20 Points to Know About Impact Fees

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Impact fees are an increasingly popular revenue source to local governments. While there are a number of advantages to impact fees and related exactions, there are limitations. As communities and development groups become more sophisticated about what should be expected from a thorough impact fee study, they will become more critical and their level of expectation will increase. This article briefly notes 20 nontechnical points of which one should be aware.

1. *Impact fees are viewed as a free revenue source without any constituency requirement.*

Impact fees may be voted in without an election, usually apply only to new development (which does not yet exist) and are perceived to exclude current taxpayers. Therefore, impact fees are a fairly painless and free revenue source since there is no obvious increase in cost to current voters.

2. *Impact fees pertain only to new capital facilities which reasonably benefit the payer.*

Many people still believe that impact fees can be utilized for capital facilities which benefit existing residents. However, expenditures utilizing impact fees must show a reasonable benefit to those paying. Under some statutes, an existing facility can be included in an impact fee calculation if it was oversized to serve the new development.

3. *The impact fees collected must be spent within a reasonable time period.*

A mandated or general rule-of-thumb is about six years, although ten years may suffice. In most cases the jurisdiction must have a good idea that the money will be spent within the reasonable

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time period for a specific facility. This encourages capital improvement programs to be prepared.

4. *The electorate may think that impact fees will pay for all new capital facilities, therefore negating the need for higher taxes.*

This expectation by the electorate could lead to long term negative political consequences. Even if impact fees are eligible to pay for all capital facilities, which is highly unlikely, they will not negate the need for higher taxes due to operating costs.

Educate the electorate on what impact fees do and do not accomplish.

5. *Educate the electorate on what impact fees do and do not accomplish.*

Impact fees relate solely to capital facilities for new development. They do not pertain to rehabilitation, retrofitting, or replacement of existing capital facilities. Also, the greater cash cow of operating expenses must be explained to the electorate. Otherwise, their expectations will be artificially high.

6. *The amount of impact fees must be politically acceptable.*

The amount that is politically acceptable will vary by state and jurisdiction. If an impact fee of $1,500 is the politically acceptable amount, while the maximum justifiable is $8,000, it may not make sense to pursue some impact fees. This depends on how much revenue can be obtained by impact fees and/or other sources.

7. *The community should be growing.*

A 3-5% growth rate may allow the community to raise a reasonable amount of revenues and also show the need for additional capital facilities due to growth. A very low growth rate will generate minimal revenues and new capital facilities may not be needed in the foreseeable future for most services.

8. *Planning departments are probably the most appropriate center for managing impact fee activity.*

The calculation of impact fees is closely related to land use and rational nexus. Planning departments are generally the most appropriate center for managing this activity. Impact fee calculations are not primarily an accounting or engineering exercise. Because rational nexus requires one to show a benefit of the impact fee to the capital facility or the particular service, land use issues are very important. Also, projections, usually provided by planning departments are very important. In jurisdictions where there is an active planning department, this department will probably be the most appropriate center for managing impact fee activity. This should not preclude other departments, such as finance and budget, from playing an integral part.

Current levels of service must be met.

9. *Current levels of service must be met unless there is a plan to address existing deficiencies.*

There is a tendency for communities and their consultants to assume the adopted level of service for the impact fee study. You cannot extract a higher level of service and commensurate fee solely from new development unless there is a plan to address deficiencies generated by the current population.

Do not rely solely on departmental assumptions.

10. *Do not rely solely on departmental assumptions; instead, obtain your own background information.*

Because departments may not be familiar with the requirements of impact fees, they are unlikely to clearly understand the difference between adopted and existing levels of service, service delivery areas and their relationship to existing and new capital facilities and several other issues. If the right questions are asked, they should be able to provide the information. The most fail-safe way to ensure this is to obtain your own information from the departments.

11. *Analyze the capital improvement budget.*

The potential impact fee revenues will need to be related to the capital improvement budget or capital improvement element. It is important for the analyst to be familiar with this budget and its validity, both short and long term.

12. *Be familiar with the possible geographic service areas in order to comply with rational nexus.*

As the development community becomes more concerned about pass-throughs due to tighter markets and fiscal constraints, they are more likely to look at the geographic service areas and their relationships to their project. There is a tendency for jurisdictions to have larger service areas than may be appropriate. The service areas will vary by type of activity.

13. *Can a jurisdiction provide the needed capital facilities?*

The recommended impact fees should have some relationship to what the jurisdiction can actually provide. Whether it is due to time lag, backlog of existing facilities, debt ratios or political constraints, the impact fee work will be diminished if the jurisdiction cannot provide the needed capital facilities (assuming that impact fees do not pay 100% of the new cost).

14. *Beware of granting credits.*

In some state statutes, the future tax payments of a house or nonresidential property which are utilized for debt service of a particular capital facility will need to be credited on a discounted basis against the impact fee amount. Even in states where this is not required, the "spirit" of impact fees is to avoid any double payments. Therefore, credits will be granted in most cases.

15. *What are the realities of charging nonresidential development.*

In many states the jurisdiction may not discriminate between different types of land use for the same service. In one county, a road impact fee was not implemented because the officials did not wish to add another fee to nonresidential development. This particular jurisdiction wanted to attract as much nonresidential development as possible. The question of charging nonresidential development should be raised and answered near the outset of the study in order to avoid extra work if the answer is no.

16. *Be aware that some new home buyers are already residents within the jurisdiction.*

In some jurisdictions 50-70% of new home buyers are trading up within the same jurisdiction. The reality is that these people have been paying for capital facility needs through their existing tax base from the time they were in the community and are now being asked to pay a second time. As a point of information, elected officials should understand this.

17. *Decision makers should be aware of the "intergenerational equity" issue, a negative aspect of impact fees.*

In many cases, impact fees mark the change from intergenerational equity to site-specific equity. Many of us and almost all of our parents lived in a community where the capital facilities were paid as part of the regular tax burden. The use of impact fees and other exactions means that those who move into a community are now buying into capital facilities with a one time fee.

Educate elected officials on impact fees.

18. *Educate elected officials on impact fees.*

For many elected officials the term impact fee means a new revenue source that can be utilized in tight times. The only thing they may know

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about impact fees is that existing taxpayers will not have to pay them. However, there are important pluses and minuses to the use of impact fees which have been noted above and which should be conveyed to elected officials.

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19. *Including a public/private sector advisory group may ease the acceptance process.*

Using this type of group educates everyone on the openness of the process and reasonableness of the data as well as providing a means to reveal, before the end of the study, any major oversights which might have been made. TischlerBise recommends this process to its clients and in over 90% of the cases it is accepted. By coming to closure with such a group prior to the final report, there are fewer acrimonious hearings and less chance of litigation.

Garbage In – Garbage Out.

20. *Garbage In – Garbage Out.*

The above 19 points focus more on the non-technical issues; however, they allude to a number of technical issues, such as rational nexus. As noted, communities and development groups will become more sophisticated regarding the substantiation of impact fees. The relationship of level of service, geographic areas, capital improvement budgets, and comprehensive plans are all critical in devising a solid impact fee study. Perhaps most important is the need for the analyst to "get his feet dirty" by reviewing the local data to ensure that it is valid to be included in the study itself. An adopted recreation plan does not necessarily mean the data is valid for impact fee calculations. Overcrowded school conditions may need to be reflected in the level of service definitions. Garbage in will result in garbage out.