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**Cc:** [Heidi Petito](#); [Jorge Salinas](#); [Adam Mengel, AICP, LEED AP BD+C](#)  
**Subject:** Proposed School Impact Fees  
**Date:** Monday, September 13, 2021 5:32:29 PM  
**Attachments:** [UGov\\_281c3052-c4cf-45e7-8fc9-ef3916cbd4fc.png](#)

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I have been asked, what is the obligation of the BCC to review the request of the School Board to increase educational facilities impact fees? Although most people assume school districts assess educational facilities impact fees, under Florida law the BCC adopts school impact fees by ordinance. When adopting an ordinance, the BCC is acting in a legislative capacity and not quasi-judicial, meaning you are making a broad policy like a legislature and not like a court that decides rights among parties.

When adopting ordinances, courts give deference to the BCC's determinations, as the elected representative body of its constituents, provided the determination is made in good faith and compliant with any other applicable laws. Here, for the school impact fees, your obligation is to consider the information presented by the School Board and from other interested parties. Staff has provided you an explanation and presentations on what impact fees are and how they assist in managing growth. You have also been guided on the new legislation that applies.

The BCC is not obligated to grant the School Board's request either in whole or in part. The BCC has the responsibility to determine if "extraordinary circumstances" exist to levy the full amount of requested fees. The BCC will make this decision following the second workshop later this month with the School Board's representatives. Florida Statutes require a minimum of two workshops dedicated to the showing of "extraordinary circumstances."

If the School Board does not agree with the BCC's decision on the amount of the fees or the existence of extraordinary circumstances, the School Board could request formal conflict resolution. This would be under Florida's Governmental Conflict Resolution Act (Florida Statutes Chapter 164).

This is a mandatory process for the governments to attempt a resolution. The process can involve meetings, including with a professional mediator. No mediation is binding on the governments until agreed to in writing. The governments are obligated to act in good faith in going through the process. Failure to mediate in good faith is grounds for seeking attorney's fees from the other government.

You are also permitted to condition any approval of the educational facilities impact fees on the School Board's agreement to indemnify and defend the County if a third party were to sue the County for its adoption of the impact fees. This is what the BCC did in its 2004 interlocal agreement when it adopted the impact fees that apply today.

We are recommending that the BCC make this a condition again, as the School Board is in a superior position to defend the impact fees and their underlying analysis with their own experts.

Please let us know if you have any questions or comments. Thank you.

**Al Hadeed**

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