

April 11, 2017

TO: Gray Town Council
Deb Cabana, Town Manager

FROM: Doug Webster, Community Development
Kathy Tombarelli, Town Planner

RE: Requested Negotiated Exactions Ordinance Changes
Proposed additions to Zoning and Subdivision Ordinances
First Reading at Council's 4/18/17 Meeting

Introduction

As requested by the Council, we have drafted the language in this memo regarding "Negotiated Exactions". Based on input from the Town's legal counsel, the recommendation is to add language to both the Zoning Ordinance (Chapter 402) and Subdivision Ordinance (Chapter 401). The objective is to ensure that any development project that meets the thresholds for negotiated exactions would be covered as the project would trigger either Site Plan Review (within Zoning) and/or Subdivision.

The language proposed for both Zoning and subdivision are virtually identical with the exception of the correct statutory references and numbering sequence to work with the respective Ordinance. As noted in the proposed Subdivision Ordinance changes, the "minor" subdivision (4 or fewer lots) language merely references the language for "major" subdivisions (5 or more) to avoid the necessity of merely repeating the same language twice in the same Ordinance.

Although *not* underlined, all the proposed language is new, again, for both Zoning and subdivision. As always, I welcome comments, input, and questions regarding the proposed language either before the Council's first reading on 4/18 or at the upcoming meeting as the Council deems appropriate.

There are three separate proposed Ordinance changes:

- Adding language to a new Section 402.101.6 of the Zoning Ordinance
- Adding language to "minor" subdivisions in new Section 401.6.1.H of the Subdivision Ordinance
- Adding language to "major" subdivision in Section 401.8.1.M of the Subdivision Ordinance

Proposed change #1:Negotiated Exactions Language for Zoning Ordinance

New Section 402.10.16: Negotiated Exactions

A. Purpose: Negotiated Exactions are intended to serve the following purposes:

1. Ensure that publically owned facilities and infrastructure are not adversely affected by new residential and/or commercial development
2. Provide the administrative steps to establish a process to quantify the cumulative effects of a development proposal
3. Establish mechanisms to minimize and ideally eliminate the necessity to expend public funds to address implications of private development on public infrastructure
4. Ensure that new private development provided the same level of service available to existing development
5. Establish a fair process to ensure that adequate public facilities are available to serve new growth and development
6. Provide new growth and development that bears a proportional share of the cost new public facilities needed to serve them
7. Accommodate orderly growth and development in a safe and fair manner
8. Protect the public health, safety, and welfare of the citizens of Gray and those who utilize public infrastructure in the Town

B. Authority:

1. In accordance with 30-A, M.R.S.A. Section 4352 (Zoning), 30-A, M.R.S.A. Sections 1911 to 1916 (Home Rule), and 30-A M.R.S.A. 4354 (Fees), the Town of Gray Planning Board shall have the authority to administer and require Negotiated Exactions as established in this Section 402.10.16 of the Town's Zoning Ordinance.
2. The Planning Board shall have the authority to require the owner or applicant of a development proposal meeting one or more of the thresholds established in Section 402.10.16.D to complete one or more of the following as part and/or all of the Negotiated Exaction:
 - a. Roadway and/or intersection improvements to maintain existing capacity and/or retain the current level of service
 - b. In order to maintain existing capacity and/or retain the current level of service, make necessary improvements to public infrastructure or provide the necessary surety for such improvements to occur
 - c. Donate land to the Town of Gray and/or State of Maine as necessary to complete public infrastructure such as currently proposed and/or future road widening, intersection improvements, or similar improvements
 - d. Acquire and/or purchase land or easement rights to be transferred to the Town of Gray and/or State of Maine necessary to complete public infrastructure
 - e. Posting a bond, cash, or other financial sureties as established in this Section 402.10.16.
3. As established in Section 402.10.16.G.1, the fair value of any land area donated, acquired, or purchased shall be duly considered by the Planning Board, Town

Council and the Town as an integral component in determining the Negotiated Exaction.

C. Administrative Procedure:

1. As an integral part of the Planning Board's review of a development proposal, prior to final approval, the Board shall have the authority to require the applicant to submit a written summary of the cumulative anticipated implications of the proposed development upon public infrastructure as established in this Section 402.10.16.D and F. The purpose of providing this summary for the Board's review is to ensure that the Planning Board has sufficient information upon which to make an informed decision to require a full assessment as detailed in Section 402.10.16.F below.
2. The Planning Board shall review the summary and determine if any aspects warrant obtaining further information and/or if elements need to be verified by a duly qualified independent third party chosen by the Board with input from Town Staff at the applicant's expense.
3. After the summary and necessary information is received, the Planning Board shall have the authority to determine if a full assessment will be required.
4. In the event that the Planning Board determines that a full assessment is warranted based on the standards in this Section 402.10.16, the applicant shall compile and submit this for the Board's consideration using the requirements detailed in Section 402.10.16.F below and in accordance with professionally accepted practices.
5. Once the Town Planner has determined that the assessment is sufficiently complete, the Planning Board shall review the assessment and determine if further information and/or if elements need to be verified by a duly qualified independent third party chosen by the Board with input from Town Staff at the applicant's expense.
6. With input as necessary from duly qualified professionals to quantify the implications of the proposed development, the Planning Board shall determine the cumulative responsibilities of the applicant/developer in accordance with the options established in Section 402.10.6.G below.
7. Upon establishing a negotiated exactions agreement for an infrastructure improvement project, the Planning Board shall describe an improvement benefit area(s) within which subsequent development is likely to benefit from the required improvements. The proposed benefit area(s) and the methodology to be used in assessing future allocation cost sharing and carrying cost reallocation shall then be referred to the Town Council for enactment. Benefit area(s) enacted by the Town Council shall be effective for the agreed upon period, not to exceed three (3) years from the date of enactment.

8. Within each negotiated exactions benefit area enacted by the Town Council, all subsequent development applications for site plan and/or subdivision approval shall be required to participate in cost sharing and/or carrying costs for the infrastructure improvement project unless the Planning Board determines that no benefit has been derived from the prior improvement project.
 9. If the improvement is not completed within the agreed upon period, the fee, plus interest, must be returned to the applicant. If the improvement is made at a cost less than was anticipated, the remaining portion shall be returned to the applicant(s) at amounts equal to their fair share of the improvement.
 10. The Town shall segregate the funds received from exaction agreements from the general revenue fund and shall expend those funds solely for the purpose that was intended.
 11. Prior to final approval for the project, the Planning Board and/or Town Staff shall solicit input from the Town's Counsel to ensure that the necessary legal assurances have been established and formally executed to ensure the completion of the improvements, payments, etc. as finally determined by the Planning Board in accordance with this Section 402.10.16.
- D. Applicability: Except as specifically exempted in Section 402.10.16.E, development proposals that adversely effects existing public infrastructure by creating demand(s) upon, or the need for, public facilities causing one or more of the following, as determined by the Planning Board, are required to comply with this Section 402.10.16:
1. Project(s) that lower the level of service (LOS) nearby intersection(s) including but not limited to the following:
 - a. Adjusting signal timing and/or upgraded signals
 - b. Adding turn lane(s)
 - c. Widening portions of the intersection
 - d. Constructing roadway portions adjacent to intersections for proper alignment
i.e. taper lanes, etc.
 - e. Adding length to existing turn lane(s)
 2. Project(s) that reduce the capacity of a roadway segment
 3. Project(s) that place additional demand upon publically owned stormwater facilities
 4. Project(s) that create additional stormwater that adversely affects publically owned land or facilities
 5. Project(s) that require extending, upgrading, or increasing the water main size of a public water supply
 6. Project(s) that add additional wastewater to a publically owned and/or operated treatment facility
 7. Project(s) that place special demands upon the Gray Public Safety Department such as a requirement for special equipment to serve the project

8. Project(s) that increase the workload on the Gray Public Works Department excepting winter maintenance as established in the Gray Street Ordinance (Chapter 400)
9. Project(s) that increase the demand for police or law enforcement
10. Project(s) that place additional demands on publically owned recreational facilities
11. Project(s) that place demands on publically owned bicycle and/or pedestrian infrastructure specifically including sidewalks and bicycle lanes
12. Project(s) that involve a new use, change of use, or expansion of an existing use

E. Exemptions: The following developments are specifically exempt from this Section 402.10.16:

1. Existing, proposed, or expanded public facility(ies) owned by the Town of Gray
2. Reconstruction of a building or structure located on property which was damaged or destroyed by fire or other casualty or which was voluntarily demolished during the past year provided that all of the following are met:
 - a. No additional dwelling unit(s) are created.
 - b. The use is not changed.
 - c. The use is not expanded.
3. Alteration, remodeling rehabilitation, and/or reconstruction of any existing legal nonresidential structure where none of the following are associated with the proposed development:
 - a. No net increase in square footage of the structure
 - b. The use is not changed
 - c. There is not an expansion of an existing use
 - d. No new use(s) are proposed

F. Conducting the Assessment:

1. The Planning Board may require the applicant to participate in municipally or state owned, off-site capital improvements. In accordance with 402.10.16.D where it appears that the proposed development will result in a negative impact or decline in the level of service of any existing off-site capital improvement, the Planning Board shall assess and establish the applicant's level of participation in the off-site capital improvement.
2. In conducting the assessment, the Planning Board shall consider the following:
 - a. The status of the system and service as a result of the analysis and any potential relationship to items noted and scheduled in the comprehensive plan and capital improvement program.
 - b. The net effect of the proposed development on the capacity of the capital improvement, indicating the percentage share caused by the development.

- c. A cost estimate for this capital improvement so as to meet the increased demand, a breakdown of the applicant's share of that cost, and an estimate of the remaining capacity and post improvement capacity available to developments other than the applicant.

G. Improvement Responsibilities:

1. The fair value of any land area donated, acquired, or purchased by the owner/applicant shall be duly considered by the Planning Board, Town Council and the Town as an integral component in determining the Negotiated Exaction.
2. Once the applicant's share of capital improvement impact has been established by the Planning Board, the Board shall select the method in which the applicant must participate in the capital improvement. The following alternatives are available:
 - a. The applicant makes the improvement:
 - i. The applicant must agree to make the necessary infrastructure improvements, providing all initial financial carrying costs, establish a construction schedule, and post a performance guarantee to cover all associated costs. The applicant may recover the improvement costs (including engineering and design, construction, and financing expenses) within ten (10) years after improvements are made and in accordance with a specified level of service range associated with the improvement.
 - ii. For the applicant to recover these costs, subsequent developments must realize a benefit by using the infrastructure improvements financed by the applicant. Cost reimbursement for the applicant shall be established as subsequent developments go through the subdivision or site plan review process.
 - iii. Calculations shall include adjustments for time-price differentials using the coupon issue yield equivalent of 52-week United States Treasury Bills (1-year Treasury Rate) as an index. Payments shall be made prior to the release of the signed **final plan** for recording purposes or the building permit where no recording mylar is involved.
 - b. Cost Sharing for Subsequent Development:
 - i. Allocation Cost Sharing for Subsequent Development(s). In arriving at the appropriate cost share for subsequent development, applicants shall use the same methodology as that utilized by the initial applicant. In applying the methodology, subsequent applicants shall establish their cost based on the percentage utilization of the improvements in terms of post-construction level of service.

- ii. Reallocation of Carrying Costs. At the request of the developer and at the discretion of the Planning Board, the Town may also require subsequent developments to share in the initial financial carrying costs of the necessary infrastructure improvements. If so determined, the carrying costs shall be shared between the initial and subsequent development(s) in direct proportion to their relative impact on the capital improvement. Once apportioned, the initial and subsequent development(s) are eligible for cost reimbursement from subsequent development(s) as described above.
- c. Town makes improvements: The Town may agree to complete the improvements. The applicant shall pay the required share of the cost to the Town prior to the release of the signed **final plan** or building permit, said payment to be held in a reserve fund until the improvement is completed. Subsequent developments that realize a benefit by using the infrastructure improvements financed by the Town shall also pay a fair share contribution.
- d. Cost Sharing agreement between Applicant and/or Town and/or MDOT to complete infrastructure improvements and/or partial contribution toward future Town infrastructure Improvement related to development application and/or land acquisition.

Proposed change #2: Negotiated Exactions Language for Minor Subdivisions

Subdivision Ordinance Section 401.6.1: Minor SD Plan Review & Approval Process

New Section 401.6.1.H: Negotiated Exactions

401.6.1.H. Negotiated Exactions - All minor subdivisions shall be required to comply with the standards established in Section 401.8.1.M of this Subdivision Ordinance.

Proposed change #3: Negotiated Exactions Language for Major Subdivisions

Subdivision Ordinance Section 401.8.1: Major SD Plan Application Procedure

New Section 401.8.1.M: Negotiated Exactions

401.8.1.M: Negotiated Exactions

A. Purpose: Negotiated Exactions are intended to serve the following purposes:

- 1. Ensure that publically owned facilities and infrastructure are not adversely affected by new residential and/or commercial development

2. Provide the administrative steps to establish a process to quantify the cumulative effects of a development proposal
3. Establish mechanisms to minimize and ideally eliminate the necessity to expend public funds to address implications of private development on public infrastructure
4. Ensure that new private development provided the same level of service available to existing development
5. Establish a fair process to ensure that adequate public facilities are available to serve new growth and development
6. Provide new growth and development that bears a proportional share of the cost new public facilities needed to serve them
7. Accommodate orderly growth and development in a safe and fair manner
8. Protect the public health, safety, and welfare of the citizens of Gray and those who utilize public infrastructure in the Town

B. Authority:

1. In accordance with 30-A, M.R.S.A. Section 4404 (Subdivision), 30-A, M.R.S.A. Sections 1911 to 1916 (Home Rule), and 30-A M.R.S.A. 4354 (Fees), the Town of Gray Planning Board shall have the authority to administer and require Negotiated Exactions as established in this Section 401.8.1 of the Town's Subdivision Ordinance.
2. The Planning Board shall have the authority to require the owner or applicant of a development proposal meeting one or more of the thresholds established in Section 401.8.1.D to complete one or more of the following as part and/or all of the Negotiated Exaction:
 - a. Roadway and/or intersection improvements to maintain existing capacity and/or retain the current level of service
 - b. In order to maintain existing capacity and/or retain the current level of service, make necessary improvements to public infrastructure or provide the necessary surety for such improvements to occur
 - c. Donate land to the Town of Gray and/or State of Maine as necessary to complete public infrastructure such as currently proposed and/or future road widening, intersection improvements, or similar improvements
 - d. Acquire and/or purchase land or easement rights to be transferred to the Town of Gray and/or State of Maine necessary to complete public infrastructure
 - e. Posting a bond, cash, or other financial sureties as established in this Section 401.8.1.
3. As established in Section 401.8.1.G.1, the fair value of any land area donated, acquired, or purchased shall be duly considered by the Planning Board, Town Council and the Town as an integral component in determining the Negotiated Exaction.

C. Administrative Procedure:

1. As an integral part of the Planning Board's review of a development proposal, prior to final approval, the Board shall have the authority to require the applicant to submit a written summary of the cumulative anticipated implications of the proposed development upon public infrastructure as established in this Section 401.8.1.D and **F**. The purpose of providing this summary for the Board's review is to ensure that the Planning Board has sufficient information upon which to make an informed decision to require a full assessment as detailed in Section 401.8.1.**F** below.
2. The Planning Board shall review the summary and determine if any aspects warrant obtaining further information and/or if elements need to be verified by a duly qualified independent third party chosen by the Board with input from Town Staff at the applicant's expense.
3. After the summary and necessary information is received, the Planning Board shall have the authority to determine if a full assessment will be required.
4. In the event that the Planning Board determines that a full assessment is warranted based on the standards in this Section 401.8.1, the applicant shall compile and submit this for the Board's consideration using the requirements detailed in Section 401.8.1.**F** below and in accordance with professionally accepted practices.
5. Once the Town Planner has determined that the assessment is sufficiently complete, the Planning Board shall review the assessment and determine if further information and/or if elements need to be verified by a duly qualified independent third party chosen by the Board with input from Town Staff at the applicant's expense.
6. With input as necessary from duly qualified professionals to quantify the implications of the proposed development, the Planning Board shall determine the cumulative responsibilities of the applicant/developer in accordance with the options established in Section 401.8.1.**G** below.
7. Upon establishing a negotiated exactions agreement for an infrastructure improvement project, the Planning Board shall describe an improvement benefit area(s) within which subsequent development is likely to benefit from the required improvements. The proposed benefit area(s) and the methodology to be used in assessing future allocation cost sharing and carrying cost reallocation shall then be referred to the Town Council for enactment. Benefit area(s) enacted by the Town Council shall be effective for the agreed upon period, not to exceed three (3) years from the date of enactment.
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9. If the improvement is not completed within the agreed upon period, the fee, plus interest, must be returned to the applicant. If the improvement is made at a cost less than was anticipated, the remaining portion shall be returned to the applicant(s) at amounts equal to their fair share of the improvement.
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D. Applicability: Except as specifically exempted in Section 401.8.1.E, development proposals that adversely effects existing public infrastructure by creating demand(s) upon, or the need for, public facilities causing one or more of the following, as determined by the Planning Board, are required to comply with this Section 401.8.1:

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 - ii. For the applicant to recover these costs, subsequent developments must realize a benefit by using the infrastructure improvements financed by the applicant. Cost reimbursement for the applicant shall be established as subsequent developments go through the subdivision or site plan review process.
 - iii. Calculations shall include adjustments for time-price differentials using the coupon issue yield equivalent of 52-week United States Treasury Bills (1-year Treasury Rate) as an index. Payments shall be made prior to the release of the signed **final plan** for recording purposes or the building permit where no recording mylar is involved.
 - b. Cost Sharing for Subsequent Development:
 - i. Allocation Cost Sharing for Subsequent Development(s). In arriving at the appropriate cost share for subsequent development, applicants shall use the same methodology as that utilized by the initial applicant. In applying the methodology, subsequent applicants shall establish their cost based on the percentage utilization of the improvements in terms of post-construction level of service.
 - ii. Reallocation of Carrying Costs. At the request of the developer and at the discretion of the Planning Board, the Town may also require subsequent developments to share in the initial financial carrying costs of the necessary infrastructure improvements. If so determined, the carrying costs shall be shared between the initial and subsequent development(s) in direct proportion

to their relative impact on the capital improvement. Once apportioned, the initial and subsequent development(s) are eligible for cost reimbursement from subsequent development(s) as described above.

- c. Town makes improvements: The Town may agree to complete the improvements. The applicant shall pay the required share of the cost to the Town prior to the release of the signed **final plan** or building permit, said payment to be held in a reserve fund until the improvement is completed. Subsequent developments that realize a benefit by using the infrastructure improvements financed by the Town shall also pay a fair share contribution.
- d. Cost Sharing agreement between Applicant and/or Town and/or MDOT to complete infrastructure improvements and/or partial contribution toward future Town infrastructure Improvement related to development application and/or land acquisition.