

## MEMO

TO: IFAC, Staff, Counsel  
FROM: Lee Nellis, FAICP  
DATE: March 11, 2025

### **RE: Revised Service Area Reports and IFAC Recommendations**

Here is the revised document. Feel free to email me directly with any questions.

The paragraphs where there are revisions are highlighted in yellow. You will recognize that a bit of the original language remains in some of those paragraphs, but given the changes to the methodology, it really is all new.

To keep this easy to read, I have not shown the wholesale deletions. You can compare this edition with the last draft you had. I deleted the entire section about large-scale commercial development. I deleted the part where the IFAC posed its question about the transportation impact fee to the Council. The Council had a good discussion that answered that question. No need to revisit it.

Two questions arise from these changes. Answering the first just requires that everyone be clear about exactly where we're at in this stage of adopting impact fees, and that a little more work (easy work in this case) will be necessary when the time is right. Answering the second is problematic, as I will explain.

#### **What about Commercial in the Southeast?**

The March 4 IFAC meeting spent some time on the question of potential commercial development in what will become the Southeast Zoning District (SEZD). We had not talked about that before for the reason explained below, which is that it was, and still is, too soon.

We could, and did, estimate how much residential development might happen in the SEZD. That is much easier than estimating the extent of future commercial development. One multiplies the acres suitable for residential development by a density that is consistent with the proposed zoning. The results are included in the buildout analysis.

We knew when we made that analysis that there would be commercial development in what will become the SEZD. We did not know how much. Specifically, we did not know how many lots might be proposed for commercial use, exactly where or how large those lots might be, or the extent of building coverage that might be proposed. We did not know what limits the developers might place on commercial uses through covenants.

We could not, therefore, make a reasonable estimate of how much commercial to anticipate in the SEZD in the same way we did within the city limits. Within the city, we used property tax records and the zoning map to identify vacant commercial lots, applied a typical projected building coverage (which is more accurate for small lots like those remaining within the city

than the larger commercial lots that might be proposed in what will become the SEZD), and estimated the anticipated building area.

Given the lack of necessary information about potential commercial development, the service area reports assigned all costs of new infrastructure in what will become the SEZD that would, in part, be supported by impact fees to residential. That ensures that everyone knows the potential costs and that a sufficient sum will be collected if development proceeds as anticipated. Once the city has an annexation proposal to review, the impact fees can easily be recalculated. The total amount of money involved will be the same, it will just be collected from a different mix of uses.

To be as clear as possible, let us say this all another way. The Service Area Reports accurately calculate the total impact fees that will be due. No improvement called for by the CIP is left out. They do not make a split between residential and commercial in what will become the SEZD because the information needed to make that split did not (and does not yet) exist. Once the necessary information is available, the city can easily (there's a spreadsheet for that!) divide the impact fees between residential and commercial. The total amount that could ultimately be collected won't change.

### **What Happened to the Idea of Large-Scale Commercial?**

The changes made at the insistence of the City Attorney eliminate the concept of large-scale commercial as it was used in the service area reports. It is now proposed – see the service area reports - to use meter size to adjust the trial water and wastewater impact fees upwards if necessary, to use the number of parking spaces provided to adjust the trial transportation impact fees in the same way, and to apply the trial impact fees for municipal buildings and fire protection to all principal buildings. These changes are workable from an administrative perspective, although they necessitate unanticipated work in revising the spreadsheets that have been created to calculate and, when necessary, update the impact fees.

But they do raise a question about compliance with state law. We believed we could safely ignore large projects in calculating the trial impact fees because we would deal with them case-by-case. Based on that belief, the entire commercial share of the costs of the improvements that would be supported by impact fees has already been attributed to the anticipated amount of commercial development of less than 4,000 SF building area with a water meter of one inch or less (what the buildout analysis and original version of the service area reports called 'infill' commercial, another term that these changes eliminate). That means any money that may be raised by the new adjustments for larger projects now has to somehow be connected as directly as possible to the improvements anticipated by the CIP.

That's only so big a problem. Having extra impact fees, or at least the potential for extra impact fees, to apply to projects is not a problem at all, IF it can be properly justified. One way to achieve that justification would be to redo everything, all the way back to the CIP and change the assumptions on which it is based. But that would be disruptive and expensive,

while doing nothing to improve our ability to estimate how much or how little large-scale commercial development will happen.

Let's say instead that all commercial development, regardless of scale, will pay the impact fees calculated in the service area reports, including the added fees for larger developments. Those fees will be applied to CIP projects that benefit the existing commercial areas, which is to say, the projects that benefit what was originally defined as "infill commercial." There will eventually be commercial impact fees in the SEZD, too, but they will remain separate, applied only to improvements from which they benefit (and that list of improvements is different). Adopting this approach connects all commercial development in the existing commercial zoning districts to the CIP. That satisfies the law. It is, however, subject to one important limitation.

The CIP is based on the 130,000 SF of commercial development (it is important to note that this includes the redevelopment of existing buildings as well as new construction) that is anticipated in the existing commercial zoning district in the buildout analysis. That means that the impact fees will have to be re-calculated before the city approves more than 130,000 SF of commercial development. Unless something unusual happens, building out that much commercial in Three Forks will take years, and the fees will almost certainly have been re-calculated for other reasons, anyway.

We note that the same limitation applies to residential development. If Three Forks grows more rapidly than anticipated, the city will need to re-calculate its impact fees before it approves more than the 1,045 new dwelling units anticipated in the buildout analysis. Note also that this puts us in the same space as the other impact schedules you have seen, for Belgrade, etc., just with the approach that we think is consistent with Three Forks' size and resources. Those schedules are all premised on the assumption that not knowing exactly how many larger projects there will be, or how large they will be, isn't necessary because the fees will have to be re-calculated before answering that question becomes necessary.

Again, please feel free to contact me directly via email if you have any questions about all this.