



La Plata County
Colorado

LA PLATA COUNTY 2011 COMP PLAN
LEGAL ISSUES MEMORANDUM

Memo No. 4
Date: July 9, 2011
From: La Plata County Attorney's Office (MTB)
Subject: Multimodal Goals & Strategies

I. STATEMENT OF THE ISSUE PRESENTED

Goal Number 1 listed in Chapter 7 of DRAFT #2a of the La Plata County, Colorado, Comprehensive Community Plan, entitled "Transportation", is to "[p]romote development that is accessed with multiple modes of transportation". The strategies identified to achieve this goal include Strategy (c) to "[i]mplement a range of process-based and financial incentives for developers to meet multimodal goals, such as additional staff support, faster review turn around, lower review fees, and possible tax incentives".

The purpose of the memorandum is to identify legal issues that should be considered with respect to a comprehensive approach to multimodal goals prior to the adoption or implementation of specific strategies such as process-based and financial incentives.

II. CONCLUSIONS/RECOMMENDATION

As a basis for the implementation of the Comprehensive Plan's multimodal goals and strategies, a comprehensive study should be made of multimodal transportation needs, their relationship to development in the County and the preferred mechanisms for meeting them.

III. ANALYSIS

Appendix A to the above-referenced draft of the Comprehensive Plan defines “multimodal” as follows: “The movement of people and goods using more than one mode of travel, thereby providing users with the best choices of service. Multi-modalism considers how policies for a single mode affect all other modes.” A “mode” is defined as follows: “The different ways used to transport people or cargo. Examples are walking, bicycling, automobiles, buses, trains, motorcycles, and trucks.”

The implementation of multimodal goals necessarily includes the financing of infrastructure and the coordination of such infrastructure with development. Attached hereto for reference is a Memorandum dated May 26, 2011, from County Attorney Sheryl Rogers and Research Analyst Danielle Lorrigan regarding “County Mechanisms to Finance Public Infrastructure”. The Memorandum discusses the mechanisms available to the County and the public to pay for public infrastructure either through the County’s own initiative or through public/private cooperation. One such mechanism for the financing of public infrastructure discussed in the memo, which could possibly be utilized in connection with the Comprehensive Plan’s multimodal goals and strategies, is the use of Impact Fees.

An impact fee¹ is a legislative action taken by the Board of County Commissioners to assess a one-time charge against any new development to recover the costs incurred by the County in providing public facilities required to serve a new development. An impact fee is not a tax, which is a general revenue raising mechanism, but a fee charged solely to cover the cost of a specific activity, service or infrastructure. An impact fee is calculated based on the impact of all new development and the same fee is charged to all new development in a particular class. All impact fee schedules must include “provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development fee is charged.”

The impact fee must relate to a capital expenditure;² and be imposed as a condition of approval of land development, as a prerequisite to obtaining a permit or service. There is no requirement that the value of the improvements to each property exactly matches the amount contributed by each property, nor must an impact fee be designated for a specific construction project. Furthermore, facilities funded by impact fees need not import special “benefits” to the fee payer.

Statute requires local government to “quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development.” A technical study demonstrates this nexus, relates the impact fee to a need created by new

¹ Statute does not define “impact fee” but uses the terms “land development charge”, which are defined as: “[A]ny fee, charge or assessment relating to a capital expenditure which is imposed on land development as a condition of approval of such land development, as prerequisite to obtaining a permit or service.” C.R.S. § 29-1-802.

² [A]ny expenditure for an improvement, facility, or piece of equipment necessitated by land development which is directly related to a local government service, has an estimated useful life of five years or longer, and is required by charter or general policy of a local government pursuant to resolution or ordinance. C.R.S. § 29-1-802.

development, and shows that the amount charged is proportional to the cost of providing public facilities.

Another mechanism that may be considered for the implementation multimodal goals and strategies is the dedication of private land in connection with private development. There is a very well-established body of law regarding the circumstances under which a County can require the dedication of private property as a condition of development.³ Two requirements must be met in order to require such a dedication: (1) there must be an “essential nexus” between the legitimate government interest to be advanced and the required dedication, and (2) there must be “rough proportionality” between the governmental interest and the required dedication.⁴ In short, in order to justify a dedication condition the government must quantify the impacts created by the development and document how the required dedication will alleviate the impact created.⁵

A review of the different mechanisms available for the development of public infrastructure and the law related to the dedication of private land for infrastructure in connection with development reveals a common element. That common element is the requirement to quantify and demonstrate the need for such infrastructure and its relationship to development. This requirement is most typically met by use of a comprehensive, jurisdiction-wide technical study of the needs and goals for the desired infrastructure, and their relationship to development.

Strategy (c) referenced above refers to “a range of process-based and financial incentives for developers to meet multimodal goals, such as additional staff support, faster review turn around, lower review fees, and possible tax incentives”. The attached memorandum discusses limitations on the use of taxes for the financing of public infrastructure. The amount of staff support is purely a policy / staffing question. With respect to “faster review turn around and lower review fees”, application fees for land use approvals are essentially service fees, charged to cover the cost of the service provided. Such fees cannot be assessed arbitrarily, and must be reasonably related to the overall cost of the service.⁶ Strict mathematical precision is not required, but the County must carefully match the fee to the costs associated with providing the service and ensure that all fee revenue is used for that service.⁷ To grant lower application/processing fees and expedited review time to developments creating the need for multimodal transportation measures could very possibly run afoul of these legal requirements, unless their processing does indeed require less time and it can be demonstrated clearly that no revenues from fees for other types of applications are supporting the services provided to process applications for such developments.

³ See La Plata County 2011 Comp Plan Legal Issues Memorandum No. 2, “Exactions of private property for public use”.

⁴See *Id.*; Dolan v. City of Tigard, 512 U.S. 374 (1994); Nollan, 483 U.S. at 837 (1987); CRS § 29-20-203; Krupp, 19 P.3d at 695 (Colo. 2001); Wolf Ranch v. City of Colorado Springs, 220 P.3d 559 (Colo. 2009); CRS §§ 29-20-201 through 29-20-205.

⁵ See Colorado Land Planning and Development Law, Seventh Edition, Donald L. Elliot, Esq., General Editor, Section 6.4.1 “Exactions”.

⁶ See Colorado Land Planning and Development Law, Seventh Edition, Donald L. Elliot, Esq., General Editor, Section 6.6.4; Krupp v. Breckenridge Sanitation District, 19 P.3d 687 (Colo. 2001).

⁷ *Id.*