WINDSOR TOWNSHIP
COUNTY OF YORK

ORDINANCE NO. 07-03-01

AN ORDINANCE ESTABLISHING AND IMPOSING A TRANSPORTATION IMPACT FEE UPON NEW DEVELOPMENT WITHIN A DESIGNATED TRANSPORTATION SERVICE AREA IN THE TOWNSHIP OF WINDSOR, AND ESTABLISHING PROCEDURES AND STANDARDS ANCILLARY THERETO

WHEREAS, the Township of Windsor, County of York, Commonwealth of Pennsylvania, (the "Township") has experienced considerable growth in the form of residential and, commercial development in recent years, and it is anticipated that such development will continue into the future; and,

WHEREAS, it is anticipated that such future development will create a substantial impact upon the transportation facilities within one or more areas of the Township; and,

WHEREAS, the Board of Supervisors is required to keep all roads open, in good repair and usable for the safe and convenient travel by the public; and

WHEREAS, fulfillment of this obligation of the Board of Supervisors will entail substantial costs directly attributable to the impact of such future development; and,

WHEREAS, ACT 209 of 1990, Article V-A, " Municipal Capital Improvement", of the Pennsylvania Municipalities Planning Code, 53 P.S. §10501-A et seq., establishes a comprehensive legislative scheme for the imposition of transportation impact fees upon Applicants for approval of such future development; and,

WHEREAS, §501-A of the Pennsylvania Municipalities Planning Code, 53 P.S. §10501-A, provides as follows: "To further the purposes of this act in an era of increasing development and of a corresponding demand for municipal capital improvements, to ensure that the cost of needed capital improvements be applied to new developments in a manner that will allocate equitably the cost of those improvements among property owners and to respond to the increasing difficulty which municipalities are experiencing in developing revenue sources to fund new capital infrastructure from the public sector, (certain) powers are granted to all municipalities, other than counties, which municipalities have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance and zoning ordinance; and,

WHEREAS, §503-A (a), of Pennsylvania Municipalities Planning Code, 53 P.S. §10503-A (a), provides as follows: "The governing body of each municipality other than a county, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal impact fee ordinances and thereafter, may establish, at the time of municipal approval of any new development or subdivision, the amount of an impact fee for any of the off-site public transportation capital improvements authorized by this act as a condition precedent to final plan approval under the municipality's subdivision and land development ordinance; and

WHEREAS, by its Resolution No. O5R-9-1, duly adopted at a regular public meeting held on the 19th day of September, 2005, the Board of Supervisors declared its intention to adopt this Transportation Impact Fee Ordinance; and,

WHEREAS, public notice of intention of the Township to adopt a Transportation Impact Fee Ordinance was duly advertised in the York Dispatch/York Daily Record on the 20th and 29th day of September, 2005; and,

WHEREAS, the Township hereby finds and declares that a Transportation Impact Fee imposed upon residential and non-residential, including commercial and industrial, development in order to assist in the financing of specified major transportation capacity improvements in a transportation service area established pursuant hereto, the demand for which is uniquely created by such development is in the best interest of the Township and its residents, is equitable, and does not impose an unfair burden on such development, land owners, or the community.

NOW THEREFORE BE IT HEREBY ORDAINED AND ENACTED, by the Board of Supervisors for the Township of Windsor as follows:

§ 1. Title

This ordinance shall be known as the "Windsor Township Transportation Impact Fee Ordinance".

§ 2. Purpose

The purpose of this ordinance is to establish a Transportation Impact Fee to ensure that the transportation system is available and adequate to support new growth and development. To advance this objective, there is hereby created a Transportation Impact Fee payable to the Township at the time of building permit issuance.

§ 3. General Findings and Conditions

The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the Transportation Impact Fee set forth herein are those set forth in Act 209 of 1990, Article

V-A, Municipal Capital Improvement, of the Pennsylvania Municipalities Planning Code, 53 P.S. §10501-A et seq., and any and all amendments thereto (hereinafter the "Act"), and consists of:

(1) The recitals set forth above;

(2) The analysis, advice, and recommendations of the Traffic Impact Fee Advisory Committee;

(3) The Land Use Assumptions report as adopted by the Board of Supervisors;

(4) The Roadway Sufficiency Analysis as adopted by the Board of Supervisors;

(5) The Capital Improvements Plan, as adopted by the Board of Supervisors; and,

(6) Such other conditions and standards as the Board of Supervisors may by resolution identify from time to time as being relevant and material to the imposition of a Transportation Impact Fee and consistent with the provisions of the Act and any amendments thereto.

(b) The collection, disbursement, and accounting of Transportation Impact Fees shall be administered by the office of the Township Manager, subject to review, oversight, and control by the Board of Supervisors.

(c) The amount of per peak hour trip Transportation Impact Fees shall be as set forth in § 13 of this Ordinance.

(d) The time, method, and procedure for payment of Transportation Impact Fees shall be as set fort in §18 of this Ordinance.

(e) The procedures for credits against Transportation Impact Fees shall be as set forth in § 19 of the Ordinance.

(f) The procedures for refunds of Transportation Impact Fees shall be as set forth in § 20 of this Ordinance.

(g) Such exemptions as the Board of Supervisors shall choose to enact be set forth in § 21 of this Ordinance.

§ 4. Definitions

The terms and definitions set forth in § 502-A of the Act, 53 P.S. 10502-A, are hereby adopted and incorporated by reference in full in this ordinance, as if they were attached hereto.

§ 5. Enactment and Imposition of Transportation Impact Fees

There are hereby enacted, Transportation Impact Fees to be imposed upon new development, as defined in the Act, for the purpose of off-site public transportation capital improvements authorized by the Act and as described by the Capital Improvements Plan adopted by the Board of Supervisors. Said Transportation Impact Fees shall apply to all new subdivisions and land developments within the Transportation Service Areas established pursuant hereto and the calculation of the amount of the Transportation Fee shall be a condition precedent to final approval of a subdivision or land development plan and the payment of the Transportation Impact Fee shall be a condition precedent to the issuance of a building permit.

§ 6. Uses

Transportation Impact Fees collected pursuant to this ordinance shall be expended for costs incurred for improvements attributable to new development and designated in the Capital Improvements Plan for improvements within the Transportation Service Areas in which the new development will be located. Additionally, such fees may be used for acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements within the Transportation Service Area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

§ 7. Documents Adopted by the Board of Supervisors

The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in full in the ordinance, as if attached hereto:

(a) Recommendations of the Traffic Impact Fee Advisory Committee, including those set forth in the documents identified below.

(b) Land Use Assumptions Report as adopted on September 18, 2006

(c) Roadway Sufficiency Analysis as adopted on January 15, 2007

(d) Capital Improvements Plan as adopted on February 5, 2007

(e) Transportation Service Area Map as prepared by Transportation Resource Group Inc., included as Figure 1 to the Windsor

Township Capital Improvements Plan, and incorporated by reference in full herein, as if attached hereto.

§ 8. Special Traffic Studies

Where intended to assist in determining the appropriate amount of Transportation Impact Fees, the Township may require the preparation of a special transportation study to determine the traffic generation or circulation patterns in new non-residential development provided, nevertheless, that no studies may be required where the proposed development will not require a deviation from the land use assumptions used to create the Capital Improvements Plan. Any such studies required by the Township shall be submitted prior to the imposition of the Transportation Impact Fee and shall be considered in the determination of the Fee.

§ 9. Uniform Applicability of Transportation Impact Fee

This ordinance shall be uniformly applicable to all developments that occur within the defined Transportation Service Area.

§ 10. Imposition and Payment of Transportation Impact Fee as Condition to Issuance of Building Permit

No building permit shall be issued for a development in the Transportation Service Area hereto unless the applicant therefore has paid the Transportation Impact Fees imposed by and calculated pursuant to this ordinance.

§ 11. Method of Calculation of Transportation Impact Fees

(a) The Transportation Impact Fees for capital improvements shall be based upon the total costs of the road improvements included in the adopted Windsor Township Capital Improvements Plan within the transportation service area, which are attributable to and necessitated by the new development within the Transportation Service Area as calculated in accordance with the Act and herewith, divided by the number of anticipated peak hour trips generated by all new development consistent with the adopted Land Use Assumptions Report and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, 7th or subsequent editions, as amended, which is hereby adopted by the Township, to equal a per trip cost for transportation improvements with the Transportation Service Areas.

(b) The specific Transportation Impact Fee for specific new subdivision or land development within the Transportation Service Area for road improvements shall be determined as of the date of preliminary subdivision or land development approval by multiplying the per trip cost established for the Transportation Service Area by the estimated number of peak hour trips to be generated by the new subdivision or land development using Trip Generation Manual published by the Institute of Transportation Engineers, 7th or subsequent editions, as amended.

(c) The Board of Supervisors may authorize or require the preparation of a special transportation study in order to determine the traffic generation or circulation for a new non-residential development to assist in the determination of the amount of the transportation fee for such subdivision or land development.

§ 12. Establishment of Transportation Service Area

The Transportation Service Area is established as shown on the Transportation Service Area Map prepared by Transportation Resource Group, Inc., is included as Figure 1 in the Windsor Township Capital Improvements Plan, and incorporated by reference in full herein. Additional transportation service areas or sub-areas or combinations of transportation service areas or sub-areas may be designated by the Board of Supervisors from time to time, consistent with the procedure set forth in this ordinance and in consideration of the following factors:

(a) The Comprehensive Plan;

(b) Any standards for adequate public facilities incorporated in the Capital Improvement Plan;

(c) The projected build-out and timing of development areas;

(d) The need for and cost of un-programmed transportation improvements necessary to support projected development; and,

(e) Such other factors as the Board of Supervisors may deem relevant.

Fees collected from developments in each transportation service area or sub-area will be used exclusively to fund transportation improvement projects scheduled for that area or sub-area.

§ 13. Calculation of Per Peak Hour Trip Fee for the Transportation Service Area

(a) The amount of per peak hour trip fee for the Transportation Service Area shall be $868.00, unless revised or amended in accordance with the provisions hereof and the Act, calculated in accordance with § 504-A(e) (1) (iv) (C) and 505-A (a) (1) of the Act and § 11 hereof, as follows:

(1) **Transportation Service Area**. Total cost of road improvements in the Service Area included in the adopted Capital Improvements Plan attributable to and necessitated by new development within the Transportation Service Area including 50% of the estimated costs of improvements to highways, roads, and streets qualifying as a State highway or portion of the rural highway system as provided in § 102 of the State Highway Law.

Total Costs Attributable to the Service Area $5,681.251.00

§ 14. Large Subdivision and Land Developments

There is hereby imposed an additional Transportation Impact Fee upon new developments which generate 1,000 or more new peak hour trips, net of pass-by trips as defined by the Trip Generation Manual published by the Institute of Transportation Engineers, 7th or subsequent editions, during the peak hour period designated in this ordinance. The applicant for such a development shall perform traffic analysis of development traffic impact on highways, roads, or streets outside the Transportation Service Area in which the development site is located but within the boundaries of the Township. Any such highways, roads, or streets or parts thereof outside the Transportation Service Area which will accommodate 10% or more of development traffic and 100 or more new peak hour trips shall be studied, and the applicant shall mitigate the traffic impacts of the development on such highways, roads, and streets to maintain the pre-development conditions after completion of the development.

§ 15. Projects not contained in the Capital Improvements Plan

Any other provisions of this ordinance to the contrary notwithstanding, in accordance with the provisions of the Act, the Township may expend Transportation Impact Fees paid by an applicant on projects not contained in the Capital Improvement Plan or may provide credit against the Transportation Impact Fees for the value of any construction projects not contained in the Capital Improvement Plan or may provide credit against Transportation Impact Fees for the value of any construction projects not contained in the Capital Improvement Plan, which are performed at the applicant's expense if all of the following criteria are met:

(a) The applicant has provided written consent to the use of its Transportation Impact Fees or the provision of such credit against the applicant's Transportation Impact Fees for the specific transportation projects, which are not included in the Capital Improvement Plan.

(b) The alternative transportation projects, whether highway or multi-modal, have as their purpose the reduction of traffic congestion or the removal of vehicle trips from the roadway work.

(c) The Township amends its Capital Improvement Plan components required by section 504-A(e)(1)(vi) of the Act to provide replacement of the collected Transportation Impact Fees transferred to transportation projects outside the Capital Improvement Plan from sources other than Transportation Impact Fees or developer contributions within three years of completion of the alternative projects to which the transferred fees were applied or for which credit was provided. All interest earned on such funds shall become funds of that account. The Township shall make an accounting annually for any fund account containing Transportation Impact Fee proceeds and earned

interest. Such accounting shall include, but not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds and the amount of funds expended on specific transportation improvements. Notice of the availability of the results of the accounting shall be included and published as part of the annual audit required by the Township. A copy of the report shall also be provided to the Traffic Impact Fee Advisory Committee.

§ 16. Non-binding Transportation Impact Fee Estimate

Prior to making an application for a building permit, an applicant may request a non-binding Transportation Impact Fee estimate from the Township, which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specifies a lessor use of the development.

§ 17. Administration of Transportation Impact Fees

(a) Collection of Transportation Impact Fees due pursuant to this ordinance shall be collected by the Township in the manner or manners prescribed herein prior to the issuance of a building permit.

(b) Establishment of the Fund. Upon receipt of Transportation Impact Fees, the Township Manager shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of the Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds of such account.

(c) Establishment and Maintenance of Accounts. The Township Manager shall establish appropriate trust fund accounts and shall maintain records whereby Transportation Impact Fees collected can be deposited for the Transportation Service Area.

(d) Maintenance of Records. The Township Manager shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Capital Improvements Plan for the Transportation Service Area.

§ 18. Time, Method and Procedure for Payment

The Transportation Impact Fee for a specific subdivision or land development shall be paid prior to the issuance of the building permits in the development. The Transportation Impact Fee shall be paid to the Township in cash, bank cashier's check, certified check, or electronic fund transfer approved by the Township Manager and shall be administered by the Township in accordance with the provisions of §17 hereof.

§ 19. Credit

Any applicant who shall perform, at its own expense and the consent and agreement of the Board of Supervisors, off-site improvements, as herein defined, shall be eligible for a credit from a Transportation Impact Fee otherwise due. Such credit shall not exceed the amount of the Transportation Impact Fee that would have been charged if a credit was not due.

(a) If the applicant makes such improvements, he shall enter into an agreement with the Board of Supervisors prior to the issuance of any building permit. The agreement shall establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement , a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria, as applicable, and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors shall review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable Transportation Impact Fee prior to issuance of any building permit. The amount of such credit for any capital improvement constructed shall be the amount allocated in the Capital Improvement Plan, including contingency factors, for such improvement. In no event shall the Board of Supervisors provide a credit, which is greater than the applicable Transportation Impact Fee. If however, the amount of the credit is calculated to be greater than the amount of the Transportation Impact Fee due, the applicant may use such excess credit toward the Transportation Impact Fees imposed on other building permits for development on the same site and in the same ownership. Any such applicant shall be required to supply financial security sufficient, in the judgment of the Township, to cover the cost of any improvement installed by the applicant for which credit is sought.

(b) An applicant shall be entitled as a credit against Transportation Impact Fees an amount equal to fair market value of land dedicated by the applicant to the Township and accepted by the Township for future right-of-way, realignment or widening of existing roadways. The fair market value of any land dedicated to and accepted by the Township shall be determined as of the date of the submission of the subdivision or land development application to the Township.

(c) An applicant shall be entitled as a credit against impact fees an amount equal to the value of any road improvement construction which is contained in the Capital Improvements Plan and which was performed at the applicant's expense.

§ 20. Refunds

Transportation Impact Fees collected pursuant to this ordinance shall be refunded, together with interest earned thereon, to the payor of the Transportation Impact Fees under the following circumstances:

(a) In the event the Township terminates or completes the Capital Improvements Plan and there remains at the time of termination or completion un-disbursed funds, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's Transportation Impact Fee payment plus interest earned bears to the total Transportation Impact Fees collected plus interest. The Township shall provide written notice by certified mail to each person who previously paid the fees and remain un-disbursed, that such person's proportionate share of the fund balance is available for refund to such person. Such notice shall be provided to the last known address provided by the payor of the Transportation Impact Fees to the Township. In the event that any of the funds remain unclaimed following one year after the notice, the Township shall be authorized to transfer any funds so remaining to any other fund in the Township without any further obligation to refund said funds. It shall be the responsibility of the payor to provide the Township at all times with a current address for such notice.

(b) In the event the Township fails to commence construction within three years of the scheduled construction dates of the project as set forth in the Capital Improvement Plan, the Township shall refund the portion of the Transportation Impact Fee paid by any payor making written request therefore, which is attributable to said project, with accumulated interest; provided, nevertheless, that no refund shall be payable or paid with respect to any project actually commenced prior to the receipt of such refund request and the failure of a payor to make such written request prior to the commencement of such project shall be deemed a waiver of any right to such refund.

(c) In the event that, upon completion of any road improvements project, the actual expenditure for the project are less than 95% of the budgeted costs for such project, the Township shall refund the pro rata difference between the budgeted cost and the actual expenditures, including interest accumulated thereon from the date of payment, to the person or persons who paid the impact fees for such improvements.

(d) In the event, the development for which Transportation Impact Fees were paid has not commenced prior to the expiration of the building permit issued therefore, the Transportation Impact Fees paid with accumulated interest shall be refunded to the payor. Further, if a building permit after issuance is altered in such a way as to reduce the amount of the Transportation Impact Fee due, the difference between such amount and the amount actually paid shall be refunded. The payor, at its option, may roll over the Transportation Impact Fees attributable to an expired building permit to cover fees incurred by a new permit.

§ 21. <u>Exemptions</u> (Reserved)

§ 22. Effect of Transportation Impact Fee on Zoning, Subdivision and Land Development.

This ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the subdivision or land development or provision of public improvements which remain subject to applicable zoning, subdivision and land development regulations of the Township, which shall be operative and remain in full force and effect without limitation with respect to such development.

§ 23. Transportation Impact Fee as Additional and Supplemental Requirement

The Transportation Impact Fee is additional and supplemental to, and not in substitution of any other requirements imposed by the Township on the development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance; provided, nevertheless, that a property owner may be required to pay, pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the Transportation Impact Fee as provided herein.

§ 24. Liberal Construction

It is hereby found and declared to be the intention of the Township that the public health, safety, and welfare be protected and furthered by the provisions of this ordinance, and it shall be interpreted and construed liberally to effectively carry out its purposes and in such manner as to favor such public interest as opposed to any private interest.

§ 25. Repealer

Any ordinances, or parts of ordinances, in conflict herewith be and the same are hereby repealed.

§ 26. Severability

The provisions of this Ordinance are severable. If any sentence, clause or section of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision been included herein.

§ 27. Retroactive Application

(a) Notwithstanding §28 herein, Transportation Impact Fees shall be imposed on those projects involving subdivisions and land developments for which an application

has been filed on or after the first publication of notice of the intent of the Township to adopt this ordinance; provided, nevertheless, that such retroactivity does not exceed eighteen (18) months after the adoption of the resolution that created the Traffic Impact Fee Advisory Committee.

(b) With respect to such retroactive applications, the per peak hour trip shall be $1000.00, as set forth in Resolution No. 06R-02-03, duly adopted at a regular public meeting held on the 20th day of February 2006, and pursuant to which the Board of Supervisors declared its intention to adopt this Transportation Impact Fee Ordinance.

§ 28. Effective Date

This Ordinance shall take effect five (5) days after adoption by the Board of Supervisors.

ORDAINED AND ENACTED 5th day of March, 2007 at a regular public meeting.

ATTEST:

WINDSOR TOWNSHIP
BOARD OF SUPERVISORS

Jennifer L. Gunnet, Secretary

Paul M. Smith, Chairman

Dean L. Heffner

Janna T. Smith