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SB 360 Article Series:
Key Issues Guiding Mobility Fee Discussions

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Background Overview

Over the past 12 months, the development and passage of SB 360 (also known as the "Community Renewal Act") has generated many questions from the perspectives of both public agencies and the private sector. In an attempt to highlight the key issues and questions resulting from the passage of SB 360, Tindale-Oliver & Associates, Inc. (TOA) has authored a series of articles on various subjects surrounding the bill that are pertinent to local government.

The first article focuses on the initial issues and potential concerns related to the replacement of a development review process for transportation impacts (i.e., concurrency) with the payment of a standardized fee.

The second article consists of two parts: the first provides a discussion on the technical methodology for calculating a mobility fee and the factors that should be considered when transitioning from a road impact fee to a mobility fee; the second provides a discussion of the factors contributing to the variability in road impact fees in Florida.

This third and final article in the TOA SB 360 Series is a summary of the key issues and concepts of which local governments should be aware, essentially highlighting the "big picture" topics under which all issues related to concurrency exceptions and mobility fees with regard to SB 360 likely will fall, including:

- community strategic vision,
- considerations concerning the "pay-and-go" process,
- flexibility of mobility fee revenue, and
- administrative and implementation issues.

It should be noted that the content of this article is based on the 2009 Community Renewal Act and interpretation thereof by the Florida Department of Community Affairs (FDCA), specifically concerning local government preservation of "home rule" in regard to transportation concurrency. Any proposed legislation addressing this interpretation is not incorporated into the content of this article.

Strategic Vision

Each community should have a strategic vision that guides its growth management policy decisions in order to achieve that vision over a specific period of time. A community's strategic vision is not found exclusively in one plan, but resonates throughout all planning documents and policy decisions, including the Comprehensive Plan, Land Development Code, and Metropolitan Planning Organization's (MPO) Long Range Transportation Plan (LRTP). The community's vision should encompass all aspects of the community, including preservation and protection of neighborhoods, development of employment centers, land-use densities and intensities, connectivity and circulation, and the multi-modal transportation system, among others.

If there is one key concept that SB 360 has highlighted, it is the need for each community to examine the relevance of its plans and policies with regard to the current strategic vision of the community. For example, now that concurrency is no longer mandated at the state level, communities that are automatic Transportation Concurrency Exception Areas (TCEAs) must determine if implementing a new or reaffirming an existing concurrency program at the local level corresponds with the community's vision. Whether it is reaffirming a local concurrency program via home-rule authority or accepting the newly-bestowed pay-and-go process, a community must consider each policy decision in

[1] *Replacing Transportation Concurrency with a Mobility Fee*, Tindale-Oliver & Associates, Inc., September 2009.
[2] *Factors to be Considered in Transitioning from a Road Impact Fee to a Mobility Fee*, Tindale-Oliver & Associates, Inc., January 2010; *Factors Contributing to Variability in Roadway Impact Fees*, Tindale-Oliver & Associates, Inc., January 2010.

the context of the community vision.

The remainder of this article presents the key issues and topics stemming from SB 360 that are pertinent to local government, each of which are driven by the community's strategic vision.

Considerations Regarding the Pay-and-Go Process

As previously mentioned, the first article of TOA's SB 360 series provides a detailed discussion concerning some of the broader issues surrounding the replacement of a development review process for transportation impacts with payment of a standardized fee. For those local governments that are now designated a TCEA, the option to rely on the state-mandated transportation concurrency process to guide local pay-and-go policy no longer remains. Instead, local governments established as automatic TCEAs under SB 360 must now use home-rule authority to affirm local concurrency policies if they are consistent with its goals and desires for growth management.

Essentially, SB 360 requires each automatic TCEA to ask two questions. The first is a direct result of the home-rule provision included in the legislation: *Is it the intent of the local government to maintain the pay-and-go process that may have been established by a TCEA?* The second is one that is not garnering as much discussion, but is a fundamental concept for local governments to contemplate as part of its growth management process: *Will the pay-and-go process be implemented community-wide, or should geographic variation be considered as a tool to guide development in the community?*

Consideration for geographic variation of the pay-and-go process is an important part of a community's decision to accept the elimination of concurrency or enact local rule to develop a concurrency program. For some local governments, this question may appear to pose a more simple answer. "Uniform" communities (i.e., communities with little variation in development, either urban or rural in nature) may not see a benefit to implementing any geographic variation in the pay-and-go process. However, for those communities with a more urbanized core and suburban fringe, geographic variation in the pay-and-go process may help alleviate development restrictions in those areas where redevelopment plays an important role, while helping guide growth management policies in the still-developing part of a community.

An example of this application is the City of Tampa's current TCEA structure, which provides geographical variance depending on the density of the area. Tampa's TCEA structure provides for a pay-and-go process in the higher-density areas, including downtown Tampa, in an effort to encourage redevelopment; however, Tampa still has a traditional concurrency/proportionate fair-share program in the outlying suburban areas of north Tampa. The City of Tampa's TCEA structure is an application of geographic variation that recognizes the community's vision with regard to implementing a pay-and-go process.

Regardless of its state of development, each community must carefully consider the effects that a pay-and-go process will have on its character. Matters such as the preservation and protection of neighborhoods and the safety and functionality of the transportation network (especially with regard to critical corridors and evacuation routes) must be carefully considered. Another pertinent question is what is the effect of a pay-and-go system (i.e., no level-of-service standards) on a community's ability to evaluate land-use plan amendments? Given the symbiotic relationship that is supposed to occur between transportation and land-use planning, communities will need to decide how best to address this issue under a pay-and-go system.

Flexibility of Mobility Fee Revenue

As discussed in the second article of TOA's SB 360 series, there are many elements to be considered when transitioning from a road impact fee to a mobility fee. The majority of these considerations are technical in nature; however, the flexibility of the revenues generated is also a key issue driven by the community's vision.

TOA believes that mobility fees will not generate significant additional revenue for a community with an existing road impact fee program, nor will implementing a mobility fee solve transportation funding in any community. Instead, mobility fee revenue will provide for the flexibility to spend revenues on more than just roads. If a community's vision is to focus on multi-modal travel options, then the ability to spend "one-time payment" revenue on transit buses and infrastructure and the construction of additional bicycle and pedestrian facilities will help achieve that vision. As a result, the community will need a mobility fee that provides for flexibility in the way the revenues can be spent, both in terms of capital infrastructure and transit operations.

Flexibility of Spending on Capital Infrastructure

There are two ways that the spending flexibility of the revenue can be considered during the development of a mobility fee program. The first is through the methodology used to develop the fee; in essence, does the methodology by which the fee is calculated determine how the revenues can be spent? For example, by calculating a strictly asset-based mobility fee that provides no consideration for demand, a community is restricted to expending the revenue in proportion to the distribution of assets used to calculate the fee. This approach makes it difficult for a community to increase spending on alternative modes by way of mobility fees if those fees are restricted to the small percentages that the transit, bicycle, and pedestrian infrastructure comprise of the total multi-modal asset.

The second way to consider the spending flexibility of revenue is to calculate the mobility fee as one fee, regardless of the distribution or demand of the existing asset. Under this view, the revenues would be put into one "pot" to be expended on the various modes, either at the community's discretion based on its needs or by a specific formula allocating the funds across the different modes. One potential method for determining the allocation of mobility fee revenue is based on the distribution of LRTP Needs Plan expenditures by mode, or some combination of the existing asset value by mode and the future asset value by mode based on projects identified in the LRTP Needs Plan (thereby recognizing both the achieved and desired asset distribution). It is important to note that, regardless of how a community allocates mobility fee revenue, mobility fees, like their impact fee predecessors, comprise one component of a community's funding mechanism for transportation capital infrastructure.

> Current impact fee case law requires proof of need and benefit. As of this publish date, legislation concerning mobility fee methodology has not been passed. As such, care must be taken to ensure that a mobility fee meets the current impact fee case law.

In Florida, there currently are several communities pursuing a multi-modal impact fee or mobility fee ahead of any additional legislation regarding this topic. The City of Orlando recently began the process of updating its road impact fee program to reflect multiple modes of transportation. The City's primary objective for the update is to transition the impact fee calculation from a "road-based" fee to a multi-modal fee by incorporating vehicular, transit, bicycle and pedestrian modes of travel.

Pasco County recently embarked on the initial phase of developing a mobility fee program. During this phase, concepts for differentiation of transportation mitigation and financing requirements by geographic area will be developed. In addition, financial strategies and alternative preliminary multi-modal mobility fees will be developed for example land uses, based on the different characteristics of the transportation system serving each area.

Exploring a One-Time Payment to Fund Transit Operating

The mobility fee, or the concept of a one-time payment for transit capital, provides a revenue source for transit agencies to fund new transit infrastructure necessitated by growth and development. However, a lack of transit operating revenue is typically the most significant obstacle for most transit agencies. New shelters and buses to serve growth and development cannot provide service without sufficient operating revenue. Unlike roads, bicycle, and pedestrian facilities that are more capital intensive, the majority of costs associated with transit service are operational. Arguably, the biggest problem with developing a one-time payment to fund transit operating is that the amount of revenue generated is dependent on the level of development. This works with impact fees, which fund one-time expenditures for capital infrastructure necessitated by new growth, but it does not work as well when funding annual operating costs. Broward County implemented a pay-and-go system over a four-year period from 2005 to 2009 to fund transit operations, but, as development in South Florida slowed, so did the operating revenue generated by the new development that was being used to fund the County's transit service. As a result, Broward County reconfigured its concurrency system to fund transit capital and transportation system management rather than transit operations.

The key to a one-time payment for transit operating is to find a revenue source that has the potential to create a fund balance, allowing operations to continue being funded during dips in revenue collections. Or the one-time revenue source should be paired with an alternate source, such as a on-going or reoccurring transportation utility fee, which would provide relief in the event that the one-time payment revenues fall short of funding the full operational costs.

The solution to funding transit operations, particularly with a one-time payment, is a complicated issue; however, any community with a multi-modal vision that seeks to expand its transit service must address how to fund the operating costs associated with the additional service.

Administrative and Implementation Issues

Aside from the technical and policy aspects of a mobility fee, there are pertinent issues regarding the implementation and administration of a mobility fee program that must be considered. Under SB 360, FDCA and the Florida Department of Transportation (FDOT) were tasked with providing a final joint report on the mobility fee methodology to the Florida legislature by December 1, 2009. As part of this report, a countywide mobility fee methodology was recommended. Transitioning from road impact fees calculated and collected individually by counties and municipalities to a countywide mobility fee raises several questions concerning intergovernmental coordination, including:

- How will mobility fee revenues be allocated among agencies?
- What agreements associated with mobility fees will be necessary between governmental agencies relating to the management, distribution and expenditure of mobility fees?
- What agency(ies) will be responsible for enacting, collecting, and administering the mobility fee?

In addition, other administrative and implementation issues to consider include:

- What are potential issues that must be resolved between implementation of mobility fees and existing impact fees?
- How will the process be handled for those counties with no TCEAs versus municipalities with TCEAs?
- How will development order agreements and credit agreements be handled?
- How will credits for road-only improvements versus mobility fees for improvements across multiple modes be handled?
- How will proportionate fair share agreements for only road projects that are impact fee creditable be dealt with?

Summary

TOA's article series highlights key issues surrounding the ongoing debate and discussion relating to the requirements of SB 360, in particularly mobility fee and concurrency concepts. The first article highlights key issues and questions that should be addressed as a part of the State's consideration of replacing transportation concurrency with a mobility fee. The second article focuses on mobility fee methodology and factors to be considered when transitioning form a road impact fee to a mobility fee. This third and final article highlights and summarizes the key issues and concepts of which local governments should be aware and consider as the discussion moves forward. All decisions concerning concurrency and mobility fees are driven by a community's strategic vision; first and foremost, it is imperative that each community examine the relevance of any such policy decisions within this context.

[3] *Joint Report on the Mobility Fee Methodology Study*, the Florida Department of Community Affairs and the Florida Department of Transportation, December 1, 2009.

[4] Ibid., p. 6

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