Municipalities, waiver of impact fee credits

Number: INFORMAL

Date: August 22, 2005

The Honorable Michael S. Bennett
The Florida Senate
District 21
Wildewood Professional Park
3653 Cortez Road West, Suite 90
Bradenton, Florida 34210

Dear Senator Bennett:

Thank you for contacting the Florida Attorney General's Office regarding recent actions by the Manatee County Commission. According to information received from your office, the county commission recently approved Valencia Groves, a 624-home subdivision. The developers of the project offered to donate land for a school and roads and to waive impact fee credits in an effort to secure approval of their project. The county commission accepted these terms and approved the Valencia Groves project. According to a newspaper article in the Sarasota Herald-Tribune, the county commission expressed concerns about traffic and density of more than two homes per acre and the offer from the developer alleviated these concerns.

You have asked whether a local government may require a contribution or donation of land for school facilities and whether the local government may also require a developer to waive impact fee credits for the same project. Initially, I must advise you that the question of whether the actions of the Manatee County Commission are valid and enforceable may only be answered within the context of appropriate judicial proceedings when necessary to determine a justiciable controversy. This office, like the courts, will presume that the commission acted legally until such time as a court determines otherwise. However, I offer the following informal comments in an effort to be of assistance to you.

In Attorney General's Opinion 76-199, this office was asked whether a city could adopt an ordinance requiring land developers undertaking projects within the municipality to dedicate a portion of the land being developed to the public for park purposes. After consideration of the extent of home rule powers, the opinion concluded that "the adoption of an otherwise valid municipal ordinance requiring land developers to dedicate a portion of their land for park purposes as a precondition to obtaining subdivision plat approval may be a proper municipal purpose." Similarly, in consideration of the broad powers of counties operating under Chapter 125, Florida Statutes, it would appear that a county ordinance requiring land developers to dedicate land for public purposes, such as a school, may constitute a proper county purpose.[1]

In Florida, impact fees are imposed pursuant to local legislation. The leading Florida impact fee case applies the "just and equitable" standard in its analysis of impact fee validity.[2] That general standard is usually embodied in local enabling legislation which grants a county or city the authority to implement a schedule of fees and charges.[3] Assuming that the parameters or

guidelines established by Manatee County to control the administration of impact fees were followed, this office, like the courts, must assume that the county is proceeding in a lawful fashion. Any challenge to local legislation imposing impact fees on particular property or challenging the method of their collection and allocation must be brought to a court with jurisdiction to consider such a matter.[4]

I trust that these informal observations will assist you in considering whether a local government is authorized to require the dedication of property to a public purpose and the validity of the assessment and collection of impact fees.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl
---

[1] *Cf., City of Temple Terrace, Florida v. Tozier*, 30 Fla. L. Weekly D1102 (Fla. 2nd DCA April 29, 2005), in which the court held that a city's ordinance requiring that certain development conditions be met prior to vacation of a street was lawful as a matter of Home Rule authority.

[2] *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

[3] *See, e.g., Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000) and *Florida Keys Aqueduct Authority v. Pier House Joint Venture*, 601 So. 2d 1270 (Fla. 3rd DCA 1992)

[4] *City of Tarpon Springs v. Tarpon Springs Arcade Limited*, 585 So. 2d 324 (Fla. 2 DCA 1991), *rev. den.* 593 So. 2d 1051 (Fla. 1991).