Impact Fees – A Demonstrated Needs Study on Extraordinary Circumstances

September 21, 2021

Charlotte County Florida

Purpose

- To present a demonstrated needs study establishing the existence of extraordinary circumstances necessitating the need to exceed statutory impact fee phase in limitations.

CHARLOTTE COUNTY FLORIDA

Legislative Action

- June 4, 2021 – Governor signed HB 337 amending Section 163.31801, F.S (The Florida Impact Fee Act)
- Changed the definition of Infrastructure
- Placed limits on how and when impact fees can be increased by a jurisdiction
- Other minor changes

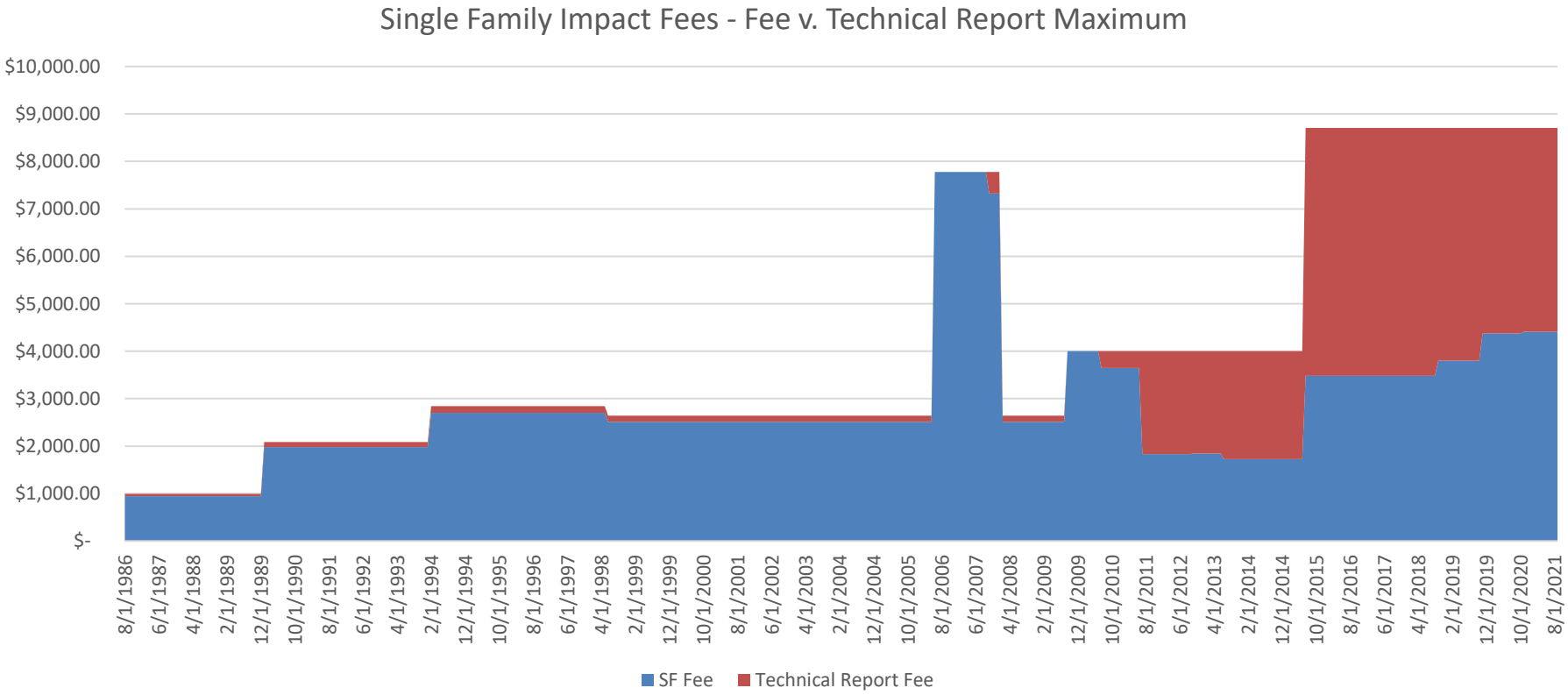
CHARLOTTE COUNTY FLORIDA

History of Impact Fees

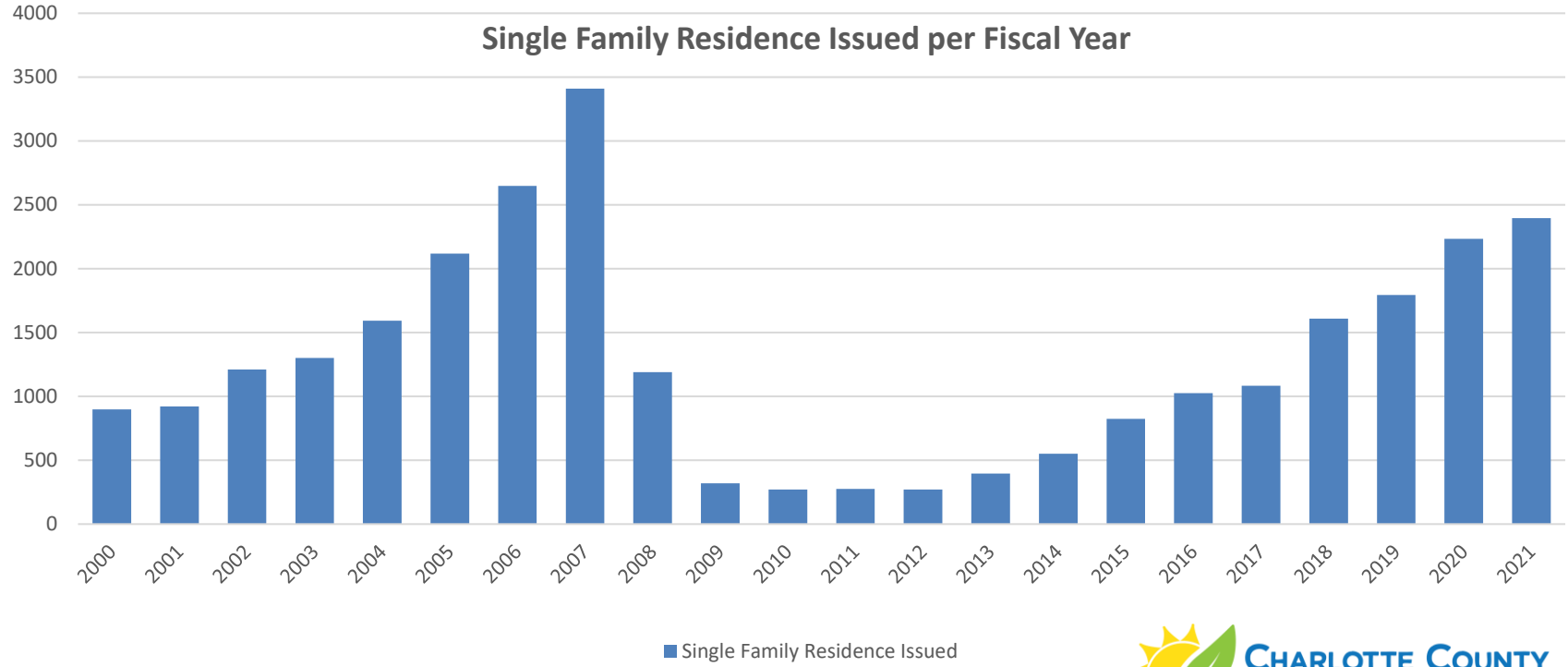
- First enacted on 7-1-1986 with ORD 86-28
- Nine increases in impact fees
- Six decreases in impact fees
- Eight technical studies
- Only 26 months of the 35 years of history had implementation rates of 100% of the technical study
- Range in fees for single family home from $946 (1986), a high of $7,780 in 2006 to the currently adopted rate of $4,409. (Based on 2000sq.ft home within the urban zone).

CHARLOTTE COUNTY FLORIDA

Impact Fee History

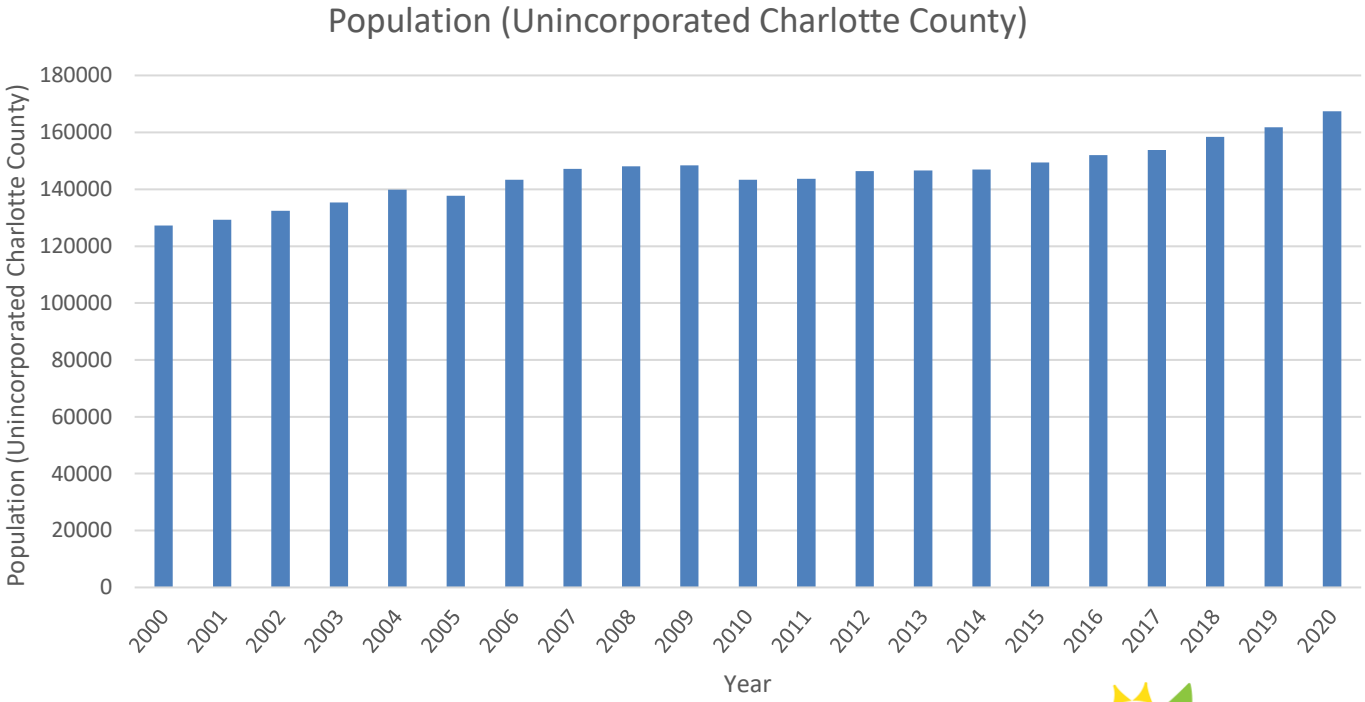


Development History



CHARLOTTE COUNTY FLORIDA

Population Data (BEBR)



Current Status

- ORD 2021-11 accepted the Duncan Associates Technical Study
- Kept impact fees at the Tindale Oliver study at 50.64%

Path Forward

- A path exists to deviate from the phase-in path defined in the statute. This must be done in the following way:

  - A demonstrated need study justifying any increase in excess of those authorized in the legislation.
  - A demonstrated need study must be completed within 12 months of the adoption of new fees.
  - The demonstrated need study must expressly demonstrate the **extraordinary circumstances** necessitating the need to exceed the phase-in limitations.
  - The jurisdiction must hold no less that 2 publicly noticed workshops dedicated to the extraordinary circumstances.

CHARLOTTE COUNTY FLORIDA

What is an “Extraordinary Circumstance”

- Not defined by the statute
- No guidance as what constitutes an “Extraordinary Circumstance”
- Absent of any additional direction, definition seems to be the purview of the Board

Demonstrated Needs Study

- Completed by county staff at the direction of the Board
- Dated September 12, 2021

CHARLOTTE COUNTY FLORIDA

Pre-emption

- Pre-emption of Home Rule
  - Pre-emption limiting the power of the local jurisdiction to appropriately fund needed infrastructure improvements within its jurisdictional boundaries.

Concerns with new language

The Florida Impact Fee Act confirms that Impact Fees are an important source of revenue for local governments to use in funding infrastructure necessitated by new growth.

Section (4)(a) of the Act maintains that philosophy stating that the jurisdiction must "**Ensure that the calculation of the impact fee is based on the most recent and localized data.**"

The added language in Section 6 of the Act hampers the ability of jurisdictions to comply with Section (4)(a) therefore creating an extraordinary circumstance requiring the local government to deviate from the phase-in requirements detailed in Section (6)(a) thru (f) to ensure compliance with Section (4)(a) of the act.

CHARLOTTE COUNTY FLORIDA

Concerns with new language

Section (4)(f) of the act requires the local government to "**ensure that the impact fee must be proportional and reasonably connected to, or has have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction".**

By limiting the ability of a local jurisdiction to increase their fees in accordance with the most recent and localized data, the local government is hampered in their ability to ensure a rational nexus exists with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction as determined in the most recent technical study prepared for the county. Therefore, an extraordinary circumstance exists which requires Charlotte County to deviate from the phase-in requirements detailed in Section (6)(a) thru (f) to ensure compliance with Section (4)(f) of the act.

CHARLOTTE COUNTY FLORIDA

Concerns with new language

The Act, although signed by the Governor on June 4, 2021, includes Section (6)(h) which makes the phase-in provisions detailed in Section (6) **retroactive to January 1, 2021**. Charlotte County has been working on revisions to their impact fees since 2019 and was nearing the end of this process.

An Impact Fee Technical Report was finalized in January 2021. By including this retroactivity provision, the legislation nullified action taken by the properly elected board of the jurisdiction through the regular public hearing process.

This in itself creates an extraordinary circumstance as it binds the Board to the prior Technical report, dated 5-8-2014 with no path to implementing the fee schedule detailed in the January 2021 Impact Fee Technical Report without being in conflict with Section (6) (a) thru (f).

Concerns with new language

Voting requirements. The Act now includes a provision whereby any increase which is a deviation from the phase-in provisions detailed in Section (6) (a) thru (f) must be **"…….approved by at least a two-thirds vote of the governing body."** (Section (6)(g)3).

Although this does not create any conflict or inconsistency within the Act itself, it does **create a higher standard** for the passage of an increase of impact fees than the standard set for most other taxes, assessments or fees imposed by the County.

CHARLOTTE COUNTY FLORIDA

Conflicting Technical Reports

- April 17, 2021 – Board adopted Tindale Oliver Study fees at 40% of the recommended amount
- Duncan Associates Study was completed in January 2021
- Duncan Associates Study was accepted by the Board on February 9,2021
- Two studies do not have a direct correlation
  - Updated methodology
  - Changes in traffic calculations (new ITE manual)
  - Changes in land use categories

CHARLOTTE COUNTY FLORIDA

Conflicting Technical Reports

Land Use	Current Fee - Tindale Oliver at 50.64% adoption	Duncan Fee @ 50.64% adoption	Percentage Difference
Single-Family, Detached	$ 4,409.00	$ 4,957.00	12%
General Retail/Comm./Shop. Ctr	$ 6,715.00	$ 5,384.00	-20%
Tire Superstore	$ 7,273.00	$ 3,942.00	-46%
High-Turnover Restaurant	$ 19,286.00	$ 17,981.00	-7%
General Office	$ 4,364.00	$ 3,404.00	-22%
Medical Office/Clinic	$ 4,887.00	$ 11,567.00	137%
Warehousing	$ 1,152.00	$ 659.00	-43%
Nursing Home	$ 2,069.00	$ 1,234.00	-40%

No direct correlation between the two fee studies

CHARLOTTE COUNTY FLORIDA

Growth Patterns and Challenges

- Unique growth and development history and patterns
  - 90% of population in unincorporated area
  - Over 650 square miles to maintain
  - Multiple suburban development centers
  - Pre-platted lands with minimal infrastructure now seeing extensive in-fill

CHARLOTTE COUNTY FLORIDA

Unfunded transportation needs

	2022	2023	2024	2025	2026	2027	Total
Projected project Costs							
Edgewater Ph 3	-	-	-	-	-	33,050	33,050
Edgewater Ph 4	2,583	-	-	-	-	30,152	32,734
Edgewater Ph 5	-	-	-	-	-	27,947	27,947
Harborview Ph 2	-	-	9,094	-	21,000	-	30,094
Hillsborough/Cranberry	41	112	1,315	-	-	-	1,468
Kings Hwy-I75 to Desoto County Line	-	-	-	-	10,586	-	10,586
Sandhill Widening	-	1,115	2,205	15,372	-	-	18,692
Toledo Blade/Cochran-SR776 to Pellam (Developer)	-	-	-	-	-	-	-
Various Intersection Impvts Program	996	1,800	1,800	1,800	1,800	1,800	9,996
Sidewalk Hazard Mitigation	-	2,668	-	-	-	-	2,668
Sidewalks - Gap/Infill Gas Tax (Allocation)					1,250	1,250	2,500
Regional Bicycle-Pedestrian Trails	250	2,450	2,100	1,200	-	-	6,000
Sidewalk Installations-County Wide (Allocation)					3,106	3,106	6,212
TOTAL EXPENDITURES:	3,870	8,145	16,514	18,372	37,742	97,304	181,947
Funding Sources							
2014 Sales Tax	10,000						10,000
2020 Sales Tax Tier 1			8,250	6,000		28,500	42,750
2021 Sales Tax Tier 2						10,000	10,000
Grant Funding					10,000		10,000
Impact Fees (current level)	7,400	7,400	7,400	7,400	7,400	7,400	44,400
SURPLUS / (SHORTFALL)							(64,797)

Collaboration and Cooperation

- Relationship with the local Building Industry
  - Memorandum of Understanding with CDBIA
  - History of highly collaborative problem solving
  - Unique relationship which we can leverage to develop a mutually acceptable solution

CHARLOTTE COUNTY FLORIDA

Conclusion

- The current circumstance surrounding impact fees in Charlotte County places the County mean that moving forward and following other sections of the statutes would be difficult without deeming extraordinary circumstances exist.
- Deeming specific extraordinary circumstances exist which would allow the Board to regain control of their decisions surrounding the collection of impact fees

CHARLOTTE COUNTY FLORIDA

Next Steps

- This workshop can be determined to be the 1st of two required publicly noticed workshops dedicated to extraordinary circumstances
- A second publicly noticed workshop is required
- A 2/3rds majority vote is needed to deem extraordinary circumstances exist

CHARLOTTE COUNTY FLORIDA

Questions