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County eyes committee for impact fees

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It's been more than a year since the Montana Legislature gave local governments the authority to charge impact fees for new development.

The fees are intended to help communities pay for growth-related infrastructure improvements, such as better roads, sewer and water line extensions, and storm-water systems.

To date, Flathead County hasn't availed itself of this legislative authority. Despite an ever-widening gap between the level of services it can afford and the level of services needed to meet public demand, it has taken no steps to impose the fees.

Commissioners haven't appointed an impact fee advisory board — a necessary first step before any fees can be assessed.

That could be about to change.

Following a public workshop Monday on impact fees, Commissioner Gary Hall said he's ready to move forward with the process.

"Impact fees aren't a fix-all — they aren't going to fix our existing infrastructure problems — but we need to do something," Hall said. "I think an [impact fee] advisory board will make sure we don't overstep our legal authority. We're preparing to put out a request for advisory board members."

Commissioner Joe Brenneman said that was news to him. However, he agreed it was time for the county to take this step.

"As a stand-alone solution, impact fees don't work," Brenneman said. "But as part of an overall [infrastructure financing] plan — and with the support of the community — then yes, I'm willing to consider them."

Brenneman said appointing the advisory board doesn't necessarily mean he'll support imposing impact fees. He wants to see what kind of recommendations the board comes up with.

Monday's workshop was sponsored by the Flathead Building Association and the Northwest Montana Association of Realtors. It specifically addressed Senate Bill 185, which was approved during the 2005 session and outlines procedures for imposing impact fees.

Helena land-use attorney Michael Kakuk, who helped craft the legislation, emphasized several times Monday that local governments have to discriminate between the future capacity increases that should be paid for by new development and the existing infrastructure problems that must be paid for by other means.

"You can't charge impact fees to repair potholes," Kakuk said. "You have to find other ways to fix your existing deficiencies."

Kakuk drew three horizontal lines on a board, one above the other.

The lowest line, he said, represents the community's existing infrastructure — the condition of its roads, the capacity of its sewage treatment plant, etc. In many cases, that infrastructure is substandard and inadequate to meet the existing need.

The middle line represents where the infrastructure capacity should currently be, while the top line represents where it needs to be in the future to satisfy expected population growth.

The knee-jerk reaction for many jurisdictions, Kakuk said, is to charge impact fees that would allow them to raise their infrastructure from the lowest line to the top line.

But that's illegal, he said. Impact fees can only be used to pay the cost of future capacity expansions — the difference between the middle and top lines.

The gap between the lower and middle lines, however, represents the existing deficiency. Future developers can't be forced to pay for those improvements because they didn't cause the problem.

Brenneman said figuring out how to bridge that gap was a major concern.

"Without a plan for coming up with the rest of the funding, I'd be pretty hesitant to move forward with impact fees," he said.

Hall said no specific determination has been made about how many people would be on the advisory board or when it would be appointed. He indicated that was something the commissioners would discuss next week.

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