

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD JULY 20, 2021 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Trish Hatch, Kent Shelton, Jay Thomas, Matt Quinney, Corbin England, Ammon Allen, and Pamela Bloom.

STAFF: Scott Langford, Larry Gardner, Mark Forsythe, Julie Davis, Duncan Murray

OTHERS: Bill Ramsey (remotely), Kelvin Green, Mike Canning, Harmony Mitchell, Cordon Capell, Ryan Schmidt, Carly Lewis, Evelyn Thomas (remotely), Rich Welch

The briefing meeting was called to order by Trish Hatch. Training from Assistant City Attorney Duncan Murray was provided regarding illegal exactions.

The regular meeting was called to order at 6:00 p.m.

1. Approve Minutes from July 6, 2021

MOTION: Matt Quinney moved to approve the minutes from July 6, 2021. The motion was seconded by Ammon Allen and passed 7-0 in favor.

2. Schmidt's Farm and Greenhouse Expansion; 9020 South 2200 West; Temporary Use Permit for Produce Stand and Expanded Activities; SC-1 Zone; Ryan Schmidt (applicant) [#24704; parcel 27-04-426-008]

Ryan Schmidt, applicant, said their produce stand has been operating in this same location for more than 16 years, along with a you-pick pumpkin patch and activities. They hope to continue with those same activities along with a hayride and straw maze and to make sure that everything is approved. Hours of operation begin at 9:00 a.m. on weekdays and 8:00 a.m. on Saturdays.

Mark Forsythe said the farmer's market started out as a small produce stand and has grown in popularity over the years with expanded activities that have extended beyond the scope of the original approval and site plan, which is the reason for this review. The 9-acre parcel has been an agricultural use for many decades. In the past 10 years it has been used as an on-again, off-again temporary use location. The nearest residential use is 110 feet to the north across 9000 South. Temporary uses are allowed in all zoning districts. He showed the site plan that identifies activities such as a farmer's market, pumpkin patch, hay bale maze, a new sunflower maze, animal display and feeding area, tractor rides, and live music. Parking has been reviewed, and the applicant explained to staff that there is an agreement with Hawthorne Academy to use the large parking lot after school hours and on weekends. That lot combined with the on-site gravel parking provides 181 parking spaces. The applicant will have personnel directing traffic and pedestrians for safety purposes. The Building Official has determined that because many of the individual activities will be operating for less than six weeks, so the ADA paving requirements do not apply. However, they will do an inspection of the hay maze to ensure stacking is safe and appropriate. The police chief stressed the requirement that there be no parking on 2200 West, which is a condition of approval. The Fire department will be required to inspect the larger tents. Animal Control does not have any concerns or permit requirements.

Staff recommended that the Planning Commission approve the Temporary Use Permit for the expansion of Schmidt's Produce, located at 9010 South 2200 West in an SC-1 zone, with the Conditions and Requirements of Approval listed below.

Conditions of Approval

1. The business activities shall be consistent with the submitted application, letter of intent and site plan.
2. The site shall be kept clean and free of trash and debris at all times.
3. Electrical power sources and/or lines must be located so as to not present any hazard to the public.
4. The produce stands, tents, anchoring equipment, ticket booths, trailers, food trucks, temporary toilets, animal keeping equipment, sign(s) and other equipment/materials associated with the farmer's market and associated events shall be completely removed from the site when the Temporary Use Permit expires. The site shall be fully restored to its original condition within 5 days of the permit expiration date.
5. The easement and the parking space created for the pressure reduction valve shall remain clear for the City's access.
6. The office shall be located on the west side of the produce stand and shall be locked from 9:30 PM to 9:00 AM to prevent public access for the duration of the temporary use.
7. The days and hours of operation shall be Monday through Saturday from 9:00 AM to 9:30 PM.
8. The parking area shall be paved with compacted road base gravel or recycled asphalt per West Jordan Municipal Code Section 13-12-5D.
9. No on-street parking along 2200 West will be permitted.
10. Any lights used to illuminate the site shall be arranged to reflect the light away from all adjoining lots. Lights shall also be shielded to eliminate uplighting. All light levels shall not exceed 1 foot-candle power at the property line.
11. The event shall adhere to all applicable noise ordinances of the Salt Lake County Health Department.
12. Verification of shared parking agreements between Schmidt's Produce and Hawthorne Academy shall be provided to the City upon request.
13. All animals shall be secured in fully enclosed pens and shall be provided adequate food, water and shelter.

Requirements of Approval

1. The Temporary Use Permit is valid for no more than 150 consecutive calendar days following the date of commencement.
2. Tents that are 400 square feet or larger must be inspected by the Fire Department.
3. Hook-ups to utility lines will require a permit from the West Jordan Building & Safety Department.
4. Comply with all applicable requirements of the West Jordan Building & Safety Department.
5. Obtain and maintain a valid West Jordan City Temporary Business License.
6. One, 32 square-foot sign is allowed with the Temporary Use Permit and must be securely attached to the trailer or placed on temporary poles in a landscaped area. One additional sign is allowed only with approval of a Temporary Sign Permit.

Pamela Bloom asked if there is a way to make this a permanent use so there will be no need to reapply every year.

Mark Forsythe said that temporary use permits for a period of up to 150 days need planning commission approval, but they can be renewed annually on an administrative level.

This was a business item on the agenda.

MOTION: Ammon Allen moved, based on the information and findings set forth in the staff report and upon the evidence and explanations received today, to approve the Temporary Use Permit for the Schmidt's Produce Expansion 2021, located at 9010 South 2200 West in an SC-1 zone, with the Conditions and Requirements of Approval listed in the report, amending:

6. The office shall be located on the west side of the produce stand and shall be locked outside of business hours to prevent public access for the duration of the temporary use.
7. The days and hours of operation shall be Monday through Saturday between 8:00 AM and 9:30 PM.

The motion was seconded by Jay Thomas and passed 7-0 in favor.

3. Addenbrook Phase 2 and Phase 5; Continued from July 6, 2021; 6100 West Fallwater Drive; Amended Development Plan for increased building height; MFR (WSPA) Zone; Addenbrook Highlands Corp./Richard Welch (applicant) [#23927]

Rich Welch, applicant, said that Garbett Homes has been building continuously in West Jordan since 1995. In 2015 they presented what would make up the 180-unit Addenbrook Village within the Highlands master plan. Addenbrook Village is made up of single-family detached homes, twin homes, and approximately 100 townhomes. Changes in the market have prompted the requested changes to the plan. The 2015 home designs were adequate at that time, but with the Covid pandemic it brought a need for people to have workspace at home. A mix of product types in the townhomes has 70 rear entry units on 20-foot-wide lots and the rest with front entry. Since the footprints were already determined by the approved master plan, the solution was to create more space by adding a third story. The architectural elements that were submitted in 2015 were in line with the density buy ups allowed and included proper mix of covered porches, enhanced window/door/eave/roof treatments, equal disbursement of high-quality building materials, and energy efficient building practices. They feel that their new plans have all of those same elements included and meet the spirit of the development plan. When building permits were submitted for the revised buildings, staff felt that the changes were different enough that they needed to come back to the planning commission for approval. The residents in attendance and staff probably do not view these changes as meeting the spirit of the approved plan. He proposed that if Exhibit B, the staff recommendation, is acceptable to the neighbors and the Commission then Garbett would accept that recommendation. They want to make sure that the architectural renderings for those units would be acceptable to the Commission as well. Bill Ramsey, their architect, was attending the meeting virtually if there are questions regarding architecture and materials.

Larry Gardner showed the proposal to replace the two-story townhomes with three-story townhomes. Staff's recommendation was for a mixture of two- and three-story units. The applicant would also like approval of the new architecture, even if the three-story units are not approved.

Trish Hatch opened the public hearing. She noted that the comments of those who spoke at the prior hearing for this item were placed on the record.

Harmony Mitchell, West Jordan resident, said she lives in the Broadmeadow development adjacent to Addenbrook Village. The residents in that area were aware of the master plan when they built their homes in 2017 and that they would be adjacent to two-story townhomes and what the elevations looked like. She felt that it is more cohesive to keep the two-story structures on the south side of Fall Water Drive. The Gladstone development on the other side of Fall Water Drive is full of three-story townhomes. She did not feel great about a mix of two- and three-story townhomes.

Carly Lewis, West Jordan resident, stated that she previously lived in the Broadmeadow community and now lives temporarily in the Gladstone Apartments. She felt that the new proposal looks the same as the apartments already in the area. The cohesiveness of 2-story blends in more with single-family rather than the feeling of another concrete jungle of apartments. She said that more square footage could be added with a basement rather than a third story. She said there are also issues with the entrances and parking.

Evelyn Thomas, West Jordan resident, said she lives at the top of the hill. They are already below the level of the road so the perspective that was shown is not a true representation. The three-story buildings would be even higher.

Further public comment was closed at this point for this item.

Trish Hatch asked what the distance is between the homes and the townhomes.

Larry Gardner said there is a 60-foot road, and the lots are probably at least 100 feet deep.

Ammon Allen asked if the commission is looking at architecture tonight.

Larry Gardner said they are forwarding a recommendation to the City Council, which includes different architecture, which staff is fine with.

Ammon Allen thought the architecture looked fine. He asked about the slope of the property as mentioned by the resident.

Larry Gardner said that the property is somewhat level, however, all property in that area slopes from west to east.

Trish Hatch said she would love to poll the residents to see if they were in favor of the mix of two- and three-story units as shown in the staff recommendation.

Larry Gardner did not recommend polling the audience, because it is the Planning Commission's recommendation.

Ammon Allen asked for an explanation of how staff's recommendation came about.

Larry Gardner thought that the conclusion was that there was a lot of public opposition to taller homes from the residents when Addenbrook was approved, but he did not remember if three-story homes were proposed at that time. The two-story product has settled in with the neighbors, so there are concerns when the plan changes. Ray McCandless wrote the report, but he thought it was just a compromise by placing the three-story buildings where they would be least obtrusive to the neighbors.

Corbin England displayed a street view map of the area to see if there is a drop in elevation from Fall Water Drive.

Jay Thomas asked what kinds of options the Commission has for making recommendations.

Duncan Murray said the Commission has the option to make a recommendation with whatever configuration they choose as long as they accurately describe the recommendation and the reasons for any variations.

Matt Quinney said he is pro-development, but he was against changing the MDA, because it is not fair to the residents who believed that the approved plan would go forward. He did not see that this would improve the city or be of value to anyone other than the landowner.

MOTION: Matt Quinney moved, based upon the information and findings set forth in the staff report and upon the evidence and explanations [clarified on August 3, 2021], to forward a recommendation to City Council to only allow two-story homes in Addenbrook Phase 2 and Phase 5 as originally proposed in the MDA, and including the updated architecture as discussed. The motion was seconded by Jay Thomas and passed 6-1 in favor with Trish Hatch casting the negative vote.

4. Sprinkler Supply Hardscape; 1402 West 7800 South; Preliminary and Final Site Plan; CC-F Zone; Sprinkler Supply/Mike Canning (applicant) [#24087; parcel 21-27-276-024]

Mike Canning, applicant, said the application is for a preliminary and final site plan and building for their hardscape business.

Larry Gardner said the property is currently vacant. He reviewed the surrounding property uses. The operations include sales and display of hardscape landscaping materials such as rock and pavers. A 5,000 square-foot sales office building will be located at the south end of the property. Parking meets the ordinance for the CC-F zone. The entire site will be asphalt. Attractive landscaping is shown on 7800 South, and a 20-foot landscape buffer and masonry wall will abut the residential properties to the north. Building elevations were shown. All elevations will have relief in order to break up the long expanse of walls. The east and south elevations will have a storefront look. The Design Review Committee recommended approval.

Staff recommended that the Planning Commission approve the Preliminary/Final Site Plan for Sprinkler Supply Hardscape located at 1402 West 7800 South in a City Center-Frame (CC-F Zone) subject to the approval requirements listed below.

Preliminary Site Plan, approval requirements:

1. The proposed development shall meet all applicable 2009 City Code requirements.
2. An approved preliminary site plan shall remain valid for one year following the date of the approval.
3. Planning Commission approvals do not include Public Safety, Fire, Building and Safety, or Engineering approval.

Trish Hatch opened the public hearing.

Kelvin Green, West Jordan resident, stated that his property abuts the north property line for this business. He felt that the city needs commercial development, and this will be a good use for the land. The residential neighbors will get the benefit of a landscape buffer and masonry wall, and the field will be cleaned up. There was a request that the dumpster not be on the back property line. He was in favor of the proposal.

Further public comment was closed at this point for this item.

Jay Thomas felt this would be a great place to get landscaping supplies in West Jordan.

MOTION: Jay Thomas moved to approve the Preliminary/Final Site Plan for Sprinkler Supply Hardscape located at 1402 West 7800 South in a City Center-Frame (CC-F Zone) zoning district subject to the approval requirements 1 through 3 as listed in the staff report. The motion was seconded by Matt Quinney and passed 7-0 in favor.

5. **Text Amendment – Alcoholic Beverage Control and Uses; Continued from 7-6-21; Amend the 2009 City Code by adopting Title 17 Alcoholic Beverage Control, as a set of land use regulations; and by amending Sections 13-2-3 Definitions, 13-5C-4 Planned Development Zones Permitted and Conditional Uses, 13-5D-2 Office and Research Park Zones Permitted and Conditional Uses, 13-5E-3 Commercial Zones Permitted and Conditional Uses, 13-5F-2 Manufacturing Zones Permitted and Conditional Uses, 13-5I-4 City Center Zones Permitted and Conditional Uses, 13-5J-4 West Side Planning Area Zoning District Permitted and Conditional Uses, 13-6B-3 Redwood Overlay District Permitted and Conditional Uses, and 13-6G-4 Transit Station Overlay District Permitted and Conditional Uses; City-wide applicability; City of West Jordan (applicant) [#23114]**

Larry Gardner said that the City Council proposed a new title in the City Code be created for alcohol administration in West Jordan, because it is currently administered over three titles. This proposal removes references to alcohol uses in the zoning ordinance. He noted that the removal of 'Reception Center' from the SC-2 zone came about as a recommendation from the Planning Commission. There will be 23 definitions regarding alcohol use in the title that come exactly from State Law. He reviewed the new use table and explained that this is considered a land use regulation.

Duncan Murray said the main goals of the proposed ordinance are to update the city code to be more compliant with State Law, and to consolidate in one title the definitions, procedures, and use tables regarding alcohol beverage control and uses. Although this is a function of State Law, we still have a role to play from a zoning perspective. There are also cross references in Title 13 to the new title.

Staff recommended that the Planning Commission forward a positive recommendation to the City Council to adopt the new Title 17 Alcohol Ordinance and the changes to Title 13.

Pamela Bloom asked what more needs to be done to get in line with State Law.

Duncan Murray said this will get us really close. There will probably be some things that are missed in compiling a title this large and the second thing that may cause the need for additional changes in the title deals with Economic Development. This code will allow more of an opportunity to bring in businesses that were inadvertently left out because there was not an appropriate use listed in the table.

Trish Hatch opened the public hearing.

Kelvin Green, West Jordan resident, said he was the primary author of this code. The draft ordinance was submitted prior to the State requirement to do so. He asked if the use table lists the types of licenses. He also asked why the Transit Station Overlay District has a separate use table. He said this title consolidates the regulations and allows for more communication between all departments involved. He asked the Commission to forward a positive recommendation for adoption.

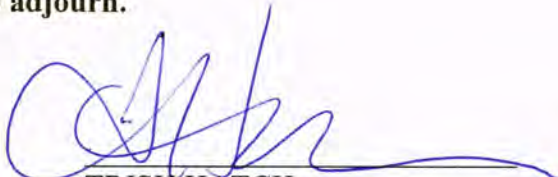
Further public comment was closed at this point for this item.

Larry Gardner said the uses listed are right out of the definitions but uses such as a hotel could be in some zones but not all zones. He explained that the TSOD use table is written like this currently and it was difficult to combine the tables due to size.

MOTION: Pamela Bloom moved, based on the information and findings set forth in the staff report and upon the evidence and explanations received today, to forward a positive recommendation to the City Council for the Text Amendment regarding Alcoholic Beverage Control and Uses and changes to Title 13. The motion was seconded by Corbin England and passed 7-0 in favor.

MOTION: Trish Hatch moved to adjourn.

The meeting adjourned at 7:01 p.m.


TRISH HATCH
Chair

ATTEST:


JULIE DAVIS
Executive Assistant
Community Development Department



Approved this 3 day of August, 2021.

Burdens on New Development

1. Imposing Conditions and Exactions on Development Approvals

We consider these separately because the issues involved overlap several areas of land use activity, such as:

- **Subdivisions.** When a subdivision is approved, what requirements can be placed on the developer or property owner as conditions of the approval?
- **Conditional Uses.** When a conditional use permit is approved, are there limits to what the local officials can demand in order to make the use compatible with the zone and neighborhood?
- **Variances.** When a property owner seeks a variance, can the land use appeals authority impose requirements and conditions on the variance? How are those additional burdens limited?
- **Other Situations.** When a property owner seeks access to a state road; when any special approvals are required that allow for conditions; when a homeowner seeks to connect to utilities and is told there are conditions to do so; and in other similar situations.

What can the government require a property owner/applicant to do in order to get a permit or approval?

The United States Supreme Court has laid down guidelines for conditions that offer some help in evaluating the balancing that must be done in making sure that government does not go too far in burdening changes in land use.

The Utah State Legislature wrote these standards into statute in 2005 by enacting new language which reads:

A municipality (or county) may impose an exaction or exactions on development proposed in a land use application if:

1. an essential link exists between a legitimate governmental interest and each exaction; and
2. each exaction is roughly proportionate, in both nature and extent, to the impact of the proposed development.¹

The basic issues are:

1. Does the proposed condition or requirement advance some legitimate government function? Is it the kind of issue that local planners should even be involved with? Does it relate to an issue that is within the jurisdiction of local land use controls?
2. Does the proposed condition or requirement solve some problem created by the development or mitigate some negative aspect of the proposed land use?
3. Is there a roughly proportionate balance between the problem and the cure? Is the condition or requirement "overkill" or does it fairly balance the duty imposed on the applicant and the burdens the proposed development places on community resources?

4. Is there a less intrusive way to solve the problem? Does the proposed condition address the issue, but in a manner that limits very significant property rights or impose a heavy burden when some other, less intrusive option would also solve the problem without imposing such a harsh burden?

Who Can Impose Conditions?

Case Law — Nollan v. California Coastal Commission

A prime example of an illegal condition was brought to light in the story of the Nollan family, who owned property near Santa Barbara, California. They went to get a permit to demolish their beachside bungalow and replace it with a larger house. The California Coastal Commission is given statutory authority to comment on the building permit. When the Nollans went to the commission, they were told they would have to deed an easement for public access to their beach to the State of California. Nollan objected. He objected all the way to the United States Supreme Court, which agreed that the commission had gotten a little carried away. The court held the purpose of the



The California Coastal Commission illegally demanded the Nollan family give away easements for public access to this beach in order to get a building permit. Photograph courtesy of Prof. Daniel Mandelker.

commission was to preserve access to the beach, but that charter did not include a mandate to demand easement for access across the beach. The commission was operating outside its authority and was attempting to solve problems it was not created to solve. The requirement to "exact" the easement was therefore a "taking."

What Conditions Can Be Imposed?

Case Law — Dolan v. Tigard, Oregon

In another case, Florence Dolan wished to expand her hardware store in Tigard, Oregon. The City of Tigard required her to dedicate land to the city for a bike path, but Florence could not understand why. She saw no connection between her expanding a hardware store and the city's worthy desire for a bike path. (It may be that in all her years of selling plumbing supplies, no one had ever taken a toilet home on a bicycle!)

The city's condition was struck down by the court because Tigard had not shown that the bike path solved any problem that Florence had created.



Above is Florence Dolan's hardware store in Tigard, Oregon, which she wanted to expand. Her refusal to accept the conditions imposed by the city led to her victory before the U.S. Supreme Court, which held the conditions imposed on Ms. Dolan constituted a "taking." Photograph courtesy of Prof. Daniel Mandelker.

Rough proportionality

Even if the bike path the city demanded of Florence Dolan was necessitated by the occasional cycling handyman, the court also stated that showing some vague relationship was not enough. Government entities must show, by an individualized analysis in each case, that the dedications and exactions imposed on development are roughly in balance, imposing a burden sufficient to offset generally the burdens created by the development and not significantly more.

For example, if a homeowner has an adult child who wishes to build a home near the parents and the family decides to divide a two-acre lot into two one-acre lots, then it would be appropriate to require them to provide the normal amenities for that new home. If the roads in the area are 60 feet wide in single family neighborhoods, then it could be required that the road in front of the new lot be widened to become 60 feet. This width has already been established by the community as the normally required road width for single-family occupancies.

But if the community has a plan that an arterial highway be built along the roadway where this lot split is occurring, it is often tempting to require the homeowners to dedicate enough land for the future four-lane highway. This would be inappropriate and illegal since the proposed home is not creating the need for a four-lane highway.

If the proposal was to build a truck stop, then maybe the four-lane road would be justified. But the property owner can only be required to solve problems in a manner that is "roughly proportionate" to the burdens his development is creating.

Least intrusive solution

Lastly, it needs to be considered that even if the goal of the con-

dition is an appropriate goal, and even if it solves a problem the proposed land use creates or aggravates, and even if the condition is roughly equal to the problem it is meant to solve, there is still one more issue to consider.

There are some particularly sacred rights that the courts have recognized for all property owners. For example, in the case of Florence Dolan, the city also attempted to force her to dedicate to the city an environmentally sensitive creek that ran along her property. The goal was to create a public parkway, which had no connection to Dolan's store, but the city claimed that the dedication of the land was necessary to protect it as a floodway. There is no doubt the city has a duty to protect floodways, but the same result could have been reached by simply limiting her ability to build along the creek. By making her keep it clear for the storm water that her expanded parking area was going to create, the city could solve the flooding problem. There was no legal justifi-



Above is the creek behind Florence Dolan's hardware store. The U.S. Supreme Court said, while the city could restrict development along the creek, it could not require the creek be deeded to the city as a condition of development.

cation for its attempt to grab the title to the land along the creek in order to use it for a city park when building development restrictions would have adequately protected the flood plain. The city had raised an appropriate issue, but the wrong solution was imposed. Indicating the right to exclude others from her property was a sacred, protected right, the U.S. Supreme Court struck down the dedication requirements as too intrusive.

Utah courts have held that local land use processes cannot impose conditions, impact fees, dedications, and other burdens on development if those who will use the property will not benefit from the public improvements and amenities they finance or donate.² For example, a city could require the property owner to install curb and gutter along the front of the property, but not force the property owner to cure an existing storm water problem up the street above his property which was caused by the lack of curb and gutter in front of someone else's lot.

Other examples of inappropriate burdens and conditions:

- A subdivider may be required to meet a city-wide standard for open space, but that does not mean he can be required to convey title to the open space to the city.
- Those developing land on hillsides cannot be required to install trails across private property when those developing land in other parts of the city have no requirement to dedicate trails.
- A property owner cannot be required to pay an impact fee for water lines and then also have to build water lines, completely at his expense, which the impact fee is supposed to pay for.
- If a development demands an 8-inch water main to serve its residents, local officials cannot demand that a 12-inch main be provided because that is what is needed to pro-

vide for other potential development in the area. The city should pay the cost of upsizing the water lines for the additional capacity.

However, it is important to note:

- A developer can volunteer public improvements if they wish to.
- There are sometimes legitimate trade-offs where the community gives bonuses in density and lot sizes in return for voluntary public improvements.

Legal conditions and exactions on development must meet four tests:

1. advance a legitimate public purpose and be within the scope of the government entity to impose;
2. address some burden created by the development;
3. be roughly proportionate to the burden imposed on the development; and
4. solve the problem in the manner which is least intrusive on protected property rights.

Tips for participants

This corner of land use activity is a busy place to be. Local governments continually seek to accommodate development and change without adding new tax burdens on the existing population. A developer is a tempting target. They are usually from out of town. They are here to make money and supposedly have some to share. They are promoting a change and are considered the root cause of some of the problems the municipality faces, so requiring them to solve some problems seems only fair.

As far as it goes, of course, there are fair and logical justifications

for imposing burdens on development. The problem comes from the fact that sometimes the locals get a little carried away and impose disproportionate burdens that are out of balance.

As a practical matter, however, there is no easy way for the landowner to fight the imposition of burdens on his proposals. Any appeal of the burdens imposed is going to take time, and landowners don't usually have time. They usually have more money than time, and if they don't get moving, they could miss their development opportunity.

Those who make their living in the development business also have a valuable ongoing relationship with the building official, the zoning administrator, and citizen planners. They worry about whining too much or fighting back against unfair requirements because they need to work with local officials and there are always issues where a developer needs cooperation. Where local officials have so many ways to regulate development, those who are regulated have learned that it does not pay to kick up too much of a fuss.

If you are getting started in the development business, when you attempt to get approval for your first project you need to be very pessimistic about the cost and time involved in the process. You can, of course, insist upon an absolutely legal approval process if you are willing to take the time to run appeals and do the necessary work to make sure that every condition of approval is legal and fair. But it is quicker, and often cheaper, to go with the flow, accept some inappropriate regulation, and get the job done sooner, if not less expensively.³ (I am not advocating what the U.S. Supreme Court has called "an out-and-out plan of extortion" but only pointing out the realities.)

In Chapter 10, we discuss appeals. Perhaps there might be some method among those outlined there that could fit a given situa-

tion and allow an appeal of disproportionate burdens in a manner that resolves the issue without taking too much time or resulting in long-standing hostilities. This is an area the Property Rights Ombudsman is hired to assist with, so do not hesitate to call.

2. Impact Fees

Impact fees are imposed on each house, business, or other development based on the expected cost of public facilities to service that unit of development. They are general and usually apply community-wide. They are set by ordinance, based on a community capital improvements plan, and can usually be relatively easily predicted and calculated. Counties, cities, towns, special



Local government continually strains to meet the utility requirements of new growth while battling the decay of old "infrastructure." Impact fees are a major source of revenue in handling the expansion, but not replacement of utilities.