

**TOWN OF BURGAW BOARD OF COMMISSIONERS
SPECIAL MEETING**

DATE: June 21, 2018
TIME: 2:00 PM
PLACE: Burgaw Municipal Building
BOARD MEMBERS PRESENT: Mayor Kenneth Cowan
Mayor Pro-tem Wilfred Robbins
Commissioners Jan Dawson, Bill George, Vernon Harrell and James Murphy
STAFF PRESENT: Joseph Pierce, Town Manager
Sylvia W. Raynor, Town Clerk
Zachary Rivenbark, Town Attorney
Louis Hesse, Building Inspector
Jim Taylor, Fire Chief
Wendy Pope, Finance Officer
Karen Dunn, Planning Administrator
Kim Rivenbark, Community Development Coordinator
Kristin Wells, Deputy Clerk
MEDIA PRESENT: None
OTHERS: Dale Schepers, McGill Associates

The meeting was called to order by Mayor Kenneth Cowan at 2:00PM. The invocation was delivered by Commissioner George. The Pledge of Allegiance was said by all.

PUBLIC HEARING - Consideration of Approval of Ordinance 2018-07 to amend Article III Rates and Charges of the Town of Burgaw Code of Ordinances Regarding Water and Sewer Impact Fees

Mr. Pierce advised the North Carolina General Assembly passed House Bill 436 in July 2017, amending Chapter 162A of the General Statutes by adding “Article 8, System Development Fees.” This amendment was enacted as “An Act to Provide for Uniform Authority to Implement System Development Fees for Public Water and Sewer Systems in North Carolina.”

Mr. Pierce advised to fulfill the requirements of §162A-205 Supporting Analysis, the Town engaged McGill Associates to complete a system development fee analysis. Based on Burgaw’s combination of existing system capacity and ongoing capital construction to expand capacity, the development fee, in accordance with HB 436 rules for an Equivalent Residential Unit (ERU) for water and sewer was calculated to be \$11,713. ERU is defined as the water and sewer capacities required to serve the most typical user type, which is a three-bedroom single-family dwelling.

Mr. Pierce recognized Dale Schepers with McGill Associates. Mr. Schepers advised the calculation sets a ceiling or a maximum amount that is justifiable and is in accordance with the legislation. He said the town can choose to set its fee at any amount up to and including said ceiling. Mr. Schepers said the state determined that cities, towns and municipalities did not have the legal right to charge impact fees; only counties and water/sewer authorities did. He advised that in a contested court case that went all the way to the Supreme Court it was determined that they were out of line because they don’t have the right to charge them now. The court determined that they would allow these entities to charge the fees by following very specific guidelines on how those charges will be calculated. As a result of this action it has become a uniform method for everyone. He there are no capacity fees, no capital repayment fees or anything like impact fees. They have to be done in accordance with the methodology and termed as system development fees. This came about as a result of several lawsuits.

Mr. Schepers advised that in regards to previous fees, the fees must conform to this process by July 1, 2018 which is what you are doing today. He advised there is a three year statute of limitations with this process that allows someone to contest these fees if they believe they have been overcharged. This must be done within three years after July 1, 2018. Mr. Schepers advised there has been no change in the town’s fees and we are well within limits set by the state, therefore in his opinion, we should not have any issues with someone contesting the fees.

There being no further discussion, Mayor Cowan closed the public hearing and called for a motion on Ordinance 2018-07.

Motion

Commissioner George made a motion to approve Ordinance 2018-07 To Amend Article III, Rates and Charges of the Town of Burgaw Code of Ordinances Regarding Water and Sewer Impact Fees. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDINANCE 2018-07
ORDINANCE TO AMEND ARTICLE III RATES AND CHARGES OF THE TOWN OF BURGAW CODE OF
ORDINANCES REGARDING WATER AND SEWER IMPACT FEES**

WHEREAS, the North Carolina General Assembly has authorized the Town to adopt system development fees in accordance with N.C.G.S. §160A-314 and Article 8 of N.C.G.S. §162A; and

WHEREAS, pursuant to N.C.G.S §162A-205, the Town retained the services of McGill Associates to produce a written analysis, employing generally accepted accounting, engineering, and planning methodologies to calculate system development fees for the Town's public water and sewer systems; and

WHEREAS, McGill Associates produced a "Cost-Justified Water and Wastewater System Development Fee Report" for the Town of Burgaw dated May 2018 (hereinafter "Report"); and

WHEREAS, subsequent to posting of the Report to its website and otherwise making it available to the public for review and comment, the Town conducted a public hearing at a special meeting of the Board of Commissioners on June 21, 2018 to receive public comment on the Report prior to considering adoption of the analysis with any modifications or revisions; and

WHEREAS, the Board of Commissioners does hereby direct the Town Manager or his assigns and a qualified licensed professional engineer or accountant to update the Report and system development fees at least every five years hereafter; and

WHEREAS, the Board does wish to maintain fees charged under the new moniker of System Development Fee as those fees described in the Town of Burgaw's Budget Ordinance, Section 8, Attachment I - Schedule of Fees as "Appendix A – Water and Sewer Fee Schedule"; and

WHEREAS, the Board of Commissioners does hereby direct the Director of Finance of the Town to assure that all expenditures of system development fees herein created shall conform to N.C.G.S. §162A-211 as the same may be amended from time to time; and

WHEREAS, the Board of Commissioners deems it advisable and in the public interest to effect certain revisions to Article III. "Rates and Charges" of Chapter 36 "Utilities" of the Code of Ordinances of the Town of Burgaw to establish a system development fee as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF BURGAW:

SECTION 1: That Article III. "Rates and Charges" of Chapter 36 "Utilities" of the Code of Ordinances of the Town of Burgaw is hereby amended and replaced with the following:

DIVISION 2. – SYSTEM DEVELOPMENT FEES

Sec. 36-108. – Generally.

System development fees shall be charged with respect to new development involving the subdivision of land either at the time of plat recordation or when water or sewer service for the subdivision or other development is committed by the local governmental unit. For all other new development, the local governmental unit shall collect the system development fee at the time of application for connection of the individual unit of development to the service or facilities. New development includes the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the calculated anticipated daily flow rate, or any use or extension of the use of land which increases the calculated anticipated daily flow rate.

- (1) Beginning on the effective date of this ordinance, system development fees shall apply to:
 - (a) all new connections to the town's water or sewer system, except for fire line connections;
 - (b) existing connections where new improvements have an increased calculated anticipated daily flow rate of water or sewer from the town; and
 - (c) change of use will require the owner/customer to pay the difference between the old use and the proposed new use, if there is an increase in calculated anticipated daily flow rate. No refunds will be granted if the new usage is less than the old usage.
- (2) System development fees shall not include and separate charges may be assessed for:
 - (a) administrative, plan review, or inspection costs associated with permits required for development.
 - (b) connection fees for the purpose of reimbursing the city for the actual costs of connecting the service unit to the system.
 - (c) dedication of capital improvements onsite, adjacent, or ancillary to a development absent a written agreement providing credit or reimbursement to the developer pursuant to N.C.G.S. §160A-320, §160A-499 or Part 3D of Article 19, Chapter 160A as the same may be amended from time to time.
 - (d) reimbursement to the town for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses.
- (3) System development fees will not be charged on buildings or other improvements constructed to replace like buildings provided that the replacement will not result in any increased capacity requirements over that required to

- serve the replaced building. The decision as to whether the result is an increased capacity requirement shall be made by the building inspector, whose decision is final.
- (4) System development fees are transferable between locations on different parcels of property as long as the parcels are contiguous or separated only by a street or alley and part of a single or multi-phased project shown on an approved site plan at the time of issuance of a building permit.
 - (5) System development fees shall be paid in full prior to the issuance of a building permit for the structure to be built at the service address.
 - (6) When it is determined that a renovation, improvement, addition, increase or change in use has been made that increases the capacity requirements of the town's water and/or sewer system, the system development fee calculation shall be made by calculating the fee for the total building including the improvement, addition, increase or change in use and deducting the fee for the original building or use. If a system development fee was not previously required, then the fee shall be calculated based only on the improvement, addition or change in use. The decision as to whether the result is an increased capacity requirement shall be made by the building inspector, whose decision is final.
 - (7) If the use of a building changes or increases after system development fees are paid, the total system development fee cost shall be equal to the greatest flow of the expected use.
 - (8) Buildings that contain more than one use shall have the system development fee calculated from the sum of each use in the building, based upon the schedule of system development fee charges.
 - (9) The system development fee authorized by this section shall be paid for connections to the town's municipal water and sewer systems in the amount or at the rate as may from time to time be fixed by the Board of Commissioners, and based on the Table of Equivalent Residential Units (ERU) of Major Land Uses as described in the Schedule of Fees, which shall be on file in the office of the Town Clerk.

SECTION 2: That Article III. "Rates and Charges" of Chapter 36 "Utilities" of the Code of Ordinance of the Town of Burgaw is hereby amended as follows:
 Sec. 36-110. –Refund of fee paid.

If a building permit expires and no construction has been commenced, then the fee-payer shall be entitled to a refund of the impact system development fee paid as a condition for its issuance except that the town shall retain six percent of the funds as an administrative fee to offset the costs of collection and refund.

SECTION 3: Any ordinances or resolutions in conflict with this ordinance are hereby repealed. These amendments shall become effective immediately upon adoption of this ordinance on June 21st, 2018.

WITNESS my hand and the corporate seal of said Town of Burgaw, this the twenty-first day of June, 2018.

Adjournment

Commissioner George made a motion to adjourn. The motion was seconded by Commissioner Dawson and carried by unanimous vote. The meeting adjourned at 2:12PM.

Kenneth T. Cowan, Mayor

Attest: _____
 Sylvia W. Raynor, Town Clerk