

ORDINANCE 2007-2

**AN ORDINANCE TO AMEND SECTION 184-16,
PUBLIC FACILITIES; IMPACT FEES,
OF THE TOWN OF CEDARBURG
CODE OF ORDINANCES, OZAUKEE COUNTY, WISCONSIN.**

BE IT ORDAINED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, that Section 184-16 of the Town of Cedarburg Code of Ordinances is hereby amended to read as follows:

§ 184-16. Public facilities; impact fees.

A. Purpose.

- (1) The purpose of this section is to establish the mechanism for the imposition of impact fees on developers of land to finance the capital costs of acquiring, establishing, upgrading, expanding, and constructing public facilities which are necessary to accommodate such development within the limits of the Town of Cedarburg in accordance with § 66.0617, Wis. Stats.
- (2) In enacting this section, the Town Board of the Town of Cedarburg desires to promote the public health, safety and general welfare of the community, to secure safety from fire, panic and other dangers, to provide adequate provisions for public facilities and to facilitate adequate transportation, parks, municipal buildings, water drainage and other public requirements.

B. Definitions. In this section, the following terms shall have the meaning indicated:

CAPITAL COSTS — The capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the Town of Cedarburg can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

DEVELOPER — A person who constructs or creates a land development.

IMPACT FEES — Cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by the Town of Cedarburg under this section.

LAND DEVELOPMENT — The construction or modification of improvements to real property that creates additional residential dwelling units within the Town of Cedarburg or that results in nonresidential uses that create a need for new, expanded or improved public facilities within the Town of Cedarburg.

PUBLIC FACILITIES — Highways, as defined in § 340.01(22), Wis. Stats., and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating stormwater and surface water, facilities for pumping, storing and distributing water, parks, playgrounds and land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

C. Impact fees. The Town of Cedarburg hereby imposes the following impact fees on developers to pay the capital costs that are necessary to accommodate land development:

(1) Parks, public sites and open spaces.

(a) Reservation of potential future sites.

[1] In the design of a plat or other forms of land division, consideration shall be given to the adequate provision of, and correlation with, open public park and recreation sites and facilities.

[2] When it is determined by the Town Board that a portion of the plat or land division is required for future public park, recreation sites and related facilities, the developer may be required to reserve such area for not more than five years, during which time the Town shall either acquire the property or release the reservation. If the parties are unable to agree on an acquisition price the following procedure shall be followed: The representative cash value of the land to be dedicated shall be determined by the Town and developer on the basis of full and fair market value of the land to be dedicated. If the value of such land cannot be determined satisfactorily by the Town and the developer, an appraisal board consisting of one appraiser selected by the Town at its own expense, one selected by the developer at his own expense and a third selected by the other two appraisers at Town expense shall determine the value upon a consensus of a majority of the board. If a majority determination is not made by the appraisal board within 45 days of the date of selection of the third appraiser, the average of the three appraisals shall be the value. If such determination is not made prior to the time required for the payment of fees under this section, such fees shall be paid as required, subject to a credit, refund or payment to be made upon the value determination.

(b) Parks, recreation and open space impact fee.

[1] An impact fee shall be imposed upon the developer or property owner to provide for the legal, engineering and design costs and for the land and/or easements and facilities to meet the park, recreation and open space needs of the Town resulting from new residential development.

[2] The amount of the fee shall be listed on the Impact Fees Schedule as approved by the Town Board and said fee to be paid shall be imposed upon each dwelling unit to be provided, added or created by the proposed development.

(c) Dedication of land.

[1] Where land has been required to be reserved pursuant to Subsection C(1)(a)[1] and [2] above, or when the developer owns other land that has been determined by the Town Board to be acceptable for park and recreation purposes, the developer may be required to dedicate such land and any impact fee imposed shall be reduced to compensate the developer for such land dedication. .

[2] The representative cash value of the land to be dedicated shall be determined by the Town and developer on the basis of full and fair market value of the land to be dedicated. If the value of such land cannot be determined satisfactorily by the Town and the developer, the procedure outlined in Subsection C(1)(a)[2] above shall be followed. If such determination is not made prior to the time required for the payment of fees under this section, such fees shall be paid as required, subject to a credit, refund or payment to be made on the value determination.

[3] The determination as to the feasibility of dedication shall be made by the Town Board.

(2) Municipal buildings, sites and related facilities.

(a) Policy. In order that sites for municipal buildings may be properly located and preserved as the community develops, and in order that the cost of providing municipal building sites and facilities, including public works, library, Police Department, Fire Department and Town Hall space necessary to serve additional families brought into the community by land development, may be most equitably apportioned on the basis of the additional need created by the land development, the following provisions in this subsection are established.

(b) Reservation of potential sites.

[1] In the design of the plat, consideration shall be given to the adequate provision of, and correlation with, municipal building sites and facilities.

[2] When it is determined by the Town Board that a portion of the plat is required for such future municipal building sites and facilities, the developer may be required to reserve such area for not more than five years, during which the Town shall either acquire the property or release the reservation. If the value of such land cannot be determined satisfactorily by the Town and the developer, the procedure outlined in Subsection C(1)(a)[2] above shall be

followed to determine the cash value. If such determination is not made prior to the time required for the payment of such fees under this section, such fees shall be paid as required, subject to a credit, refund or payment to be made upon the value determination.

(c) Municipal buildings and facilities impact fee.

[1] An impact fee shall be imposed upon the developer or property owner to provide for the legal, engineering and design costs and for the land and facilities to meet the municipal buildings and facilities needs of the Town resulting from new residential development.

[2] The amount of the fee shall be listed on the Impact Fees Schedule as approved by the Town Board and said fee to be paid shall be imposed upon each dwelling unit to be provided, added or created by the proposed development.

(d) Dedication of land.

[1] Where land has been required to be reserved pursuant to Subsection C(2)(b) above, or when the developer owns other land that has been determined by the Town Board to be acceptable for municipal building sites and facilities purposes, the developer may be required to dedicate such land and any impact fee imposed shall be reduced to compensate the developer for such land dedication..

[2] The representative cash value of the land to be dedicated shall be determined by the Town and developer on the basis of full and fair market value of the land to be dedicated. If the value of such land cannot be determined satisfactorily by the Town and developer, the procedure outlined in Subsection C(1)(a)[2] above shall be followed to determine the cash value. If such determination is not made prior to the time required for the payment of fees under this section, such fees shall be paid as required, subject to a credit, refund or payment to be made upon the value of determination.

[3] The determination as to the feasibility of dedication shall be made by the Town Board.

(3) Drainage, highways, traffic control and other infrastructure.

(a) Policy. In order to promote the public health, safety and general welfare of the community and to ensure the protection of the quantity and quality of waters within the Town, to ensure proper drainage of lands and protect against flooding and erosion, and to provide appropriate highway capacity, traffic control, and other infrastructure the Town Board declares its policy to plan and provide therefor. For the aforesaid purposes, as lands within the Town are developed with new residential dwelling units the plan must be implemented.

- (b) Drainage, highways, traffic control or other infrastructure impact fee/. In order to defray a portion of the costs of the above items, including the legal, engineering and design costs and the costs of drainage, highway, traffic control, and other infrastructure projects resulting from new residential development, an impact fee shall be imposed upon the developer or property owner in an amount as listed on the Impact Fees Schedule as approved by the Town Board as a condition of approval of a final plat of subdivision or part thereof, certified survey map, or land division for each dwelling unit to be provided, added or created by the proposed development.
- D. Other financing. This section does not prohibit or limit the authority of the Town of Cedarburg to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by the Town of Cedarburg shall be reduced to compensate for any other costs, special assessments, land dedication or other fees imposed by the Town of Cedarburg on developers to provide or pay for capital costs.
- E. Payment.
 - (1) Impact fees shall be payable by the developer or the property owner to the Town Treasurer in full within 14 days of the issuance of a building permit. If any development affected by an impact fee imposed under this Section is under construction or has received a building permit at the time this Section takes effect, all required impact fees shall be paid to the Town Treasurer in full within 14 days of the issuance of a certificate of occupancy. Any building permit or certificate of occupancy issued prior to the full payment of all impact fees due is conditional and may be revoked for nonpayment of impact fees after 14 days has elapsed from the date of permit or certificate issuance. Impact fees shall be presumed to be payable by the owner of record at the time the building permit or certificate of occupancy is requested.
 - (2) When not required.
 - (a) When a lot or parcel for which payment has been made is further divided, payment shall be required only for the additional lot(s) or parcel(s) created.
 - (b) No payment shall be required on any lot which supports a residential structure existing prior to the approval of the final plat or certified survey map.
 - (3) Multiple dwelling units. Where there are multiple dwelling units on a lot or parcel of land, the fees shall be imposed for each dwelling unit.
- F. Impact Fees Schedule and annual adjustments. The fees imposed pursuant to this section shall be listed on the Impact Fees Schedule and approved by the Town Board on an annual basis as a part of the Fiscal Year Annual Fee List. The amount of the impact fees imposed shall be adjusted annually based upon the Construction

Cost Index (CCI) as reported by the Engineering News Record (ENR) effective January 1 of each year by a percentage equal to the annual percent change as listed for the end of October of the previous year.

- G. Time to expend impact fees and return of impact fees not expended. Impact fees that are imposed and collected by the Town of Cedarburg but are not used within seven years after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed along with an interest that has accumulated as described in Subsection H(1) hereof. The schedule of reasonable time periods within which impact fees must be spent or refunded is as follows:

- (1) Parks, public sites and open spaces: 7 years.
- (2) Municipal building sites and related facilities: 7 years.
- (3) Drainage, highways, traffic control and other infrastructure: 7 years.

The seven year time limit may be extended for three years if the Town adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the seven year limit, the Town needs an additional three years to use the impact fees that were collected.

- H. Administration and Use.

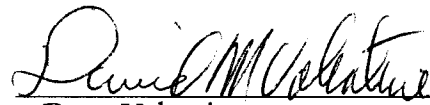
- (1) Use. Revenues from each impact fee that is imposed shall be placed in a separate segregated interest-bearing account and shall be accounted for separately from the other funds of the Town. Impact fee revenues and interest earned on impact fee revenues may be used solely for the purpose of paying for the particular capital costs for which the impact fee was imposed, unless the fee is refunded as otherwise provided herein. These costs may include the costs of debt service on bonds or similar debt instruments when the debt has been incurred for the purpose of proceeding with designated public facilities projects prior to the collection of all anticipated impact fees for the project
- (2) Report. Commencing with the calendar year subsequent to the effective date of this section, the Town Treasurer shall report annually to the Town Board with regard to all deposits, withdrawals and fund balances in regard to impact fees. The purpose of the annual report is to provide the Town Board with information necessary to determine that all funds collected are spent within a reasonable amount of time for the purposes intended and that the amount of the fees imposed continues to represent an equitable and reasonable apportionment of the cost of public improvements and requirements generated by new residential development.
- (3) Refunds. Should the Town Board determine that any refunds be made, such refunds shall be made proportionally to the current owner(s) of the lot(s) or parcel(s) as their interests may appear, taking into account the time and

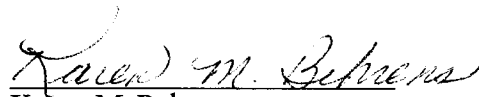
amount of fees paid for such lot(s) and parcel(s).

- (4) Documentation. To demonstrate the compliance with the requirements of § 66.0617(4), Wis. Stats., the following Town document contains the needs assessments for the impact fees identified in this section and shall be kept on file and available for public inspection in the office of the Town Clerk: Town of Cedarburg, Wisconsin Impact Fee Study, September 1, 2005.
- I. Applicability. The regulations in this section shall be applicable to certified survey maps and final plats approved or reapproved if the time for recording has expired, after the effective date hereof.
- J. Appeal. Any developer or property owner upon whom an impact fee is imposed by this section shall have the right to contest the amount, collection or use of the impact fee to the Town Board. Such appeals shall be filed in writing with the Town Administrator within 30 days of receipt of request from the Town for payment of the impact fee. The Town Board shall set a reasonable time for hearing the appeal and give due notice to the parties in interest. At the hearing the appellant may appear in person, by agent, or by attorney. The Town Board shall decide all appeals within 30 days after the hearing and shall transmit a copy of its written decision to the appellant.

This ordinance shall be in full force and effect upon its passage and publication as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 7th day of February, 2007.


Dave Valentine
Town Chairman


Karen M. Behrens
Town Clerk