

ORDINANCE NO 2011- 14
OF THE TOWN OF ZIONSVILLE, INDIANA

AN ORDINANCE TO ESTABLISH AN EQUITABLE IMPACT FEE
FOR THE PURPOSE OF PLANNING AND FINANCING
PARK AND RECREATIONAL INFRASTRUCTURE
TO SERVE NEW DEVELOPMENTS
IN THE TOWN OF ZIONSVILLE, INDIANA,
PURSUANT TO INDIANA CODE CHAPTER 36-7-4-1300 ET AL.

WHEREAS, the Town Council of the Town of Zionsville, Indiana ("Town Council") has determined that it is reasonable and necessary to promote and accommodate orderly growth and development, and to promote the general public health, safety and general welfare of the citizens of the Town of Zionsville, Indiana ("Town"), by providing for an equitable program to fund the capital costs of new park and recreational infrastructure necessary to serve new development within of the Town; and

WHEREAS, the Town Council has further determined that it is reasonable and necessary to promote the orderly development of the Town by establishing standards by which the Town may require new development to pay an impact fee representing the development's proportionate share of the capital costs of new park and recreational infrastructure necessary to serve the development within the Town; and

WHEREAS, the Town Council has further determined that new development should not be required to pay a fee for the capital costs of such new park and recreational infrastructure greater than the development's proportionate share of the capital costs of such infrastructure necessary to serve such development; and

WHEREAS, the Town has engaged H.J. Umbaugh & Associates Certified Public Accountants, LLP ("Umbaugh") to prepare Zone Improvement Plan for Parks and Recreation Facilities (the "Zone Improvement Plan"), referred to by Umbaugh as a "Special Purpose Report", as a supplement to the [insert year of Plan] Parks and Recreation Master Plan, and as an amendment to the Town of Zionsville Comprehensive Plan, which Zone Improvement Plan is attached as Exhibit A and made a part of this Ordinance; and

WHEREAS, the cost of implementing the park and recreational recommendations of the Zone Improvement Plan in their entirety exceeds:

1. the income capacity of the Town through its ad valorem property tax receipts or other tax distributions allocated to park and recreational improvements relative to the chronological needs of the Town for said improvements; and
2. the general obligation bond capacity of the Town based upon net assessed valuation; and

3. the revenue bond potential of the Town based upon any existing means of acquiring revenue related to such improvements; and

WHEREAS, because of the Town's size, considering both its population and geographic area, as well as the distribution of public and private institutions, services and other facilities throughout the Town, park and recreational improvements benefit all citizens of the Town equally; and

WHEREAS, it is the Town's objective for the Zone Improvement Plan to result in the determination of an impact fee that meets the rational nexus test as that test is understood by current applicable Indiana statutory and case law; and

WHEREAS, the Town of Zionsville Advisory Plan Commission, having conducted a public hearing upon, and given due deliberation to, the Zone Improvement Plan has forwarded a favorable recommendation of the Zionsville Advisory Plan's adoption to the Town Council by a vote of 6 in favor and 0 opposed; and

WHEREAS, the Town Council previously has appointed the Town of Zionsville Impact Fee Advisory Committee to advise the Town Council pursuant to Ind. Code § 36-7-4-1312; and

WHEREAS, the purpose of this Ordinance is not to deter growth, nor remedy existing infrastructure deficiencies or pay for maintenance or other non-capital costs.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of the Town of Zionsville, Indiana, that:

1. Limitation on Imposition of Impact Fee. This Ordinance shall expire and become void five (5) years after its effective date as required by Ind. Code § 36-7-4-1340, however, the Town may adopt a replacement impact fee ordinance consistent with Ind. Code §36-7-4-1300 et seq.

2. Establishment of Impact Zone. There is hereby established one (1) Infrastructure Impact Zone, the boundaries of which are co-terminus with the existing corporate boundaries of the Town, as such boundaries may be extended from time to time through annexation, and over any boundaries for which the Town exercises planning and zoning jurisdiction. In this regard, the Town Council specifically finds: there is a functional relationship between the components of the infrastructure type in the Impact Zone; the infrastructure type provides a reasonably uniform benefit to all citizens throughout the Impact Zone; that all areas within the Impact Zone are contiguous as required by Ind. Code § 36-7-4-1316. Except as provided herein, this Ordinance shall apply uniformly to single-family detached, duplex/condo and townhouse, and multi-family apartment residential developments within the Impact Zone for which the Town may require an Improvement Location Permit, and which creates a need for new and additional park and recreational infrastructure. This Ordinance shall not apply to:

- a. development meeting the requirements set forth in Ind. Code § 36-7-4-1322(g);
- b. improvements which do not require an Improvement Location Permit;
- c. improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences, or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed;
- d. the replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destructions thereof; and
- e. non-residential development.

3. Zone Improvement Plan. As a precondition of the adoption of this Ordinance, the Town Council engaged Umbaugh to prepare a comprehensive and detailed park and recreational impact analysis, referred to as a "special purpose report" by Umbaugh. The Town Council hereby adopts the Special Purpose Report prepared by Umbaugh dated October 26, 2011, as its Zone Improvement Plan. Additionally the Town Council hereby adopts specifically the Zone Improvement Plan as part of the Comprehensive Plan for the Town of Zionsville, Indiana, pursuant to Ind. Code § 36-7-4-500 *et seq.*

- a.
- b.
- c.
- d.
- e.
 - 1)
 - 2)
- f.
 - 1)
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- g.
- h.

4. Establishment of Park and Recreation Impact Fee. Based on the Plan, the Town Council determines that the cost for each residential dwelling unit is as follows:

Single-family detached dwelling unit	\$1,221
Duplex/Condo/Townhouse	\$ 977

The Town Council hereby makes all of the data collected, the calculations made and the conclusions reached by Umbaugh in the process of developing and drafting the Zone Improvement Plan a part of the official record considered by the Town Council in enacting this Ordinance, and specifically instructs the employees of the Town to make such data and other information available to the public for review during regular business hours.

5. Credit in Lieu of Payment: Exemptions. Pursuant to Ind. Code §36-7-4-1335, any person obligated to pay a fee pursuant to the terms of this Ordinance may have the option of financing, constructing and dedicating park and recreational infrastructure owned and operated by a neighborhood association for the public benefit, all as described and defined in the Plan and in accordance with the park and recreational specifications for such park and recreational infrastructure to be improved, instead of paying all or part of any impact fee to the Town. The fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit for the actual costs of planning, financing and constructing such park and recreational infrastructure for the Town. A request for credit shall be presented prior to the issuance of the Improvement Location Permit. In the event the actual cost of such planning, financing and construction do not equal the amount of the impact fee pursuant to the calculation provided for in Section 4 hereof, the remaining balance shall be due in accordance with the provisions stated hereafter.

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

Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm, or other casualty beyond his or her control, shall be exempt from said fee if he or she repairs or replaces the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed infrastructure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

6. Impact Fee Upon Issuance of Improvement Location Permit. The impact fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of an Improvement Location Permit by the Town. It is understood that the Improvement Location Permit is synonymous with the term "structural building permit" as that term is used in Ind. Code § 36-7-4-1323, in that the issuance of an Improvement Location Permit authorizes the applicant to commence construction activities, structural or otherwise. The entire fee which is calculated pursuant to the terms of this Ordinance shall be due at said time unless the aggregate amount of the fee is greater than Five Thousand Dollars (\$5,000.00), in which case an installment plan may be requested by the applicant in accordance with the terms set forth in Ind. Code § 36-7-4-

1324(a) through (d). The Zionsville Impact Fee Review Board shall establish specific rules consistent with Ind. Code § 36-7-4-1324(a) through (d) for installment payments. The interest rate on any installment plan or deferred payment shall not exceed the pre-judgment rate as established by Indiana law, as amended, and shall only accrue on the outstanding portion of the impact fee beginning on the date the Improvement Location Permit is issued.

If a fee payer requests, the amount of the impact fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the Improvement Location Permit, whichever is earlier. For purposes of this Section, "assessment" means the act of calculating the amount of the impact fee which shall be due. The Town shall make such assessment within thirty (30) days of the date of such voluntary request or at the issuance of the Improvement Location Permit with or without the request.

7. Lien Rights Established. Pursuant to Ind. Code §36-7-4-1325, the Town acquires a lien against the real estate which is the subject of the impact fee. The Town may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of an impact fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

8. Form of Receipt. The Zionsville Clerk/Treasurer shall issue a receipt for any and all impact fees collected and the form of such receipt shall be as follows:

Received of _____ (fee payer), this _____ day of _____ the sum of \$ _____ in (full) (partial) satisfaction of Park and Recreation Impact Fees due pursuant to Zionsville town Council Ordinance No. _____ relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made part hereof, and subject to the collection remedies and lien rights in favor of the Town of Zionsville in the event or partial payment with payments remaining due pursuant to Ind. Code §36-7-4-1325. The remaining balance due (if any) is in the following amount: \$ _____. This impact fee is dedicated to the creation of the following infrastructure element in accordance with the Zone Improvement Plan: _____.

_____, Clerk-Treasurer
Town of Zionsville, Indiana

9. Appeals. Any fee payer who believes he or she is aggrieved by the calculation of the impact fee may appeal from such calculation to the Zionsville Impact Fee Review Board, and the Zionsville Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

- a. A fact assumed in determining the amount of the impact fee is incorrect;
or
- b. The amount of the impact fee is greater than the amount allowed under Ind. Code §§36-7-4-1320, 1321 and 1322.

Upon conclusion of the hearing, the Zionsville Impact Review board shall make a determination based upon the facts presented, and may reverse, affirm, modify or make such adjustments in the impact fee as it believes are appropriate under the circumstances, if any, including establishing the amount of an impact fee, a credit, a refund or any combination of fees, credits or refunds.

The Zionsville Impact Review Board shall provide a copy of its decision to the Town and the fee payer involved in the appeal within five (5) days after making its decision, and shall make written findings of fact to support its decision.

An appeal under this Section must be filed no later than thirty (30) days after the issuance of the Improvement Location Permit. The appeal shall be initiated with the filing of a Petition for Review with the Zionsville Clerk/Treasurer's Office, together with a filing fee in the amount of One Hundred Dollars (\$100.00). The filing fee shall be refunded in full if (i) the Petition for Review is granted and the impact fee is eliminated, reduced or adjusted by the Zionsville Impact Fee Review Board, by independent action the Town or by a court having jurisdiction; and (ii) the reviewing body determines that the amount of the fees, reductions, or credits were arbitrary or capricious.

The Petition for Review shall be in a form calculated to inform the Zionsville Impact Fee Review Board of the nature of the complaint, the parties to the action and the relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitation set forth in the enabling statute.

The Town shall not deny the issuance of an Improvement Location Permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee; however, if the impact fee is less than One Thousand Dollars (\$1,000.00), the Town may require the fee payer to pay the impact fee or initiate an appeal under this section before the Improvement Location Permit is issued.

10. Establishment of Zionsville Impact Fee Review Board. The Town Council hereby establishes an Impact Fee Review Board ("Board"), which shall consist of three (3) citizen members appointed by the Town Council President and who shall qualify as follows:

- one (1) member shall be real estate broker licensed in Indiana;
- one (1) member shall be an engineer licensed in Indiana; and
- one (1) member shall be a certified public accountant.

No Board member shall be a member of the Zionsville Advisory Plan Commission.

- a. The term of office of the members of the Board shall commence from the date of their appointment and expire five (5) years from the date of appointment.
- b. At the expiration of the respective terms of each of the Board members originally appointed, their respective successors shall be appointed in the same manner as the original appointee, and each such succeeding member shall serve for a term of five (5) years. Each member shall continue to serve until his or her successor is appointed and qualified.
- c. In the event any person appointed as a Board member shall fail to qualify as provided within ten (10) days after the mailing to him or her of notice of his or her appointment, or if any member after qualifying shall die, resign, vacate office, or in the event a member is unable to hear a petition due to a conflict of interest, the Town Council President shall fill such vacancy with a new or temporary (in the event of a conflict of interest) member meeting the qualifications of the member being replaced. A new member shall serve out the remainder of the vacated term, while a temporary member shall serve for the period necessary to dispose of the petition giving rise to the conflict.
- d. The Board shall be governed by Ind. Code §36-7-4-1338(c) and all other applicable provisions of Indiana's Impact Fee Statute.

11. Establishment of Park and Recreation Impact Fee Fund. The Town Council hereby establishes the Park and Recreation Impact Fee Fund ("Fund") for the Town. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized in connection with the purposes set forth herein. The Fund shall consist initially of one (1) account, based upon the current existence of one (1) Impact Zone. In the event, and only in the event, an additional Impact Zone is created hereafter, a separate account shall be maintained for each separate Impact Zone established within the Town. Interest earned on the Fund, or on any account with the Fund, shall be deposited and maintained within the Fund or the separate account. The Zionsville Clerk/Treasurer shall maintain records of the status of the Fund, or any account established therein, and shall make an annual report of the Fund available to the public, in general, and fee payers, upon request.

Pursuant to Ind. Code §36-7-4-1332(e), the Clerk/Treasurer is designated as the Town official responsible for accepting, rejecting and paying on refund requests. In order to facilitate refunds when they may be due, the Clerk/Treasurer is directed to identify the purpose of any impact fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

12. Use of Impact Fees Collected Pursuant to this Ordinance. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the Town, acting by and through its Town Council, which for the purposes of this Ordinance is identified as the "infrastructure agency" contemplated by Ind. Code §36-7-4-1317:

- a. providing funds to be utilized by the Town for the purpose of paying the capital costs of new park and recreational infrastructure that is necessary to serve the new development within the corporate limits of the Town and that is identified in the Plan;
- b. an amount not to exceed Five Percent (5%) of the annual collections of the fee to be utilized for expenses incurred by the town for the consulting services used to establish this Ordinance.
- c. to pay any refund amounts due pursuant to the terms of this Ordinance;
- d. to pay the debt service cost on any obligation issued to provide new park and recreational infrastructure described in sub-paragraph (a) above.

13. House Enrolled Act 1467. The Town Council specifically acknowledges the existence of House Enrolled Act 1467 ("Act") adopted by the General Assembly of the State of Indiana which regulates the imposition of impact fee ordinances by municipal corporations within the State of Indiana. It is the intent of the Town to comply with the Act, and this Ordinance shall be construed in all respects to be consistent with the Act. The substantive and procedural requirements of Ind. Code §36-7-4-1300 et seq. shall control in the event of conflicts between this Ordinance and the Act, which conflicts are unintended by the Town Council.

14. Amendment and Review. The impact fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the Town has no control. The town Council may, not less than once each year, cause a review to be made by Town staff or consultants, as may be required, to determine the continuing validity of the impact fee, the Impact Fee Zone and the Zone Improvement Plan. The Town Council shall consider and adopt such amendments as are necessary to cause substantive compliance with all constitutional and statutory requirements. To the extent required by the facts and circumstances, this process shall include all steps necessary to update the Zone Improvement Plan and the Comprehensive Plan.

15. Effective Date. This Ordinance shall be in full force and effect six (6) months after its adoption by the Town Council in accordance with Ind. Code §36-7-4-1340.

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

17. Repeal of Conflicting Ordinances. The provisions of all other Town ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed.

18. Severability. If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

Introduced and filed on the 5th day of DECEMBER, 2011. A motion to consider on First Reading was sustained by a vote of 7 in favor and 0 opposed, pursuant to Indiana Code §36-6-2-9.8.

DULY PASSED AND ADOPTED this 5th day of DECEMBER, 2011, by the Town Council of the Town of Zionsville, Boone County, Indiana, having been passed by a vote of 7 in favor and 0 opposed.

TOWN OF ZIONSVILLE, INDIANA
BY ITS TOWN COUNCIL

Matt Price

Matt Price, President

✓
For

Opposed

Tim Haak

Tim Haak, Vice-President

✓
For

Opposed

Welton W. Harris II

Welton W. Harris, II

✓
For

Opposed

Valerie Swack

Valerie Swack

✓
For

Opposed

Candace L. Ulmer

Candace Ulmer

✓
For

Opposed

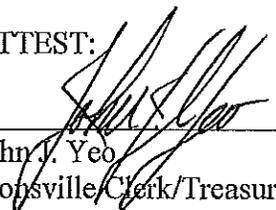
Gene W. Mundy

Steve Mundy

✓
For

Opposed

ATTEST:


John J. Yeo
Zionsville Clerk/Treasurer

Jeff Papa *JM*
Jeff Papa

✓
For

Opposed