Charlotte County Impact Fees – A demonstrated need study establishing the existence of extraordinary circumstances necessitating the need to exceed statutory impact fee phase in limitations.

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Purpose

The purpose of this study is to demonstrate the need for Charlotte County to exceed the phase-in limitations adopted through House Bill 337 which limits the amount a jurisdiction can increase its impact fees and provides for a phase-in schedule for how any increases can be made.

The aim is to give the Charlotte County Board of County Commissioners (Board) information to assist them in making a determination that extraordinary circumstances exist in Charlotte County which justify exceeding or deviating from the phase-in limitations set out in the adopted legislation.

This will be accomplished through a summary of the legislation, discussion of the history of impact fees in Charlotte County, historical and recent development patterns which create unique challenges to the County and recommendations of extraordinary circumstances.

Section 1 - Summary of legislative changes

On 6-4-2021, Governor DeSantis signed into law House Bill 337 which amends s. 163.31801, F.S. cited as the Florida Impact Fee act. (Attachment A).

This legislation made several changes to the Florida Impact Fee Act including amending the definition of infrastructure for which impact fees can be used, more significantly, imposing limitations as to how local jurisdictions can increase impact fees.

The language surrounding the increase on impact fees has the following requirements:

- Impact fees can be increased by either 25% over 2 years or 50% over 4 years in equal increments.
- Impact fees can only be increased every four years.
- An increase cannot be retroactive.

The legislation did give an alternate route for increasing impact fees with the following criteria:

- 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.

- The impact fee increase ordinance must be approved by a two thirds majority vote of the governing body.

The legislation, signed on 6-4-2021, is retroactive to January 1, 2021.

Significantly, what is not contained within the legislation or any analyses is any guidance as to what constitutes a :demonstrated needs study on extraordinary circumstances" and therefore seems to be the purview of the governing body of the jurisdiction.

Section 2 - History of Impact Fees in Charlotte County

Impact fees have been collected consistently in Charlotte County for over 35 years. The initial ordinance ORD 86-28 is attached as Attachment B. The Impact fees were adopted per a technical study dated 4-20-1986 and were adopted at 95% of the amount recommended in the technical study.

Since the adoption of these impact fees, they have been amended as follows: (Details in Attachment C)

- 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 the initial fee of $946, to a high of $7,780 in 2006 to the currently adopted rate of $4,409. (Based on 2000sq. ft. home within the urban zone).

Figure 1 (next page) shows the fee assessed compared with the fee recommended by the technical report since 1986.

Impact fees are collected in the following categories:

- Public Buildings
- Libraries
- Fire and EMS
- Law Enforcement/Correctional Facilities
- Community, Regional and Specialty Parks
- Transportation

The initial ordinance (ORD 86-28) had five categories. Fire and EMS was initially assessed in the 1989 ordinance (ORD 89-85) and the categories have remained somewhat consistent since then with minor changes to titles of categories.

Impact fees are assessed per land use category. The initial ordinance (ORD 86-28) broke development into 12 land use categories. The most recent technical study as accepted by the Board contains 41 separate land use categories (Attachment D – 2021 Technical Study and Fiscal Analysis).

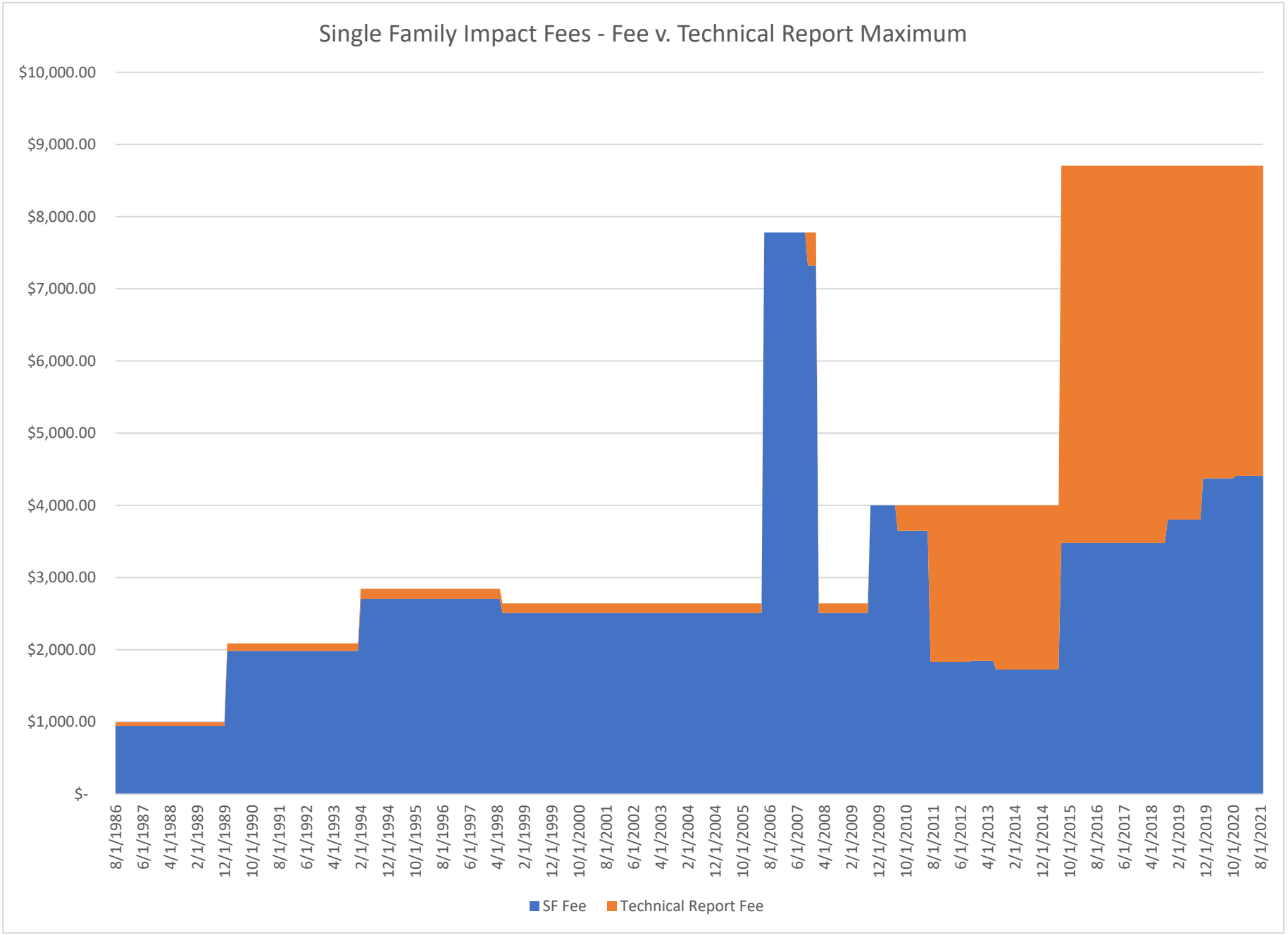

Figure 1 – Single Family Home Impact Fees through the years assessed fee and 100% of the technical report.

Section 3 - Development in Charlotte County

Development in Charlotte County is typically measured by the number of permits issued for single-family residence (SFR). *Figure 2* below shows SFR issued since Fiscal Year 2000 (earlier data is not available). *Figure 3* shows the corresponding population data issued by the Bureau of Economic and Business Research for unincorporated Charlotte County.

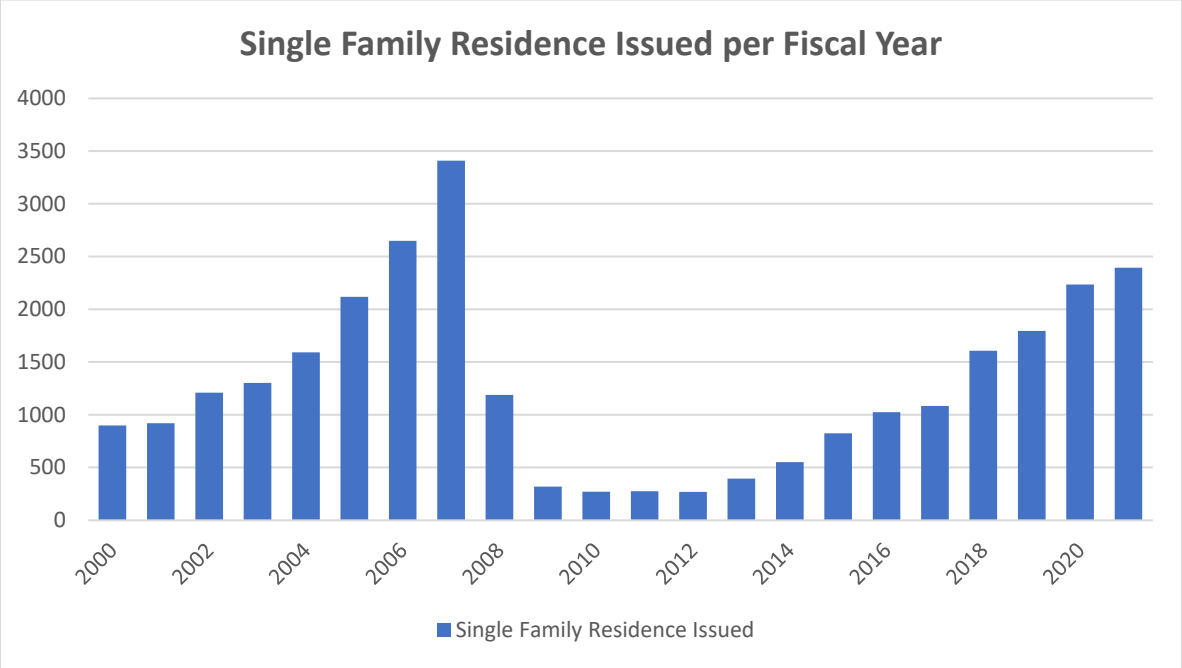

Figure 2 – Single Family Homes Issued per year from 2000

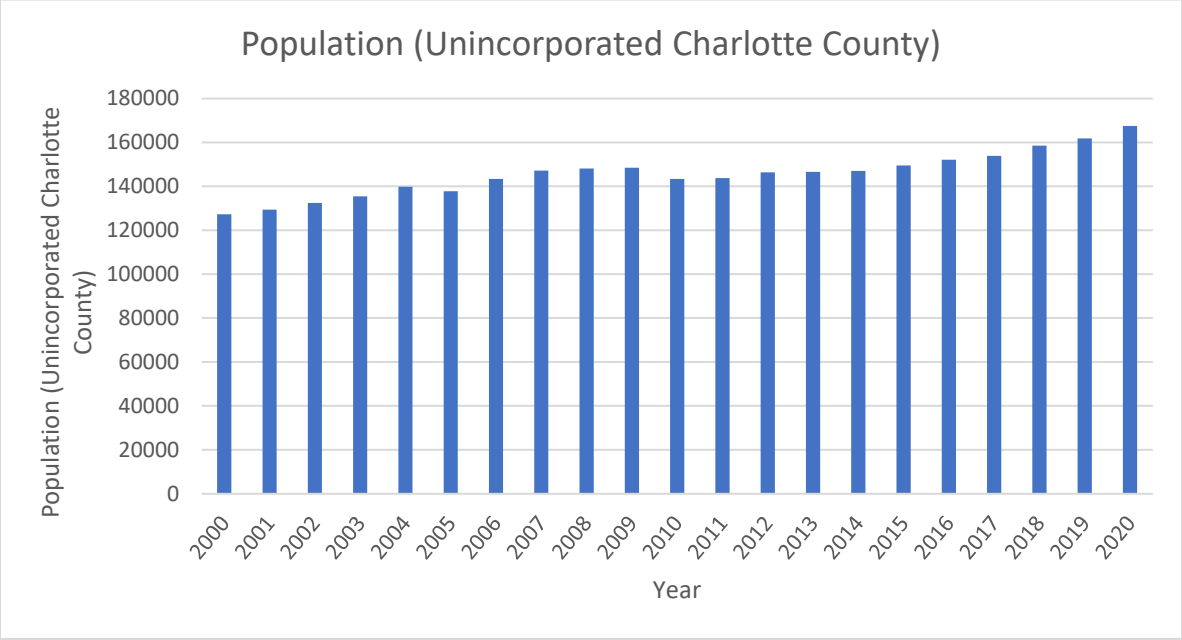

Figure 3 – Population since 2000 (Source Bureau of Economic and Business Research)

Charlotte County development patterns consist of a combination of newly developed land along with infill of the platted lots within the urbanized areas of the county. In addition, Babcock Ranch, a community in the south east part of the county, has contributed significantly to growth in the past few years.

Section 4 - Current Status of Impact Fees.

As a direct result of legislative changes to the Florida Impact Fee Act, Charlotte County is in a position of having recent and localized data developed through a Technical Study dated January 2021 that cannot be adopted. On June 22, 2021, following the Governor's signature of the legislation, to ensure impact fees could still be collected in Charlotte County, the Board adopted ORD 2021-11 which accepted the 2021 Technical Study and the fee schedule within the technical study but kept the effective fee schedule as the one adopted in ORD 2015-014 and indexed last on November 1, 2020.

Section 5 - Extraordinary Circumstances

The approved legislation and associated analyses does not define "extraordinary circumstances." As there is no definition, determining if extraordinary circumstances exists falls within the purview of the Board of County Commissioners. The following sections address potential extraordinary circumstances within specific categories.

5.1 – General concerns related to Home Rule and general county procedures

Charlotte County is a Home Rule county with a Charter that became effective on January 1, 1986. The legislation challenges Home Rule by pre-empting a very local decision to the state and limits the ability for the local jurisdiction to make appropriate decisions relating to the funding of infrastructure improvements within its jurisdictional boundaries.

5.2 – Concerns with the new Florida Impact Fee Act language

a) 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 (S163.31801(2) F.S. Prior amendments to the Florida Impact Fee Act have preserved the local jurisdiction's ability to determine the appropriate fee depending on need of the jurisdiction.
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 does not allow 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.

b) 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 amendment hamstrings the local government from ensuring a rational nexus exists between 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.

c) 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 had 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). (This will be discussed further in Section 5.3 of this report below).

d) 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.

   The County's Charter does not include any provisions for increasing taxes, assessments or fees which would require a two-thirds vote.

5.3 – Conflicting Impact Fee Technical Reports

On April 17, 2015 the Board adopted ORD 2015-014 which adopted the technical studies prepared by Tindale Oliver in 2013 (Transportation) and 2014 (all other fees). These studies were adopted at 40% of the recommended rate.

On February 26, 2019, the Board directed staff to go out to bid to perform a new technical study. On May 14, 2019, this was awarded to Duncan Associates.

After many workshops and discussions, along with close monitoring of rapidly evolving potential state legislation, the Board accepted the Duncan Associates study on February 9, 2021 and instructed staff to bring back an ordinance setting a new impact fee schedule at 100% of the recommended amount with the provision that this would be rolled back once the results of the legislation were final.

*****_An exception to this statement is provided in Section 200.065(5)(a)1, F.S. which allows a rate of up to 110% of the rolled back rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, if approved by 2/3 vote. Section 200.065(5)(a)2, F.S. allows a rate in excess of 110% if approved by a unanimous vote._

As mentioned, on June 22, 2021, following the Governor's signature of the legislation, to ensure impact fees could still be collected in Charlotte County, the Board adopted ORD 2021-11 which accepted the

2021 Technical Study and the fee schedule within the technical study but kept the effective fee schedule as the one adopted in ORD 2015-014 and indexed last on November 1, 2020.

This has left Charlotte County in the unique and unenviable position of having two different studies which have no direct correlation. Updated methodology, changes in traffic calculations (the ITE manual) and changes in land use categories make a transition from one study to another impossible using the phase-in path detailed in the Act. An illustration of this lack of correlation is below in Figure 4.

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

Figure 4 – Comparison between 50.64% adoption rate of Tindale Oliver Study and 50.64 % Duncan Associates Study

Impact fees **can** be adopted at differing percentage rates within the impact fee categories (transportation, libraries, fire, EMS, etc.). For example, the Board could choose to adopt transportation impact fees at 100% and all others at 25%. This is in the purview of the Board and does not break the rational nexus test that all impact fees are applied consistently.

Impact fees **cannot** be applied at different percentage rates across land use categories (Single Family Residential, Retail, General Office, etc.) For example, the Board could not adopt Single Family Residence fees at 100% and General Retail at 50%. By doing so, the jurisdiction would not be equally applying impact fees to all and therefore breaks the rational nexus test.

As there is no direct correlation between the currently charged fees and the fees detailed in the Duncan Associates study, there is no path to move from one study to another within the parameters of the Florida Impact Fee Act. **This is an exceptional circumstance that applies specifically to Charlotte County.**

5.4 – Unique Growth Patterns and Challenges

There are many factors that make Charlotte County unique when it comes to its structure and development patterns which put a strain on its ability to manage the cost of increasing capacity of infrastructure to support growth. Some of these factors include:

a) Charlotte County is a large county (over 650sq. miles) containing only one municipality. Approximately 90% of the county's population resides in the unincorporated areas. Although this is not unique to Florida (eight other counties only have one municipality), only one other county (Hernando) has a similar size, population and ratio between the incorporated area and unincorporated area.
b) Multiple urban and suburban areas exist in the county where citizens require city level services provided at a county level.
c) Much of the county was pre-platted and sold in the 1950's with minimal consideration for infrastructure needed to support the growth from purely in-fill. Although growth in the County has been erratic over the years, both the single-family data (*Figure 2*) and the population data *(Figure 3*) show significant growth which, given the availability of relatively inexpensive land compared to surrounding counties, can only continue. As this infill occurs, the strain on the County to expand the existing infrastructure, compounded with the need to upgrade and repair existing infrastructure, places a significant fiscal constraint on the county and its citizens.

Because of these factors, which complicate the delicate fiscal balance within the county, **extraordinary circumstances exist** which warrant the need to deviate from the phase-in requirements set forth in the Act.

5.5 – Unfunded transportation expansion needs

The largest proportion of impact fees collected are for transportation. This is specifically to fund expansion of the county's transportation network because of increased development and infill of pre-platted areas with sub-standard transportation networks.

	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
TOTAL REVENUES:	17,400	7,400	15,650	13,400	17,400	45,900	117,150
SURPLUS / (SHORTFALL)							(64,797)

Figure 5 – Transportation Improvements and funding sources

Although the county is very strategic when planning transportation improvements and utilizes many sources of revenue, the development patterns, urban sprawl, and age of our infrastructure has led to a significant shortfall in funding our transportation improvements within the 6-year window. *Figure 5* above lays out those major projects, the estimated costs of the projects and the identified shortfall of over $64 million. Collecting impact fees at a lower fee than that recommended by the technical study results puts an increased burden on other funding sources to keep up with transportation needs.

As evidenced in *Figure 1*, the gap between the recommended impact fee collection and the fee collected has been significant with every year compounding the problem. Being unable to move towards the recommended fee as determined in the technical study because of the phase-in requirements **is an exceptional circumstance that applies specifically to Charlotte County.**

Section 6 - Relationship with the Building Industry

Although this is not an extraordinary circumstance which would necessitate the increase in impact fees, this report would be remiss if it did not discuss the unique relationship the County has with the local development and building community – a relationship all parties have fostered and nurtured over the years.

Charlotte County has, since 2003, maintained a regular and standing relationship with the local Building Industry Association (The Charlotte DeSoto Building Industry Association (CDBIA)). There exists a Memorandum of Understanding (MOU) between the County and the CDBIA which creates a Building Industry Oversight Committee (BIOC) (Attachment E). With very few exceptions, the BIOC has met with County staff every month since its creation.

Staff and the BIOC work through issues such as the adoption and implementation of new impact fees and have worked collaboratively over the years to ensure impact fees are balanced to ensure funding needed for expansion of services due to growth without significantly impacting the competitive nature of construction in southwest Florida. Ultimately, recommendations brought to the Board of County Commissioners are typically supported by the BIOC and CDBIA because of this highly collaborative process.

Staff is confident that given the opportunity, they could work collaboratively with the BIOC to develop a fee schedule that meets the infrastructure needs of the County and the fiscal needs of the industry that is less restrictive than the prescribed phase-in requirements.

Section 7 – Conclusion

Charlotte County has a combination of unique circumstances that could be deemed by the Board as extraordinary circumstances. It is staff's professional opinion that by determining extraordinary circumstances, the Board may "regain control" of the implementation of impact fees which would allow the Board to set the impact fees, and any subsequent increases at their discretion.