City for Phase Three at no cost to the City whenever the City makes such a request.

8. The Parties hereto will mutually cooperate to attempt to relocate the traffic light currently located at Wynnmeade and Georgia State Highway 54 to the intersection of Line Creek Parkway after the City completes construction of an east/west connector to the Wynnmeade subdivision. The cost of the relocation will be borne by RAM. The City will not withhold the issuance of any permits or certificates of occupancy because of the failure to complete the east/west connection or the failure by the Georgia Department of Transportation to approve the relocation of said light. The parties agree that they will attempt to use the existing signal and controller which are located at Wynnmeade and Georgia Highway 54, however, if the existing signal and controller cannot be used, then RAM will purchase the appropriate required signal and the existing light will remain the exclusive property of the City. RAM agrees to do any and all improvements reasonably necessary to secure D.O.T.'s approval to move the signal, and to do so in a timely manner. Even if the approval for a traffic light at the intersection of Georgia State Highway 54 and Line Creek Parkway has not been secured by the time RAM completes construction of Phase One of the Line Creek Parkway, said intersection must be constructed as if the traffic light was approved so no additional improvements to the intersection will have to be

RDM

made when the traffic light is approved, and the Developers agree to post an adequate bond with the City to cover the cost of an appropriate traffic light and all required attending traffic devices, poles, wiring, etc. with the City in an amount to be mutually agreed upon by the City and the Developers at the time Phase One is dedicated to the City.

9. The City, at its election and at City expense, is entitled to make a subdivision entrance road connection (as depicted on Exhibit "A") via a frontage road running parallel to and north of Highway 54 between Line Creek parkway and the Wynnmeade Subdivision. Developers (to the extent they own such property) will donate the right-of-way for this entrance to the City.

10. The terms of this Agreement are fully binding on the City and the Developers and all other persons, corporations, partnerships, and legal entities of any and all types who may acquire the development rights covered in this Agreement or the property which is affected by the development rights. Developers agree to advise any subsequent purchasers or assigns of the property or property rights affected by this Agreement and any developers who acquire the development rights affected by this Agreement of this Agreement and their obligation to comply with the terms of this Development Agreement.

11. The terms of this Agreement will be incorporated into a Modification of the Consent Order and Judgment to be prepared by counsel for Developers and the City and will be filed in the Court.

Executed this 9th day of Feb, 1999.

RDH

DEVELOPERS:

RAVIN HOMES, INC.

By: [signature] Pres.
Michael Rossetti

RAM-PTC, INC.

By: [signature]
R. Doug McMurrain

CITY:

CITY OF PEACHTREE CITY

By: Robert L. Lenox, Mayor

G:\CASE\CITY\CLINE\First Modification.wpd

Peachtree City
Georgia

June 5, 1998

Mr. John Moll
John Moll and Associates, Inc.
Gwinnett Esplanade, Suite 5B
Duluth, GA 30136

Dear Mr. Moll:

1:30

Because of the complexity and the importance of the Westside Collector Road project and the fact that there are still a number of critical issues that remain unresolved, I am going to take this opportunity to follow up on our discussion of June 2nd with a list of what I consider to be the bottom-line conditions for City Staff approval of the construction plans:

1. The City does not intend to participate in the cost of the Collector Road. This includes right-of-way as well as construction. The road is totally intended to serve new development in the Westside Area, and the cost must be borne by that development;

2. Prior to the issuance of any permits for the construction of the Collector Road, the entire right-of-way from GA 54 to the southern property line of the Katz Tract must be dedicated to the City. It is intended that the right-of-way will be 80 feet wide throughout this area. If and when the Katz Tract is proposed to be developed, the right-of-way for the collector road will have to be dedicated to the northern property line of that Tract.

3. A traffic signal at the intersection of the Collector Road and GA 54 must be installed and be operational prior to the issuance of the first certificate of occupancy for any new residential or commercial project in the Westside Area;

4. If GA DOT will not allow a traffic signal at both the Westside entrance and the Wynnmeade entrance, the first phase of the Westside Collector Road must be constructed to the point where it will accept the proposed new access street to Wynnmeade north of Castle Court. The City will be responsible for constructing this new access street in a timely manner. If the traffic signal cannot be relocated until this street is completed, the City will not withhold certificates of occupancy pending completion of the City project.

5. The City will not require the developers of the Westside property currently zoned General Commercial (this includes the apartment project and Cedarcroft) to construct any of the Collector Road beyond the northern entrance to Cedarcroft;

6. The City will not require the developers of the Westside Area to build a frontage road between the Collector Road and Wynnmeade Parkway. However, the City will require that the developers make proper provision on their property for the construction of that frontage road if and when it is decided to initiate construction. The City does not intend to participate in the cost of the frontage road; and

7. Landscaping consistent with other intersections on GA 54 and GA 74 will be required on the GA DOT right-of-way as a part of the Collector Road project.

I think the above conditions accurately reflect the position of the City staff with respect to authorizing the actual construction of the Collector Road. We can discuss their implications at our next meeting on June 9th.

Sincerely,

Jim

James B. Williams
Director of Developmental Services

JBW/jir

cc Mayor
City Manager
City Planner

6/5/98 Westside Collector Letter sent to the following:

Mr. John Moll
John Moll and Associates, Inc.
Gwinnett Esplanade, Suite 5B
Duluth, GA 30136

Mr. Dan Fields
John Weiland Homes
P.O. Box 87363
Atlanta, GA 30337

Mr. Lee N. Katz
Grant Development
5435 Overlook Court
Atlanta, GA 30327

Mr. Michael Rossetti
Ravin Homes, Inc.
P.O. Box 2394
Peachtree City, GA 30269

Mr. Ron Reeser
The Eagle Group
510 Plaza Drive, Suite 1500
Atlanta, GA 30349

RAVIN HOMES, INC.
BUILDERS & DEVELOPERS

V. Michael Rossetti
P.O.Box 2394
Peachtree City, GA.
30269

June 8, 1998

Mr. James B. Williams
The City of Peachtree City
151 Willowbend Road
Peachtree City, Georgia
30269

RE: Your letter dated June 5, 1998 on the Westside Collector Road

Dear Mr. Williams:

To say that I was surprised at the scope of our meeting last Tuesday would be an understatement. The issues that were raised by you and staff were, for the most part unrelated and completely out of the terms of the development agreement that was adopted by the Peachtree City Council on the 7th day of March, 1996.

My position is that the city abide by the terms of the development agreement. We worked long and hard to construct the terms of the agreement and for the city to contemplate and request items contrary to and in addition to what was agreed to is aggravating at the very least. I will comment on the items listed in your letter to further clarify my position.

1. I agree with you so stay out of the process and let the developers work out who pays for what.
2. I will not do this. It is not a part of the development agreement.
3. I agree that a traffic signal needs to be installed and the development team is willing to pay for this however if we cannot install a signal because of some action by the city (for example the installation of the signal at Wynnmead) then our position is that the city caused this stipulation to be impossible to accomplish and we would expect the city to correct the problem so that we can complete the terms of the agreement. As I asked at our meeting (four times) we would expect complete cooperation from the city to get the D.O.T. to permit a signal at Line Creek Parkway. The issuance of permits hinging on the installation of a signal is not mentioned in the agreement.
4. Reference item no. 6 in the development agreement to address this point.

5. This is contained in the development agreement
6. Again item no. 6 in the development agreement applies to this.
7. The D.O.T. controls the intersection designs and approves them. I believe that we indicated in our meeting that we are willing to work with an entrance design that would be acceptable to Peachtree City but that the D.O.T. would have to approve any design.

Let me state that I am adamant about following the terms of the development agreement and to get the permit for Line Creek Parkway. My company has almost gone out of business once concerning problems with this development. We made a deal in which my company gave up a sale on apartment land that would have made us in excess of one million dollars because I wanted to do the right thing for Peachtree City. The developers have designed the Line Creek Collector to major collector standards which is well above the scope of the development agreement. The point is that we have more than held up our side of the bargain so you need to hold up your side.

Sincerely,

V. Michael Rossetti

President, Ravin Homes, Inc.

Cc: Mayor

City Manager

City Planner

Doug McMurrain

Ron Reeser

Mac Duff

WEBB, STUCKEY & LINDSEY, LLC

Attorneys-At-Law

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John M. Stuckey Jr. **
Richard P. Lindsey
H. Clay Collins
Carlton H. Jones III
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March 26, 2001

Mr. Michael Rossetti
President
Ravin Homes, Inc.
P.O. Box 2394
Peachtree City, Georgia 30269

RE: Your Letter Dated March 15, 2001

Dear Michael:

I have been asked by the City to respond to the above-captioned letter. As you know, the Cedarcroft Development is a part of a Consent Order and Judgment signed by Judge Paschal A. English, Jr. on May 17, 1996, and was modified on February 9, 1999 by Ravin Homes, RAM-PTC, LLC, and Peachtree City. (For your convenience and ready reference, I have enclosed a copy of both documents with this letter.)

According to Paragraph Seven of the Development Agreement, which is attached as Exhibit "A" to the Consent Order and Judgment, the City is not required to pay any of the costs for the infrastructure construction to serve the projects. The developers were required to reserve an 80 foot right-of-way for the Line Creek Parkway (now McDuff Parkway). Further, the developers were to construct the Parkway from Highway 54 north approximately 1,700 feet to the entrance of the Cedarcroft Subdivision and are required to dedicate that road and its attendant right-of-way to the City at no cost. In Paragraph One of the first modification, RAM was the developer identified which would dedicate and construct the Parkway from Highway 54 to the first entrance of the Cedarcroft Subdivision. In the second paragraph of the First Modification, Ravin Homes is to construct and extend the Parkway an additional approximate 900 feet to the second entrance to the Cedarcroft Subdivision and dedicate the road and right-of-way to the City at no cost. Additionally, in Paragraph Three of the First Modification, all costs of right-of-way, roadway construction and landscaping for both above-mentioned phases of the Parkway would be paid for by the developers. However, all impact fees for the initial phases of Cedarcroft would be deferred by the City in an amount equal to, but not exceeding, the cost of the <u>construction of the road of Phase II only</u>. Thus, Ravin is to be given credit against the impact fees for the roadway construction costs of the approximate 900 feet from the first entrance of Cedarcroft to the second entrance of Cedarcroft. This credit will not include the costs of a right-of-way or for the landscaping.

In Paragraph Seven of the First Modification, Ravin was required to dedicate an 80 foot right-of-way to the City at no cost whenever the City made such a request. The Consent Order and the First Modification are silent as to the cost of the roadway construction, and, therefore, it is not proper for the City to request Ravin to pay for the cost of the extension of the Parkway from the second entrance to Cedarcroft to the northern boundary line of the property. It is my understanding that the City did not request Ravin Homes to pave that section of the Parkway. Therefore, any request for reimbursement for the cost of such paving of that portion of the Parkway is one properly reserved for Ravin Homes and the adjacent property owners.

If you will provide me with a cost for the roadway construction of the approximate 900 feet between the first and second entrances to Cedarcroft, along with the necessary support documentation to enable the City Engineer to review the same, I will request that the City provide Ravin Homes with the appropriate impact fee credit after it has been verified by the City Engineer.

The remaining portions of your March 15, 2001 letter concerning system improvements versus project improvements are made moot by the Consent Order and Judgment signed by Judge English and the First Modification of the Development Agreement signed by all the parties. Obviously, the terms of both the Consent Order and the First Modification are based on compromises made by all the parties in light of the issues which were facing all of us several years ago.

Should you wish to discuss this matter further, please do not hesitate to contact me. Additionally, if you will send to me the requested documents concerning the cost of the 900 feet stretch of Parkway, I will forward those to Troy for review and approval.

Best regards.

Sincerely,

WEBB, STUCKEY & LINDSEY, LLC

Richard P. Lindsey

RPL:jmf
Enclosures

I:\PTC\CITY\Cedarcroft\Correspondence\Michael Rossetti.wpd

Cedarcroft

RAVIN HOMES, INC.
BUILDERS & DEVELOPERS

August 7, 2002

Mr. David Rast
City Planner
City of Peachtree City
151 Willowbend Road
Peachtree City, GA 30269

Re: Your letter dated 6/22/02
Cedarcroft Impact Fees.

Dear David:

I am in receipt of your letter referenced above. We may want to meet in the near future to clarify a couple of points you bring out.

It was my understanding that the fees would be fixed at $1,314.00 per unit throughout the project.

It was also my understanding that the impact fees equal to the cost of MacDuff Parkway would be deferred until Phase III of Cedarcroft is final platted.

I would however like to call your attention to the objections raised by our previous correspondence to James B. Williams.

Call me if you care to discuss any of these matters.

Sincerely,

V. Michael Rossetti
President

Cc: Deron R. Hicks

/sgb

Attachment "I"

P.O. Box 2394 • Peachtree City, Georgia 30269 • (770) 487-9608 • Fax: (770) 487-1029

ENERGY WISE HOME

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Other licenses:
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† Illinois

June 26, 2002

Mr. Jim Williams
City of Peachtree City
151 Willowbend Road
Peachtree City, Georgia 30269

RE: Cedarcroft Impact Fee Deferral

Dear Jim:

At the City's request, we have considered Ravin Homes' claim that the City must reimburse it for the expense of constructing MacDuff Parkway ("the Roadway"). Although at first blush the Development Impact Fee Act ("the Act"), O.C.G.A. § 36-71-1 *et seq.*, suggests that Ravin Homes is entitled to a refund, it is our opinion that the Consent Order requiring that Ravin Homes construct the Roadway supersedes the Act and absolves the City from any duty to reimburse Ravin Homes.

As you know, on May 17, 1996, at the request of Peachtree City and Ravin Homes, Judge English signed a Consent Order and Judgment, which was subsequently modified on February 9, 1999 ("Consent Order"). Under the terms of the Consent Order, the parties explicitly agreed that Ravin Homes would extend the Roadway, and that Ravin Homes would bear the entire cost of doing so. Specifically, Paragraphs 1 and 2 of the first modification to the Consent Order state that Ravin Homes would construct a portion of the Roadway and that the road would be dedicated to the City "at no cost to the City." Similarly, Paragraph 3 states that Ravin Homes would pay "all costs"of the Roadway, including construction and landscaping. In short, the Consent Order clearly contemplated that the cost of the Roadway would be borne entirely by Ravin Homes.

Nevertheless, Ravin Homes is requesting a credit for the cost of the Roadway, arguing that the Act requires the credit, notwithstanding Ravin Homes explicit agreement to pay for the Roadway. It is Ravin Homes' position that the Roadway was a "system improvement," and as such, the City was required to credit the Roadway cost against any impact fees owed for the construction of Cedarcroft, and to reimburse any costs in excess of that amount.

The relevant portions of the Act include the following:

"[D]evelopment exactions for other than project improvements shall be *imposed* by municipalities and counties only by way of development impact fees imposed pursuant to [the Act]." O.C.G.A. § 36-71-3(a).

"[C]redit shall be given for the present value of any construction of improvements . . . *accepted* by a municipality . . . for system improvements." O.C.G.A. § 36-71-7(a).

"In the event that a developer *enters into an agreement* with a county or municipality to construct . . . system improvements such that the amount of the credit created by such construction is in excess of the development impact fees which would otherwise have been paid for the development, the developer *shall be reimbursed* for such excess construction . . . . " O.C.G.A. § 36-71-7(b).

Under the express terms of the Act, if a city enters an agreement with a developer that calls for the developer to construct a system improvement (and there is little question that the Roadway would qualify as a "system improvement"), the city must reimburse the developer for costs of the improvement that exceed the development impact fees the developer might owe. O.C.G.A. § 36-71-7(b). Ravin Homes relies on this provision to argue that the City must reimburse its Roadway construction costs. Nevertheless, the Consent Order is a binding judicial decree that takes precedence over the Act. Further, the parties were undoubtedly aware of the Act when they agreed to the Consent Order. By nevertheless agreeing to the Consent Order, Ravin Homes waived any right to reimbursement.

1. <u>The Consent Order is binding on the parties, absent fraud or mistake or lack of judicial jurisdiction</u>.

Ravin Homes' assertion in its letter of April 12th that the Act supersedes the parties' "private agreement" is unavailing, because a Consent Order is not a "private agreement," but a binding judicial decree. It is well-established that in the absence of fraud or mistake, a consent decree is valid and binding on the parties, provided the court had jurisdiction over the parties and the matter. <u>Alford v. Smith</u>, 224 Ga. 802, 164 S.E.2d 781 (1968); <u>Johnson v. Shook</u>, 156 Ga. App. 878, 275 S.E.2d 815 (1981). Once an agreement is entered as a consent order, it cannot be challenged, absent allegations of fraud, mistake or jurisdiction. <u>See also</u> <u>Fowler v. Fowler</u>, 206 Ga. 542, 57 S.E.2d 593 (1950) (consent of the parties to the terms of a judgment cures any errors not going to the jurisdiction of the court). Under the Consent Order, Ravin Homes agreed to bear the full cost of building the Roadway. There is no evidence that the Consent Order was based on fraud or mistake, or that the court lacked jurisdiction over this matter, so the Consent Order is valid and binding.

In Wimbush v. Fayette Finance Co., 156 Ga. App. 500, 275 S.E.2d 99 (1980) the Court addressed a similar situation and held that a statute allegedly making an agreement illegal was immaterial once the agreement became a consent order. Wimbush involved an action on a loan contract. At the parties' request, the court entered a consent judgment. The appellant then sought to set aside the judgment, alleging that the loan contract was illegal. The Court held that the judgment should stand, concluding that "consent to the judgment renders the asserted defects in the loan contract superfluous." Id. As in Wimbush, Ravin Homes' acceptance of the Consent Order "renders the asserted defects in the [agreement] superfluous." Even if the City were otherwise required to credit Ravin Homes for the cost of constructing the Roadway, any complaint about the terms of the agreement was cured when the Consent Order was entered.

2. The Agreement cannot be invalidated on grounds of illegality or public policy.

A contract that is illegal or in contravention of public policy cannot be enforced. O.C.G.A. § 13-8-1, 13-8-2. Ravin Homes' suggestions to the contrary, this provision does not apply here. A contract is not contrary to public policy unless the legislature has declared it to be so, the contract is contrary to good morals and law, or the purpose of the contract was to violate the law. Porubiansky v. Emory Univ., 156 Ga. App., 602, 275 S.E.2d 163 (1980). None of these circumstances exist here.

Moreover, even if the terms of the underlying agreement were illegal or unauthorized under the Act, nevertheless the Consent Order would still be enforceable. Consent orders are not subject to the statute that renders illegal contracts void. In Leventhal v. Citizens and Southern Nat. Bank, 249 Ga. 390, 291 S.E.2d 222 (1982), the Court refused to set aside a consent judgment on the grounds of impossibility of performance, noting that the impossibility of performance defense, while applicable to contracts, was not applicable to court orders. Similarly, the defense of illegality, while applicable to contracts, is not applicable to consent orders.

3. Equity demands that the Consent Order stand.

Ravin Homes knew about the Act when it asked the court to enter the Consent Order. Ravin Homes cannot now argue that the Consent Order should not be enforced, when it stood by silently while the City relied on the Order. In Carter v. City of Toccoa, 210 Ga. 167, 78 S.E.2d 487 (1953), a municipality notified property owners of its intent to assess their property for street improvements. Despite a statutory provision that allowed the property owners to challenge the assessments before the improvements began, the property owners waited until the improvements were made to challenge the assessments. The Court held that the property owners could not challenge the assessments after the fact, reasoning that parties who did not behave equitably were not entitled to equity themselves. Accord Harp v. Mayor of Forsyth, 208 Ga. 842, 69 S.E.2d 750 (1952) (dismissing challenge to legality of assessment for street paving where homeowners knew of paving and assessment plan yet did not object until work was almost complete). Like the plaintiffs in City of Toccoa and Harp, Ravin Homes has had years to challenge the Consent

Order and the underlying agreement. By standing silently by while the City performed its part of the agreement, Ravin Homes waived any claim to reimbursement.

4. <u>The Act's prohibition on "imposed" exactions does not apply to Ravin Home's express agreements</u>.

Ravin Homes' express agreement to bear the cost of construction brings it outside the Act's prohibition on "imposed" exactions. A municipality may only "impose" exactions for system improvements by way of development impact fees pursuant to the Act. O.C.G.A. § 36-71-3(a). This provision does not prevent a municipality and a developer from entering into an *agreement* to have the developer construct a system improvement, however. The development exaction here was not "imposed" by the City, but rather was agreed to by the City and Ravin Homes in an effort to end litigation. Ravin Homes freely agreed to build the Roadway at its expense. "The voluntary nature of a consent judgment is among its most notable characteristics." <u>City of Centerville v. City of Warner Robins</u>, 508 S.E.2d 161, 164, 270 Ga. 183 (1998). The Act's provision preventing municipalities from *imposing* a requirement that developers to build system improvements simply does not apply here.

Please note that the Act's requirement that a city credit or reimburse the cost of system improvements that it "accepts" or that were made pursuant to an "agreement" may be problematic. <u>See</u> O.C.G.A. § 36-71-7. It would not be unreasonable for a court to interpret this as requiring the credit even if the City is "accepting" the improvements pursuant to a consent order. Nevertheless, the City has a reasonable basis for arguing that Ravin Homes is responsible for the cost of road improvements, because Ravin Homes' waived any right to reimbursement when it asked the court to enter the Consent Order, and the Consent Order cannot be challenged absent fraud or mistake.

Best regards.

Sincerely,

WEBB, LINDSEY,
COLLINS, JONES & WADE, LLC

Richard P. Lindsey

RPL

I:\PTC\CITY\Cedarcroft\Correspondence\Jim Williams - Cedarcroft Impact Fee Ltr.wpd

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THEODORE P. MEEKER, III
E-MAIL: tmeeker@fairburn.com

May 8, 2006

Via Fax to (706) 596-9992
and Via First Class Mail

Deron R. Hicks, Esq.
Page, Scranton, Sprouse,
Tucker & Ford, P.C.
Post Office Box 1199
Columbus, Georgia 31902-1199

Re: Ravin Homes, Inc./City of Peachtree City

Dear Mr. Hicks:

I am in receipt of your correspondence dated June 17, 2004 and April 26, 2006 regarding the issues raised by your client, Ravin Homes, Inc., with respect to the impact fees being charged by the City of Peachtree City, Georgia for the Cedarcroft Subdivision. At the outset, the City remains firm in its position that the impact fees being charged to your client are correct. This position is based upon several legal grounds.

First, as you know, our clients were involved in litigation regarding the Cedarcroft Subdivision in the 1990's. So as to bring that litigation to a conclusion, the parties entered into a Consent Order which required, among other things, that your client would construct that portion of McDuff Parkway at issue. As part of that Consent Order and the subsequent amendment to the Consent Order, your client was given a forbearance period in which the initial impact fees owed for the Cedarcroft Subdivision did not have to be paid. Those fees, as per the Consent Order and subsequent amendment thereto, however, did have to be paid, in full, upon the platting of Phase III of the Cedarcroft Subdivision. In short, while the impact fees were referenced in the Consent Orders, the condition imposed on your client to construct that portion of McDuff Parkway at issue was part of the negotiated settlement between the parties in the litigation. The resulting construction of McDuff Parkway by your client, therefore, had no implication on the amount of impact fees owed by your client for the Cedarcroft Subdivision.

You have reference various provisions of the Peachtree City Land Development

Attachment "K"

Ordinance. In doing so, however, you have failed to note the plain reading of those provisions. First, you will note that Section 307.5 sets forth the impact fees associated with the area in which the Cedarcroft Development is located. Specifically, impact fee in the Line Creek service Area is $1,637.00 per dwelling unit, which includes $1,083.00 for the citywide service area, $231.00 for the bike bridge across Georgia Highway 74 West to Planterra neighborhood, and $323.00 for the reconstruction of Leach Fire Station. Section 307.5 also notes that the impact fee for the citywide service area is $1,083.00 per dwelling unit, which includes $1,040.00 for recreational system improvements and $43.00 for library expansion, police department expansions, and a recreation administration building.

You only cited a portion of the Section 307.7, pertaining to credits. Subparagraph (a) of that Section provides:

> (a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction or improvements or contribution or dedication of land or money required or accepted by the city from a developer or his predecessor in title or interest **<u>for system improvements of the category for which the development impact fee is being collected</u>**. Credits shall not be given for project improvements.

(Emphasis added). As you will note from the fee schedule referenced above, none of the impact fees collected by Peachtree City reference the road improvements made by your client. In other words, the road was not a system improvement of the category for which the development impact fee is being collected. Therefore, no such credit for your client is warranted.

Section 307.8 follows this line of thought. While that section may reference a system improvement being constructed and potential resulting credit for such construction, it also references that the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which has benefited by such improvements. As you know, state law and the Peachtree City Land Development Ordinance require that expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed. As a result, the City could not collect impact fees for city recreation system improvements and use those fees to reimburse a developer, such as Ravin Homes, Inc., for the construction of a road which was not otherwise included in the category of system improvements which form the basis of the impact fees collected.

Finally, while Section 307.12 may authorize the type of agreements referenced therein, it is apparent that the Consent Order and agreement between our clients was not such an agreement. Rather, as previously indicated, the Consent Order and agreement were part of a negotiated settlement between our clients. While Section 307.12 of the City's Land Development Ordinance may have authorized the City to give a credit for any improvements by your client, that was not the agreement between the parties. As your client freely and voluntarily entered into that agreement and Consent Order, the City will expect your client to fulfill all of its obligations set forth therein.

Should you wish to discuss this matter further, please contact me.

Sincerely,

Theodore P. Meeker, III
City Attorney, City of Peachtree City

TPM/cmc
cc: Bernard J. McMullen, City Manager

HP Fax K1220

Log for
Charles H Davis,Jr., Atty
(770) 964-9730
May 08 2006 11:03am

Last Transaction

Date	Time	Type	Identification	Duration	Pages	Result
May 8	11:02am	Fax Sent	17065969992	0:54	3	OK

PEACHTREE CITY
PLAN TO STAY™

PLANNING DEPARTMENT
153 WILLOWBEND ROAD
PEACHTREE CITY, GA 30269
PHONE: 770-487-5731
FAX: 770-631-2552
WWW.PEACHTREE-CITY.ORG

August 30, 2006

Mr. Michael Rossetti
Ravin Homes, Inc
P O. Box 2394
Peachtree City, GA 30269-2394

Re: Cedarcroft
Impact fee determination

Dear Mike:

Pursuant to your letter (dated August 10, 2006) requesting pre-clearance certification for the impact fees due for the Cedarcroft subdivision, we have reviewed our files and have calculated the impact fees due and payable for the overall subdivision.

The Cedarcroft subdivision is located within the Line Creek Service Area, with an established impact fee of $1,637 per residential dwelling unit. The First Modification of the Development Agreement (executed February 9, 1999) states: *"The impact fee rate paid by the Developers shall be $1,314 per unit unless said fee is not due and paid before January 1, 2004, and if said impact fees have not been paid by said date, the applicable impact fee at the time the impact fee is due and paid shall be the then-existing fee."*

Phase 1 of the overall subdivision was approved for recording on July 6, 2001 and included a total of 64 lots, which resulted in impact fees in the amount of $84,096.00 (64 lots x $1,314 per lot)

Phase 2 of the overall subdivision was approved for recording on May 10, 2004 and included a total of 82 lots, which resulted in impact fees in the amount of $107,748.00 (82 lots x $1,314 per lot) At that time, you submitted payment in the amount of $32,600.52, which was the total of all impact fees due and payable to date minus the construction costs for Phase Two of MacDuff Parkway. The documentation you provided indicated the construction costs you incurred for the construction of Phase Two of MacDuff Parkway were $159,243 48.

Phase 3 of the overall subdivision has not yet been submitted for recording, but will include a total of 72 lots. Because this phase of the subdivision is being recorded after the date identified within the First Amendment to the Development Agreement (January 1, 2004), the impact fees for Phase 3 will be calculated at the current impact fee rate of $1,637 per residential dwelling unit, which will require payment in the amount of $117,864.00 (72 lots x $1,637 per lot).

Attachment "L"

Paragraph 6 within the First Amendment to the Development Agreement states *"Ravin shall repay all impact fees deferred under paragraph three herein at the time a final plat is approved for Phase Three but not later than four (4) years after the approval of the final plat for Phase Two of Cedarcroft."*

Based on this requirement, we have determined the impact fees for Cedarcroft as follows:

Phase One	(64 lots x $1,314 per lot)	$84,096.00
Phase Two	(82 lots x $1,314 per lot)	$107,748.00
Phase Three	(72 lots x $1,637 per lot)	$117,864.00
	Sub-total	$309,708.00
	Received to date	($32,600.52)
	Total due	**$277,107.48**

These fees must be received in full before the final plat for Phase 3 can be approved for recording or no later than May 10, 2008 (no more than four years following recording of the plat for Phase 2).

Should you have any questions, please do not hesitate to contact me at (770) 487-5731.

Sincerely,

David E. Rast

David E. Rast, ASLA
City Planner

Attachments

cc: *City Manager*
Developmental Services Director
City Attorney
file

Sec. 307. Development impact fee.

(a) Pursuant to the authority granted the City of Peachtree City (hereinafter the "city") by O.C.G.A. §§ 36-70-1, 36-71-13 et seq., the city, having formed a development impact fee advisory committee and said committee having reviewed the city's existing development fees, its comprehensive plan, its land use regulations and its capital improvements element, and said committee having rendered its recommendations to the governing authority of the city.

(b) In order to serve, promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the city, and to ensure that adequate public facilities are available to serve new growth and development, the city hereby enacts the herein uniform standards and procedures by which the city requires new growth and development to pay its proportionate share of the costs of new public facilities. This ordinance establishes minimum standards for development impact fees and ensures that new growth and development are required to pay no more than their proportionate share of the costs of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development extractions.

(c) The development impact fees ensure that a developer will not pay more than a proportionate share of system improvement costs and these fees are imposed on the basis of service areas. Furthermore, said fees were calculated on the basis of levels of services for public facilities that have been adopted by the city in its comprehensive plan and which are applicable to existing development as well as new growth and development. The fee schedule was based on actual system improvement costs or reasonable estimates of such costs and was further calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.

307.1. Definitions.

(a) *Building permit* means the permit issued by a city building official authorizing a builder to begin construction of a building or structure.

(b) *Capital improvement* means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(c) *Capital improvements element* means a component of the comprehensive plan which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(d) *Comprehensive plan* means the plan identified as the comprehensive plan and adopted by the city on March 19, 1992.

(e) *Citywide service area* is composed of the entire geographic area of the city. (Ord. No. 608, 10-7-1993)

(f) *Developer* means any person or legal entity undertaking development.

(g) *Development* means any construction or expansion of a building, structure, or use, any change in the use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(h) *Development approval* means any written authorization from the city which authorizes the commencement of construction.

(i) *Development impact fee* means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(j) *Dwelling unit* means a separate, independent housekeeping structure for a single family.

(k) *Encumber* means to legally obligate by contract or otherwise commit to use by appropriation or other official act of the city.

(l) *Feepayor* means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this ordinance has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(m) *Kedron Village Service Area* is composed of that area of the city that is identified in exhibit A to this ordinance and which is incorporated by reference herein.

(n) *Level of service* means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of public facilities or both.

(o) *Preliminary plat* means the drawing of a proposed subdivision of land in accordance with sections 403, 502 and 504 of the [this] land development ordinance.

(p) *Present value* means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, land, construction, or money.

(q) *Project* means a particular development on an identified parcel of land.

(r) *Project improvements* means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the city shall be considered a project improvement.

(s) *Proportionate share* means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

(t) *Public facilities* means:

(1) Water supply production, treatment, and distribution facilities;

(2) Wastewater collection, treatment, and disposal facilities;

(3) Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of state or federal highways;

(4) Stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(5) Parks, open space, and recreation areas and related facilities;

(6) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(7) Libraries and related facilities.

(u) *Service area* means a geographic area identified by the city in which a defined set of public facilities provides service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(v) *Site development permit* means the permit issued by the city engineer authorizing a developer to begin the development of land for an approved purpose.

(w) *Site plan* means the drawing of a proposed development project in accordance with sections 505 and 506, and article VI of the [this] land development ordinance.

(x) *System improvement costs* means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvements element, and administrative costs, provided that such administrative costs shall not exceed three percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the development impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the city to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, or other operating costs.

(y) *System improvements* means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to project improvements.

307.2. Application.

This ordinance and its development impact fees shall not apply to any developer who has secured a building permit at the time of the enactment of the ordinance. The assessment and payment of development impact fees in accordance with this ordinance shall occur at the time of preliminary plat approval with respect to residential subdivision lots and at the time of site plan approval with respect to multifamily residential dwelling units, in that all development impact fees being assessed and paid hereunder are for public facilities and said assessments occur at the time of development approval. Any residential subdivision lots which have passed, prior to enactment of this ordinance, the preliminary plat approval stage or any multifamily residential dwelling units which have already passed the site plan approval stage shall not have any development impact fees assessed against their developer in accordance with this ordinance, but the developer shall owe development fees in accordance with [this] city ordinance section 306, which shall remain in force and effect until all such outstanding fees have been paid.

307.3. No multiple or duplicate assessments.

By payment of the development impact fee or development fees by a developer in accordance with the development fee schedule contained in this ordinance or under the provisions of city ordinance section 306, the city acknowledges that the developer has paid its proportionate share of system improvement costs and will not be assessed further for system improvement costs with respect to that particular development.

307.4. Preclearance.

Any developer may request and receive a certification of the development impact fee for a project upon written demand and within a reasonable time, and such certification shall establish the development impact fee for that project for a period of 180 days from the date of certification.

307.5. Schedule of fees.

(a) *Current fees.*

(1) The fee schedule per dwelling unit of development on a service area by service area basis:

a. Is $1,083.00 per dwelling unit for the citywide service area. This fee includes $1,040.00 for recreational system improvements and $43.00 for library expansion, police department expansions, and a recreation administration building.

b. Is $1,190.00 per dwelling unit for the North Aberdeen service area (the portion of Aberdeen Village north of Georgia Highway 54). This fee includes $1,083.00 for the citywide service area and $107.00 for the bike bridge across Georgia Highway 74.

c. Is $1,083.00 per dwelling unit for the South Aberdeen service area (the portion of Aberdeen Village south of Georgia Highway 54). This fee is the established fee for the citywide service area.

d. Is $1,083.00 per dwelling unit for the Glenloch service area (Glenloch

Village). This fee is the established fee for the citywide service area.

e. Is $1,083.00 per dwelling unit for the Braelinn service area (Braelinn Village). This fee is the established fee for the citywide service area.

f. Is $1,283.00 per dwelling unit for the Kedron service area (Kedron Village). This fee includes $1,083.00 for the citywide service area and $200.00 for bike path system improvements, a new fire station with equipment, and system improvements to Brown Road.

g. Is $1,202.00 per dwelling unit for the Planterra service area (Lake McIntosh Neighborhood). This fee includes $1,083.00 for the citywide service area and $119.00 for underpass access across Georgia Highway 54 West.

h. Is $1,637.00 per dwelling unit for the Line Creek service area. This fee includes $1,083.00 for the citywide service area, $231.00 for the bike bridge across Georgia Highway 74 West to Planterra neighborhood, $323.00 for the reconstruction of Leach Fire Station. (Ord. No. 704, 4-2-1998)

i. Is $3,708.00 per dwelling unit for the Crabapple West service area (consisting of all tracts of land within the city that currently front on Crabapple Lane West between GA 74 and the Tyrone city limits). This fee includes $1,083.00 for the citywide service area, $200.00 for the Kedron service area (of which this service area is a part), and $2,425.00 for system improvements to Crabapple Lane West. (Ord. No. 681, 11-20-1997)

j. Is $1,707.00 per dwelling unit for the Northeast Kedron service area. This fee includes $1,083.00 for the citywide service area, $200.00 for the Kedron service area (of which this service area is a part), and $424.00 for system improvements to Sumner Road. (Ord. No. 705, 4-2-1998)

(2) There are no categories of system improvements other than these included in this impact fee ordinance. All other improvements, if any, are project improvements. Nothing in this ordinance shall prevent the city from requiring a developer to construct reasonable project improvements in conjunction with a development project. (Ord. No. 608, 10-7-1993)

(b) *Future fees.* This ordinance does not require assessment of development impact fees for anything other than residential development, and the development impact fees assessed hereunder are based on residential zoning as it exists at the time this ordinance was passed. If either property is annexed into the city and/or a rezoning of property from any zoning category to a residential or higher density residential category occurs, the development improvement fee established herein shall not apply and development impact fees will be determined in a manner consistent with the intent of this ordinance and in an amount not less than the current development impact fees.

(c) *Required substitution.* The city has the right to require the substitution of land in lieu of a monetary payment for development impact fees. If the city requires such a substitution, the land to be substituted must meet all of the criteria of sections 307.7(b) and (c), herein, or the land must be mutually acceptable to both the developer and the city, and such acceptance cannot be unreasonably withheld. Credit shall be given to the developer for the substitution as prescribed by section 307.7(b)(5) or 307.7(c)(3), whichever is applicable, and if neither section applies, the credit shall be based on the fair market value of all such substituted land.

307.6. When fees paid.

The development impact fee due hereunder is solely for the construction of public facilities and shall be due prior to the time of final plat approval with respect to residential subdivision lots, and prior to the time of final site plan approval with respect to multi-family residential dwelling units.

307.7. Credit for present value of construction.

(a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction or improvements or contribution or dedication of land or money required or accepted by the city from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements.

(b) A developer may substitute active recreation land and receive a partial credit per dwelling unit toward the development impact fee. The exact credit will be limited to $500.00 per dwelling unit (which is the city's standard development impact fee for recreational land per dwelling unit) and shall be accepted by the city if the following conditions are met:

(1) The land must be suitable for active community recreation use;

(2) The land must be in a location identified as "community recreation" in the comprehensive recreation plan;

(3) The land must possess physical characteristics that are consistent with standards specified by the comprehensive recreation plan for recreational use;

(4) If land is substituted in lieu of partial or whole monetary payment by the developer, all such land will be valued at $16,667.00 per acre for purposes of the credit the developer is to receive hereunder;

(5) The overall substitution must comprise an area of at least three contiguous acres; and

(6) The substitution must be acceptable to the city council, planning commission, and the recreation commission in the exercise of their discretion.

(c) A developer may substitute passive recreation land for active recreation land, if the following conditions are met:

(1) The land must be in a proper location and consistent with the standards of the comprehensive recreation plan for passive community recreation land;

(2) The substitution must be on the basis of 16 acres of passive recreation land for every acre of active recreation land;

(3) If land is substituted in lieu of partial or whole monetary payment by the developer, all such land will be valued at $1,000.00 per acre for purposes of the credit the developer is to receive hereunder; [and]

(4) The substitution must be acceptable to the city council, planning commission, and the recreation commission in the exercise of their discretion.

307.8. Developer credit.

(a) In the event that a developer enters into a written agreement with the city to construct, fund, or contribute system improvements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefitted by such improvements.

(b) In the event that a developer desires to construct major private recreational areas or facilities and further desires to receive a credit for the value or a percentage of the value of such areas or facilities, the developer shall make written application for such credit to the city council of the city, and the city council shall make a determination, within a reasonable time period, as to whether or not the developer is entitled to such credit or partial credit. Whether or not to grant the credit, and, if so, the amount of the credit, is entirely a discretionary decision for city council.

(c) Nothing herein shall prevent a transfer or assignment of credits from one developer to another.

307.9. Deposit and expenditure of fees; annual report.

(a) Development impact fees shall be maintained in one or more interest-bearing accounts by the city. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under this ordinance.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvements element and as authorized by this ordinance. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c) The city shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

(d) All development impact fees collected in accordance with the provisions of this ordinance shall be spent by the city only in accordance with paragraphs (a) and (b), above.

307.10. Refund.

(a) In the event that development is not initiated within a reasonable time period after the payment of a development impact fee, and, upon written request of the developer, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land.

(b) Upon the request of an owner of property on which a development impact fee has been paid, the city shall refund the development impact fee if capacity is available and service is denied or if the city, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out basis.

(c) When the right to a refund exists due to a failure to encumber development impact fees, the city shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the city of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of Entitlement to Development Impact Fee Refund."

(d) An application for a refund shall be made within one year of the time such refund becomes available under paragraph (b) or (c) of this ordinance section or within one year of publication of the notice of entitlement to a refund under this ordinance section, whichever is later.

(e) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected.

(f) All refunds shall be made to the feepayor within 60 days after it is determined by the city that a sufficient proof of claim for a refund has been made.

(g) The feepayor shall have standing to sue for a refund under the provisions of this ordinance if there has been a timely application for a refund and the refund has been denied or has not been made within one year of submission of the application for refund to the city.

307.11. Use.

Development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

307.12. Other agreements.

Nothing in this ordinance shall be construed to prevent or prohibit private agreements between property owners or developers and the city, counties, municipalities, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credit or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

307.13. Appeal.

(a) If any developer or other interested person elects to appeal any ruling of the city with respect to any provision of this development impact fee ordinance, the appellant shall comply with section 1301, entitled "Appeals," in the [this] land development ordinance.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this ordinance, nor shall such developer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(c) If an appellant loses his appeal under the provisions of this ordinance, the appellant's sole and exclusive remedy is to submit to binding arbitration with the city through the American Arbitration Association with the determination of said association being the disposition of the issue and, in the absence of fraud, not further appealable.

307.14. Conflicts.

Any ordinance or part of any ordinance of the city that is in conflict with this development impact fee ordinance is no longer in force and effect as of the date of passage of this ordinance (except section 306, as previously referenced herein).

(Ord. No. 582, 8-6-1992; Ord. No. 586, 10-15-1992; Ord. No. 634, 3-16-1995)

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§ 36-71-2. Definitions

As used in this chapter, the term:

(1) "Capital improvement" means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) "Comprehensive plan" has the same meaning as provided for in Chapter 70 of this title.

(4) "Developer" means any person or legal entity undertaking development.

(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

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(10) "Feepayor" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(10.1) "Governmental entity" means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

(11) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of public facilities or both.

(12) "Present value" means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(13) "Project" means a particular development on an identified parcel of land.

(14) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(15) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

(16) "Public facilities" means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;

(D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(E) Parks, open space, and recreation areas and related facilities;

(F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(G) Libraries and related facilities.

(17) "Service area" means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(18) "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(19) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements."

Laws 1990, p. 692, § 1; Laws 1992, p. 905, § 1.

RESEARCH REFERENCES

Encyclopedias

36 Am. Jur. Proof of Facts 3d 417, Zoning: Challenge to Imposition of Development Exactions.

NOTES OF DECISIONS

Calculation of impact fees 2
Constitutional concerns 1

1. Constitutional concerns

County's ordinance by which county imposed impact fees for libraries, roads, and parks and recreation conformed to due process and equal protection principles, even though fees were only imposed on developments outside of incorporated areas, given that county's authority to impose impact fees was limited to unincorporated portions of county, state permitted, but did not require, county to enter into agreement with municipalities to jointly collect impact fees to pay for system improvements benefitting both, and county did not make classification, but rather imposed fees equally on all developments that it could. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Constitutional Law 🔑 228.2; Constitutional Law 🔑 278.2(1); Zoning And Planning 🔑 86

County ordinance imposing impact fees for fire protection, sheriff's patrol, and public safety, on developments in unincorporated areas of county did not violate equal protection or due process, where fees were imposed equally on all developments over which county had jurisdiction to impose fee, and developments in incorporated area contributed to benefits through fees or services in-kind, such as provision of back-up fire protection systems, mutual law enforcement aid, and payment of jail use fees. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Constitutional Law 🔑 228.2; Constitutional Law 🔑 278.2(1); Zoning And Planning 🔑 86

2. Calculation of impact fees

County impact fee on developments in unincorporated areas of county did not exceed proportionate share of cost of system improvements, even though shortfall would likely develop because developments in incorporated areas did not have to pay impact fees to cities, given that county employed careful calculation procedures, which projected system improvements based on growth throughout entire county, and calculated impact fees based on assumption that all new developments throughout county, whether in incorporated or unincorporated areas, would pay impact fees to cover these new improvements, existence of shortfall did not diminish fact that fees as calculated were not disproportionate, and fees were based on procedure that accounted for each project's projected impact on need for system improvements. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 🔑 382.4

County met statutory requirement that development impact fees be calculated on basis that was net of credits for present value of revenues that would be generated by new growth and development based on historical funding patterns and that were anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers, given that county was not limited to calculation of development impact fees as if general tax revenues and other sources were assumed to pay as much for increased demand for services as such revenues and sources did previously, such approach would defeat key purpose of impact fee statute, namely to allow new source of funding system improvements as necessitated by growth, and to have that growth pay proportionate share of public facilities needed to serve that growth, and county credited anticipated revenues, grants, state funds, and millions in sales tax revenues from growth were credited to cost of projects. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 382.4

Development impact fee calculations did not have to focus on needed personnel, but rather on needed facilities to accommodate new growth, and thus rational basis existed for county's use of facility square footage to determine levels of law enforcement and fire protection service for impact fee purposes, even though sheriff's department representative and fire department representative each testified that neither used square-footage-of-facility-to-population ratios to determine levels of service, and instead rather focused on response time or workload, which were matters driven by numbers of personnel. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 382.4

Ga. Code Ann., § 36-71-2, GA ST § 36-71-2

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§ 36-71-4. Minimum standards for development impact fee ordinances

(a) A development impact fee shall not exceed a proportionate share of the cost of system improvements, as defined in this chapter.

(b) Development impact fees shall be calculated and imposed on the basis of service areas.

(c) Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development.

(d) A municipal or county development impact fee ordinance shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (D) of paragraph (16) of Code Section 36-71-2 may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (D) of paragraph (16) of Code Section 36-71-2.

(e) A municipal or county development impact fee ordinance shall include a schedule of impact fees specifying the development impact fee for various land uses per unit of development on a service area by service area basis. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs.

(f) A municipal or county development impact fee ordinance shall be adopted in accordance with the procedural requirements of Code Section 36-71-6.

(g) A municipal or county development impact fee ordinance shall include a provision permitting individual assessments of development impact fees at the option of applicants for development approval under guidelines established in the ordinance.

(h) A municipal or county development impact fee ordinance shall provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee for a period

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of 180 days from the date of certification.

(i) A municipal or county development impact fee ordinance shall include a provision for credits in accordance with the requirements of Code Section 36-71-7.

(j) A municipal or county development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Code Section 36-71-8.

(k) A municipal or county development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed system improvements.

(l) A municipal or county development impact fee ordinance may exempt all or part of particular development projects from development impact fees if:

(1) Such projects are determined to create extraordinary economic development and employment growth or affordable housing;

(2) The public policy which supports the exemption is contained in the municipality's or county's comprehensive plan; and

(3) The exempt development's proportionate share of the system improvement is funded through a revenue source other than development impact fees.

(m) A municipal or county development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

(n) A municipal or county development impact fee ordinance shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land.

(o) A municipal or county development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of Code Section 36-71-9.

(p) A municipal or county development impact fee ordinance shall provide for appeals from administrative determinations regarding development impact fees in accordance with the requirements of Code Section 36-71-10.

(q) Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(r) Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.

Laws 1990, p. 692, § 1; Laws 1993, p. 91, § 36.

LIBRARY REFERENCES

Zoning and Planning k382.4.
Westlaw Key Number Search: 414k382.4.
C.J.S. Zoning and Land Planning § 197.

RESEARCH REFERENCES

Encyclopedias

36 Am. Jur. Proof of Facts 3d 417, Zoning: Challenge to Imposition of Development Exactions.

NOTES OF DECISIONS

Calculation of impact fees 2
Constitutional concerns 1

1. Constitutional concerns

County's ordinance by which county imposed impact fees for libraries, roads, and parks and recreation conformed to due process and equal protection principles, even though fees were only imposed on developments outside of incorporated areas, given that county's authority to impose impact fees was limited to unincorporated portions of county, state permitted, but did not require, county to enter into agreement with municipalities to jointly collect impact fees to pay for system improvements benefitting both, and county did not make classification, but rather imposed fees equally on all developments that it could. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Constitutional Law 228.2; Constitutional Law 278.2(1); Zoning And Planning 86

County ordinance imposing impact fees for fire protection, sheriff's patrol, and public safety, on developments in unincorporated areas of county did not violate equal protection or due process, where fees were imposed equally on all developments over which county had jurisdiction to impose fee, and developments in incorporated area contributed to benefits through fees or services in-kind, such as provision of back-up fire protection systems, mutual law enforcement aid, and payment of jail use fees. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Constitutional Law 228.2; Constitutional Law 278.2(1); Zoning And Planning 86

2. Calculation of impact fees

County impact fee on developments in unincorporated areas of county did not exceed proportionate share of cost of system improvements, even though shortfall would likely develop because developments in incorporated areas did not have to pay impact fees to cities, given that county employed careful calculation procedures, which projected system improvements based on growth throughout entire county, and calculated impact fees based on assumption that all new developments throughout county, whether in incorporated or unincorporated areas, would pay impact fees to cover these new improvements, existence of shortfall did not diminish fact that fees as calculated were not disproportionate, and fees were based on procedure that accounted for each project's projected impact on need for system improvements. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 🔑 382.4

County met statutory requirement that development impact fees be calculated on basis that was net of credits for present value of revenues that would be generated by new growth and development based on historical funding patterns and that were anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers, given that county was not limited to calculation of development impact fees as if general tax revenues and other sources were assumed to pay as much for increased demand for services as such revenues and sources did previously, such approach would defeat key purpose of impact fee statute, namely to allow new source of funding system improvements as necessitated by growth, and to have that growth pay proportionate share of public facilities needed to serve that growth, and county credited anticipated revenues, grants, state funds, and millions in sales tax revenues from growth were credited to cost of projects. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 🔑 382.4

Development impact fee calculations did not have to focus on needed personnel, but rather on needed facilities to accommodate new growth, and thus rational basis existed for county's use of facility square footage to determine levels of law enforcement and fire protection service for impact fee purposes, even though sheriff's department representative and fire department representative each testified that neither used square-footage-of-facility-to-population ratios to determine levels of service, and instead rather focused on response time or workload, which were matters driven by numbers of personnel. Cherokee County v. Greater Atlanta Homebuilders Ass'n, Inc., 2002, 255 Ga.App. 764, 566 S.E.2d 470, certiorari denied. Zoning And Planning 🔑 382.4

Ga. Code Ann., § 36-71-4, GA ST § 36-71-4

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→§ 36-71-7. Credits against development impact fees

(a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction of improvements or contribution or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest **for system improvements of the category for which the development impact fee is being collected**. Credits shall not be given for project improvements.

(b) In the event that a developer enters into an agreement with a county or municipality to construct, fund, or contribute system improvements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.

Laws 1990, p. 692, § 1.

LIBRARY REFERENCES

Zoning and Planning k382.4.
Westlaw Key Number Search: 414k382.4.
C.J.S. Zoning and Land Planning § 197.

RESEARCH REFERENCES

Encyclopedias

Ga. Jur. Property § 25:75, Generally.

NOTES OF DECISIONS

Agreement 1

1. Agreement

While statute governing credits against development impact fees generally authorizes developers

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to seek monetary reimbursement for excess development fee credits, municipalities and developers may enter into private agreements that otherwise govern, and potentially alter, the reimbursement or payment methods for system improvements. Fulton Greens L.P. v. City of Alpharetta, 2005, 2005 WL 400583. Zoning And Planning 🔑 382.4

Agreement between developer and city concerning extension of road by developer entitled developer to reimbursement of excess development fee credits through impact fee credits, not cash; agreement stated that excess development fee credits could, at developer's option, be applied against other development-related fees which may become due to city, including cost of building permits, or could be transferred to others or both. Fulton Greens L.P. v. City of Alpharetta, 2005, 2005 WL 400583. Zoning And Planning 🔑 382.4

Ga. Code Ann., § 36-71-7, GA ST § 36-71-7

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→ § 36-71-8. Receipt, deposit, and expenditure of development impact fee funds

(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvement element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

Laws 1990, p. 692, § 1.

Ga. Code Ann., § 36-71-8, GA ST § 36-71-8

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→ § 36-71-10. Administrative appeals; arbitration

(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this chapter, nor shall such developer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(c) A municipality or county development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise.

Laws 1990, p. 692, § 1.

LIBRARY REFERENCES

Zoning and Planning 440.
Westlaw Key Number Search: 414k440.
C.J.S. Zoning and Land Planning § 213.

RESEARCH REFERENCES

Treatises and Practice Aids

Georgia Procedure Special Remedies and Proceedings § 7:101, Development Impact Fees.

Georgia Procedure Special Remedies and Proceedings § 7:1, Generally.

Georgia Procedure Special Remedies and Proceedings § 7:101, Development Impact Fees.

Ga. Code Ann., § 36-71-10, GA ST § 36-71-10

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→ § 36-71-13. Construction

(a) Nothing in this chapter shall prevent a municipality or county from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(b) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

(c) Nothing in this chapter shall limit a municipality, county, or other governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users, provided that the development impact fee ordinance of a municipality or county or other governmental entity that collects development impact fees pursuant to this chapter shall include a provision for credit for such hook-up or connection fees collected by the municipality or county to the extent that such hook-up or connection fee is collected to pay for system improvements. Imposition of such hook-up or connection fees by any governmental entity to pay for system improvements either existing or new shall be consistent with the capital improvement element of the comprehensive plan and shall be subject to the approval of each county, municipality, or combination thereof which appoints the governing body of such entity. The adoption, imposition, collection, and expenditure of such fees for system improvements by any governmental entity shall be subject to the same procedures applicable to the adoption, imposition, collection, and expenditure of development impact fees by a county.

(d) Nothing in this chapter shall apply to a water authority created by Act of the General Assembly, as long as such authority is not established as a political subdivision of the State of Georgia but instead acts subject to the approval of a county governing authority.

Laws 1990, p. 692, § 1; Laws 1991, p. 94, § 36; Laws 1992, p. 905, § 3.

LIBRARY REFERENCES

Zoning and Planning k382.4.

Attachment "S"

Ga. Code Ann., § 36-71-13

Westlaw Key Number Search: 414k382.4.
C.J.S. Zoning and Land Planning § 197.

RESEARCH REFERENCES

Encyclopedias

36 Am. Jur. Proof of Facts 3d 417, Zoning: Challenge to Imposition of Development Exactions.

NOTES OF DECISIONS

Connection fees 1

1. Connection fees

City was entitled to collect sewer connection fee from county for providing service for new county jail, without enacting impact fee ordinance that required credit against impact fees for system improvement charges embedded in other hook-up charges, under Development Impact Fee Act (DIFA); administrative agency responsible for administering DIFA interpreted statute as exempting city from impact fee ordinance, and statute itself differentiated between municipalities and counties providing their own sewer service and service provided by a water and sewer authority in applying impact fee ordinance requirement. City of Griffin v. McDaniel, 2004, 270 Ga.App. 349, 606 S.E.2d 607. Municipal Corporations 🔑 712(7); Zoning And Planning 🔑 382.4

Ga. Code Ann., § 36-71-13, GA ST § 36-71-13

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