



STATE OF VERMONT
 ENVIRONMENTAL BOARD
 MONTPELIER, VERMONT 05602
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DATE: May 9, 1989
 TO: Parties
 FROM: Aaron Adler *ADA*
 Assistant Executive Officer
 RE: Clarence and Norma Hurteau
 Land Use Permit #6F0369-EB

On April 24, 1989, the Board issued a decision in the above matter. On May 2, 1989, the Board moved to revise the decision to correct manifest error pursuant to Board Rule 30(B).

In the decision, the Board stated that the Town of Georgia did not meet its burden to prove that the Hurteaus' subdivision will create a burden on Georgia's ability to provide educational services. However, because the decision concluded that the subdivision will create such a burden, the Board is concerned that its decision is not clear.

Part of the burden of proof is the burden of producing evidence. It was this part of the burden of proof to which the decision referred. As the decision states, Georgia did not provide enough information with regard to a number of items, such as how much additional space will be needed to meet public school approval standards. Accordingly, the Board has corrected page ten of the decision to refer to the "burden of providing evidence" rather than the "burden to prove."

The decision also faulted Georgia for not showing that other developments comparable to the Hurteaus' subdivision were being assessed impact fees. However, the Board did not have the power to require that Georgia impose impact fees on other projects. The only project before the Board was the Hurteaus' subdivision and therefore the Board could only have imposed conditions with respect to that project. Consequently, the requirement to show assessment of fees on comparable developments has been deleted from pages twelve and thirteen.

I am enclosing corrected pages to the decision.

ADA/h

Enclosures

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1987-1988 school budget finances educational capital costs. Since the planned addition is to a facility which only is used by K-8 children, the Board is able to reach a positive conclusion on the basis of the information submitted by the Hurteaus that no unreasonable burden is created on Georgia's ability to provide educational services. Accordingly, the burden of proof shifts to Georgia with regard to the three issues cited above regarding the burden on Georgia, the reasonableness of this burden, and the appropriateness of fee assessment.

B. Burden/Impact on Georgia

The Board concludes that Georgia has not met its burden of providing evidence that Laura's Woods would cause a burden on the ability of Georgia to provide educational services. In assessing the burden or impact on Georgia, central factors to consider are: (1) whether new facilities are necessary because of a proposed project; (2) if so, what the costs of these new facilities will be; and (3) whether credits should be given to the proposed project because of other revenues the proposed project will generate. In this regard, it is important for a party with the burden of proof to provide a formula for assessing these factors.

In testimony on its behalf, Georgia offered a formula for the Board to use in this matter, but this formula does not take into account all the actual debits and credits that must be considered to reach a fair result. The factors that should be accounted for are included below in the Board's discussion of the areas in which more information would be needed to find in Georgia's favor.

1. Need for Additional Facilities

To adequately determine whether new facilities are necessary because of the proposed project, the Board needs to know what current conditions are at the K-8 facility, the number of K-8 children that will be generated by Laura's Woods, whether improvements are needed to meet public school approval standards, and the aggregate number of K-8 children per year that existing homes in Georgia will produce in the future.

In this area, Georgia has provided some but not all of the evidence the Board considers relevant. For example, Georgia has not indicated the number of K-8 children expected to be generated by Georgia's existing population over the next ten years. Georgia also has not come forward with information as to whether portions of the planned

C. Reasonableness of Burden/Impact

The Board concludes that Georgia has not met its burden to show that any alleged educational burden is unreasonable. The Board believes that it must determine whether a burden is unreasonable in light of (1) the ability of the community as a whole to absorb the burden, (2) other burdens from developments which have been accepted or not accepted as reasonable by Georgia or other communities, and (3) other measures which might be taken, or factors which may exist, to mitigate the burden. In this regard, Georgia has discussed the Arrowhead Development but has not offered evidence on this development's fiscal burden on Georgia or whether this burden was reasonable. Further, Georgia has not shown what the cost per taxpayer will be if the planned K-8 addition's costs were spread to all town residents through the property tax. The Board does not believe that impact fees should only be assessed if a town cannot use the property tax to finance a project. The Board does believe that, to determine whether a burden is unreasonable, it is important to see what the burden might be on the individual taxpayer.

On the basis of the evidence presented, the Board must conclude that the burden represented by Laura's Woods is reasonable. The burden only represents approximately 4% of the total school budget. Due to the phase-in of the project, this burden will occur gradually rather than at one time. Once the phase-in is completed, Laura's Woods will continue to generate property tax revenues which will be applied to educational-related capital costs. Moreover, Laura's Woods will cause only a total net increase in the amount of K-8 students of 8%. Like the cost increase, the increase in the number of students will occur gradually over ten years. Accordingly, the Board determines that Georgia appears able to absorb the educational impact of Laura's Woods and no unreasonable burden is created.

D. Appropriateness of Impact Fee Assessment

The Board concludes that Georgia has not proven that an impact fee is appropriate. In evaluating whether an impact fee is appropriate, an important factor is the fairness of both the fee and the plan for its actual assessment. The fee funds must be spent within a reasonable time and only to remedy the impacts for which they are levied. Further, measures must be taken to ensure that no unfairness results from failure to consider appropriate time-price differentials that may arise if homeowners pay fees at different times due to the phased nature of the project.

Georgia has not offered a fair plan for assessing impact fees on Laura's Woods. Assuming that fees are to be paid by home buyers at different times over the ten-year phase-in of the project, Georgia has not proffered a method for consideration of the time-price differential inherent in comparison of amounts paid at different times.

In Georgia's objections to the proposed decision, it argued that it did not have the burden to come forward with all the elements of an appropriate remedy such as impact fees. In support of its contention, it cited 10 V.S.A. § 6087(b), which states:

A permit may not be denied solely for the reasons set forth in subdivisions (5), (6) and (7) of section 6086(a) of this title. However, reasonable conditions and requirements allowable in section 6086(c) of this title may be attached to alleviate the burdens created.

This provision does not in fact address who bears the burden with respect to fashioning a remedy. Instead, it authorizes the Board and district commissions to impose remedies to alleviate burdens.

In a case in which the remedy sought is impact fees, the Board needs proper information on how to fairly assess the fees. Georgia, as the party affirmatively seeking such fees, must bear the burden of coming forward with adequate information for fair fee assessment.

E. Conclusion

The Board concludes that Georgia has not met its burden of proof with regard to whether Laura's Woods would create an unreasonable burden on Georgia's ability to provide educational services and on whether an impact fee would be an appropriate remedy for this burden. In contrast, the Hurteaus have provided enough evidence for the Board to make a positive finding in this regard. Accordingly, the Board determines that Laura's Woods will not create an unreasonable burden on Georgia within the meaning of Criterion 6, and will revise Land Use Permit #6F0369 to delete Condition 13.

In concluding that Georgia has not met its burden of proof, the Board recognizes that it will be difficult and time-consuming for Georgia and other communities to provide

the information necessary for fair assessment of impact fees. However, the Board is constrained by law to ensure that these fees are fairly assessed and must rely on parties seeking the Board to impose impact fees to provide the information necessary for such imposition.
