A Perspective from the Development Community

by Wade L. Hopping

It seems to be almost universally accepted that Florida's transportation concurrency system does not work. It creates economic winners and losers. It encourages developers to seek existing transportation capacity on the road system wherever possible in order to manage their costs, sometimes in locations where public policy otherwise seeks to discourage development. And it encourages cities, counties, the Department of Transportation (DOT), and developers to "game the system," breeding disrespect for how we pay for development-created impacts to our transportation system.

These are not only my conclusions: The 2009 Florida Legislature found that "the existing transportation concurrency system has not adequately addressed the transportation needs of this state in an effective, predictable, and equitable manner, and is not producing a sustainable transportation system."[1] The legislature set the stage for "fixing" this problem by directing the Department of Community Affairs (DCA) and DOT to complete their current studies on a new mobility fee to replace transportation concurrency. It required that the mobility fee provide for mobility needs, ensure that new development provides mitigation for its impacts, and "promote compact, mixed-use and energy-efficient development."[2] Implicit in this last command is that a mobility fee takes into account, in some way, vehicle miles or people miles traveled.

Adoption of a mobility fee will not be simple or painless. Nevertheless, it is consistent with the fact that developers in the private sector would prefer certainty and are willing to pay for their new impacts to the transportation system. However, they are neither obligated nor capable of paying for years and years of neglect and backlog on the road system or for financially unrealistic level-of-service standards that have been adopted for many roads. Developers should be asked to pay once for their transportation impacts so they can get on with business. They should not be hit with multiple fees and exactions, or be asked to pay more than one time for the same impacts.

The heart of the challenge in arriving at a policy framework for a mobility fee will be addressing and reconciling several somewhat conflicting goals while respecting the well-developed body of law that governs such matters:

- Adopting a fee high enough to replace both transportation concurrency and local government transportation impact fees so developers only pay once for new impacts while providing sufficient funding to mitigate transportation impacts.
- Adopting a fee with a locational price structure that encourages urban infill, discourages unbridled rural development and is consistent with the legislature's command for local comprehensive plans to foster "energy-efficient land use patterns" and "greenhouse gas reduction strategies."[3]
- Adopting a fee that meets the dual rational nexus test,[4] protects private property rights, and avoids the ridiculously excessive amounts that some developers have been asked to pay in recent years.

These goals will have to be addressed in the course of answering many practical questions about the policy framework for a mobility fee. Some of those questions follow.

Who Should Pay a Mobility Fee?

One of the toughest questions may be who should pay. Should the mobility fee be universal for every new "development"? I suggest that every "developer" should pay for his or her new transportation impacts. That would include public-sector developers. Such a position would be consistent with Florida's long-standing statutory definition of "development," which does not distinguish between public- and private-sector developers.[5] The hardest part of this calculation will be to ensure that all new development pays an appropriate amount.

To Whom Should Mobility Fees be Paid?

The fee should be paid to the local government with the responsibility to provide the transportation facilities being paid for within the dual rational nexus test for impact fees already established in law. Paying the money to the local government, such as a city or county, can be very straightforward and should depend on location issues, such as where the development and the transportation facilities to be improved are located. The real problem will come because of extra-jurisdictional or "spillover" impacts among several jurisdictions. The legislature needs to provide a way to resolve disputes between local governments, DOT, and various regional entities. The law authorizing a mobility fee also needs clear guidelines to ensure that facilities are built.

Should a Mobility Fee Encourage Compact Urban Development?

While current DCA thinking is that compact urban development is superior to suburban or rural development, the cost of urban development is generally much higher. Land values are higher. Limitations on space and other factors, such as a requirement to take down old buildings

during redevelopment, make the cost of urban development much greater. Nevertheless, compact urban development can help the state meet its planning goals. One practical way to address this concern might be for mobility fees to use a "zone" system — like taxi fares — for 1) existing urban areas; 2) areas where future urban development is encouraged and suburban areas; 3) rural areas where job centers and future urban growth are planned; and 4) rural areas where preservation of agricultural values and conservation are encouraged, consistent with private property rights. Price differentials could encourage development in zones one, two, and three while discouraging development in zone four.

Should There Be Other Public Policy Adjustments to the Mobility Fee?

Decisionmakers will be asked to waive the mobility fee for workforce housing, high-quality new job projects, economic development projects, and other environmentally and economically desirable projects. Over time it may be desirable to give fee breaks for particular types of projects favored by public policy, but I suggest that this not be done until the new system is adopted and fully functional on a statewide basis.

It will be tempting to try to completely reform Florida's antiquated transportation funding system as part of the effort to remedy the failure of transportation concurrency. This would be a mistake. The focus should be on cleaning up the mess we created with transportation concurrency and existing transportation impact fees, all within the body of constitutional law which has developed on such matters. We should create a new system in which every developer who puts new trips on the roads and creates other demands on the transportation system pays a reasonable amount for those impacts. We need a simple, straight-forward, and reasonably priced mobility fee. ❑

[1] Ch. 2009-96, §13(1)(a), Laws of Fla.

[2] *Id.* at §13(1)(b).

[3] FLA. STAT. §163.3177(6)(a) (2009).

[4] *Contractors and Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

[5] FLA. STAT. §380.04 (2009). *See also* FLA. STAT. §163.3180(4)(a) (2009) ("concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development").

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