

MINUTES OF THE PUBLIC WORKS COMMITTEE

Meeting of: Wednesday, October 1, 2014
Leawood City Hall, Main Conference Room

COMMITTEE MEMBERS PRESENT:

Carrie Rezac, CHAIR and Councilmember Ward 3
John Burge
Ken Conrad
Jon Grams
Abbas Haideri
Marsha Monica
Christopher White

COMMITTEE MEMBERS ABSENT

James Azeltine, Councilmember Ward 4
Andrew Osman, Councilmember Ward 1
Jim Rawlings, Councilmember Ward 2
Adam Abrams

STAFF PRESENT: Joe Johnson, David Ley, Julie Stasi

- **Chair Rezac called the meeting to order at 7:34 AM.** Introductions were made of Committee Members and staff.
- **The first item of business was to review the previous meeting Minutes of June 11, 2014.**
Jon Grams Motioned to approve the Minutes as written.
John Burge seconded the Motion; all members in favor.
Motion passed.
- **The second item of business was NEW BUSINESS: Review of Street Fees.**

Chair Rezac mentioned there was a discussion that came up in Staff Meeting regarding the interpretation of the Fee Schedule/or the Ordinance related to streets that abut new Arterial Streets.

Joe Johnson-The City has its Fee Schedule that we use to charge developers and when we do work for items necessary to be charged. In the Planning & Development area of the Fee Schedule there is the cost for developing an Arterial Street.

A question has come up as to how to apply the fee. The Fee Schedule says when you come in and develop next to an Arterial Street, (Nall, 119th, Mission Road, 135, 143) those types of streets, the developer pays basically \$311 (\$620 a running foot) or \$311 on each side. The developer comes in and whatever the platted frontage is, the developer pays \$311 for abutting foot. The way it has been applied for a very long time, the fee has only been assessed to developments when it is along an unimproved arterial.

Currently today, that would be 143rd Street, Mission Road South, 151st would be unimproved. If it's improved already to a 4-lane street (to our standard) then we have not charged the fee. We have been doing this for as long as I've been here/that I can remember.

We have a development that came in and there was a discussion on whether they pay the fee. This was at 143rd & Nall. And both Nall and the section of 143rd that abut the property have been improved to our four-lane standard. During the review the question was asked how the fee should be applied. There are two different interpretations of how it should be applied. So it recommended that it come to this committee to talk about the fee and history and then if we have a recommendation; whether the fee should be applied no matter what or should the fee

continue with how the City has applied it and only charged it to developments that come in and build next to an unimproved.

Marsha Monica-Isn't the purpose of this to provide monies to make that development? Isn't that the purchase of this?

Joe Johnson-The fee schedule was established so that when you develop out from the improved infrastructure. The idea was that the developer was required to build a 36 foot wide street so that there is appropriate access to their development. Then in the future the City would come in and improve it to a four-lane street. So in that process if the developer didn't want to or need to improve the street or it was in the best interest of the City to improve the street as a single project. So the fee was established and we charged the fee in lieu of making the developer improve his section of the road. And at whatever time necessary, the City would make the improvements then, when the City was ready to.

There have been times when developments come in and because of the size of the development; they needed to make temporary improvements to widen the road in addition to paying the fee. It was for developers to be able to build a collector street and then the City applied it by collecting the funds and when it was necessary by traffic or when we had the money, and then we would make the full improvement and take those funds and use them to offset that cost.

So how has it been done when a development comes in: say 143rd between Mission and Nall. So those developments as they came in paid the fee and it was put into an account for the section of street. When we developed that section of the street, we wouldn't collect money on 151st and use it to pay 143rd street.

Some of the reasoning I think it has not been applied to improved thoroughfares is because the City has already done the work, it has already been bonded. And if we did collect the money, it would just go back into the general fund because we do not have an account any more specific to that street. And I do not think we can use the money unless we would re-issue the notes to pay down the debt. So it would just go in the City's general fund.

Abbas Haideri-But it is an investment the City made up front. The developer is reaping benefits of that, in terms of marketing his area and also they would be putting pressure on the infrastructure with increased transportation with maybe a light or whatever it called for.

Jon Grams-Joe, when was the last time this fee has been reviewed in reference to the amount being enough? Has it gone up over time?

Joe Johnson-It is about half the cost. We are looking at about \$1200 dollars a lineal foot to build a four-lane street. The last time we looked at it when we did Roe, that is where we were about. We are getting ready to build 143rd Street, so we will see. Yes, we look at it periodically to make sure it is in check with what it costs to build a street.

Jon Grams-I do not understand why they wouldn't have to pay the fee either way.

Abbas Haideri-Exactly

Chris White-Presumably someone owns the land. If someone owns the land then they are not a developer and they own the plot of land, they don't have to pay?

Joe Johnson-Not until the time it is platted.

Chris White-So if you develop a piece of land that is not platted, then the City bears the full cost.

Marsha Monica-So if you own a ten acre tract; say on Mission. And you build a house on that. Would you be charged?

Joe Johnson-For a single family it does not apply (and it says it in the Fee Schedule). But if you come in to build and develop your property, you have to plat. That is the condition. If it is a single lot/residential property and you dedicate the right of way to the City. And that was something we added a year or so ago. The City does not generally assess the fee to a single family lot. But if you come in and you plat for commercial or residential subdivision, then yes that fee would apply.

Marsha Monica-I'm having trouble figuring out-say a developer came and wanted to put something along 143rd. So they pay this Fee. So I guess we collected money for it once to make the improvements. So then if somebody else comes-I guess the land was never developed. Is that the issue? And somebody else has come now. So do you re-tax them for monies you have already received? Because the first developer does not get any kind of a...

Joe Johnson-Well it's been platted, then theoretically they would have paid.

Ken Carson-It's only a one time deal. It only happens once.

Marsha Monica-That's what I'm thinking, why would we re-charge somebody if it hadn't been done once? I mean why would you...

Jon Grams-You haven't been charged.

Chris White-Nobody's paid it and so this land could sit there for decades and nobody has paid a fee. And then when some developer purchases it, then it gets paid one time.

Marsha Monica-right.

Chris White-If they don't develop it. But once it's platted, it's paid and if that comes in like Leabrooke. It's not paid again by a new developer is it?

Marsha Monica-that's what he's talking about isn't it? That's what I thought you were saying that you re-charge it for...

Joe-No.

Joe Johnson-The difference is that if you have a tract of land. Example we are going to build 143rd Street. Steeplechase would have paid, Wilshire would have paid.

Chris White-Your example is Nall at 143rd, there is standing ground there.

Joe Johnson -yes, there is a new development at Nall & 143rd Street. The piece of land on that corner. They have developed around it but they have not platted that tract. So what we have today. Is We have Nall already improved and we have 143rd Street is improved. So this tract comes in and plats for the first time.

Group-so they get charged.

Joe Johnson-Yes. But the question is, do you charge?

Group-Sure.

Chris White-What I was going to say and am kind of surprised by the question because as the way this is currently written, I'm surprised there is an interpretation problem. Because it clearly does not charge for that because it says when they buy it, they will charge at 50%. It doesn't say if it has been, they will pay 50% for the development. I guess someone has come back and read it and says we are going to charge it for what was done in the past.

Ken Conrad-What's missing on this is the key word "Platted".

Joe Johnson-They say "developed".

Chris White-See on the right hand side, it says "fee shall be collected at time of platting".

Carrie Rezac-What's confusing I think about this statement is it says at the cost to develop said street to the standards prescribed for a major collector. Well if it's already been developed to those standards, that's why the question is there.

Chris White-And you could argue that the cost to develop it now is zero. Because there's no more development.

Marsha Monica-That's why I am confused. Because somebody would have had to pay that to develop it right?

Chris White-The City did.

Marsha Monica-So we are asking to be reimbursed.

Ken Conrad/Joe Johnson-Basically.

Joe Johnson-But it won't go to pay off for that debt. It's just going to be collected and the City has whatever discretion it wants to use on how they are going to spend the fee. When we looked at it, we built College Boulevard from State Line all the way and improved it to Roe. But we had everything along College and Tomahawk Creek Parkway all developed. On both of those streets, and no fees. Any of these developments out here (Town Center, Park Place) 119th Shops when they came in and developed, because we had already made the expenses and improved it, we didn't charge. But the way it has been applied as least for 18 years since I've been here. Is that if the street is unimproved, the fee was applied to that development. If the City had already made those improvements, then the City did not make that request on that development.

Abbas Haideri-Since there is a precedent like that it would probably be hard to go back and charge someone.

Group-Yea.

Dave Ley-What we do on a new development that comes in on a street that has already been improved, is they have to do a traffic study. So they end up having to do like 119 Shops probably did over a million dollars of improvements. They had to do a left turn lane and a right turn lane and things like that for access into the property.

Julie Stasi-for clarification-If one developer on one side paid it and then this other side was empty. The next developer comes in and he doesn't have to pay it? Because it's already paid and improved? But they have to do a traffic study?

David Ley-Yes, they have to do a traffic study and make sure that the road does have capacity and make any improvements that are necessary.

Ken Conrad-When the City makes these infrastructure improvements is there an increase in property value for tax purposes? That we can maybe technically see some recovery of that? Does that make sense?

Joe Johnson-It does. Commercial it may. The last time we did Roe that was a very debated argument because the thought for most of the residential property was that it was going to have a negative impact on their valuation. There were those that said it would have a positive effect, of course that brought a larger uproar. So generally try to stay away from that. Because it is a perception. Without doing a market study to show the difference, I do not know. Now commercial properties, I think you would get an improvement as you have better access, better frontage. The down side they would say well now you have more traffic. I would say, no you probably had the same volume of traffic it's just not two miles long.

Ken Conrad-Right you can always sell it and turn it into commercial property. Rezone it?

Marsha Monica-you might have to rezone it.

Ken Conrad-Right but if I'm sitting in my house on ten acres and everything else is growing up around me.

Chris White-Yes, you could also say that it might reduce the value of those current houses, it increases the value of those houses further out because then you have access to them further out and you've allowed the City to grow. That is kind of what I am looking at. Generally I think everyone agreed at first, YES, we'd charge everyone. But then you start

thinking, the City has got to plan ahead. And so do you want to only charge those people who are not developing, or who are developing beyond the City's plan? Or do you want to charge everyone? The people who are building kind of within the City's developed area and have this plan, like College Boulevard? There is an incentive for the people. We did it for a reason, the people were there. Do you want to charge them or do you want to charge only the people who are maybe developing new areas?

Marsha Monica-Wouldn't you want people to infill first before you start jump/leap-frogging over?
Joe Johnson. That was kind of the intent if you have a core here and then you go out two miles to develop something; our infrastructure doesn't reach out that far. So we are going to charge you for that.

Marsha Monica-But you might look at a site, where if you knew that you could buy this site and not have this apply to you. You would probably look at the developed ones more closely I would think then leapfrogging way out. Then you get things like out by just south of 135th where you have 1 building sitting in that area. And that doesn't look good.

David Ley-Villaggio.

Joe Johnson-If you wanted (and I think we're probably one of the only cities left) a lot of other cities; there has always been the debate, when you charge those properties that abut, (you may only go a quarter mile back, or you may go a half a mile or a mile back), but they are paying the brunt of that improvement. Whereas anybody else that develops internally, that does not abut a thoroughfare, there is no fee assessed. Now what a lot of cities have done and of course we are beyond that because we do not have many streets left. But they have taken that fee and decided they are going to charge that no matter what on a square foot basis. So if you are in the middle of the development or if you are on the edge of the street, everybody pays their fair share.

Marsha Monica-Yea, and I think that is a different question. And I agree with that.

Joe Johnson-It is.

Chris White-That's why you have the issue at 143rd & Nall. Because they have developed internally and tried to minimize that.

Marsha Monica-What property at 143rd & Nall is vacant?

Chris White-South of Saint Michaels.

Carrie Rezac-The southeast corner, across from St Michaels, directly across.

There is a little piece just to the west of the retirement villas.

Joe Johnson-North of the villas and just west of the Assisted Living. Grace Gardens. They never platted. When they came in. What's built is platted.

Jon Grams-I think to go back on this infilling and stuff. If a developer is going to buy a piece of ground and he knows he is going to get charged for the front foot. He's going to put that into his negotiations when he buys the piece of ground. I don't see that that is a problem. That's between the developer and guy he is buying it from. If he says I'm going to buy your ground, but I'm only willing to pay so much because of this fee. I don't see that as a problem. Suggest a price.

Marsha Monica-Why would we change our normal way or how we have normally be applying it? Why?

Carrie Rezac-If there is not at this point in time a financial impact to the City, because you haven't been charging.

Joe Johnson-correct.

Carrie Rezac-It's not like there is money coming in that is now not going to be coming in.

Chris White-and it's not projected anywhere.

Carrie Rezac-Right, the financial impact I don't see it being negative.

Joe Johnson-no, and when you look at it, there biggest corridor left that we have un-platted tract is 135th Street. And the City improved that mainly with State Funds. Because it was a State Route. But that /this would apply to 135th Street. You look at the unimproved corridor; it is either platted or they are large residential tracts. Now that's not to say someone wouldn't come in and buy up a couple ten acre tracts and make a nice development. But the only place we really have un-platted unused property is 135th Street.

Marsha Monica-And that has already been improved.

Ken Conrad-With an improved road.

Joe Johnson-Right.

Julie Stasi-for clarification. But if all staff changed and we all retired and this is not worded right other staff may read it incorrectly; is that right?

Joe Johnson- And that is when we read it, we applied it to be applied when it is not built to our current standards. City Administrator reads it different. City Attorney reads it both ways.

[laughter]

Chris White-The real question is how should we change the wording to clarify how we want it to read?

Chair Rezac-Should we go around to see which direction the group wants to go before we change wording?

Chris White-The goal today is, regardless of how we feel it should be applied, we need to consider whether we need to modify the wording to make it clear what that position is.

Carrie Rezac-Correct.

Abbas Haideri-I would like to know one other thing. On a side note; if we were indeed to find a way to apply that and recover the costs that had been incurred in the past for improvement that we hadn't charged. What kind of money are we talking about? What scale? Thousands or Millions?

Joe Johnson-That we would re-coop?

Group. (That might be millions for the cost of legal fees).

David Ley-We would have to look at the cost example: at 103rd & Lee there is a tract there that is probably going to come in residential; maybe 4 lots, 3 lots. And then 143rd & Nall; are really about the two I think that are left up against arterials that are undeveloped. That the site is undeveloped but they are up against a developed roadway.

Marsha Monica-So if we say okay now you are going to have to pay this, they also have to pay for that traffic study and the improvements to that site for traffic in and out is that correct? So we are adding another layer?

Joe Johnson-Yea. Because we are adding to the development. We want to make sure that what is there is adequate and they take care of it.

Abbas Haideri-And like you said you would have legal costs because some did not pay across the street, and why am I now being made to pay?

Chris White-I think of going back and trying to collect from the past is a negative.

Joe Johnson-That we wouldn't be able to do.

Chris White-And then going forward, I can think of several legal conflicts. I think you have somewhat of a legal challenge in applying it differently than you applied it for 90% of the others in the past.

Abbas Haideri-But speaking on a broader picture, if we have done the work and we have provided these amenities to people, why shouldn't we charge for them?

David Ley-Another question would be if we did the road (looking at 103rd) it was constructed in 1985. If we charged them \$311 per foot. That's not really what our costs were. Our costs back in 1985 would have been significantly less than that.

Chair Rezac-So I'm hearing a consensus that we do not want to charge this fee?

Marsha Monica-I would say yes and I would say the one of the reasons I would say yes is that A. We have very little land left that this would apply to. It would be different if there were miles and miles of whatever. Basically to make a change now with just a few areas left, I don't think we should. I think we should keep that and then my personal opinion is keep it and clarify the language.

Joe Johnson-I think from the Committee's point of view then is the recommendation would be to either yes we are going to charge it to everybody or no, this is going to be interpreted that it is only charged to plats adjacent to undeveloped thoroughfares. With that recommendation then the City Attorney will look at it and make sure it is re-worded to say whatever the recommendation is. I don't know that we have to "word-smith" it. I think what the City needs from the Committee is: Yes do it this way or do it the other way. Once the Council accepts it or acts on your recommendation, then probably myself and City Attorney will then write it so that it says that.

Abbas Haideri-Could someone try to challenge it though; saying this lot of land you are not developing it, but you developed Nall without any reason- why don't you do my street? Could someone turn around and say that?

Joe Johnson-Well I think with those that have paid into having the roadwork improved. If we would do another road. Like 143rd. For all those that paid 151st. If we took all that money and applied it to 143rd Street, Then yes, but we don't do that. It goes into it's own separate account. Now with an excise fee where you do it on a square foot basis, Cities can use that on any thoroughfares they see fit. When it is collected like we collect it, it gets stuck into an account and it stays in that account until we improve that road.

Carrie Rezac-Okay does anyone want to make a motion for a recommendation?

Marsha Monica-I move that we recommend to the Council that the fee is applied only to undeveloped property abutting an unimproved thoroughfare.

Abbas Haideri-Seconded the Motion.

Ken Conrad-The way this is written. It talks about everything Arterials but halfway in the paragraph it says major collector.

Joe Johnson-Right. That is how the fee is established. So the fee itself is based on a 36 foot wide street. With the assumption the City is...

Ken Conrad-So is a major collector 36 foot?

Joe Johnson-Yes.

Ken Conrad-Okay major collector is 36 foot and an Arterial is four lanes.

Joe Johnson-So the fee is based on a collector. So when we go back and look at updating the fee, we know what standard to look at. So the standard we use is a 36 foot wide street. So that is what that cost is \$600. So a thoroughfare is about 12 per 1300 per front foot.

Ken Conrad-You've explained it just fine, I guess where I'm going now is, this is a lot to do about nothing.

Chris White-Arterial by definition is not four lanes, so they have kind a already got it. But I think the vote here is, we're trying to say do we continue the policy, or do we change it? That's all.

We don't have to come up with the language.

Jon Grams-We don't have to come up with the language, the language is the lawyer.

Ken Conrad-So to summarize:

Chair Rezac: The Committee, confirmed the interpretation of current practices and how Public Works is currently applying/using the Fee. Confirming that what the Committee wants is to keep it as it is being used. Clarification to recommend to the Council that when undeveloped land is adjacent to an unimproved thoroughfare, a developer would be assessed the Street Fee. Any undeveloped land adjacent to an improved thoroughfare (where the road has already been improved upon) would not be charged the Street Fee.

The Members all voted in favor of the Motion. Motion passed unanimously.

Staff will get with the Legal Department to word-smith the Fee; making it clear that the fee will only apply to an undeveloped thoroughfare.

- Chair Rezac adjourned the meeting at 8:10AM.

Minutes submitted by Julie Stasi, Public Works Department