

**Whatcom County Fire District #21
Station 61 – Blaine
9408 Odell Rd
10:00 a.m.
September 7, 2022
Special Board of Fire Commissioners Meeting
Work Study**

CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

Chairman Ansell called the special Whatcom County Fire District #21 Board of Fire Commissioners work study for September 7, 2022, to order at 10:01 a.m. at Station 61 – 9408 Odell Rd, Blaine, WA.

ROLL CALL

Chairman Bruce Ansell; Vice-Chairman John Crawford (via Zoom); Commissioners Scott Fischer and Kimberly McMurray; Fire Chief Jason Van der Veen; Division Chief Shaun Ward; Attorney Jon Sitkin.

CAPITAL FACILITY PLANNING AND IMPACT FEES/MITIGATION PRESENTATION

City of Blaine’s Attorney, Jon Sitkin, provided an informational presentation on capital facility planning along with impact and mitigation fees. This presentation was also presented to the City of Blaine Planning Department and Interim City Manager.

Jon Sitkin represented the district in early 2000 when former North Whatcom Fire and Rescue Fire Chief Tom Fields requested assistance when an uptick in development in the area threatened to derail the current levels of service provided. A decision was made in favor of the fire service, which was appealed several times, ultimately landing in the supreme court. The district prevailed, enabling them to collect mitigation fees from the developers. Mitigation fees collected cannot exceed \$2,500 per unit, as stated in the current Capital Facilities Plan.

Jon Sitkin has managed many cases all over the state, dealing with once rural areas being developed into urban areas served by rural fire departments. With no additional funds to deal with this growth, levels of service will be affected.

Jon Sitkin provided information regarding typical impacts of development:

- New fire and emergency response demands that cause a reduction in levels of service to existing residents and businesses.
- Accelerated depreciation of critical and essential public facilities and equipment caused by the added demands placed upon the fire district, its capital, apparatus, staff, and volunteers as a result of the project.
- Raising concerns regarding emergency vehicle access related to parking and design elements of the project; and
- Necessity for measures to ensure adequate fire suppression systems are included in the design of the project and, after that, maintained by the owner.

Jon Sitkin noted that city planners, officials, developers, and the community do not understand the nature of fire response, fire apparatus needs, and all that it entails. It would benefit the district to provide in-depth fire service education to the community as a whole, including the ramifications of developing with no additional staffing, concurrent calls, and lack of funding resulting in longer response times. Other concerns include accelerated depreciation of facilities and equipment and staff burnout.

The district also needs to attend all technical review meetings to ensure its needs for fire response are met and maintained.

OVERVIEW OF PRESENTATION

Jon Sitkin provided an overview of the presentation, which included planning for growth, responding to developmental proposals, impact fees and legal requirements.

GROWTH MANAGEMENT ACT (GMA)

Jon Sitkin reviewed the GMA Requirements, noting that in the 1990s, the fire service did not take an active role in the planning process.

Highlights included:

- The GMA requires each county's comprehensive plan to be consistent with the goals of the GMA.
- GMA goal is to ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- The Growth Management Act requires each county to plan for and regulate urban growth.
- Under the GMA, urban growth occurs first in areas where adequate public facilities and service capacities exist to serve such development.
- "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and typically not associated with rural areas,
- "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.
- "Public facilities" include streets, roads, highways, sidewalks, street, and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.
- GMA require counties and cities to include as part of its comprehensive plan a capital facility plan.
- GMA requires a capital facility plan that includes a forecast of future needs for capital facilities.
 - District's capital facility plan needs to be included in the county comprehensive plan for the county to have a GMA-compliant capital facility plan

- GMA requires that urban growth areas have adequate facilities and services at designated levels of service.

MITIGATION FEE DISCUSSION

Chairman Ansell requested clarification regarding the mitigation guidelines. Jon Sitkin noted that there are various ways to defend the needs identified in the district's capital facilities plan, including how assets are booked. Traditional brick-and-mortar capital includes apparatus. The district may be able to make an argument to classify hoses, boots, and helmets as capital, depending on how they are reported on the asset sheets and in policy. It is crucial that the district's capital definitions align with the policy.

Jon Sitkin noted that typically both agencies would adopt the district's capital facilities plan by reference, including how capital is defined. However, the district may want to add the reasoning for the definitions if it encompasses more than land, building, associated infrastructure, and/or apparatus. Consistency throughout the organization with regard to capital definitions is key and will be assessed by the auditor. The other stipulation is that mitigation fees must be refunded to the developer if not utilized within the specified timeline.

Chairman Ansell requested information regarding mitigation fees and if and when they can be changed. Jon Sitkin noted that by the current mitigation agreement, the district could raise fees not to exceed \$2,500, however, any change, including an increase up to \$2,500, must be defensible through the capital facility planning and adoption process, which in turn must be adopted by both the county and city.

There was further discussion regarding how the mitigation fees can currently be utilized. The district is under the impression that those fees can only be used for new growth or impacts from further development. There was a question regarding whether funds could be utilized to update current stations and equipment. Mitigation fees cannot be used to remedy existing deficiencies unless new development causes them to decline further. Mitigation fees can then be utilized to bring it back to the current level.

Jon Sitkin stated that the district could argue for updating a current station (Birch Bay Station 63). An update could affect responses and increases aid or backup in specific areas. The capital facilities plan would need to discuss these improvement needs and explain the district's integrated or mutually supported system and how mitigation fees will be utilized. The plan would also identify the mitigation fee usage timeline.

In addition, by signing a mitigation agreement, the developer agrees that the funds will be used to fund capital identified in the capital facilities plan.

Jon Sitkin stressed the importance of educating and getting buy-in from the local government, community, and developers during the entire capital facility process.

GMA CAPITAL FACILITY PLAN REQUIREMENTS

- One of the purposes of capital facility planning is to determine:
 - What capital facilities are necessary to serve new development; and
 - Whether existing and anticipated revenues can meet those capital cost requirements; and, if not,

- What impact fees or other revenue (if available) may be necessary to meet the revenue needs caused by new development to maintain the existing level of service (LOS).
- A capital facilities plan element consisting of:
 - (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.
 - (b) A forecast of the future needs for such capital facilities.
 - (c) The proposed locations and capacities of expanded or new capital facilities.
 - (d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

DEVELOPMENT OF A CAPITAL FACILITY PLAN – PROPOSED NEW CAPITAL FACILITIES

- The capital facility plan identifies the future capital facility needs to maintain the existing designated LOS standards factoring in the impact of new growth.
- Impacts of new growth include types of uses, location of new development, and traffic impacts, including those generated by new development.
- The capital facility plan should identify those future new fire stations and equipment/apparatus necessary due to the projected new growth.
- The capital facility plan must address whether the district can provide an appropriate level of service for the growth within the district over the county’s 20-year growth planning period based upon existing and anticipated revenue.
- The capital facility plan must include a finance plan for the necessary capital facilities to provide levels of service for development planned by the county/city.
 - Must include a minimum six-year plan that will outline how such facilities will be financed within projected funding capacities and identify sources of public money and identify those facilities that will be built within six years.
 - The district capital facility plan must address whether existing and anticipated revenue is sufficient to develop the necessary capital to provide the applicable LOS.
- The capital facility financial plan must address how existing deficiencies in level of service and capital facilities are to be paid from existing revenues.
 - Cannot have new development pay for existing deficiencies
- If the capital facility plan indicates that there is insufficient forecasted revenue projected to develop the necessary capital over the 20-year planning period, this **MUST** be presented to the county/city.
- The county/city must address this deficiency in its comprehensive plan and development regulations.
- Revenue deficiency can be a basis to condition or deny developments.
 - Revenue deficiency should be set forth in the county/city comprehensive plan.

DISCUSSION

Jon Sitkin encouraged the district to meet with general purpose governments to come to an understanding regarding the levels of service that will be adopted and the effect on response times during an emergency and to insurance ratings.

Chairman Ansell noted that the district is currently at the limits of its response level. The district responds to concurrent calls at least forty-five percent (45%) of the time. This means one or more stations cannot respond to their call area, drawing in other stations or agencies, resulting in longer response times. With further developments in process, there is more pressure on the existing overburdened call load and currently no means for additional funding.

The district needs to show its level of standards cover requirements (RCW 52.33) and how that is measured.

Jon Sitkin noted that the district cannot halt development. He reiterated the importance of ensuring that there is a justification for a higher mitigation fee placed in the new capital facilities plan, which could result in resistance from the developers. The district could also ask the city and county to adopt an impact fee based on the capital facilities plan, which would take much education by the district and could result in further pushback from the developers and possibly council members.

Jon Sitkin noted that this problem is not unique to the district. This results from pushing growth into a rural area and then calling it urban without adding the needed adequate resources.

Jon Sitkin stated that if a newly created capital facilities plan demonstrates insufficient revenue that can be forecasted over the course of twenty (20) years, the district needs to advise both the county and city, which should address the deficiency of service in their comprehensive plans, providing they adopt the district's plan. This could provide a basis for them, not the district, to deny or approve upcoming development.

The capital facilities plan must be adopted and referenced by the county and the city. The hope is that both comprehensive and capital facilities plans will be aligned.

Chairman Ansell acknowledged his concern regarding taxes. How to fund the fire service given the taxing structure, limitations, and levy lid lift failures? Jon Sitkin recommended running two scenarios (mitigation fee increase/levy lid lift) and educating the public about what each would provide in the way of services or lack of services to the community.

If the city or county collected impact fees on behalf of the district, those funds would have a ten-year (10) life span, allowing more time to spend.

CAPITAL FACILITY PLAN – MITIGATION FEES

- The district capital facility plan can include a system for impact fees and/or a SEPA mitigation fee to address revenue deficiency.
- Any mitigation fee system should follow the Impact Fee process.

STATE ENVIRONMENTAL POLICY ACT (SEPA)

Jon Sitkin reviewed the SEPA process that a development project must follow.

- Environmental reviews under SEPA must identify significant impacts on the natural and built environment. Such reviews must use sufficient information and disclose areas where data is speculative or unknown.
- SEPA requires reasonably thorough information, disclosure and discussion, good data, and analysis to support conclusions, and sufficient information to make a reasoned decision.
- SEPA review is commenced by the project proponent completion of a SEPA checklist, which addresses public services.
- A comprehensive plan update is a non-project action, a more general review of the impacts of the planning proposal.
- Key time to address the level of service, impacts of increased traffic on response times, and increased demand on response time to existing development.
- A development project is a project action, resulting in a more detailed project specific SEPA review.
 - District should address and comment on project-specific requirements on all projects.
- SEPA can result in a Determination of Non-Significance (DNS), a Mitigated Determination of Non-Significance (MDNS), or a Determination of Significance (DS), which will require an Environmental Impact Statement.
- District should submit comments in a timely fashion on every project.

Jon Sitkin cautioned that developers often do not accurately disclose their impact on specific public services, such as fire service response, which should be addressed in the capital facilities plan.

SEPA MITIGATION

- In the absence of impact fee authority, the city/county can:
- Use SEPA processes to obtain mitigation.
- Such agreements with a developer must meet the requirements of RCW 82.02.020.
 - Provide comprehensive plan policy language directing a review of project impacts during project review, and SEPA review.
 - Supplemental action can be for city/county to adopt and Implement a concurrency ordinance.
- SEPA review at the project level to identify impacts and impose mitigation:
 - If the developer does not agree to voluntary mitigation, the county can deny development-must have an EIS.
 - If the county does not deny the development, the district can challenge the development in the regulatory processes and court if necessary.
 - This is what entities are usually seeking to avoid.

IMPACT FEES AND LIMITATIONS, INCLUDING SEPA MITIGATION

- Impact fees may only be assessed for system improvements.
- Impact fees may not be assessed to correct deficiencies in the district's ability to meet the applicable LOS.
- The county/city imposes mitigation or an impact fee. Mitigation fees can be paid directly to the district.

- Impact fees must be identified in and only used for those facilities identified in the county comprehensive plan/capital facility plan.
- Adopted for each type of development activity that is subject to impact fees-SFR, MFR, commercial, industrial, etc.
 - Typically based upon a formula or other method of calculating such impact fees
- Fees must be held in a separate account and only expended on capital identified in the capital facility plan. Must be returned if not spent within ten years.
- Only applicable to new development to address additional demand and need for services; may not be used to cure existing deficiencies.
- Must provide for a proportionate share that includes:
 - Cost of public facilities
 - An adjustment for past or future payments anticipated to be made by new development, including taxes or other payments.
 - Available other means of payment
 - Credits for other improvements or land dedication

Jon Sitkin provided a mitigation fee formula example; however, he noted that a consultant specializing in GIS planning would be better able to develop an applicable formula for the district.

CONCURRENCY

- Local governments can adopt a concurrency ordinance to assure that those public facilities and services necessary to support development are adequate to serve that development at the time the development is available for occupancy and use without decreasing service levels below locally established minimum standards. WAC 365-196-840.
 - Whatcom County has such an ordinance 20-8212
- A concurrency regulation and process must be established
 - If not, can use the existing regulatory process and project approval criteria, such as SEPA and land use permit approval criteria

RECOMMENDATIONS AND CONSIDERATIONS

Jon Sitkin provided the following recommendations/suggestions:

- Extend capital facilities plan one year to allow for an appropriate planning process
 - Utilize parts of the district master plan where appropriate – make it more relevant
 - Align capital facilities plan to align with both the city and county’s comp plan
- Engage with both general local purpose governments
 - Maintain relationships
 - Be involved in any new development process (*make fire service needs and deficiencies known*)
- Hire a GIS consultant (*possibly share costs with the city*) or hire one that can collaborate with the city’s consultant
 - Crucial to update data, demands, population projections, and costs and get accurate numbers (*original 2009; in-house update completed in 2016*)
 - Include cost in the 2023 budget
 - Align plans

- All fire districts in Whatcom County share the cost of employing one GIS consultant
- Publicly lowering response times
 - Response time for life safety
 - Response time for fire protection

Chief Van der Veen noted that many of the same recommendations came from the recently attended joint meeting with Deputy Fire Marshal Nielsen, Interim City Manager Wilbrecht, City Planner Clauson, and Attorney Sitkin. Jon Sitkin suggested entering into an agreement with the City of Blaine to possibly utilize the same consultant or consultants. They could potentially work together to update, align, and compliment both plans.

NEXT STEPS

Chief Van der Veen will coordinate with the City of Blaine to schedule a meeting to discuss working together for future planning.

ADJOURNMENT

MOTION: There being no further business, Chairman Ansell moved to adjourn the meeting at 11:07 a.m. The motion was seconded by Commissioner McMurray and approved 4-0.

Respectfully Submitted by:

Jennie Sand, Board Secretary

ATTEST:

Bruce Ansell, Chairman

John Crawford, Vice-Chairman

Scott Fischer, Commissioner

Kimberly McMurray

Jason Van der Veen, Fire Chief