

Debateable: Would development fee change work in the real world?

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MORE ON THE FEE

The transportation impact fee is the largest fee for developers building average-size houses outside the city's core. School fees are next, but a builder would have to construct at least a 2,090-square-foot house in the most expensive school district -- Greenfield Union -- for the school fee to exceed the transportation impact fee.

Most houses being built now in Bakersfield are about 1,700 square feet, said Building Director Phil Burns.

Compared to other cities like Fresno, Merced, Modesto, Pasadena and Visalia, Bakersfield and Kern County have the highest transportation impact fee. However, Burns pointed out, many of those cities have a half-cent sales tax for transportation improvements.

Merced and Modesto do not, but their total building fees are actually higher than Bakersfield's. In Merced, for example, total development, building permit and plan check fees for a 2,000-square-foot house are estimated at \$39,159, compared to \$28,169 in Bakersfield, according to a comparison chart prepared by the Building Division.

In Visalia, the city with the lowest fees included in the comparison, the total is \$24,332. Visalia also has a half-cent sales tax for transportation projects.

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City staff and council members have been debating how to ease the burden of a \$12,870 fee developers pay for each new house they build. The aim is to breathe life back into the industry.

How about adding the fee to buyers' property taxes? Temporarily cutting the fee? Directing developers to public financing?

But how those ideas would work outside a meeting room gets a little sticky, say bankers, developers, consultants and the city attorney.

First, a bit of background:

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In 2009, the city raised the transportation impact fee from about \$7,300 to \$12,870 for each new single-family house outside a core area of Bakersfield. Developers pay the fee when they apply for building permits.

The fee is meant to mitigate the impact of new housing on traffic throughout the city and is used for infrastructure projects like the Thomas Roads Improvement Program.

Developers say that in the current sluggish housing market, the fee -- which they add to the cost of a house -- is cutting into profits and hurting their ability to compete with cheaper homes, like those sold through foreclosure.

Now, option one:

*** Add the fee to buyers' property tax bills instead.** There'd be a lower sticker price on the house, developers say. The buyer would pay the fee over several years.

Lenders might be more willing to give loans for smaller amounts, the argument goes. If a house is \$150,000 versus \$157,000, borrowers might be more likely to get a loan. That assumes taxes wouldn't be much of a factor in lending.

True? The answer, of course, depends.

"(Property tax) typically isn't a huge dealbreaker (for approving a loan), but it can be if you're treading close to the danger zone," said Joe Navarro, sales manager at Signature Home Lending in Bakersfield.

Navarro said loan staffers estimate property taxes will be about 1.25 percent of the property value. They look at an applicant's income versus monthly obligations, including a monthly portion of annual property tax.

Even if the loan doesn't include an amount to cover property taxes, lenders still look at the applicant's potential tax bill and whether he can pay it, Navarro said. And banks are scrutinizing loan applications more than ever, he added.

So an added tax could mean no loan for a borrower who otherwise might just qualify. Of course, an applicant could qualify for a larger loan than he needs, and an added tax wouldn't matter as much, Navarro said.

Option two:

*** Direct developers to use the Statewide Community Infrastructure Program.**

SCIP is a program of the California Statewide Communities Development Authority, an organization of cities, counties and special districts that can issue bonds.

Developers would pay the fee up front, then apply to SCIP for reimbursement. SCIP would issue bonds, used to pay back developers for the fees, and homebuyers would repay SCIP through an assessment on their properties over time.

But some developers aren't exactly embracing that idea.

Greg Balfanz, vice president of John Balfanz Homes, which builds custom houses that sell from the high \$100,000s to the \$300,000s, called the SCIP idea a "no-win situation" for builders.

Either they don't recoup the money through the program and have to add the fee to the purchase price or they do and, when they disclose that to potential buyers, buyers move to sellers who don't use the program -- and therefore don't pass on the fee.

"Are some builders going to get negative publicity if they take advantage of (SCIP)?" Balfanz said.

Balfanz said the city should lower the transportation impact fee. But a temporary decrease followed by an increase above the current level would "create an exorbitantly higher rate.

"There's no easy answer," Balfanz said.

Addressing the fee level needs to come first, and how to finance it can come second, said Chris Austin, managing principal at The Development Planning and Financing Group. DPMFG is a real estate finance consultant for developers.

Developers want to mitigate their impacts, but at an appropriate cost, he said.

"SCIP is a financing tool ... but (it would be) financing a fee that they believe is too high," Austin said. "They have no room to be adding costs in a home market where prices continue to decline."

Also, he said, the fee should be reevaluated because developments have changed. Smaller houses, and fewer of them, are being built. The cost of land for homes and of building roads have decreased, he said, and studies upholding the current fees should be based on the most current assumptions.

Bruce Freeman of homebuilder Castle and Cooke Mainland Communities said although the company hasn't researched the SCIP idea in depth, one problem already is obvious.

"SCIP may not be practical where there is already an assessment district on the property that was used for public infrastructure or schools fees," Freeman said in an email. "Adding another big assessment for a SCIP could make the amounts unmanageable."

City policy sets the limit for property taxes at 2 percent of home values, and since most property taxes are at about 1.2 percent, there's still room for developers to finance additional fees through tax assessments if they want to, said Nelson Smith, the city's finance director. Whether developers want to add a SCIP assessment to their properties is up to them, he said.

Steve Teglia, assistant to the city manager, said the city doesn't define which properties could be eligible for SCIP reimbursements. Although city staff aren't recommending one option over another, the advantage of the SCIP option is that it's already in place, he said.

Which takes us to option three:

*** Cut the fee, perhaps by half, for a set period, then increase it above its current level to make up for what the city lost.**

That could be fraught with legal complications, said City Attorney Ginny Gennaro.

For starters, the city went through a careful process to set the current fee level. That process resulted in a "Nexus" report -- basically support for the need for the fee and details on how it's used.

"If you touch any aspect of the fee ... you've put at risk the integrity of your Nexus document, which is the basis of the fee," Gennaro said. The document itself ages, however, and the fee will eventually have to be revisited.

But in the meantime, the current fee has already been scrutinized, approved by the city council and withstood a legal challenge from developers, she said.

Secondly, if the fee were lowered, the city could be sued for not mitigating the impacts of construction, Gennaro said.

And lowering the fee for a set time and specific area opens the city up to potential accusations the fee is unfair, she said.

Gennaro said her office doesn't want to change the fee at all, but a temporary city-wide cut would legally be better than a targeted one.

A complication with all of the options is how to measure whether any of them work, Teglia said.

Smith echoed that.

"The prices of homes change all the time, and to say that the price of the home changed because of this one reason I think is rather simplistic," he said.

A city task force is due to discuss the fee again noon Dec. 20 at City Hall North, 1600 Truxtun Ave.