


MEMORANDUM  
HERNANDO COUNTY ATTORNEY'S OFFICE

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To: The Hon. Chairman & Members of the  
Hernando County Board of County  
Commissioners

Date: April 21, 2023

 From: Jon Jouben  
County Attorney

Re: The Ability of the Board to Impose  
a Mobility Fee in Lieu of Transportation  
Impact Fees  
**(LR. 23-135)**

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I. Introduction

The Board of County Commissioners (the "Board"), during its workshop of March 7, 2023, directed the County Attorney's Office to prepare a report for it to consider at a future meeting with regard to the Board's ability to impose mobility fees in lieu of transportation impact fees.

II. Legal Background

The Florida Legislature, by enacting the Growth Management Act of 1985 (the "Act"), required all of the state's local governments to adopt comprehensive plans to guide future development. The Act mandated that adequate public facilities must be provided "concurrent" with the impacts of new development. State mandated "concurrency" was adopted to ensure the health, safety, and general welfare of the public by ensuring that adequate public facilities would be in place to accommodate the demand for public facilities created by new development.

Transportation concurrency became the measure used by the state and local governments to ensure that adequate public facilities, in the form of road capacity, were available to meet the transportation demands created by new development. To meet the travel demand impacts of new development and be deemed "concurrent," transportation concurrency was primarily addressed by constructing new roads and widening existing roads.

The transportation concurrency mandate requires a local government to deny an application for a proposed development if road capacity will not be available to accommodate the additional transportation demands that the development will create. Often, local governments requires developers to either phase their construction to be concurrent with the availability of additional road or to create sufficient capacity by improving existing, overcapacity roads.

Furthermore, local governments' application of the concurrency mandate discourages the construction of new developments in urban areas, as the roads therein are near or about to exceed their respective capacities. The transportation concurrency mandate, as a result, encourages urban sprawl by forcing the construction of new development into suburban and rural areas where sufficient road capacity either exists or will be relatively cheaper to construct.

Searching for an alternative to transportation concurrency in 2009, the Legislature mandated that the state "evaluate and consider the implementation of a mobility fee to replace the existing transportation concurrency system."<sup>1</sup> The Legislature stated that it intended that mobility fees "be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development."<sup>2</sup>

The Legislature made transportation concurrency optional for local governments in 2011.<sup>3</sup> In 2013, it amended the Community Planning Act to encourage local governments to adopt alternative mobility funding systems, such as mobility plans and fees, in lieu of imposing transportation concurrency requirements, proportionate share payments, or impact fees.<sup>4</sup>

### III. The Nature of Mobility Fees

A mobility plan identifies various multimodal projects necessary to permit development, redevelopment, and in-fill projects to be constructed. Examples of multimodal projects include, but are not limited to, roads, sidewalks, bicycle paths, and trails. A mobility fee is a one-time fee paid by a developer to a local government to cover the costs of the improvements necessary to fully mitigate the development's traffic impact on the transportation system. Mobility fees must be calculated based on the projects adopted in the mobility plan, and can only be used to fund those projects.<sup>5</sup>

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<sup>1</sup>Ch. 2009-96, s. 13(1)(b), Laws of Fla.

<sup>2</sup>*Id.*

<sup>3</sup>See Ch. 2011-139, s. 15, Laws of Fla. (amending Fla. Stat. § 163.3180).

<sup>4</sup>See Ch. 2013-78, s. 1, Laws of Fla. (amending Fla. Stat. § 163.3180).

<sup>5</sup>See Fla. Stat. § 163.3180(5)(i).

Mobility fees are only assessed on new development and redevelopment that generates person travel demand above and beyond the existing use of land. They cannot be assessed on existing homes or businesses, unless the size thereof has increased, or there is a change of use for an existing business that results in an increase in travel demand.<sup>6</sup>

Please note that although the mobility fee concept is often associated with the reduction of urban sprawl, many urban, built-out local governments have adopted mobility plans and fees.<sup>7</sup>

#### IV. Impact Fee & Mobility Fee Comparison

The Florida Constitution grants local governments broad home rule authority to establish special assessments, impact fees, mobility fees, franchise fees, user fees, and service charges as revenue sources to fund specific governmental functions and capital infrastructure. Payment of impact fees or mobility fees are one of the primary ways local governments can require new development, along with redevelopment or expansion of existing land uses which generates additional transportation demand, to mitigate its impact to a local government's transportation system. While road impact fees and mobility fees are both intended to be means in which a development can mitigate its transportation impact, the following are the major differences between the two fees:

##### Road Impact Fees

- Partially or fully fund road capacity improvements, including new roads, the widening of existing roads, and the addition or extension of turn lanes at intersections to move people driving vehicles.
- Are based on increases in trip generation, vehicle trip length, and road capacity, along with the cost of road capacity improvements and the projected vehicle miles of travel from development.
- May be based on either an adopted level of service standard or on the cost of constructing road improvements in the future.<sup>8</sup>

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<sup>6</sup>See Fla. Stat. § 163.31801(4)(f)-(h).

<sup>7</sup>See, e.g., City of Jacksonville Code § 655.501, et seq.; City of Miami Beach Code § 122-21, et seq.

<sup>8</sup>Generally Fla. Stat. § 163.31801.

### Mobility Fees

- Pay for the cost associated with adding new multimodal capacity to move people walking, bicycling, scooting, riding transit, driving vehicles, or using shared mobility technology.
- Partially or fully fund multimodal projects, including sidewalks, multi-use paths, greenways, bike lanes, multimodal lanes and ways, streetscape, landscape, micromobility (i.e., electric bikes, electric scooters) devices, programs, and services, microtransit (i.e., golf carts, neighborhood electric vehicles, autonomous transit shuttles) circulators, services and vehicles, new roads, the widening of existing roads, traffic control devices, intersection improvements, and roundabouts.
- Be used by local governments only to construct the multimodal projects that are identified in their adopted mobility plans.
- Are based on increases in person trips, person trip lengths, and person miles of capacity from multimodal projects, along with projected person miles of travel from development.
- Assessment areas, if any, may vary based on geographic location (e.g., either side of an Interstate), type of development (e.g., mixed-use), or differences in person travel characteristics.
- Must be based on future multimodal projects adopted as part of a mobility plan and incorporated or referenced in the local government's Comprehensive Plan.
- May not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals; provided, the developer pays the applicable mobility fee.
- May provide offsets for the redevelopment of existing developed properties based on the last known use of the land.
- Must provide credits for previous proportionate share payments, for dedication of right-of-way above and beyond that needed for the development, and for the construction of, or monetary contribution to, multimodal transportation

improvements that serve more than just the development and are included in the mobility plan or capital improvements program.<sup>9</sup>

#### V. Mobility Fee Methodologies

The Legislature has not established a uniform method for local governments to calculate a mobility fee. As a result, local governments throughout Florida have adopted various systems to calculate their mobility fees. That being said, the systems can generally be classified into four broad categories, to wit:

- Developer Traffic Study Method: This approach requires a developer to perform a detailed traffic analysis to determine a net peak hour or daily trip generation and then to apply a fixed per trip mitigation rate to the net trips and determine the mitigation or mobility fee to be paid. The use of this method establishes a direct relationship to the proposed development impact and the fee due. Among the method's drawbacks is that there is still a methodology that has to be agreed to, still the potential for debate on how the study should be conducted, and the developer does not know the mitigation due until the study is completed and the final fee is acceptable to all parties involved.
- Local Government Study Method: This approach is for a local government to review a proposed development, calculate a net trip generation, net vehicle miles of travel or net person miles of travel impact, and then apply a fixed mitigation rate to the net impact and determine the mitigation or mobility fee to be paid. The pro is there is a direct relationship to the proposed development impact and the fee due. The con is that there is potential for disagreement and challenge with the proposed development on the methodology used, and the developer does not know the mitigation due until the study is completed and the final fee is calculated.
- Predetermined Mobility Fee Schedule: This approach is for a local government to adopt a predetermined mobility fee schedule based on the person travel demand from new development and the person miles of capacity provided by projects identified in the local government's adopted mobility plan. The upsides of this method are that there is a direct relationship between the projects identified in the mobility plan and the impact from new development, and that a developer will know its mitigation requirements before it ever moves forward with its development. The downside of this method is that there will not be a direct correlation to a specific development based on a detailed traffic study or a detailed analysis conducted by the local government.
- Combined Fee Schedule/Study Method: This is the most popular method amongst Florida's local governments. A local government adopts a predetermined mobility fee schedule. That being said,

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<sup>9</sup>Generally Fla. Stat. § 163.3180(5)(i).

if a developer disagrees with the application of the fee schedule to its development, the local government will allow an individual study to be conducted, either by the developer or by the local government at the developer's expense.

## VI. Application of the Impact Fee Act to Mobility Fees

In 2019, the Legislature required that the procedures for developing and enacting mobility fees be consistent with Fla. Stat. §163.31801, otherwise known as the Impact Fee Act.<sup>10</sup> Some of the practical ramifications of the Legislature's action include:

- A local governments must enact a mobility fee ordinance by following the statutory requirements for enacting an impact fee ordinance (e.g., workshops, hearings, consultants, technical reports, etc.).
- A local government can only adopt a mobility plan and enact a mobility fee ordinance if doing so conforms to its comprehensive plan, the documents incorporated therein, and its land development regulations.
- Mobility fees can be assessed no "earlier than the date of issuance of the building permit for the property that is subject to the fee."<sup>11</sup> That being said, some local governments wait to collect their mobility fees until the issuance of a certificate of occupancy.<sup>12</sup>
- A local government may include an administrative charge with the mobility fee to offset the cost associated with a mobility fee program. Florida law limits the fee to the actual cost associated with administering a mobility fee program. Typical administrative charges range between 3% and 5% of the assessed mobility fee, however, the actual administrative charge must be based upon a technical report that evaluates the cost associated with administering the mobility fee program.<sup>13</sup>

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<sup>10</sup>See Fla. Stat. § 163.3180(5)(i) ("A mobility fee-based funding system must comply with s. 163.31801 governing impact fees.")

<sup>11</sup>Fla. Stat. § 163.31801(4)(e).

<sup>12</sup>See, e.g., Hillsborough County Code § 40-78(b); Plant City Code § 86-114(a).

<sup>13</sup>See Fla. Stat. § 163.31801(4)(c).

- A local government must provide the public with a 90-day implementation period between when a mobility fee is adopted and when the local government begins collecting mobility fees. Thus, if the County adopted a mobility fee on July 31, 2023, the earliest the fee could go into effect would be October 1, 2023.<sup>14</sup>
- A local government must “ensure that the calculation of the impact fee is based on the most recent and localized data.”<sup>15</sup>
- A local government must “ earmark funds collected under the [mobility] fee for use in acquiring, constructing, or improving capital facilities to benefit new users,” and require that the collected fees “are not used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.”<sup>16</sup>

Additionally, a local government must demonstrate, consistent with Fla. Stat. § 163.31801(4)(f) and (g) and by a preponderance of the evidence, that its adopted mobility fee satisfies the “dual rational nexus” and the “rough proportionality” tests.<sup>17</sup>

The “dual rational nexus test” establishes a two-prong test required of any fee or exaction by local government. As applied to mobility fees, the dual rational nexus test requires that a rational nexus exists between both (1) the applicable local government’s need to construct new multimodal projects and the increase in demand for those projects that will be created by the construction of a new development; and (2) a developer’s payment of the mobility fee and the benefits that its development will receive from the local government’s construction of the multimodal projects.<sup>18</sup>

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<sup>14</sup>See Fla. Stat. § 163.31801(4)(d).

<sup>15</sup>Fla. Stat. § 163.31801(4)(a).

<sup>16</sup>Fla. Stat. § 163.31801(4)(h)-(i).

<sup>17</sup>See also *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612 (2013) (holding that monetary exactions must satisfy the nexus and rough proportionality requirements).

<sup>18</sup>See *Nollan v. California Coastal Commission*, 483 U. S. 836, 837 (1987); *Dolan v. City of Tigard*, 512 U.S. 383, 386 (1994).

The rough proportionality test, while not requiring “a precise mathematical calculation,” necessitates a local government to “make some sort of individualized determination” that its mobility fee “is related both in nature and extent to the impact of the proposed development.”<sup>19</sup>

## VII. Proposed Legislation Related to Mobility Plans and Fees

Please note that the Legislature is expected to pass in its current session a bill that, if enacted in its present form (as of April 19, 2023), will, in pertinent part:

- Amend Fla. Stat. § 163.3164 to add definitions for “mobility fee” and “mobility plan.”
- Create a new Fla. Stat. § 163.3180(5)(j), which will prohibit local governments from charging for transportation impacts if they are not the local government that is issuing a building permit, require that local governments collect for extra-jurisdictional impacts if they are issuing building permits, and prohibit local governments from assessing multiple charges for the same transportation impact.
- Amend Fla. Stat. § 163.3180(7) to require that local governments that transition to an alternative funding system provide the holders of impact fee credits with full benefit of intensity and density of prepaid credit balances.<sup>20</sup>

## VIII. Conclusion

While the Legislature has expressed its preference that local governments move away from imposing transportation impact fees and proportionate share requirements, it has not mandated that Hernando County do so. The Board has the discretion to act, or to not act, as it deems to be appropriate.

cc: Jeff Rogers, P.E.  
County Administrator

J. Scott Herring, P.E.  
Public Works Director/County Engineer

Aaron Pool  
Development Services Director

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<sup>19</sup>*Dolan*, 512 U.S. at 391.

<sup>20</sup>See 2023 Florida House Bill CS/CS/HB 235, Florida One Hundred Twenty-Fifth Regular Session.