



Strafford Regional Planning Commission

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“Planning and action for sustainable development and an improved quality of life”.

Fact Sheet

Issue Date: May 14, 2004

Impact Fees

What is an impact fee?

It is a one-time assessment on new development that helps off-set the costs for municipal capital facilities/costs related to growth. RSA 674:21 states, “...an impact fee means a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned and operated by the municipality...”

Towns impose impact fees on the land development process in order to pay for public facilities needed to service a particular project. To the extent that the fee exceeds the land developer's proportionate share of the facility's cost, the levy is an unconstitutional taking of property. Courts scrutinize the calculations for imposing such fees by government, particularly if they are "ad hoc". It is therefore useful, if not necessary, for government to "regularize" the land development condition process through appropriate local ordinances.

How do we have the authority to establish an impact fee?

RSA 674:21(Innovative Land Use Controls) authorizes and specifies towns authority to establish impact fees. It must be set out in the zoning ordinances (can't do through subdivision regulations). That is how it is implemented.

What is required in order to establish an impact fee?

Master plan and a capital improvements program are adopted. Generally speaking, it is a good idea to have the projects that you are requesting money for listed in your Capital Improvement Plan (CIP).

On what can we measure impact?

- water treatment and distribution facilities;
- wastewater treatment and disposal facilities;
- sanitary sewers;
- storm water, drainage and flood control facilities;
- public road systems and rights-of-way;
- municipal office facilities;
- public school facilities;
- the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member;
- public safety facilities;
- solid waste collection, transfer, recycling, processing and disposal facilities;
- public library facilities;
- and public recreational facilities not including public open space.

RSA 674:21 V

How can we measure impact?

A few examples:

- Public schools: Enrollment per unit (using total facility space needed per pupil).
- Water and sewer: Average number of gallons per day usage.
- Public safety: Personnel and equipment space for coverage (per capita residential; per square foot non-residential).
- Parks and Recreation: Land area and facilities per 1000 population (Need to create a local facility standard but be careful that you are prepared to live up to that standard).
- Road systems: Trip generation rates (pm peak and land use).

What is the process for fee assessment?

1. Identify facility standards.
2. Measure existing vs. future need.
3. Estimate facility cost.
4. Apply credits to account for other payments toward facilities.

What needs to be included in our impact fee ordinance?

- Finding of need.
- Definition of what development is subject to the fees.
- Procedures for assessment and collection.
- Waivers and criteria for them (for elderly housing, low income housing, etc).
- Explanation of the transfer and use of funds.
- Criteria and procedures for refunds.
- Appeals procedures.

How is the fee amount determined?

A fee must be proportional share of capital improvements costs reasonably related to capital needs created by and benefits accruing to development.

How do we handle the accounting of an impact fee?

Fees must be accounted for separately and segregated from the general fund. It may be spent by the governing body but used solely for the purpose/capital improvements it was collected for. Fees need to be assessed prior to building permit, and collected prior to occupancy permit.

Are there any limitations to what they can be used for?

Yes, they cannot be used for public open space and they cannot be used to pay for existing needs, or to upgrade current deficiencies.

Is there a certain year by which we need to spend the money?

Yes, fees collected must be spent within 6 years of collecting them. It is important to appoint a person who will be responsible for keeping track of this information (when which fees were collected and by when the money needs to be spent).

What is the difference between an off-site improvement and an impact fee?

With an impact fee, the contribution is tied to the project but the money goes into a fund toward the project. Off site improvements are specific projects paid for by the developer.

What about court?

Courts have upheld both on-site and off-site conditions. As might logically be expected, the more clearly the impact fee relates to the impact of the development, the more likely a court is to uphold the impact fee. On this basis, as a class, street improvements and sewer and water improvements are more likely to

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be upheld than low-income housing fees and set-asides, as the former are more clearly impacted by most land development than the latter. If the municipality can show that there is an essential or rational nexus between the impact fee and the municipality's legitimate state interests in relieving the impact of the development by imposing the impact fee, and that the impact fee is roughly proportionate to the impact of the development, the impact fee will withstand judicial scrutiny. If, however, either test cannot be met, courts will strike down the impact fee as an uncompensated taking. In sum, the type of impact fee itself may well determine whether there exists an essential nexus, and the character of the impact fee may impact on the proportionality requirement. It is important to have a land use attorney look at the impact fee ordinance

Should we establish an impact fee?

Only you can answer that, but remember, one sure way to attract development is to not have an impact fee.