

**WESTBROOK PLANNING BOARD  
TUESDAY, JUNE 20, 7:00 P.M.  
WESTBROOK HIGH SCHOOL, ROOM 114  
MINUTES**

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (At Large), Dennis Isherwood (Ward 2), Joseph Marden (Ward 3), Cory Fleming (Ward 4), Greg Blake (At Large), Robyn Tannenbaum (Alternate)

Absent: John Turcotte (Alternate), Rebecca Dillon (Ward 1),

Staff: Jennie Franceschi, Alex Kee, Richard Gouzie

*MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING PLANNING AND CODE ENFORCEMENT at 207-854-0638 ext. 1220 and [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us).*

Ed Reidman explained the Planning Board Workshop public process.

**1. Call to Order.**

**2. ~~Approval of Minutes.~~**

**WORKSHOP**

**3. 2017.28 – Amendment to the Land Use Ordinance – Chapter 9 Section 900 General Provisions, Impact Fees: Discussion on establishing general language and requirements for any impact fee enacted by the City.**

**Ordinance Description:**

The intent of this ordinance is to establish a General Impact Fee Ordinance which we currently do not have within our Land Use Ordinance to give the City the ability to enact Impact fees if it so chooses. At the same time, we are providing two additional sections on impact fees for School Expansions and Sanitary Sewer Treatment Plant upgrades for the Boards feedback.

**Project History:**

**October 3, 2016** – City Council voted to have the Administration research, develop and return appropriate legislation for their consideration of impact fees to support the funding needs of expanding educational facilities and expand/upgrade wastewater collection and treatment infrastructure on a cost sharing basis.

**November 8, 2016** – City of Westbrook voters approved to bond the expansions of the Middle School and Saccharappa School.

**May 15, 2017** – City Council referral to the Planning Board for consideration and recommendation.

**June 20, 2017** – Planning Board Workshop

**Staff Comments:**

Per the City Council’s vote of October 3, 2016, a process to propose an impact fee system was initiated by Planning and Engineering Staff. This process required substantial research into legally

defensible impact fee systems and thus a significant amount of staff review time was necessary to pull together the proposed documents that have been provided. The City Solicitor was part of that process and that input has been incorporated into the proposal before the Board.

**Action for the Board's consideration at this meeting:**

- Consider public comments provided
- Provide Feedback on the ordinance
- Consideration of a public hearing on the proposed language

**Jennie Franceschi** before the Planning Board is a document refereed by the City Council, currently we do not have a general provision within or ordinance that talks about impact fees. Statements with in our Site Plan and Subdivision that refer to enacting impact fees, but we actually do not have an actual ordinance that affords us that ability to enact those fees.

To start this evening we are going to discuss the general language as it pertains to establishing impact fees within or City Ordinances. We researched through various communities within the vicinity and looking at State ordinances and came up with what we feel encompasses all the elements that we need to enact any impact fees in the future and gives us basic parameters on how to continue those impact fees in perpetuity with inflation.

**\*\* Insert language**

Couple of the items I want to bring to your attention as part of the discussion; if a house resides on a lot currently and you demolish and rebuild there is no impact fee that is associated with a new house being constructed that already had a house on it. Any houses that go through a transformation process that the number of bedrooms remains the exact same between the before and after, there will be no change.

The same goes for a Mobile Home Park, if there mobile home is replaced there is no impact fee charged to the new mobile home, it is considered a grandfathered lot and they are exempt from the process.

The Impact Fees need to be utilized for the purpose that they were intended to be collected. We have a ten (10) year window per State Law meaning to utilize impact fees as we are collecting them we are setting them aside account. During the ten (10) years we need to come up with a strategy to implement the impact fees. If at the end of ten (10) years we do not utilize the impact fees, they need to go back to the applicants that have paid the fees into the system.

That is a general overview on the general ordinance component.

**Ed Reidman** you have given us a couple memos from outside people one of which was from James Wolf. He talked about impact fees retroactively. I assume since he said he has done work in the City of Westbrook and he talked about retroactive not future.

**Insert James Wolf memo**

The other one is from Daniel Maguire

**From:** Daniel Maguire

**Sent:** Tuesday, June 20, 2017 2:53 PM

**To:** Jennie Franceschi

**Cc:** Jerre Bryant, Michael Tyler, James Coughlin, Rick Gouzie, Linda Gain, Rebecca L. Dillon

**Subject:** Proposed Amendments to the City's Land Use Ordinance

Hi Jennie,

Could you please pass along copies of this email to the Planning Board regarding the Workshop meeting this evening on proposed amendments to the Land Use Ordinance. Please confirm receipt of this email.

Thank you very much.

To: City of Westbrook Planning Board

Sandy River Company is the developer of Stroudwater Landing, a senior care campus located off Spring Street. This campus now includes Springbrook Nursing Center, Avita of Stroudwater Memory Care Assisted Living, Stroudwater Lodge Independent Living Apartments. The last phase of 45 retirement cottages (Stroudwater Cottages) will begin construction in 2018. Stroudwater Cottages has approved permits in place and is restricted to ages 55 plus.

It is our understanding that the City Planning Board is proposing to Amend the Land Use Ordinance that will include establishing School Expansion Impact Fees and Sewer Impact Fees. We are notable to attend the Planning Board Workshop meeting this evening, but would like to comment:

First, we have permits in place to develop Stroudwater Landing and have completed all phases except Stroudwater Cottages (55+). We would ask the Planning Board to consider not requiring such "impact fees" on projects that are already permitted and approved. Such costs were not factored into our budgeting and planning when we decided to invest over \$40 million in bringing a senior care community to the City of Westbrook. We do not feel it is fair to developers that have made significant invest decisions based on the current Land Use Ordinance and already have permits in place, to be required to incur such unplanned costs.

We have also noted that the proposed changes have an "Housing for Older Persons" exemption to the School Expansion Impact Fee with Housing for Older Persons defined as being occupied by persons 62 years of age or older. The "Housing for Older Persons" Exemption under the Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. In order to qualify for the "housing for older persons" exemption, a facility or community must prove that its housing is:

Intended for, and solely occupied by persons 62 years of age or older; or

- Intended and operated for occupancy by persons 55 years of age or older.

In order to qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing.

Stroudwater Cottages is an integral part of Stroudwater Landing, a continuum of senior care facilities and services. Our permits that are in place require that the entire campus be age-restricted and the retirement cottage phase of such developments are generally restricted to persons 55 years of age or older and not 62 years of age or older. We would suggest that your proposed "Exemption" also include a "55 or older" exemption as defined and included in the Fair Housing Act.

We appreciate your consideration.

## **Daniel J Maguire**

Managing Partner

[www.sandvriviercompany.com](http://www.sandvriviercompany.com)

217 Commercial  
Street, Suite 201  
PO Box 110  
Portland, Maine 04112

**Ed Reidman** does the Board have any comments in regard to verbiage the staff has put together?

**Cory Fleming** not a question on verbiage but curious to know what the other Cities around this region are doing in terms of impact fees. Do all of them have impact fees and are we the only one that does not have them or haven't enacted them?

**Jennie Franceschi** it varies, depending on the community.

Gorham has a couple of impact fees, they used to have a school impact fee but no longer have the school impact fee. It was actually pulled back by the action of their Town Council.

Scarborough does have impact fees for their schools and transportation improvements that the community has taken in advance of the development.

York has impact fees.

But to say that every community is enacting impact fees, I could not say that. Everyone has distinct projects that come up over time like a transportation project that the community wants to take on or in our case schools and they need to make sure the impact fees are utilized for the intent that they are collected.

Windham has an impact fee for recreational trails, so they utilize that fee to build ore trail systems. There are different ways communities have utilized impact fees for their projects.

**Cory Fleming** if we were to adopt this it would not impact our economic development potential. It does not put us at a competitive disadvantage with the other Cities around us.

**Jennie Franceschi** it depends what you are looking at for homes. In the end this is the general language and we are going to get into each specific ordinance section. For a single family home the two ordinances up for discussion tonight would add approximately \$5,000 to a single family home cost.

That is something we need to be cognoscente of. In the sewer section it gives you some draft ideas as to what an impact fee would be assessed on certain types of uses. You can get flavor to what exactly these

impact fees would have on specific types of uses, a restaurant or a single family home. Just so you have that frame of reference that there are definitely impacts on the community.

Some communities feel it is a five year window where you are going to feel that impact others do not have that perspective that it had as much of an impact but it is clearly going to be transferred some way or form to a single family home owner or it ends up cost as part of a development project for a business. They will have to factor that into their equation whether or not the project is viable with these impact fees.

**Ed Reidman** we are also aware that the City of Westbrook has an impact fee on land or dollars given for recreation space. We see it on all the subdivisions that come through.

**Robin Tannenbaum** when this discussion came up theoretically during Blue Spruce you talked to some things that the City of Westbrook had in place already; had in lieu of...

**Jennie Franceschi** similar to what other communities call an open space impact fee but we offer options to developers that they could put the amenities on their site if they do not want to necessarily pay the fee they could put amenities on their site or pay an in lieu of fee.

**Robin Tannenbaum** we have that.

**Jennie Franceschi** there are mechanisms put into place in our building permit process that we raised our fees as part of the building permit fee process and a portion of those fees go to different departments in the City

**Ed Reidman** the Library is one of them.

**Jennie Franceschi** the Library is one, Community Services is another and a portion goes to the School. Within the existing framework of the Building Permit Fee portions going to different City Departments.

**Robin Tannenbaum** factually true that somehow the fees will be passed retroactively?

**Jennie Franceschi** when the discussion occurred this fall about impact fees a motion was made at the City Council level that they put a date of October 3<sup>rd</sup>, 2016 as a date of applicability. So any permit pulled after the date of October 3<sup>rd</sup> could be impacted by the impact fees that were under discussion and be provided back to the City Council for their consideration.

The majority of concerns that we have so far from the development community are on the retroactivity component and it is from the standpoint that there has been a significant amount of single family homes pulled all throughout the community that are pulled by the developers or contractors, the home owner has taken ownership of their house and they were not aware during the process they may see an invoice from the City for \$5,000 dollars on their home if they have both school and sewer impacts.

So although there is a lot of grumbling about impact fees in general; the biggest concern that people have in general now is that we are looking at this going backwards in time and the developers have said if you go forward I have no problem in the future, it's it is going backwards in time retroactively could be problematic from people who do not know that they are going to be saddled with a bill that they were not anticipating.

**Joe Marden** I have a question on refund of unused impact fees. I am curious to the school impact and the sewer, especially with single family homes as there is a lot of movement within 10 years who originally paid and no longer live in the State. How do you go about locating them to give their money back?

**Jennie Franceschi** that is a great question, as it pertains to the schools there is no 10 year window as we are already moving forward on the bond so the school impact fee would stay alive until such time that we pay back on the bond and then we would cancel out the impact fee on the school.

The sewer is the concerning one is where you would be collecting this fee and if we do not get to that point then we would have to go back and try to do our best efforts at contacting these folks that have provided these impact fees over the years. That is a concern whether it would end up going back to the land and that the property owner being the person that we would have to reimburse. We would have to talk to legal to see what exactly happens.

**Joe Marden** my question is if something should be put into this that explains that process. I just could see it becoming an issue. If you could not find the original owners and returned to the new owner, there could be conflicts with that.

**Ed Reidman** understandably you do not know what the sewer budget is as you are not involved with it. There is a provision on an annual basis to put revenue in to projects and this money could be used for that at that time, therefore the chance of the money ever running into the deadline is probably little to none. But the mechanism has to be there.

This is a workshop and we invite people to speak at this workshop, but we ask them to come to the podium and state your name and address.

**Michael Jacobson** my partner & I have been fortunate to do some condominium projects here in the City. I have a couple of concerns about this. Whenever we go into a project we try to go in with eyes wide open and we try to figure out the viability of it. Here is what I see on this issue, impact fees are something we are used to. In Scarborough we built some homes over the years and we knew when we walked into whatever we were doing, each house had an impact fee and we never expected to get money back either.

We understand the Cities and the Towns need funds to take care of their infrastructure. What I am concerned about is the reach back and I am not really sure, not wanting to get into the legal aspects that but when we came into town and purchased a project and we did the math, figured out what would be the affordable aspect.

I have been doing this for about 33 years and when there is a building boom, people get wound up and people say what is going to happen to our town? Then this starts. Westbrook is in incredible position, it is affordable. Then you say in the middle of our work with people already living in the homes we built; you say we were talking about impact fees. I did our calculation that is about \$15,000 dollars that we did not put in our budget.

Now if you say we have passed an impact fee everything looks a little different. Will it adjust the values? Absolutely. Do you want to see the values in Westbrook climb so it is no longer affordable?

We have paid sewer fees that are an impact fee. We pay to tie into a sewer whether we built the line or not, we are contributing.

I do not have anyone living in a home that were built during the retroactive period, but we are building one now, twelve units, about \$15,000 dollars that we did not plan on. If I am a homeowner and I get a bill in the mail for \$5,000 dollars, I am going to say are you kidding me? These byers are not 20% down, \$400,000 dollar homes these are built in the \$200,000 and those people got in with FHA loans, 3% down

that are trying to build a community with their families. They would not have that kind of money; they did not have the down payment.

All I am saying is you have the opportunity to slow the role. I have a hard time reaching back to unsuspecting people. I will pass on the fee and hope that the cost does not make the sale less attractive.

**Ed Reidman** Planning Board does not make law, the City Council does. The only thing we do is make a recommendation and the Council have the option to do what they think is right.

**Rocco Risbara** 287 Black Point Road, Scarborough, I am definitely not in favor of either of these fees which is probably no surprise to any of you. I look at it as just another tax that is put on whoever wants to live in this City, whether it is a new home, condominium or an apartment. Whatever that fee becomes gets rolled into the price of the project. Personally it does not cost me anything. It gets passed on to the end user and so I cannot help but look at it as another tax. Welcome to Westbrook you get to pay another fee because you did not move in last year. I would like you to think about that for a little bit. I think it is unfair.

We work in a lot of towns in Greater Portland; probably more towns have some sort of an impact fee. Again, I think that is unfair. When I look at the numbers that are being proposed for the Schools, the methodology seems right to me. I understand why that is being asked. It seems right but I think it is another tax.

I do want to make a comment, in reading what is proposed I feel that the one bedroom units are exempt. I think history within Blue Spruce Farm do not produce any children.

I also want to talk about the retroactive piece of this whole thing. We knew as we were going through the process with our Phase II of Blue Spruce that the Council had enacted this. We were caught in the middle and were well into the process. As you know we had many meetings with the Staff and the Planning Board and I think it is highly unfair that we were caught by the October 3<sup>rd</sup> date. In our case it is over \$135,000 dollars for our project alone that will get passed on to the eventual tenants that live in those units.

As far as how that impacts home owners, I am not sure how the City can even manage that piece. Many permits have been issued, homes have been completed, and people live there. I am sure that people have no idea that they have a bill coming. If you look at how the Ordinance is written it goes to anyone who puts a one bedroom addition on their house. If this passes, they have a bill coming that they may or may not know about. Going back to October I think is highly unfair and I hope that the Planning Board talk about that a little and make a recommendation to the Council that if these do go forward that we make it at least going forward. Every Town I ever worked in, I know there was an impact fee when the project was started. To have that thrust upon us after we have started, I think is unfair.

I do think it will impact the growth of the City. I think it is going to particularly going to hurt in the Commercial area. The sewer impact fee is going to be a problem with commercial growth and I hope you will consider that.

**Ed Reidman** you have thrown out the \$5,000 dollar figure, how does it break down school to sewer?

**Jennie Franceschi** approximately \$3200 school and about \$1800 sewer.

**Chis Wilson** Warren Avenue, I am going to sound like a broken record at this point but I am in agreement to what has been stated is that it is inevitable that there is going to be impact fees. That is not the big problem, I think the numbers are a little too high and I agree with Rocco with what he said about the commercial side some of those numbers are staggering.

A restaurant at \$19,000 dollars, unless it is a chain restaurant I do not know who could come in and have a \$19,000 dollar fee tacked on to all the other expenses they need to put into it. It is almost slanting to not being business friendly anymore.

Bill Baker was very pro-business when he was here. He did a lot for Schlotterbeck and Foss when they came to the City. He was great pulling business to the City. Some of the things that are happening now are going to deflect businesses away. There is just no doubt.

Retroactive the fees, I do not see how that can happen. I know the City Council proposed it and voted on it but to try to go back to the multiple projects were the houses have been sold, long sold and to try to go back on these homeowners and say you owe us this because your house was built after October is going to be very difficult to enforce. There is going to be liens attached to properties, this is going to become a mess.

When this was first proposed, the word that came to my head was another tax. It is a pretty sweet gig for the City, developers come in, and you have application fees, subdivision fee, parks and rec fee, plastic tote fees, sewer connection fees, now we have impact fees on top and while you are at it, build us a complete infrastructure street and give it to the City and pay all the fees. It gets frustrating because it is like Rocco said we do not pay it, it gets passed on. This \$5,000 dollar impact fee is not going to be paid for by the developers or the contractors, it will be paid for by the people who purchased the home so, a \$240,000 Colonial is going to become a \$245,000 Colonial. This will put Westbrook not as affordable as it once was.

Those are my thoughts, I know the Board does not make the rules you make recommendations but hopefully you can take some of the feedback from us and go to the Council with that.

**Michael Ross** 45 Middle Street it says in the impact fee, section 901.7 *Exemption Reduction from Fee for Offsite Improvements* in the first paragraph it ends; *offsite improvements may be deducted from calculated impact fee or may be determined to be equivalent to the impact fee as determined by the City Planner.*

I would like to see that changed to say;  
“City Planner and approved by the Planning Board after approved in a Public Hearing as required for the impact”.

My reason for that if you leave it solely in the hands of the City Planner they are going to be held responsible. It is a lot of authority. I think we have Planning Board meetings for fences, so to put it in a broader context where it is a public debate in a public forum; it is much more in the light of day kind of thing. We would not want to put all that pressure on a single individual, the City Planner, make it part of the Planning Board approval process, to give them that exemption.

Section 910.1 *Purpose* the first sentence; fees collected under the regulations used to contribute to the City School improvements as authorized by the voters 11-8-2016, an Attorney could read that as an end date. Before we approve this we should put “and any future school expansion projects”. Going forward these impact fees that impact the entire City not a dead end date of November of 2016 because the school population is changing.

I do like the October 3<sup>rd</sup>, 2016 date. The reason for that date is because you did not have an impact fee assessment plan at the time it was debated before the City Council. I have listened to the Developers talk; they need to read the fine print in the contract. This was well known in the newspapers, it was on television, we had this debate, and it was processed here in the Planning Board and the City Council

meetings, to act with that date in mind as Blue Spruce Phase I & II was part of those meetings. I know it was deliberate and adds to the cost retroactively but it has not been hidden from anyone. The reason we are going through this process is because it is so sophisticated.

A couple of things, my daughters are in the school system, Saccarappa has three portables, Canal has three portables, and you are teaching classes in the cafeteria at Saccarappa. This has been a painful process. We approved the twenty-six million school expansion that is being paid for by the tax payers because of the changing dynamics and growth in the school population. Five years after the new middle school opened, we are now moving forward with an expansion. What has changed is the City itself. A lot of development has come to the City, people and developers can help pay for the cost of running the City.

This document is based on surrounding Towns regulations and this is a sound regulation, you did a nice job. The impact fee for the school based on the amount of bedrooms, the numbers are really good because going from one bedroom to a two bedroom to a three bedroom talks about the number of kids in school.

I like this well-crafted document and I think it is fair.

**Ed Reidman** questions or ideas with regard to this item?

No comments

**4. 2017.29 – Amendment to the Land Use Ordinance – Section 910 School Expansion Impact Fee: Discussion on establishing an impact fee system towards the school expansion projects at the Middle School and Saccarappa Elementary School.**

**Ordinance Description:**

1. This ordinance is to collect impact fees from new housing development within the City. Fees would be based upon the number of bedrooms in the unit being proposed as well as the type of housing.
2. The fees collected under implementation of these Regulations shall be used to contribute to the City of Westbrook’s debt burden for the construction or renovation of the Middle School and Saccarappa School improvements as authorized by the voters on November 8, 2016. A portion of the cost of these projects is necessary due to the projected increase in enrollment due to anticipated new housing construction in the City of Westbrook.
3. Addition to an existing dwelling unit which expands the number of bedrooms shall be required to pay the difference in the fees for the type of unit after the addition and the type of unit prior to the addition.
4. Exemption from the fees is proposed to be provided for Housing for Older Persons, which may also include assisted-living or congregate care facilities. Housing for Older Persons is defined, intended for, and solely occupied by persons 62 years of age or older.

**Project History:**

1. **October 3, 2016** – City Council voted to have the Administration research, develop and return appropriate legislation for their consideration of impact fees to support the funding needs of expanding educational facilities and expand/upgrade wastewater collection and treatment infrastructure on a cost sharing basis.
2. **November 8, 2016** – City of Westbrook voters approved to bond the expansions of the Middle School and Saccarappa School.
3. **May 15, 2017** – City Council referral to the Planning Board for consideration and recommendation.
4. **June 20, 2017** – Planning Board Workshop

**Staff Comments:**

For the School Impact fee, Staff thoroughly research student generation rates for the region, state and national surveys. The final methodology provided to you is an accumulation of those efforts in pulling together the most detailed data we felt was legally defensible. As part of these efforts, we requested an outside review by a professor at the USM Muskie School to review our methodology for appropriate practices, which we received his positive feedback on. This review was provided gratis.

As future property owners will be paying on the School bond through taxes in the future, we need to credit that effort to avoid doubly feeling those new owners. Thus, to avoid legal challenges to our ordinance, a discount of 50% was utilized as a credit, which was advised by reviewers.

**Action for the Board's consideration at this meeting:**

- Consider public comments provided
- Provide Feedback on the ordinance
- Consideration of a public hearing on the proposed language

**Jennie Franceschi** Alex and I did lots and lots of research looking at other communities, School impact fees and how they actually calculated their numbers. We looked into the State model Impact Fee Ordinance as well as studies that were done on the City of Westbrook and we pulled together student generation rates depending upon types of housing options and the number of bedrooms.

After crunching the numbers and comparing it to other communities for generation rates we feel what we have proposed at this time is the best information that we can pull together for an appropriate representation of the impact.

If you go to the methodology sheet that shows you how we actually came up with our student generation rates broken down into that different categories of school age children. Ultimately what was provided to us from Harriman was the cost on a per classroom basis to build the additional classrooms looking forward to future growth and not necessarily what we have to compensate for current conditions. We took the number of classrooms divided it by the number of children in a classroom and came up with a cost per child which was roughly \$8,600 dollars.

Understanding that when someone buys a home in our community, they are also paying taxes on the Bond for the School System and there should be some credit provided in that process so that you are not double feeling someone as part of that.

In discussing with reviewers of this Ordinance it was advised to us to take the number and divided it by half that would be an appropriate credit to be provided on the cost and would make it legally defensible and less subject to challenge by developers.

We took that number and multiplied it by our student generation rates and looking at what other communities are charging we are actually roughly where we should be. Not that we should be comparing to other communities because other communities projects may not be similar to ours but we felt what we were charging based on our growth and what is needed in those schools for expansion actually comes up with a reasonable number.

That is how we came up with the methodology. A lot of the language came from York and also Scarborough. York has had an Ordinance since the 90's and if it had not been legally challenged then the language was generally good. Using their bones as the basis we have put forward the Ordinance.

As discussed during one of the Council meetings was housing for the elderly and making sure that we are not imposing upon elderly housing the same way we would be imposing upon for a new single family home. Staff's discussions on this particular point; we are debating whether you use the 55 and older or the 62 and older, understanding that a 55 and older still can have a family unit included with that particular individual. We felt by going to the 62 and older which is the definition for housing for older persons that is a Federal Definition and they use 62 and older so we felt that at this point we will propose 62 and older will get an exemption. Anything other than that should have reflected an impact fee. . A housing unit propose 65 and older anything else be reflected in the calculation

**We received two additional e-mails today:**

**From:** Wayne Nelsen  
**Sent:** Tuesday, June 20, 2017 4:25 PM  
**To:** Jennie Franceschi  
**Subject:** School Impact fees

Hi Jennie

I am writing today to express my concern about any new impact fees being retroactive to any date before the actual fees are part of the Land use Ordinance.

The problem will be if a fee is charged after a home is completed and sold the issue of whom will pay it and if the city can indeed collect the fee on a back dated issue. I know for myself and I would assume others whom build in the city where never given any paperwork with permit issued after the October date . I do not include impact fees at this time in my Westbrook building projects because there is no known amount set to even convey to the future owners.

I want to say I believe the city as a right to access and collect the fees once it has become the new standard and is readily available for the public to see and the builder to talk to the future owners about the fees as I do in any other town that has impact fees.

So please consider there will be many new home owners who may not be in a position to pay a fee after closing that was not able to be included in the purchase price of the home. FHA buyers are required to put 3.5 % down and most also ask for closing costs to be paid because even with great credit and the income coming up with \$3,000.00 or more lump sum will create a terrible hardship on the new homeowners and could even result in the home having a lien placed by city that could cause the Mortgage holders to foreclose on the new owners.

Thank you for considering my input .

I would look forward to more discussions about how this should work moving forward

Wayne Nelsen ,Broker,  
Builder The Maine

Real Estate Network  
US Rt. 1  
Falmouth Maine 04105

**Sent:** Wednesday, July 26, 2017 9:55 AM  
**Subject:** Impact fees

Jennie.

I was in the city of a few days ago and it came to my attention about the impact fees for new construction within the city. I am working tonight therefore I won't be able to make it to tonight's meeting. I just want to send this email along to express my two cents about the fees.

As a Westbrook resident, business owner, and a investor, I am deeply concerned and disappointed with the impact fees being implementing by the city.

I love the city of Westbrook and since I moved here a couple of years ago, a lot of things have changed.

There are a lot of growth in the city with new developments on Spring Street, the shopping center on Larrabee Rd and others within the city. I am afraid with the impact fees will hurt the future developments in the city. We cant be a business friendly city if we start punishing people by unloading fees on them. Its costly to build a house or a commercial building as you and I know first hand with my building on Main Street. I spent thousands more than I expected to meet the city requirement and permitting. Properties on Main Street are aging and more fees will stop people from developing in Westbrook. Out taxes are high but the property values are low comparing to other cities except Portland. More fees is not the answer!

Please think about the future of our great city and it people. Also please share my concerns with the city officials. I wish I could attend the meeting tonight but we all have other duties to fulfill. Please contact me anything If I can be any help.

Sincerely,  
Ryan

Le

**Ed Reidman** who pays school impact fee?

**Jennie Franceschi** the school impact fee would be assessed on a building permit. As a project comes forward they would be paying the impact fee at the time of the building permit.

**Ed Reidman** with regard of Mr. Wilson's project that he had approved in back of the Lutheran Church would he pay a school impact fee?

**Jennie Franceschi** no, anything that does not have a residential unit will not pay the school impact fee.

**Ed Reidman** comments from the Board?

**Rene Daniel** if I have a four (4) bedroom home and I decide to add one more bedroom, at the permit stage getting permission to build that fifth bedroom, I would be assessed?

**Jennie Franceschi** you will be assessed a fee.

**Rene Daniel** the \$8,652.60 per student, what does the State reimburse our district per student now?

**Jennie Franceschi** that dollar amount is based upon the construction cost.

**Rene Daniel** I fully understand that, but what I want to know is what does the State pay each student in each district.

**Jennie Franceschi** I do not know, I would have to find that out.

**Rene Daniel** my calculation is right around that number. I find that in my opinion another tax and I have a major problem with property owners paying double taxes.

**Joe Marden** I see the note about the increase of bedrooms and that you have to pay the difference between the two fees, but it does not go the other way?

**Jennie Franceschi** no

**Joe Marden** the other question is the exemptions for housing for older persons with a change of use to an apartment complex would it pay the impact fee at that time?

**Jennie Franceschi** we hadn't discussed that. We can talk with legal and see what their thought would be.

**Joe Marden** have you done any research annually over the past year of growth what would be collected in a year?

**Jennie Franceschi** we have not done the calculation yet. That is something we could provide.

**Joe Marden** I am just looking for round number.

**Ed Reidman** any other questions on school impact fees?

**Dennis Isherwood** I disagree with my Board Members about the school impact. I come from a family of six kids and we were very low income, we all went to private school though, all of us and we paid by the week I think. We carried envelopes with our money in it. All six of us went to private schools. But my folks still paid taxes, still paid for the school systems.

Now I pay for the school systems when my daughters went to the school system, they did go to public schools. We did not have any trailers out back of Saccarappa or Canal school at the time. They went to the schools and the schools were sufficient. Now the schools are being remodeled probably for need because they are old and to accommodate the growing population of Westbrook.

All of us here have been paying for that. Shouldn't the new housing also jump in and help pay for the school too? Their kids are going to be using it. I am going to continue to be paying for it. My kids are long gone.

I do believe in the impact fees for the schools. Not just for the residents that are the elders of Westbrook but the new houses too. Our budget is going higher and higher every year so I think we do need some help there, especially the Senior Citizens.

I think that everything that happens in Town has an impact on the Town. It affects the school system, it affects the Town completely.

Let's talk about sewer, my street was paved and five (5) years and a day later the Ordinance was changed to allow fifty (50) foot frontage lots, they added ten (10) houses on the street. They put water and sewer into each one of these houses, now you cannot drive on one side of my street now unless you have to, everyone drives on the left side because that is the side that has not been dug up, otherwise you are going over like cobble stones and everywhere there are patches on the streets but they don't really patch it right. I do not think it is possible to patch it to the original again. Maybe some of the sewer impact money could be used to patch the roads. The way they were supposed to be done in the first place. This goes for the water department also.

That is my opinion on this.

**Ed Reidman** anymore comments with regard to the schools?

**Rocco Risbara** I wanted to touch on a couple of things on the school piece. A question was asked and I did not hear the answer. As proposed if I live in town right now and I live in a four bedroom house and I want to add a fifth bedroom, I am going to be assessed a fee but I do not see on this calculation of fees what that fee is going to be. Do I pay the full five bedroom fee? Or do I pay the single bedroom fee.

The other piece I wanted to touch on is the difference of the 55 and older and 62 and older. Dan Maguire sent a letter today after he left my office. That affects his project that is coming. I would think that the City would encourage the type of project that he has where it is going to be age restricted 55 and older condominium units with a cross section of people that you are going to want to live in your City. 55 and older that are not going to have kids, it is age restricted yet as this is written there will be an impact fee on his units because he is age restricted to 55 and older I wish that you would consider that and perhaps use the 55 number as recognized by HUD and other government agencies.

**Ed Reidman** you already addressed the 55 and older vs. the 62 and older.

**Jennie Franceschi** the bedroom differential we do have an example below in the Ordinance where if you had currently a three bedroom house and you wanted to add a fourth bedroom you would pay the differential between four bedroom fee and the three bedroom fee. That is what you impact fee would be. You would not be paying for you house that is grandfathered for three bedrooms.

**Ed Reidman** what Rocco just spoke to the difference between the 55 year old and the 62 year old?

**Jennie Franceschi** it was a point of debate amongst staff. IT was felt by staff that 55 had potential even if you called the project age restricted there are still some 55+ individuals that do have families. It is not out of the realm of possibility for someone that is 55 to not have children still in the school system. It was felt that if you reached the age of 62 it is a pretty good probability that there will be no children in that particular unit.

**Rocco Reidman** I think a project that has to be 55 + and has no children can live there, why do we have to charge them a fee?

**Ed Reidman** must say 55 and then say you cannot have children can live there.

**Rocco Risbara** I am thinking only 55+ can live there.

**Ed Reidman** so if someone is 55 years old and marries someone that is younger with children

**Rocco Risbara** they cannot live there. It is an age restricted community. It is a possibility.

**Chris Wilson** Mr. Isherwood, I want to respond to a couple of your points. I totally understand I send my children to private school. We need to be careful that the impact fees are not looked at as a penalty for moving into the City. You made reference to a family moving into a house, why shouldn't they contribute to the school system. If Mr. and Mrs. Jones live in a ranch on Myrtle Street and they sell their home and this same family purchases that home, there is no impact fee. The kids will be in the Westbrook School System. I think this is a slant towards a penalty chipping in payment to our schools. Remember also these families have been paying taxes in other communities, now they have decided to relocate to Westbrook. The only way they are going to be penalized or pay this fee is if they buy new construction. They can buy any existing place in the City and they do not have to contribute a dime towards the school. You mention using other fees for the streets, contractors pay 1,000 of dollars that is another fee for whenever these houses were opened up, there were street opening fees that paid to do all those patches. Those fees paid were supposed to be put to the side for two or three years later to do all those patches to make the street smooth again, like Portland does. It does not happen in Westbrook. There are fees paid for all that as well. I just wanted to address that.

**Michael Ross** 45 Middle Street Mr. Daniel the State is mandated to pay 55% percent for school students and have never reached the 55 % percent.

Our school budget went up by 1.3 percent which part was to pay for the roof on Canal School. The rate that the State has been reimbursing Cities and Towns has been going down steadily. We cannot count on the State to help. The fact that this impact fee is for the school specifically as a onetime thing and it does go back if it is not needed, that fee needs to be paid.

Based on 24 students per classroom is ideal. Westbrook does an excellent job compared to what they are dealing with. We are also seeing changes in population dynamics that is putting another stress on the School system. The School system is doing great considering the overcrowded classrooms, the portables. The impact fee is a much needed boost to an already strained system. I really want to support the School.

**Ed Reidman** anything else?

1. **2017.30 – Amendment to the Land Use Ordinance – Section 920 Sewer Impact Fee: Discussion on establishing a sewer impact fee system to offset costs associated with increasing capacity at the City's Wastewater treatment plant facility.**

**Ordinance Description:**

The fees collected under the implementation of these regulations shall be used to increase capacity in Westbrook's sanitary sewer treatment plant in conjunction with the growing population of the City to maintain current standards and incorporate new developments in the sanitary sewer system.

**Project History:**

**October 3, 2016** – City Council voted to have the Administration research, develop and return appropriate legislation for their consideration of impact fees to support the funding needs of expanding educational facilities and expand/upgrade wastewater collection and treatment infrastructure on a cost sharing basis.

**May 15, 2017** – City Council referral to the Planning Board for consideration and recommendation.

**June 20, 2017** – Planning Board Workshop

**Staff Comments:**

For the Sewer Impact fee, the Wastewater Department determined the calculation of the fee, which is based upon the 2011 Woodard and Curran Treatment Plant study that developed a monetary cost to upgrade the current Wastewater Treatment Facility by 700,000 gallons per day (gpd). The cost was adjusted to present value using construction cost indices from the Engineering News-Record, which is industry standard.

As these new sewer users will be paying on an infrastructure bond through the user fee in the future, we cannot doubly fee those new users which could make this ordinance susceptible for legal challenges. Therefore, a discount of 50% was utilized as a credit, which was advised by reviewers.

Incorporated into the methodology document are sample fees for use categories to provide the Board with the potential impact on those uses.

**Action for the Board's consideration at this meeting:**

- Consider public comments provided
- Provide Feedback on the ordinance
- Consideration of a public hearing on the proposed language

I would suggest to staff in the purpose statement fees under recommendations be used to increase the capacity in the Westbrook Sanitary Treatment Plant, I would urge you to add in between increased and capacity “*or maintain capacity*”. The situation could exist; I will ask has the Westbrook system completely separated at this point?

**Jennie Franceschi** no

**Ed Reidman** if you use your funds to separate the system, you maintain the capacity of the treatment plant by eliminating the stormwater that gets to the treatment plant. There is a potential to fund a separation project vs just putting into the expansion of the treatment. This is only a suggestion.

**Jennie Franceschi** my only concern with the statement is that impact fee is specific to the project in which that we have calculated and put forth vs. inclusion to CSO projects which would be separate to be priced out and have to have a specific fee structure. The fee structure shown here based upon the increase of 700,000 thousand gallons per day at the treatment plant and what the cost to the upgrade would require shown on the methodology sheet and basically divided by the number of gallons so it gives you gallon per day cost. That cost is specific to the treatment plant estimate. If we were to utilize the funds for other items specifically besides the impact fee we would have to determine if we would include projects within this so it would be clear as to where the impact fees are going to. We can talk with Natalie to see if we need to have them priced out in advance. Impact fees vs. just a collection of money that would be utilized for projects for an unknown estimate? We would need to look into that.

**Ed Reidman** another suggestion at the bottom of the page on page 2, under the last paragraph the City Engineer or designee with regard to inform the applicant.

**Jennie Franceschi** where sewer is in Public Services completely it would fall

**Ed Reidman** where are they going to pay the fee?

**Jennie Franceschi** the fee would be paid at time of the building permit, so we would collect the fees. If there were any discussion on the fee itself it would have to be taken up with the City Engineer.

**Ed Reidman** the designee could be Mr. Gouzie when he hands the check to Linda. Just as long as it is ... or do not allow the City Engineer to go on vacation.

When I worked in another City there was a need to create sewer capacity and the commercial, industrial area of the City the way they put the package together three developers came forward, funded the project to expand the treatment plant carrying the sanitary waste from the industrial commercial area to the treatment plant on a basis where they were paid back. I know that one developer paid one million dollars for the capacity of what they were going to put in plus the fee that was over several million dollars and it did not deter development in that area. The functional system would carry the money forward and the fee did not stop growth.

Questions and comments?

**Joe Marden** has there been an analysis that this upgrade will need to take place in the next ten years?

**Jennie Franceschi** understanding what we have remaining at the plant and continue to grow at the rate we are if Windham at some point wants to utilize their share of the Portland Water District Treatment Plant as of now they have not utilized their share, we see that is somewhere we have to go to at some point. Are we at a critical point right now? No. We are still well within what we need but looking forward trying to be proactive in the future we are most certainly will need to expand the plant. This study had been done and discussed with the Portland Water District and hoped they would take it on and we could get a bonding source and pay back over the course of time. Portland Water was not interested so we were holding onto this report and came up all of a sudden with Impact Fees as we already have this report written so this is what we can utilize in stating what it would cost to give us that capacity in the future.

**Ed Reidman** Portland Water District owns and operates the Westbrook sewage treatment plant plus some of the trunk lines that carries the sewer to the treatment plant, plus some of the pump stations.

**Robin Tannenbaum** more of a comment than a question, in general I am supportive of these initiatives. When I look at the fees for the commercial use obviously the difference from office to restaurant is huge. While in general I believe these are what we do to participate in our community for all the services we receive, the residential numbers in scale to what a house costs are still low percentagewise. It will be 5,000 dollars for a 200,000 dollar house and a 500,000 thousand dollar house and it is relatively low.

These numbers are so large and the construction costs at least for a restaurant piece aren't necessarily proportionally as large, I do not know where to go with that? To impose something like 2% of the total fee seems more tolerable than these numbers. Certainly we will never get another microbrewery.

One question does Portland have these? I cannot cross the street in Portland without a new restaurant opening; literally they are calling our office every day. Are they paying \$20,000 dollars in Impact Fees?

**Jennie Franceschi** do not know their exact rates but they are certainly paying impact fees to the point that some of their businesses are shopping elsewhere to find locations where they do not have to pay those fees. As far as the allocation of the gallons, it is solely based on flow.

**Robin Tannenbaum** I get the math completely, it is just staggering.

**Jennie Franceschi** and that is part of the concern from the Staff perspective as we are moving forward on this process. Are we going to potentially see an issue with economic development, will people take a

glance at another community that is not charging impact fees. Those are real questions that you need to grapple with through the process and make sure we know going ahead what it is that we are imposing.

**Robin Tannenbaum** I am very cognoscente of what the developers are saying about the construction piece and I am also aware that the majority of people that are moving in are in homes that are turning over, not new homes. The impact fee is not a burden on most families entering Westbrook.

The chances of a Food Processing, Restaurant or Microbrewery coming in and buying one is turning over are much slimmer. So for one of these to come here almost have to start from scratch vs. one already built. That is just another way that it seems disproportional.

**Joe Marden** is there a sewer entrance fee charged on a news house or business?

**Jennie Franceschi** there is a sewer hookup fee.

**Joe Marden** what is that based on? Is it one number or is it based on gallons?

**Richard Gouzie** it is a \$250.00 dollar fee.

**Joe Marden** is it the same for a commercial use?

**Richard Gouzie** for a sewer hookup, yes. They also pay a street opening permit also.

**Joe Marden** I would agree with the others, to me the cost of commercial use is too high. I do not think it will hurt the big businesses as they have room to absorb this. I think it is the small mom and pop restaurants that want to open, if going into a space that was previously an office space changing that to a restaurant seems that they would have to pay the impact fees.

**Jennie Franceschi** you are going to pay the increase of gallons usage based upon your needs.

**Joe Marden** gallons used per day, is it based off of the Maine Subsurface Water rule or is it based off of existing uses in the City?

**Jennie Franceschi** for the residential it is Maine Subsurface rules. The office and commercial uses looked at some comparable uses with in the community but in some cases we used national standards.

**Dennis Isherwood** I have a question on Sewer, we process other City's sewerage through Westbrook.

**Jennie Franceschi** just Gorham but Windham could come in at some point, they have an allocation at the Treatment Plant but they have not utilized it.

**Dennis Isherwood** is it on a flat fee or a per gallon fee? If Gorham added a microbrewery and they started dumping 40,000 gallons extra, would we have a fee for them of 188,000 dollars?

**Jennie Franceschi** that would be based upon if Gorham took on the initiative for an expansion. Right now Gorham, Westbrook and Windham have a percentage allocation. We own the lion share of the treatment plant. If Gorham wanted more flow to the treatment plant, that would be a negotiation with Portland Water District to allow them to do so.

**Robin Tannenbaum** consider as a thought for residences that there be an incentive if residents install low flow plumbing fixtures.

**Ed Reidman** I am not sure but we may receive some sewerage from the City of Portland.

**Jennie Franceschi** actually we do on Main Street, the motel and Denny's.

**Rocco Risbara** I just want to point a couple of things about the way this is written. Just to make sure that everyone understands is the way this Ordinance is written this money collected can only be used to expand the plant; it cannot be used for anything else. That is what it has to be used for. That is an important point.

I do think it will potentially inhibit commercial growth and I know you cited some instances and I have been involved in some instances where hundreds of thousands of dollars was paid and did not affect the project. I think when you get down to the level of potential on Main Street, I can see where someone would want to go there and open a restaurant or open a brewery or whatever and when they realize what these fees are maybe they will stay where they are or go to Portland where they do not have those fees. I do think it will impact. I hope that the City Council thinks about that long and hard because I do not think that we need another impediment to commercial growth, especially in the Main Street area.

Maine Med has just announced that they are going to buy that commercial building. I guess if their use is the same as what the Insurance Company was office use, there will probably be no impact fee to them, but if something different went in there they would be subject to these fees. It is probably a bad example as this is the same use, but a change in use could trigger these fees and it could be substantial. It could sway someone to not come to Westbrook. I think you have to consider that.

**Victor Chau** 18 Dale Avenue, I think you have hit the nail on the head for commercial uses or fees. I think the problem is it does not scale well. There should be a discount for usage. To open a brewery is a staggering cost. I understand it is a per flow use. To open a brewery or a restaurant is very cost prohibitive. I do not know if some discount or flat fee used but what you decide.

We have Mast Landing Brewery and Yes Brewery will be opening soon and the Brewery is bringing economic development down town. There is actually a bus tour that brings people from all around and they drink beer from all the good breweries around. People are coming from out of state on these buses to drink beer in Westbrook and they love the Town. I have been to Mast a few times and maybe this could change the makeup of downtown.

The fee based on usage and stay as it is will prohibit a lot of the commercial growth that we are seeking. Commercial Development is the way to go, it has no children, does not use Police much, does not use Fire much, it does not use much of the services that we have and they pay the same tax rate as residential. We should really be encouraging commercial growth. To penalize them would be harmful.

**Michal Ross** 45 Middle Street I am curious about the all hands meeting at the Middle School with the Planning Board, City Council, School Board, and Eric Dudley spoke about capacity. I think it was two days later the City was fined \$73,000 dollars from the DEP, can you explain that and who is paying for it and why?

**Jennie Franceschi** the \$73,000 dollars has absolutely nothing to do with capacity at the plant and everything to do with the CSO our combined sewer overflows that the City has been working on for many years to try to mitigate and do a series of separation projects that you have seen throughout the community. DEP decided to come down with a heavy hand and said we were not implementing the plan that had already been agreed with as fast as they want us to so we got hit with a fine.

I think it is a poor way of implementing the plan of the clean water act. We did get hit with a fine but it has absolutely nothing to do with the capacity and everything to do with our CSO issue we are currently dealing with and will continue to deal with.

**Michal Ross** is that capacity at the plant?

**Jennie Franceschi** it has nothing to do with capacity.

**Michal Ross** CSO is combined sewer overflow

**Jennie Franceschi** in the piping system but it has to do with storm events. It has nothing to do with capacity of the system as it is based on flow.

**Michal Ross** my understanding is when we get a storm the storm water combines with the sewer water and then goes to the plant, and the pumping station cannot keep up and it is allowed to overflow into the rivers.

**Jennie Franceschi** correct

**Michal Ross** at that point sewer water enters the river. It is affecting the Gulf of Maine but it flushes out of Casco Bay. They know that this causes bacteria, e-coli. It gets dangerous off of East End Beach because of potassium and nutrient loading the system.

The Clean Water Act says you have to separate sewer water from storm water and the City system does not have to do with new development, it is ore with the pumping station but it is related in the plumbing system itself. There is a need looking forward, if we build it right it will be better.

I think the impact fee is reasonable. I do not want to scare anyone away but the other Towns are doing it. I think it is good science that we think about the sewer impact because the Westbrook tax payers did pay \$73,000 dollars fine.

**Rocco Risbara** I wanted to point out what Mr. Chau had said that the new brewery is opening and as I understand if they pulled a permit after October 3<sup>rd</sup> they are going to be subject to this impact fee. That could be a substantial amount of money. Hopefully that owner knows about that.

Another idea is to work on a possible sliding scale for commercial. I do not see how it could work but it could be fair. Either this is a fee that gets paid or it goes away. I hope the Board recommends that it goes away.

**Joe Marden** on the report that Woodard Curran did and if we did not get the impact fee, what would be the cost of the upgrade through a rate increase?

**Jennie Franceschi** I do not know that.

**Joe Marden** I think it is 6 million dollars.

**Jennie Franceschi** can talk to Eric about that and see if we could... ultimately you are looking to take out a bond, probably a twenty year bond and a sewer user would pay back the bond.

**Joe Marden** I would like to know what the rate increase would be.

**Ed Reidman** sewer user fees plus operation of the treatment plant plus a portion of the operation of the sanitary sewer division. That is the way the fee comes and everyone that is tied into the sewer pays their portion.

Questions or comments?

No comments

**Ed Reidman** I think 40,000 gallons seems awfully high considering the two that are here in Westbrook they are not that type of operation.

**Jennie Franceschi** that is a larger scale, say if a neighboring company by the name of Sebago were to come into our community that scale of a microbrewery would pay that type of fee. There is a significant amount of washing

**Ed Reidman** I understand what you have is realistic in the context you just put it in. If show just the micro-breweries; that lacks some credibility.

**Jennie Franceschi** again, we have also shown you the gallon usage so if a small company like Yes Brewery is using a fraction of the gallons it would all be based

**Ed Reidman** I fully understand that.

**Jennie Franceschi** understanding if everyone says that it is \$40,000 dollars for a micro-brewery that is not necessarily the correct number, you do need to look at the gallons.

**Ed Reidman** I think the restaurant is more realistic because restaurants are fairly standard in most communities. Industrial is probably based on a plant from the City of Portland. We do not have a food processor do we?

**Jennie Franceschi** we do have a food processor, Schlotterbeck Bach and Foss.

**Robin Tannenbaum** if it is a onetime fee how do you assess it before they use the water?

**Jennie Franceschi** these uses as they are coming through our process have to provide to us a letter request for sewer capacity, based upon their usage using it formula base or in some cases they have an operation elsewhere and they will show us this is our gallons flow per day are. Our City Engineer and Waste Water Manager can look at those flows and determine whether they agree with those flows or whether they would go with the industry standard. That flow rate is going to be determined as part of our process and that would be the fee.

**Robin Tannenbaum** houses may stay here as they are fairly flat but the others you go back to the gallons used.

**Jennie Franceschi** additionally we did the math with the 50% credit for the folks that are paying into the system currently that are being impacted that we are not double impacting those folks so we are offering a 50% discount.

**Greg Blake** in terms of a bigger brewery coming into town, they are coming into Gorham in the Shaw Brothers development and I assume Gorham's flow is coming our way.

**Jennie Franceschi** not that way

**Greg Blake** I think it is a bigger quagmire and we need to look at it.

**Ed Reidman** do you know where they intend to build?

**Greg Blake** out off of Route 25, just over the knoll.

**Chris Wilson** by Beal's

**Ed Reidman** their trunk line is by the old railroad tracks so they will be slipping it through.

**Jennie Franceschi** on the three Ordinances we just went through, what we go from here. We have a series of questions that were brought up this evening that we can go back and try to revisit. Do you want that to come back as another Workshop or do you want to go to a Public Hearing?

**Ed Reidman** personally I would like to go to a Public Hearing. I have not heard anyone say re-write what you have.

**Jennie Franceschi** I have not heard that people are adamantly opposed to the draft but there are a lot of clarifying questions we need to look into that we can report back at the next meeting. Do you want it to be a Public Hearing or one more workshop on Impact Fees?

**Ed Reidman** from what I heard there were minor verbiage changes. One of the keys was the retro activeness of the fees. The only thing the Board can do is recommend to Council either they make it retroactive or not retroactive and when we make our recommendation that should be in there and to be voted on by the Board to recommend to be retroactive or not. Then whatever we have decided for verbiage with regard to the items. We will send it with either a positive or negative recommendation. I would like a positive recommendation for anything that we send to the Council but that does not mean we have to.

**2017.31 – Amendments to the Land Use Ordinance – Medical Marijuana (Cultivation/Dispensary): Discussion on establishing requirements for operations of medical marijuana cultivation and dispensaries as well as proposing zone locations.**

**Ordinance Description:**

To establish performance standards for medical marijuana dispensary or medical marijuana caregiver cultivation facility within the City of Westbrook.

**Project History:**

**November 2009** – State of Maine approved legalizing, regulating and taxing marijuana for medicinal purposes, known as the “Maine Medical Use of Marijuana Program”

**November 2016** – State of Maine legalized marijuana for recreational use

**June 5, 2017** – City of Westbrook approved a 6-month moratorium ordinance on medical growing (cultivation) facilities & dispensaries.

**June 20, 2017** – Planning Board Workshop

**Staff Comments:**

Since the enactment of the Maine Medical Use of Marijuana Act, communities have been seeing a steady rise in medical marijuana growing (caregiver cultivation) facilities locating within their communities. In some communities, performance standards have been adopted for medical marijuana dispensary or medical marijuana caregiver cultivation facility as well as locations where these uses are considered permitted.

Therefore, Staff recommends the following for discussion on medical marijuana dispensary or medical marijuana caregiver cultivation facility:

- 1) Performance standards for medical marijuana dispensary or medical marijuana caregiver cultivation facility
- 2) Definitions for uses associated with these operations and to amend existing definitions in our ordinance.
- 3) Designate appropriate locations for these operations within the City

**Action for the Board’s consideration at this meeting:**

Consider public comments provided

Provide Feedback on:

- Zoning locations – medical dispensaries & medical caregiver cultivation facility
- The ordinances provided – buffers – other regulations to consider

**Further workshops will be conducted to discuss definitions and other associated ordinance changes necessitated by the proposed language.**

**Jennie Franceschi** there has been a lot of interest in the last few years for medical marijuana growing facilities in the City. We currently have twenty-three of them in the community but you would not know because they typically they stay to themselves. However some of these have located in areas and under definitions that probably were not intended to be utilized as definitions, greenhouses, industry and manufacturing. Putting them in areas such as RGA 1, City Center District that the community should really take a look at placing these where we think are appropriate and where they pose the least interference to abutting properties.

From that standpoint we felt that it was time to ask the City Council to enact a moratorium, understanding that pressures from retail marijuana as far as a lot of people are looking into spaces to rent for retail and before people go too far we wanted to at least get medical marijuana on our books have it established and we know retail marijuana is going to be coming shortly thereafter.

Looking at various ordinances that have in effect, we have Biddeford that has a medical marijuana ordinance in effect; South Portland is at the same exact time as us. They are looking to put forward a medical marijuana ordinance and the base of what you see before you is between those two communities, utilizing their ordinances at this time.

The question initially and am looking for some guidance from the Board is thinking about location. In the initial discussion with the City Council we had talked about locations for medical marijuana growing facilities as being in the Manufacturing and Industrial Districts. The City Councils concern for blankly allowing it in a manufacturing district is Eisenhower Drive is now becoming less of an Industrial Park and more of a Business Park with Idexx being the major anchor and some other businesses coming.

Maybe we should think of an overlay of some of the zones where we would allow it in some areas within say the manufacturing district we would not allow it. So it is right now trying to find an artful balance

where we think a growing facility is going to work the best and also concerns making sure other businesses are not negatively impacted.

*Zone Areas shown on screen*

Looking at Eisenhower Drive, southerly to Saco Street without the Idexx parcel and allowing that area of Saco Street to have as a Conditional Use medical marijuana growing facilities. There are currently some other businesses out there and to allow warehousing type business maybe compatible with businesses that are existing. Additionally we could look at the street that is off of Eisenhower as businesses that are off of the main drag and allow for areas that are not innately visible. Not what the businesses look like but it is a straight warehouse that these operations are going in.

The concern that was raised at Council was we were really not promoting more construction of more warehousing type units' through this section of Eisenhower, but looking to do some changeover be more Business Park instead of Industrial Park. The thought would be let's keep warehousing type operations just off of Eisenhower and maybe the southerly section of Saco Street where we currently have warehousing.

The other location, the Industrial Zone was also mentioned as a potential that we could look at allowing it within the Industrial Zone and one more that is Warren Avenue, near Sappi.

Those are the two zones that we would look at allowances for growing facilities, otherwise known as cultivation facilities within the City. Further clarification within the Manufacturing District that it only be allowed off of the Eisenhower Drive area with the utilization of an overlay.

That is the initial discussion and generally does the Board have an issue with proceeding with those zones? We were concerned about going into any residential zone. We do not want to see this on City Center District where this would be mostly single story warehouses. We also did not want the Gateway Commercial Zone to necessarily have warehouses popping up either.

That is our first point of discussion is where and then we can go into a discussion of how we are going to set the standards. I wanted your initial thoughts understanding that this discussion will take longer and maybe a few workshops to just get through this discussion.

**Ed Reidman** my initial concern is you choose who your neighbors are going to be. I mean anything abutting the Industrial Zone. If you look at Saco Street, you have a row of houses near Idexx. You did say Idexx would not be part of it but I would also be concerned in the area where Ronny Usher used to live off of Saco Street, there are a series of houses on Saco that abut the Industrial Park. That is my concern. The other roads are Bradley Drive and Pershing Way.

**Joe Marden** next to residential areas there is a statement that says no medical marijuana facility will be within 1,000 feet of the lot line, residential or used as a residence. We do have a built in buffer.

**Ed Reidman** tonight we discuss where you want to put it and be careful because I imagine the Idexx piece abuts the residential yet is far enough away that they could be on the next parcel and you have the same problem with the City's owned Industrial Park, on Spiller Drive, across the street has residences.

**Cory Fleming** is there any way with the warehousing units we are talking about now could become retail locations? Or has that been set up by the State law that cannot happen?

**Jennie Franceschi** this particular ordinance is going to strictly deal with Medical Marijuana. At some later date the Board will be provided with another ordinance if the Council so determines if we want to move forward with any of the four uses for retail.

If it is allowed in that Zone there could be the ability to reside on any lot that it is a permitted use. There have been some regulations about buffering between some like uses with other communities. We can set a lot of parameters with retail marijuana that you can't with some other types of uses. We can limit the number, exceptional buffers, we may only want them to have them in one particular zone, or we may decide we do not want them period, that is okay based upon the law.

At this point the conversion that I see more so with the growing facilities is that they could turn into retail marijuana growing facilities if we allowed for retail marijuana facilities in these same zones. That is a possibility that you could see some of the medical marijuana facilities turn into retail if the City allows it.

We need to be careful how much we want to expose the community of how many square feet of warehousing vs. The concern is we are just going to have a bunch of warehouses in the community vs. businesses with lots of people working in them.

**Ed Reidman** question or comments?

No comments

**Jennie Franceschi** as far as the regulations – other places listed as 1,000 – have not come up with the correct number there are buffering distances that are stated within the standards that vary depending upon what you are looking for some places are listed at other places are listed at 1,000. We have not fully come up with what the right number is at this point, that is something we can be working a little more on as we go into detail on this but we definitely think there should be some level of buffering between residential uses or other uses such as Day Cares, Schools, Churches, to make sure that we are placing them appropriately. At this point we have not made a determination on the actual point.

We are adding in signage as a component of this ordinance. With growing facilities as typical across most communities, you do not see these types of facilities advertising. They do not want to be known, they do not want to put a target on themselves that could allow people to vandalize there property and try to steal their product. We just want to codify it and make sure that it is very clear that if you have a growing facility we do not want to see a big billboard of a pot leaf on your building.

It goes further that says how far you are going to allow screening any type of merchandise within these units so you cannot see in and actively see plants. This also speaks to dispensaries where there would be product. State law currently says you can only have one dispensary in a health district and Portland has the dispensary for our region. But is Portland decides to close theirs down they could relocate the dispensary anywhere within our health district and Westbrook could be a potential location.

Right now we do not have a definition for dispensary or a location within the community to put it. This ordinance would suggest that we define it and we should locate it. As it pertains to location one of the thoughts we had in a vicinity where you are going to service the region, a location where it is easily accessible. The area we would initially suggest would be the Gateway Commercial because you are very close to both interchanges. It would be accessible to the entire health region to come to that vicinity of the community vs. placing it in a location where you are driving people well into the community. Dispensaries will need to be defined and create the buffer zones as well.

**Ed Reidman** questions or comments?

**Cory Fleming** a couple of years ago we had our annual conference in Seattle and the City hosted a field demo for the dispensaries in that community. They had both retail outlets and cooperative or coops type membership organization and would we have to have separate language for that.

**Jennie Franceschi** we do not allow cooperatives. You have to be a care giver and as a care giver you have five (5) patients in which that you have six plants that you can grow for you patients. As a caregiver it my responsibility to abide by the laws of the State of Maine and how I conduct my business for my five (5) patients. But I cannot grow collectively with a group of people in a joint space.

The other alternative is that you can go to a dispensary and their sole purpose is to sell marijuana in their office.

**Ed Reidman** questions or comments from the Board?

**Robin Tannenbaum** I was just going to say a good central location would be the new Dirigo Plaza.

**Joe Marden** the firm that I worked for has helped clients with cultivation facilities and they generally like to remain anonymous and not have the locations known. The town was very careful how they noticed public hearing and such, have you thought about that?

**Jennie Franceschi** in other communities it is a Conditional Use and it does have to go through a public process. Understanding that there is a sensitivity to not want to promote this we still felt the need for the people to know, especially the direct abutter should be aware that there is this operation that is going on. We feel that it is important to be sensitive to the facility but also thought it is important the people know that a growing facility is going in adjacent to their parcel. That is a concern for us as well.

**Michael Ross** 45 Middle Street for the growth industry, a couple of things about them, they burn propane as the plants grow so fast they run out of carbon dioxide so they have to burn propane to keep the plants growing. They have a day and night cycle. These places are big and they smell really bad. The odor is like the old Westbrook odor. They pay cash because it is still illegal federally, so it is a cash economy. There are a lot of things to it and am glad that we are getting ahead of it. If it gets into a residential neighborhood the odor alone is bad, it is a good idea to get ahead of it.

**Rocco Risbara** I wanted to add the comment that the order is definitely an issue. The City is smart to try to get ahead of this; you have a lot of work you have to deal with in a short amount of time because we all know we have a real Pandora's Box that has been opened with the allowing of recreational marijuana that is coming. I would not want to be sitting where you are. I would rather propose a gravel pit then deal with this.

**Victor Chau** my concerns with location are huge. Let's say the land lord getting \$30.00 dollars a square foot in Eisenhower, Bradley Drive and all the industrial places. The profit margin for marijuana places is huge. They can offer \$50.00 a square foot.

Can you imagine D&G closing shop and all the others closing because they get so much rent? They do not have to do more work except to close down shop and open it as a warehouse and have these facilities. We will have an industrial zone with empty warehouses that will have grow facilities with no employees.

I do not know if we want to do that in that region. There are no warehouse spaces in greater Portland because it has been taken up by marijuana growers. People are looking for more facilities to expand their operations. It is easier to shut down a business, fire the employees and just collect rent and open a

marijuana facility. That is my concern. I would rather see our business zones stay as business rather than warehouses.

**Ed Reidman** questions or comments?

No comments

**ADJOURN**

*THANK YOU, respectfully submitted by Linda Gain [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us)*