

A large, stylized graphic in the background features a yellow sun with rays on the left and a green leaf on the right, both partially overlapping a light blue curved shape at the bottom.

Impact Fees – A Demonstrated Needs Study on Extraordinary Circumstances

October 12, 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.

Legislative Action

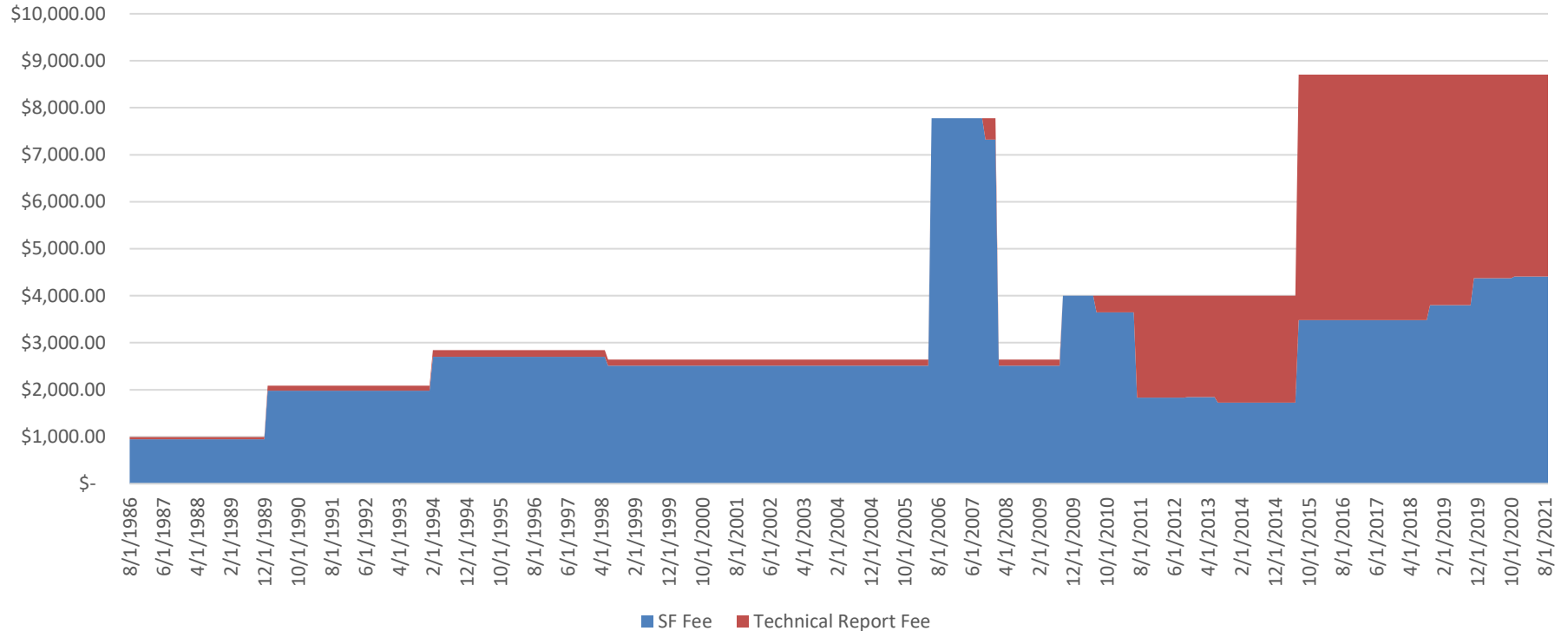
- June 4, 2021 – Governor signed HB 337 amending Section 163.31801, F.S (The Florida Impact Fee Act)
- Changed the definition of Infrastructure
- Placed limits on how and when impact fees can be increased by a jurisdiction
- Other minor changes

History of Impact Fees

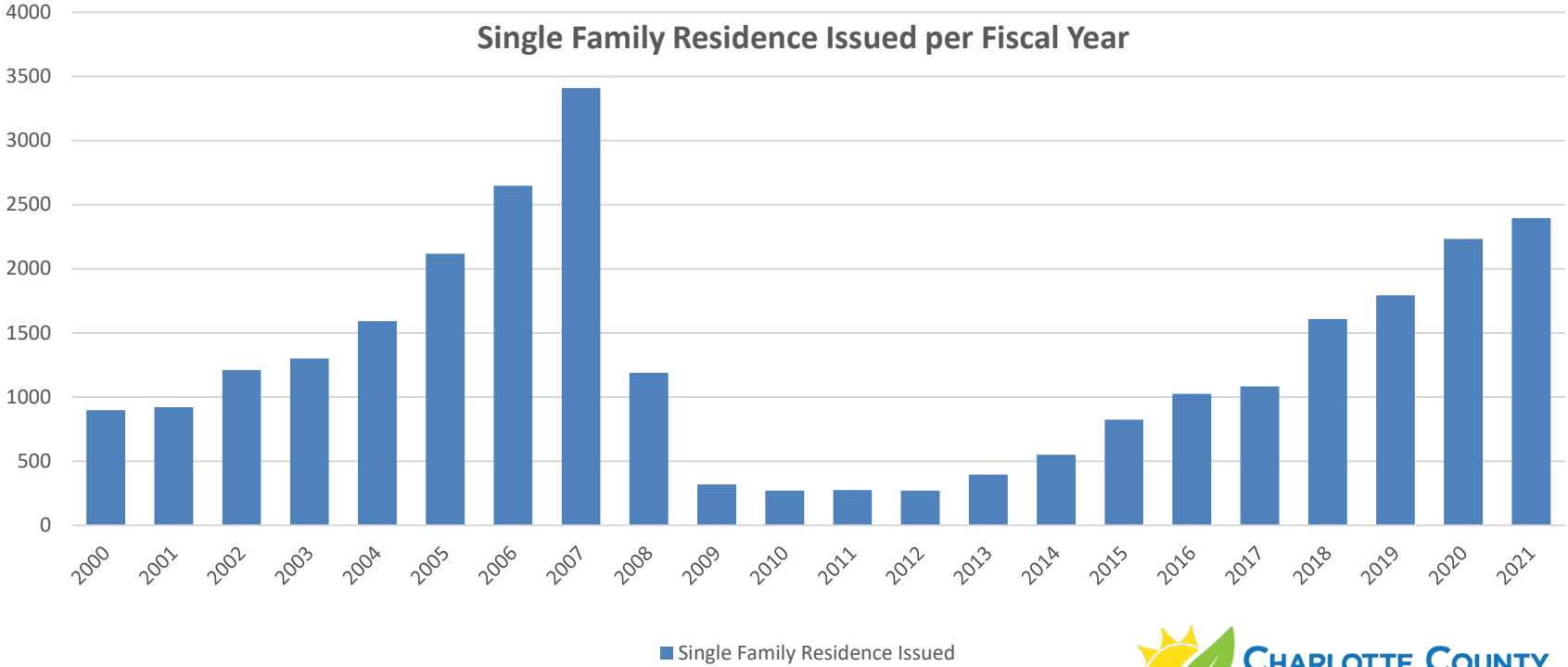
- First enacted on 7-1-1986 with ORD 86-28
- Nine increases in impact fees
- Six decreases in impact fees
- Eight technical studies
- Only 26 months of the 35 years of history had implementation rates of 100% of the technical study
- Range in fees for single family home from \$946 (1986), a high of \$7,780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

Impact Fee History

Single Family Impact Fees - Fee v. Technical Report Maximum

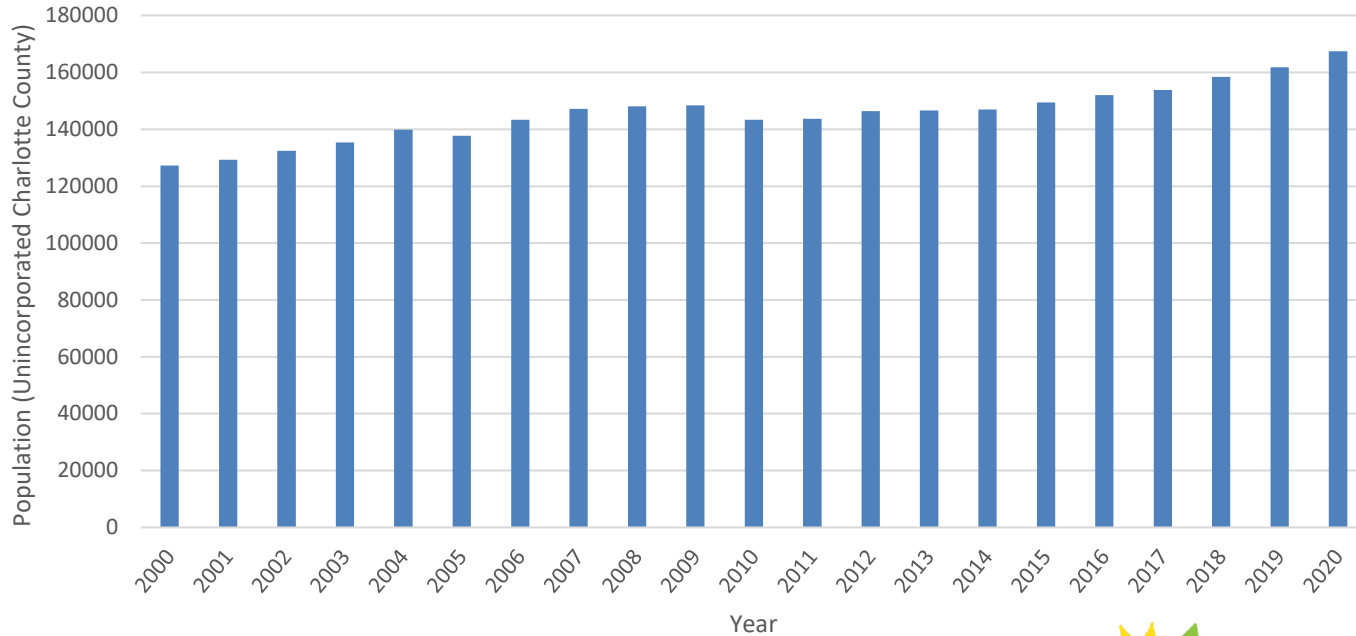


Development History



Population Data (BEBR)

Population (Unincorporated Charlotte County)



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 than 2 publicly noticed workshops dedicated to the extraordinary circumstances.

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

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 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.

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 fails 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.

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.

Conflicting Technical Reports

- April 17, 2015 – 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

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



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

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

Conclusion

- The current circumstance surrounding impact fees in Charlotte County places the County at risk of challenges
- Specific extraordinary circumstances exist which would allow the Board to regain control of the decisions surrounding the collection of impact fees

Next Steps

- This workshop can be determined to be the 2nd of two required publicly noticed workshops dedicated to extraordinary circumstances
- A 2/3rds majority vote is needed to deem the existence of extraordinary circumstances exist
- If the Board determines extraordinary circumstances exist, direction is needed on the next step relating to impact fee amounts – recommend a future item to discuss and give staff direction (poss. Oct 26, 2021)

Questions

