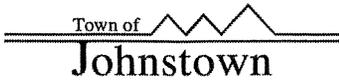


***SPECIAL
TOWN COUNCIL
MEETING
PACKET***

February 13, 2017



Special Town Council Meeting

Agenda
Monday, February 13, 2017
Town Hall, Council Chambers
450 So. Parish Avenue
7:00 PM



MISSION STATEMENT-*The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community.*

- 1) **CALL TO ORDER**
 - A) Pledge of Allegiance
 - 2) **ROLL CALL**
 - 3) **AGENDA APPROVAL**
 - 4) **NEW BUSINESS**
 - A) Swire Pacific Holdings, Inc.'s Impact Fee Protest
 - 5) **ADJOURN**
-



NOTICE OF ACCOMODATION

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

AGENDA ITEM 4A

IMPACT

FEE

PROTEST

(Swire Pacific Holdings, Inc.)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 13, 2017

ITEM NUMBER: 4A

SUBJECT: Swire Pacific Holdings, Inc.'s Impact Fee Protest

ACTION PROPOSED: Consider Swire Pacific Holdings, Inc.'s Impact Fee Protest

PRESENTED BY: Town Attorney and Town Planner

AGENDA ITEM DESCRIPTION: Swire Pacific Holdings, Inc. (Swire) has filed a protest (Attachment 1) regarding the assessment of Impact Fees for their new facility in 2534. It should be noted that while Swire's calculations do not exactly match the Town's, the primary substance of the protest is requested elimination of the offices use from the impact fee.

As part of the building permit application review, the Town Planner calculated impact fees for the Swire Coca Cola facility, which were invoiced and paid. As is customary with multi-use buildings, the calculations (Attachment 2) were based upon the two primary uses – 123,682sf of warehouse and 12,397sf offices. The office plan diagram is Attachment 3. Based upon Town calculations at the time, eliminating the office use and substituting the warehouse use only would result in a difference in impact fees of \$23,678.27, which would need to be refunded.

In response to the Swire protest, the Town Attorney prepared a letter explaining the provisions of the Impact Fee Ordinance Code, including land uses. The Impact Fee Ordinance provides for calculation of fees for multiple uses, such as Swire.

LEGAL ADVICE: Refer to Town Attorney's Letter dated October 27, 2016

FINANCIAL ADVICE: Swire did pay the Impact Fees as calculated by the Town. If the protest is approved, the difference of \$23,678.27 would need to be refunded from the Permit Fees revenue.

RECOMMENDED ACTION: Deny the Impact Fee protest.

SUGGESTED MOTIONS:

For Approval: I move to approve to grant Swire Pacific Holdings, Inc.'s Impact Fee Protest

For Denial: I move to deny approval Swire Pacific Holdings, Inc.'s Impact Fee Protest

Reviewed:


Town Manager

ATTACHMENT 1:

SWIRE

IMPACT FEE PROTEST

MEMORANDUM

9/16

To: Town Administrator, Town of Johnstown
John Franklin, Town Planner
John Gesick, Certified Building Official

Protest and Appeal Regarding Calculation of Impact Fees under Chapter 17, Article XII of the Town of Johnstown Municipal Code

Building Permit #: 16-6120

Project: Coca Cola Swire

Address: 4600 High Plains Blvd.

Owner: Swire Pacific Holdings, Inc., dba Swire Coca Cola USA

Applicant: United Properties Development, LLC

Nature of Protest and Appeal:

This is a protest of the methodology used to calculate the amount of impact fees that will be due upon issuance of the Building Permit referenced above. A copy of the Building Permit fee calculation as provided to the Applicant by the Town Building Permit Official is attached hereto. Specifically, the Building Permit application pertains to the construction of a warehouse facility which is an Industrial Use under the Town's Zoning Ordinance. The calculation of impact fees should be based solely on the fact that the application is for an industrial use building. The calculated impact fees erroneously includes fees that were calculated based upon office use in addition to industrial use as follows:

	sq ft		Public		Police		Trans
		Public	Impact fee	Police	Impact fee	Transportation	Impact fee
1/1/16	130,722						
Retail		\$0.54	\$ -	\$0.42	\$ -	\$3.33	\$ -
Office	26,332	\$0.62	\$ 16,325.84	\$0.15	\$ 3,949.80	\$1.91	\$ 50,294.12
Industrial/Other	104,390	\$0.32	\$ 33,404.80	\$0.13	\$ 13,570.70	\$1.09	\$ 113,785.10
Sub total			\$ 49,730.64		\$ 17,520.50		\$ 164,079.22

1. Chapter 17, Article XII of the Town of Johnstown Municipal Code, as amended by Ordinance No. 2015-139 (collectively the "Impact Fee Ordinance"), establishes three distinct and separate classes of non-residential land development that is subject to the impact fee. The three classes of non-residential land development are (i) retail, (ii) office, and (iii) industrial/other. The Impact Fee Ordinance is clear and unambiguous in the creation of these three distinct categories of land development. Section 17-219 of the Impact Fee Ordinance provides that upon receipt of a building permit application, the Town will determine "the specific category (type) of residential or nonresidential development, if applicable." In other words, Section 17-219 requires the Town to pick one of the three specific categories of non-residential use as applicable to the building permit application, either (i) retail, (ii) office, or (iii) industrial/other. The language of Section 17-219 uses the singular form of the word "category" and the word "type" and does not authorize the Town to determine the specific categories or types of non-residential use applicable to the building permit application. There is not any

language in the Impact Fee Ordinance that permits the Town to mix and match and apply more than one category or type to a particular building permit application for a single land use.

2. The proposed land development is not a multi-use development. It is a single land use development for the construction of an industrial warehouse in an industrial zone district. All of the facilities and areas within the warehouse building are necessary components of the industrial warehouse use. Permitted uses in the Industrial Zone District (Chapter 16, Article XV) include “general warehousing” and those that are uses accessory thereto, including “office, storage, power supply and other uses normally auxiliary to the principal industrial use.” The identified auxiliary uses are necessary components of, and part and parcel, to the principal industrial use. A warehouse facility, research lab, printing house, transportation terminal and other similar industrial use could not properly function without an auxiliary office, storage area, restroom, entry or mezzanine area. Such accessory uses within a warehouse building are a part of the principal industrial use, not separate land uses operating independently of the principal industrial use housed in the warehouse building. Therefore, the Building Permit application is for a single industrial use and is subject only to the impact fees for the industrial land use category.

3. The proposed warehouse is a single industrial use properly located in an Industrial Zone District. The office component of the warehouse is a necessary auxiliary component of the warehouse. The warehouse office does not operate independently of the warehouse and cannot operate independently of the warehouse because independent business and professional offices are not permitted uses in the Industrial Zone District. In all respects, the proposed warehouse building constitutes a single-purpose industrial land use development. In determining the impact fees applicable to the Building Permit application as required by Section 17-219, the Town should have selected the Industrial land use category or type of use for the proposed land development as the sole applicable category and calculated the impact fees using the rate applicable to the industrial category.

4. Using the Industrial category as the proper determination, the amount of the impact fees due upon issuance of the Building Permit are as follows:

Sq. Ft.	Public IF (\$0.32/sf)	Police IF (\$0.13/sf)	Trans IF (\$1.09/sf)
126,163	\$40,372.16	\$16,401.19	\$137,474.07

ATTACHMENT 2:

TOWN'S

IMPACT FEE CALCULATION



Date: October 3, 2016

Town of Johnstown
 450 S Parish Ave
 Johnstown, CO 80534
 Fax 970-587-0141
 www.townofjohnstown.com

Invoiced to:

Swire Coca Cola
 12634 So. 265 West
 Draper, UT 84020
 (801) 816-5300

Qty		Item #	Description		Line Total
4600 High Plains Blvd			Core & Shell		Subdivision: 2534
Big D Construction paid building fees of \$20,055.58 on 08/31/16					
Remaining fees:			Raw Water Development Fee	\$24,380.00	\$24,380.00
			Sewer Inspection Fee	\$100.00	\$100.00
Total valuation:		(\$6,228,826.00)	Johnstown Use Tax	\$93,432.39	\$93,432.39
			(minus 1/2% reduction by Gerrard	-\$15,572.07)	-\$15,572.07
			Larimer County Use Tax	\$20,243.68	\$20,243.68
			Public Facility Fee	\$47,264.38	\$47,264.38
			Police Facility Fee	\$17,938.21	\$17,938.21
			Transportation Fee	\$158,491.65	\$158,491.65
				Subtotal	\$346,278.24
				Sales Tax	
				Total	\$346,278.24

Thank you for your business!

ATTACHMENT 3:
SWIRE OFFICES PLAN

MEMORANDUM
(Town Attorney)

Law Office of Avi S. Rocklin, LLC
ATTORNEY AT LAW
19 OLD TOWN SQUARE, SUITE 238
FORT COLLINS, CO 80524
PHONE: (970) 419-8226 EMAIL: AVI@ROCKLINLAW.COM

MEMORANDUM

TO: Honorable Mayor and Council Members

FROM: Law Office of Avi S. Rocklin, LLC ^{as}

DATE: October 27, 2016

RE: Swire Pacific Holdings, Inc.'s Impact Fee Protest

Swire Pacific Holdings, Inc. ("Swire") objects to the Town's calculation of the impact fees and filed a protest and appeal. Section 17-221 of Chapter 17, Article XII of the Johnstown Municipal Code ("Impact Fee Ordinance") provides that a party may appeal an impact fee calculation to Town Council. The Section further provides that the appellant bears the burden of proving that the Town's calculation is erroneous.

The Town's Impact Fee Ordinance designates three categories of impact fees: retail, office and industrial/other. In calculating Swire's impact fees, Town staff determined that the property contained two categories of use – office and industrial – and calculated the impact fees based proportionately on each use category.

In the appeal, although designated as three, Swire raises two principal objections: (1) Swire contends that the Impact Fee Ordinance only allows the Town to pick one category of use for the impact fee calculation for any given development, and (2) Swire contends that the calculation of impact fees should be based on zoning rather than on land use.

As to the first contention, the argument is inconsistent with Section 17-219(6)(b), providing that: "[t]he calculation of impact fees due from a multiple-use land development shall be based on the aggregated demand (in service units) for each category of capital improvements generated by each land use type in the land development." A "multiple use" development means a new development consisting of "one (1) or more different types of nonresidential use on the same site or part of the same new land development." Section 17-217. With that, in codifying the Impact Fee Ordinance, Town Council anticipated that there may be projects consisting of multiple types of nonresidential use and that the impact fee would be proportionately based on each use.

Swire's second contention relates to zoning. Swire argues that the impact fee should be based on the zoning of the property rather than on the land use associated with the development. Swire contends that the "office" is ancillary to the "industrial" use and would not operate without the

industrial use, and that impact fees should thus be based only on an industrial use. There is no case law precedent with respect to Swire's position.

C.R.S. § 29-20-104.5, authorizing the imposition of impact fees, provides that an impact fee should be generally applicable "to a broad class of property" and should defray the projected impacts on capital facilities caused by proposed development. "A local government should 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." *Id.*

To satisfy the statutory standard and ensure that fees are directly related to the impact on capital facilities, the Town retained BBC Research and Consulting ("BBC"). For nonresidential projects, BBC calculated the impact on three types of capital facilities – transportation, public and police facilities – based on the three categories of use – retail, office and industrial/other. BBC's report does not specifically address the impact of a single proposed development containing multiple interrelated uses.

In this case, the Swire development consists of 130,722 square feet. Of the total square footage, the Town determined that 26,332 square feet, approximately 1/5th, was attributable to office space and that 104,390 square feet was attributable to industrial space. A copy of the office space is attached, showing, among other uses, approximately 12-15 offices, a break room, a waiting room and a conference room. Notably, the warehouse itself also contains an office, but that office, given its location and apparent use within the warehouse, was calculated as being an industrial use. Town staff thus differentiated between the types of office uses, finding that the larger office space was more akin to typical office use impacts.

As stated, per the Town Code, Swire bears the burden of proving that the Town's calculation of the impact fees is not correct. Swire must establish that the impact of its development on the Town's transportation, public and police facilities is the same for the office and industrial uses within the project and that the impact of the office use correlates more appropriately with the impact of the industrial use.

At its core, Swire raises a procedural question about how to calculate impact fees – or how to quantify the impact of development – for projects that contain multiple interrelated uses. Importantly, impact fees should be uniformly and consistently calculated and applied to developments within the Town. Town staff's calculation of Swire's impact fees is consistent with how the Town has historically calculated the impact fees. Council's decision will influence how Town staff calculates impact fees going forward.

