

ORDINANCE NO. 15-2007

**AN ORDINANCE IMPOSING A PARK IMPACT FEE UPON NEW CONSTRUCTION
IN THE TOWN OF PLAINFIELD, INDIANA**

WHEREAS, the Town Council ("Town Council") of the Town of Plainfield ("Town") deems it desirable and in the best interests of the Town to adopt an Ordinance for the imposition of a Park Impact Fee for the creation of new and maintenance of existing parks, trails and recreation facilities in the Town; and

WHEREAS, the Town has completed the pre-requisites for the adoption of the Ordinance and imposition of the fees;

NOW, THEREFORE, by the powers vested in the Town Council, it is hereby ORDERED and ORDAINED as follow:

SECTION 1: LIMITATION ON IMPOSITION OF IMPACT FEE

This Ordinance shall expire and become void five years after its effective date as required by IC §36-7-4-1340, unless action is undertaken to extend its life consistent with the provisions of said Code section which contemplates a replacement ordinance.

SECTION 2: ESTABLISHMENT OF IMPACT ZONE

There is hereby established one park and recreational Infrastructure Impact Zone, the borders of which are co-terminus with the existing corporate borders of the Town, and, as they may be extended from time to time through annexation, and, over which the Town exercises planning and zoning jurisdiction. In this regard, the Town Council specifically finds that there is a functional relationship between the components of the Park and Recreation Master Plan and Infrastructure Improvement Plan and that such park and recreational plan provides a reasonably uniform benefit to all of the citizens throughout the impact zone as of the adoption of this chapter. The Town Council further finds that all areas within the impact zone are contiguous as required in IC §36-7-4-1316. Except as provided below, this chapter shall apply uniformly to all residential developments within the impact zone hereby established for which the Town may require a structural building permit and which creates a need for new and additional park and recreational infrastructure. This chapter shall not apply to:

- (A) Developments meeting the requirements set forth in IC §36-7-4-1322(g);
- (B) Improvements which do not require a structural building permit;
- (C) Improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed;

(D) The replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof.

(E) Non-residential development.

SECTION 3: ZONE IMPROVEMENT PLAN

(A) As a pre-condition to the adoption of this chapter, the Town Council undertook a comprehensive and detailed park and recreational impact analysis through the employment for that purpose of Edwards and Kelcey. The Town Council does now find that the resulting study and data base constitute a sufficient study to constitute a Zone Improvement Plan. The Town Council does hereby adopt the Park and Recreation Master Plan and Infrastructure Improvement Plan prepared by Edwards and Kelcey, and dated according to its most recent update, the 25th day of March, 2007, as its Zone Improvement Plan and finds in this regard that said Zone Improvement Plan does contain the following elements:

- (1) Reasonable estimates relating to the nature and location of development that is expected within the impact Zone during the planning period, which, for the purposes of this chapter is defined to be a period of five (5) years commencing with the date of adoption hereof.
- (2) A reasonable determination of the community level of service for the Impact Zone.
- (3) A reasonable determination of the current level of service provided within the Impact Zone.
- (4) A reasonable estimate of the nature, location, sequencing, and timing of the park and recreational requirements and costs necessary to provide the community level of service for the developments contemplated in division (A)(1) of this section.
- (5) A reasonable estimate of the share of the park and recreational costs identified in division (A)(4) of this section that will be used to:
 - (a) Raise the current level of service for existing development or provide service to existing development; or
 - (b) Provide service to new development.
- (6) A reasonable estimate of revenues that:
 - (a) Are from sources other than impact fees; and,

- (b) Will be used to finance the cost identified in division (A)(5)(a) of this section.
- (7) A description of the nature and location of existing infrastructure in the impact zone.
- (8) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(B) In addition, the Town Council does hereby specifically adopt the Zone Improvement Plan as an official part of the Comprehensive Plan of the Town of Plainfield, pursuant to IC §36-7-4-500 et seq.

SECTION 4: ESTABLISHMENT OF PARK AND RECREATIONAL IMPACT FEE

(A) Based upon the Park and Recreation Master Plan and Infrastructure Improvement Plan previously referred to and which is made a part of this chapter, the Town Council determines that the cost per single-family dwelling unit and multi-family dwelling unit is in the amount of \$850. The Town Council does hereby make as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached by the Town Council in the process of developing the Zone Improvement Plan.

(B) In the event that any parcel of real estate considered in the creation of the Zone Improvement Plan undergoes a change in use, redevelopment, or a modification which requires a structural building permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure.

SECTION 5: CREDIT IN LIEU OF PAYMENT; EXEMPTIONS

(A) Any person or entity obligated to pay a fee pursuant to the terms of this chapter may have the option of financing, constructing and dedicating park and recreational infrastructure in the form of block parks owned and operated by a neighborhood association for the public benefit, all as described and defined in the Infrastructure Improvement Plan, instead of making all or part of any impact fee payment which may be due, so long as such financing, construction and dedication are accomplished pursuant to the Infrastructure Improvement Plan of the Town, and in accordance with the park and recreational specifications for such park and recreational infrastructure to be improved in force within the town's jurisdiction at the time. Such fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit for the actual costs of planning, financing, constructing such park and recreational improvements to the Town. Such request for credit shall be presented prior to the issuance of the improvement location permit. In the event the actual cost of such planning, financing, and construction do not equal the amount of the impact fee due pursuant to the calculation provided for in the schedule set forth in §96.04, the remaining balance shall be due in accordance with the provisions stated hereafter.

(B) Credits against impact fees otherwise due shall be allowed pursuant to this section for all infrastructure and improvements constructed or furnished in accordance with IC §§36-7-4-

1313 and 36-7-4-1335 since January 1, 1989. In addition, a fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided for above. Any person or entity otherwise obligated to pay the fee established by this chapter whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from said fee if they repair or replace the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed structure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

SECTION 6: IMPACT FEE DUE UPON ISSUANCE OF STRUCTURAL BUILDING PERMIT

(A) The impact fee imposed pursuant to the terms of this chapter shall be due and payable upon the issuance of a structural building permit by the Town. In this regard, it is understood that the structural building permit is synonymous with the term "structural building permit" as that term is used in IC §36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise. The entire fee which is calculated pursuant to the terms of this chapter shall be due at said time unless the amount of the fee upon calculation is greater than \$5,000, in which case an installment plan may be requested by the applicant in accordance with the terms set forth in IC §36-7-4-1324 (a), (b), (c) and (d). The Plainfield Impact Fee Review Board shall establish specific rules consistent with said code provisions for installment payments. The interest rate on any installment plan or deferred payment shall be the pre-judgment rate of interest set forth in the Indiana Code as from time to time amended.

(B) If a fee payer requests, the amount of the impact fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the improvement location permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due. The Town shall make such assessment within 30 days of the date of such voluntary request or at the issuance of the improvement location permit with or without a request.

SECTION 7: LIEN RIGHTS ESTABLISHED

Pursuant to IC §36-7-4-1325, the Town of Plainfield acquires a lien against the real estate which is the subject of the impact fee. Upon adoption, this chapter shall be recorded, and, thereafter, it shall constitute constructive notice of the lien rights of the Town. The Town may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of an impact fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this chapter.

SECTION 8: FORM OF RECEIPT

The Clerk Treasurer of the Town of Plainfield shall issue a receipt for any and all impact fees collected, and the form of such receipt shall be as follows:

Received of _____ (fee payer), this ____ day of _____, 20__, the sum of _____ (\$_____) in (full) (partial) satisfaction of impact fees due pursuant to Ordinance No. _____ relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made part hereof, and subject to lien rights in favor of the Town of Plainfield in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: _____ (\$_____).

Clerk-Treasurer, Town of Plainfield

SECTION 9: IMPACT FEE REVIEW BOARD

An Impact Fee Review Board ("Review Board") shall be established consisting of three (3) members appointed by the President of the Town Council. A member of the Review Board may not be a member of the Plainfield Plan Commission.

The term of the Review Board members shall be one (1) year commencing on January 1 and ending on the following December 31.

The Review Board membership must meet the following conditions: (1) one (1) member who is a real estate broker licensed in Indiana; (2) one (1) member who is an engineer licensed in Indiana; and (3) one (1) member who is a certified public accountant.

In the event of a conflict of interest on the Review Board, the President of the Town Council shall appoint a temporary replacement member meeting the qualifications of the member being temporarily replaced.

The Review Board shall have the power and duties set forth specifically in I.C. §36-7-4-1338 as well as any other duties set forth generally in I.C. §36-7-4-1300, 1300 SERIES-IMPACT FEES.

SECTION 10: APPEALS

(A) Any fee payer who believes itself to be aggrieved by the calculation of the impact fee, may appeal from such calculation to the Town Impact Fee Review Board and the Town Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

- (1) A fact assumption used in determining the amount of the impact fee is incorrect; or
- (2) The amount of the impact fee is greater than the amount allowed under IC §36-7-4-1320, 1321 and 1322.

(B) Upon conclusion of the presentation of evidence, the Plainfield Impact Fee Review Board shall make a determination within not more than 30 days, upon the facts presented and may make such adjustments in the impact fee as they believe are appropriate under the circumstances, if any.

(C) An appeal under this section must be filed not later than thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with the Clerk-Treasurer's office, together with a filing fee in the amount of \$100. The filing fee shall be refunded in full:

- (1) If the Petition for Review is granted and the impact fee is eliminated, reduced or adjusted by the Plainfield Impact Fee Review Board, by independent action of the Town, or by a court having jurisdiction, and,
- (2) If the reviewing body determines that the amounts of the fees, reductions, or credits were arbitrary or capricious. The Petition for Review shall be in a form calculated to inform the Plainfield Impact Fee Review Board of the nature of the complaint, the parties to the action, and the relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee, and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

(D) The town shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or, condition issuance of the permit on the payment of the impact fee. If the impact fee totals \$1,000 or less, the town may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

SECTION 11: ESTABLISHMENT OF PARK AND RECREATIONAL FUND

(A) There is hereby established the Town Park and Recreational Fund. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this chapter to be utilized in connection with the purposes set forth herein. The Fund shall consist initially of one account based upon the current existence of one Impact Zone. In the event, and only in the event, that an additional Impact Zone is created hereafter, a separate account shall be maintained for each separate Impact Zone established within the Town. Interest earned on the Fund or on any account within the Fund, shall be deposited and maintained within the Fund or the separate account. The Clerk-Treasurer of the Town shall maintain records of the status of the Fund or any account which may be established therein, and shall make an annual report of said fund and

accounts which shall be available to the public in general and fee payers, upon request, in particular.

(B) Pursuant to IC §36-7-4-1332 (e), the Clerk-Treasurer is designated as the town official responsible to for acting upon refund requests. In order to facilitate refunds when they may be due, the Clerk-Treasurer is directed to identify the purpose of any impact fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

SECTION 12: USE OF IMPACT FEES COLLECTED

Any and all fees collected pursuant to the provisions of this chapter may be utilized for the following purposes only by the Town, acting by and through its Town Council, which, for the purpose of this chapter is identified as the "infrastructure agency" contemplated by IC §36-7-4-1317:

(A) Providing funds to be utilized by the town for the purpose of paying the capital costs of new park and recreational infrastructure that is necessary to serve the new development within the corporate limits of the Town and that is identified in the Zone Improvement Plan;

(B) An amount not to exceed 5% of the annual collections of the fee to be utilized for expenses incurred by the Town for the consulting services used to establish this chapter;

(C) To pay any refund due pursuant to the terms of this Ordinance;

(D) To pay the debt service cost on an obligation issued to provide new park and recreational infrastructure described in division (A) above.

SECTION 13: HOUSE ENROLLED ACT NO. 1467

The Town Council specifically acknowledges the existence of a law adopted by the General Assembly of the State of Indiana which regulates the imposition of impact fee ordinances by municipal corporations within the state. It is the intent of the town to comply with such legislation, and this Ordinance shall be construed in all respects to be consistent with the Act. The substantive and procedural requirements of IC §36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the Town Council.

SECTION 14: AMENDMENTS AND REVIEW

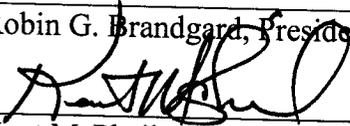
The impact fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the Town has no control. The Town Council shall, therefore, not less than once each year, cause a review to be made by Town staff or consultants as may be required, to determine the continuing validity of the Impact Fee, the Impact Zone, and the Zone Improvement Plan. The Town Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with the rational nexus test to continue, to insure that procedural due process is maintained or enhanced and to insure that this

chapter meets the requirements of the IC §36-7-4-1300 series. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Comprehensive Plan.

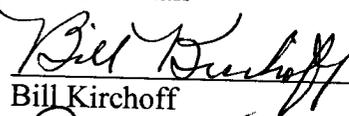
THIS ORDINANCE is hereby APPROVED and ADOPTED, this 25th day of June, 2007.

TOWN COUNCIL, TOWN OF PLAINFIELD,
HENDRICKS COUNTY, STATE OF INDIANA

Robin G. Brandgard, President



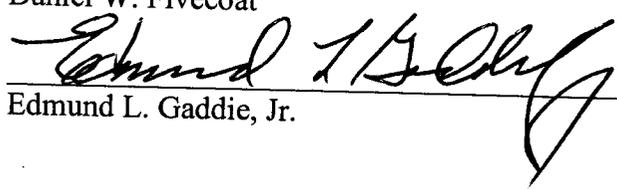
Kent McPhail



Bill Kirchoff

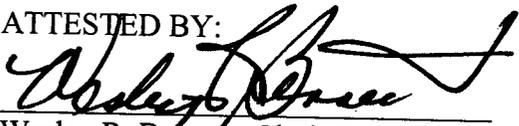


Daniel W. Fivecoat



Edmund L. Gaddie, Jr.

ATTESTED BY:



Wesley R. Bennett, Clerk-Treasurer
Town of Plainfield