

From: Christopher J. McGowne <McGowneC@api.org>
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To: Nancy Sharpe; Kathleen Conti; Jeff Baker; Nancy Jackson; Bill L. Holen; Chuck Haskins; Robert Hill
Cc: Lynn M. Granger
Subject: Traffic Impact Fee - API Comments

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Good evening,

We wanted to reach out to you today about the study session you held on the proposed Arapahoe County Traffic Impact fee. First, we appreciate the request for feedback from the industry on your proposal. As always, we are happy to provide you with our thoughts, as we feel that it is better to work collaboratively on issues such as these. However, we did have some concern with some of the comments that we heard during the study session.

First, we would note that we agree with the county's statement today that property taxes, through their payment by our operators and ultimate allocation to the road and bridge fund, provide the county funding for maintenance of its roads. This is a position we have held since the inception of this fee, and an important part of the discussion. Especially in light of the significant sums our operators have paid in property taxes, and if allowed to develop, will continue to pay.

However, where it seems we strongly disagree is the imposition of the Traffic Impact Fee pursuant to C.R.S. 29-20-104.5 and under what circumstances those funds may be used. Let us be clear about our position. Any TIF fee under Colorado statute must be used as a maintenance fee "Intended **to defray** the projected impacts on capital facilities caused by proposed development" and should be imposed at a level "**no greater than necessary to defray such impacts directly related to proposed development**". This is very clear under the plain language of the statute. We feel this is important as the county has proposed a significant increase above what operators already pay. This despite the fact the county staff has acknowledged that the current system is working, and there are no roads in immediate need of repair. Nonetheless, our members have come to the county in good faith and offered to double the current to \$15,000 per well. Again, our position is that any fee that is paid must be used to directly offset road damage attributable to oil and gas development.

Today, the county indicated its position that the impact fee was akin to a development exaction. In other words, it is our understanding that the county views the TIF fee as a monetary exaction that can be broadly used for capital expenditures. As have noted before, and we believe the county acknowledged today, ""capital expenditure" means an expenditure made by a county for long-term **additions or betterments**" See e.g. C.R.S. 30-25-202(2) This was supported by the staff's acknowledgement that the study the county commissioned to set the fee level notes a need for shoulder improvements, access for bikes, and other areas of need.

Again, we would strongly disagree with this assessment. An exaction is a situation “in which the government requires a landowner to forfeit part of his or her property for public use as a condition of development.” *Krupp v. Breckenridge Sanitation Dist.*, 19 P. 3d 687 (Colo: Supreme Court 2001). It is true that property can mean either physical property or monetary property. In this case, the county seems to be arguing that the TIF is essentially a permissible “service fee” which is “a charge imposed on persons or property for the purpose of defraying the cost of a particular government service.” [E-470 Pub. Highway Auth. v. 455 Co., 3 P.3d 18, 24 \(Colo.2000\)](#). We should note that even if the county’s position regarding the TIF fee as a monetary exaction is true, it is also true that such fees are governed by statute. In this case specifically C.R.S. 29-20-104.5, as the county acknowledged today.

C.R.S. 29-20-104.5(1) is the only provision in 29-20-104.5 that refers to capital expenditures. It states “a local government may impose an impact fee or other similar development charge to fund expenditures by such local government or a fire and emergency services provider that provides fire protection, rescue, and emergency services in the new development on capital facilities needed to serve new development.” However, those fees are subject to three conditions. At issue here is subsection (c) which requires any fee be “Intended to defray the projected impacts on capital facilities caused by proposed development.” This subsection clearly contemplates that any fee imposed must be directly correlated to the direct impacts of development, and must be imposed at a level no higher than the cost required to maintain the current level of service.

In other words, we believe the statute is clear. The county may impose a fee to ensure that if any damage is caused by oil and gas development to county roads, the county may charge amounts necessary to fix that damage. The county may not use the fee to fund improvements or otherwise build new infrastructure that may be needed.

Thus, in sum, we would again strongly urge the county to revisit its proposed fee, and adopt the more reasonable compromise proposed by local operators. At its current level, the proposed fee serves only to stifle development, discourage investment in the county, and create unnecessary uncertainty.

We look forward to sitting down with the county prior to the October 13th hearing to discuss this matter further.

Thanks

Chris

Chris McGowne
Associate Director
American Petroleum Institute – Colorado
1660 Lincoln Street, Suite 2900

Denver, CO 80264
720-878-7688 (Cell)
mcgownec@api.org



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