

Capital Improvements Advisory Committee (CIAC)  
Virtual Meeting via Webex  
January 13, 2021  
3:00 p.m.

Participants:

City Staff

Michael Marrero, City Manager  
Cindy Muncy, Asst. City Manager  
Phillip Urrutia, Asst. City Manager  
Thomas Kerr, Dir. of Public Works/Utilities  
Vanessa Ramirez, Deputy Dir. Public Works  
Yervand Hmayakyan, City Engineer  
Joe Tucker, Asst. City Engineer  
Fara Hernandez, CIP Coordinator  
Gloria Gonzalez, Utilities Contract Supervisor  
Gayla Sanders, Utilities Project Coordinator  
Natasha Brooks, City Attorney  
Additional City Legal Department staff

Kimley-Horn & Associates

John Atkins  
April Rose Escamilla  
Jeff Whitacre

CIAC Members

John Landgraf  
Mike Withrow  
Filiberto Gonzales  
Joe Hurt  
Dr. James Goates

Absent

Richard Pierce  
Rev. Quincy L. Randall

Due to COVID-19 precautions, the CIAC meeting was held via Webex.

1. Call to Order

Mr. Landgraf called the meeting to order at 3:03 p.m.

2. Approve minutes from the December 9, 2020 CIAC meeting

CIAC

Mr. Landgraf asked for a motion to approve the minutes from the December 9, 2020 CIAC meeting. Mr. Gonzales made a motion to approve and seconded by Dr. Goates. Motion passed unanimously.

3. Sales Tax Discussion

Michael Marrero, City Manager

Mr. Landgraf stated that he and Mr. Marrero have had several discussions and several CIAC members had expressed concerns that the CIAC was moving too fast. There were ramifications when looking at improvement plans. Most not inside the City of Odessa and where a lot of the Impact fees are most beneficial in expanding City services. He gave Mr. Marrero and Ms. Brooks the floor.

Mr. Marrero thanked Mr. Landgraf and acknowledged that Ms. Brooks was also on the call. Mr. Marrero stated that there was an outstanding issue with the County. A couple of years ago, the County established the County Assistance District. He mentioned that Ms. Brooks could provide more specifics, however, essentially having the County Assistance District in place has some dire consequences for the City of Odessa in terms of its growth. It impacts the work that the committee is looking at, and, although he is hopeful that the issue will ultimately work out, there is no question that it is a consideration as we begin to plan for our City's future. Mr. Marrero stated that with the implementation of the County's Assistance District, any property that is currently not within the city limits of Odessa can be annexed into the City of Odessa. However, we will not be able to collect any sales tax that may be generated from that area. The City would be relegated to water/sewer and ad valorem. He mentioned that this should be looked at from a holistic point of view as we begin to think about the development and growth of the City. Mr. Marrero would anticipate that a lot of the new area that gets developed

would have a certain amount of sales tax realization for the City. Sales tax currently comprises the largest component of revenue for our community at almost 40% annually in terms of general fund revenue. The introduction of the County Assistance District jeopardizes the ability of the City to generate sales dollars which ultimately impacts the City's ability to provide services. He gave the example of the City annexing 10,000 acres and having to provide all the services we currently provide to every resident but without the benefit of a third of the dollars that are necessary to make that happen. That plays a significant role in our ability to grow. Mr. Marrero asked Ms. Brooks for an update on how the City arrived at this point and where we are currently. It was important for the committee to know where we are today and what we anticipate as a result of our pending opinion from the Attorney General's office. He requested that Ms. Brooks provide the history of the election, wording associated with it and the interpretation of the publication by the Comptroller's office and how that ultimately affected how the County Assistance District was put in place and how it impacts the City.

Ms. Brooks asked the committee if they had the opinion that was sent to the Attorney General's office. Mr. Marrero stated that they would not have it. She believed it provided a good background of what happened. When this went to the County for a vote, the City of Odessa and Goldsmith were excluded. At the time, it was not reviewed since it was believed that its passage would only be for the County. However, the Comptroller inserted language that changed that. She was locating the opinion to share and had Robert Carroll join the call to access information quicker. She requested that the committee move to something else until Mr. Carroll joined. Mr. Marrero shared the opinion and asked which portion Ms. Brooks would like for him to show. Ms. Brooks stated that the argument portion of the brief on the first page showed the issue. She believes that the local government code required the City to be given notice by the County if the County's Assistance District was going to affect any territory of the City of Odessa. The law states that notice must be provided. The County agreed that notice was not provided to the City. They did not believe that notice was required since they do not believe the ETJ is the City's territory. Ms. Brooks stated that the City met with the County and the meeting did not go well. The City decided to request an AG opinion to decide the matter. The City believes the ETJ is City of Odessa territory, therefore, should receive tax dollars. The AG opinion is arguing to potentially provide ruling on sales tax dollars.

Mr. Landgraf asked if the ruling was expected by March. Ms. Brooks stated that the due date was April 5, 2021. Mr. Landgraf asked if the ruling is not accepted by either side, can it be appealed, and could it be in the court system for years and possibly go to the State Supreme Court? Ms. Brooks stated that the AG opinion is just an opinion and we can accept or not. It can also go to mediation or the City could file suit. Mr. Landgraf stated that it does not hinder the efforts of the CIAC. Mr. Marrero is hopeful to work out this issue. There will still be growth and having the LUA and priority projects planned out is important. Ms. Ramirez stated that the plan being reviewed is a 10-year plan that allows amendments if needed. Mr. Landgraf asked if the amendments were made by Council or the CIAC. Ms. Ramirez stated that amendments require CIAC review and recommendations to Council. Mr. Atkins stated that if plans do not state to amend, they do not need to go back to the CIAC. Fees could be amended by the Council.

Mr. Landgraf asked if the new Council members were good with the direction of the CIAC. Mr. Marrero intends to have Kimley-Horn meet with all the previous and new Council members and provide a review of

what the CIAC is working on. Mr. Marrero also offered that any committee members who would like to have an extended conversation or have specific questions can meet with him and Ms. Brooks. Mr. Landgraf asked if there was any discussion on a compromise or waiting until April. Mr. Marrero stated that anything short of 100% of the sales tax money coming back to the City creates a burden to current rate payers. Dr. Goates stated that the new Council and Mayor need to review and sounds like it might be a fight for years in the courts and Supreme Court. Dr. Goates feels like the two (2) taxing entities should be able to come to an agreement. He is personally afraid that if we go forward and specifically put down some dollar figures, that the County could use that against the City. Mr. Marrero stated that Ms. Brooks has had meetings to discuss with the new Council and continues to meet with them as a group to get direction. Ms. Brooks stated that it was going to take negotiation and compromise from both the City and the County. She is hoping to come to some resolve before April 5. Mr. Landgraf stated that the City Manager and City Attorney are available if any further questions come up.

4. Recap of schedule and discussion of in-person meetings

John Landgraf, Chair

Mr. Landgraf stated that he does not prefer virtual meetings as they are not as effective. He is hoping to do some in-person meetings, although it seems unlikely. Most large meeting rooms in town are closed. He asked for the committee's thoughts and asked Ms. Ramirez to recap the schedule.

Mr. Gonzales stated that he is open to any type of meeting but agreed that in-person puts things into perspective. If a location can be found he would love to attend.

Mr. Marrero stated that the CIAC has access to the City's community buildings. It would be some expense to get the consultants to Odessa. He stated that what the committee prefers would be considered.

Mr. Withrow stated that he does not want to create a COVID situation and be publicized. He agreed that virtual calls are easy to be distracted and not be on point. He prefers in person but with all precautions. Mr. Gonzales suggested that the consultants can join meetings virtually while the committee meets in-person. This allows for the committee to better discuss presentations.

Mr. Marrero and committee agreed with the suggestion of Mr. Gonzales.

Mr. Landgraf requested that we plan to meet in person for the next meeting with the consultants joining virtually.

Ms. Ramirez provided a recap of the meeting schedule. The first meeting was to introduce Impact Fees 101. The second meeting was to review the LUA and IF CIP plan. This meeting was to provide comments and recommendations regarding only the LUA and IFCIP to Council. Then we can move forward in February with the financial analysis of the maximum assessable impact fee per statutory law. The March meeting would be to discuss and formulate a written recommendation to Council on the impact fee. An additional meeting was built-in for April to discuss any questions from the committee.

Mr. Landgraf stated that the CIAC wanted to understand what other communities are doing and understand those issues before getting into maximum assessable impact fees. He asked what Odessa was doing before today, what was done without impact fees and how have capital

improvements been made in the past. He also asked what the difference was today compared to 1988 and 1995.

Dr. Goates stated that we needed to look at the history and discuss what other cities are doing regarding impact fees. Mr. Marrero stated that impact fees were new to the City. In years past, when providing water to new areas someone had to pay for the water. It was primarily through issuance of debt and then supplemental requests. The City must come up with money first. The 87<sup>th</sup> Street project was used by pro rata. Pro rata allowed the City to build the infrastructure first and get paid back as the properties were platted. Debt and pro rata have been the two primary ways that the City has been able to develop infrastructure.

Mr. Landgraf asked if there was a mechanism charged for the interest. Some pro rata agreements take many years to pay and the City loses money when issuing debt and paying interest on that debt. Ms. Muncy stated that there is an opportunity to do that, but it was not built into 87<sup>th</sup> St. pro rata. She stated there is a way and will research it.

Dr. Goates wanted the committee to know that and he believes Line H had pro rata. Ms. Muncy stated that when considering impact fees, the growth like with Line H was a 20-year growth. In the last 5-6 years, the growth has been more rapid than the 20 years prior.

Mr. Marrero added that more projects were issued debt and set aside for rehabilitation of existing infrastructure and little set aside for new development. That has amplified and we have crumbling infrastructure all over the City. Dr. Goates stated that it was normal development and always included in the budget. He is not against impact fees but wanted a good understanding since Mr. Atkins' focus in the last meetings were on impact fees. He wanted the committee to know there was more than one vehicle and more than one way to handle these projects.

Mr. Marrero stated that as the master plans were developed, the Council was alarmed at the total number of dollars for new and existing infrastructure. Their direction to staff was to talk about multiple ways to fund the projects including the ability for more pro rata work and impact fees. Staff was directed to look at impact fees as another option to generate revenue necessary to continue growth. Dr. Goates stated that it was important to look at where impact fees could be used. If the City is bound by the sales tax situation, there are a lot of properties in the ETJ that we can attach to now. He stated that when asked if we can use impact fees on those areas, Mr. Atkins stated we could not.

Mr. Gonzales stated that he met with Midland mayor and their Director of Utilities. He stated that impact fees were a flexible option and can go back and set certain impact fees in different areas. He stated that credits can be given to developers to offset the cost. There are several components that make the impact fees and there is a responsibility to review to provide the City with an opportunity to help with aging infrastructure.

Mr. Kerr stated that Kimley-Horn was hired to look specifically at impact fees. All the information requested is being pulled together as well. Mr. Landgraf thanked Mr. Kerr for that input.

Mr. Atkins stated that Mr. Whitacre could provide history on how impact fees were handled in Midland and Lubbock. He further stated a unique context and nuance regarding IF for water / sewer and roadway is the law requires that the roadway IF can only be calculated in relationship to your current city limits. If the City decides to move forward, that would be a separate issue from the sales tax issue. Water / sewer does extend outside the city limits into the ETJ. Mr. Whitacre stated that both committees had similar questions. Impact fees are new to West Texas and most questions are: "Why we are looking at impact fees?". Growth

has been at record pace and rate, and, as cities grow, maintenance has been put off and is now becoming major maintenance costs. He provided a summary of both Midland and Lubbock's impact fees. Midland wanted to fund major projects to allow development to continue to occur and had major sewer issues to open land for development. They were looking for an alternative funding source to help convey sewer to their treatment plant. Midland's main emphasis was how to develop their portfolio and allow development to pay into pool of money that allows them to build infrastructure needed to serve growth. The Midland's CIAC had little conversations on water and wastewater but a lot of discussions on roadway. There was \$185M on 10 year needs on capital side of roadway and \$10M needs on maintenance. Currently Odessa is funding about \$5M per year on maintenance. Moving forward Midland adopted impact fees.

Mr. Whitacre stated that Lubbock had some funding sources to allow maintenance on roadway side and at some point, did not have those funds. They had \$120 million in roadway issues and no partnerships to participate. Lubbock had water and wastewater taken care of and did not approve impact fees for that portion. Instead they used pro rata methodology. They adopted a \$0 rate for water and wastewater and they only adopted roadway impact fees.

Mr. Whitacre provided the example below.  
If the city had \$100 million of needs and take water, wastewater and roadway would need \$350 million for 10 years. If rate is adopted by City, only covers about 10% and the City would still have to cover about 90%.

Mr. Landgraf asked if Lubbock changed the water/sewer rates rather than using IF. Mr. Whitacre stated that NewGen did the rate study for Lubbock, but the short answer is every project you do has a 5-year capital plan. Their current rate structure showed that with what they had in their CIP, their water / wastewater was increased by .5 cents and water was increased by \$1. They felt like their current rate structure was adequate.

Mr. Landgraf asked if Odessa's rate structure was looked at as part of the master plan. Mr. Atkins stated that NewGen was on board during master plan discussions and they did a pro forma. Mr. Landgraf asked if it does not all have to be impact fees but also rate structure.

Mr. Atkins asked everyone to mute due to an echo.

One step moving forward is to discuss dollars at the next meeting. The step now is assuming the LUA and IFCIP is appropriate and then take the data and the pro forma, look at the City's finances and have exhibit showing needs and how those are paid by revenue funding and impact fees. Taking the assumptions from the report allows them to generate revenue assumptions.

Mr. Whitacre stated that there is a 3-step process: 1) planning, 2) math, and 3) policy. It can be confusing to put the policy step first although it is possible. Mr. Landgraf stated that the information was helpful, and he is not opposed to impact fees and believes he jumped ahead to the numbers. Mr. Whitacre stated that we can dive into the details of the policy, but we must first get recommendations on the LUA and IFCIP. Mr. Landgraf stated that we can discuss the LUA and IFCIP. Mr. Gonzales asked for positive and negatives of issuing debt, impacts fees and pro rata. Mr. Marrero stated that any information requested by the committee can be provided and answer any questions from the

committee. All the ways to fund play a roll in current and future infrastructure plans.

5. Land Use Assumption (LUA) and Impact Fee Capital Improvements Plan (IF CIP) Comments and Recommendations Kimley-Horn

Dr. Goates stated that they may have jumped ahead and that they should review the presentation on LUA and IFCIP. Mr. Landgraf agreed and was ready to hear the presentation. Mr. Atkins provided the presentation on the LUA. Mr. Landgraf asked if there were any questions.

Mr. Landgraf asked for a motion to approve the LUA as provided by Kimley-Horn. Dr. Goates made a motion to approve and seconded by Mr. Gonzales. Motion passed unanimously.

Mr. Atkins provided the presentation on the IFCIP. Dr. Goates asked if ECUD was involved in the CIP plan. Mr. Atkins stated that there is a separate plan for ECUD. Dr. Goates asked if the ConocoPhillips area was involved. Mr. Atkins stated they are not involved. Mr. Landgraf stated that was a great point and the southern portion outside the city was privately funded. If there are similar ground water issues those would probably be privately funded and have no direct impact on the City's finances. Mr. Kerr confirmed their comments. The EPA usually builds the extensions in.

Mr. Atkins continued with the IFCIP presentation and Mr. Whitacre presented on the roadway impact fee. Dr. Goates asked if the CIP could be amended to come back into City in areas in need of rehabilitation to develop new roads and service areas. Mr. Whitacre stated impact fees must be used for widening, new capacity, new roadways or intersection improvements. Impact fees cannot be used for seal coat, overlay or maintenance. Dr. Goates stated that he was referring to destroying a part of the town and rebuilding it with new road structure for additional vehicles in the area. Mr. Whitacre stated that it was possible if capacity was being added. A new project could recover almost 100% where an existing project might recover only about 10% but impact fees can be used in that case.

Mr. Atkins conclude the IFCIP presentation.

Mr. Landgraf asked if there were any questions.

Mr. Landgraf for a motion to approve the IFCIP as provided by Kimley-Horn. Mr. Withrow made a motion to approve and seconded by Mr. Gonzales. Motion passed unanimously.

6. Authorize the CIAC Chair to submit comments and recommendations to Council regarding the LUA and IFCIP on behalf of the CIAC CIAC

Mr. Landgraf stated that the committee needs to approve the chair to submit recommendations to Council. He asked that City staff help prepare the memo. Ms. Ramirez stated there is a draft pending and is only needing the committee's comments inserted. City staff will work with Mr. Landgraf directly for his approval. Mr. Landgraf stated that he will circulate the final memo to the CIAC for their approval before submitting to Council.

Dr. Goates made a motion to approve and seconded by Mr. Withrow. Motion passed unanimously.

7. Discuss questions/comments from the CIAC

John Landgraf, Chair

Mr. Landgraf asked Ms. Muncy to help the committee understand what the water / sewer fund looks like and the history. He requested it be shown in a chart at the next meeting. Dr. Goates stated that water development loans were paid by raising water / sewer rates and to build lakes for CRMWD.

Ms. Ramirez stated that the CIAC can email any questions to City staff and information will be provided or a meeting can be scheduled to discuss questions. Staff will also provide all information for the February 10 meeting a week in advance to allow the CIAC to review.

8. Adjourn

There being no further business, Mr. Landgraf asks for a motion to adjourn. Mr. Withrow moved to close. All being in favor, the meeting adjourned at 4:30 p.m.

ATTEST:

APPROVED:

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Filiberto Gonzales, Secretary

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John Landgraf, Chair