

The Impact Tax: Commonly referred to as the Impact Fee

The Builder's Corner

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The Impact fee is not a fee, it is a tax, and it should be referred to as such.

Impact taxes are used to pay for infrastructure needs caused by increases in population and must pass a dual rational nexus test to be legal.

The local government must demonstrate a reasonable connection, or rational nexus, between:

- *the need for additional capital facilities and the growth in population generated by the subdivision; and the expenditures of the funds collected and the benefits accruing to the subdivision*

– *Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983)*

The topic of the Impact Tax has been a hotly contested and a volatile topic since its inception. While it has been debated constantly since, the discussion has jumped to the top of the public policy priorities in our region as the Lee County Commission workshops the issue with constituents.

The Impact (Fee) Tax originated in Collier County were instituted over 20 years ago. The elected officials approved a fee that would be charged on new homes and commercial construction, with the intent to slow growth by taxing it.

This was to create a revenue stream to help pay for needed capital infrastructure such as roads, water, sewer, regional parks, community parks, jails, fire stations, EMS, schools, libraries, and new government buildings.

It had been lobbied and sold as a panacea, that would insulate "locals" from all of the additional expenses incurred, and was supposed to facilitate responsible growth of roads and services to maintain the style of life that the residents were accustomed to. It was represented as a way to slow down growth by requiring the investors to shoulder the lion's share of capital improvements.

As with all taxes, the initiative is sold with altruistic intentions which slowly morph into an

entity unto their own. The case of the Impact Tax is unfortunately one of these examples.

In order to ramp up the building of the infrastructure, the county proceeded to use growth projections which were predicated on population rising in perpetuity at the extreme high end of BEBR rates (growth projection methodology) that never materialized. The studies contracted out were instructed to use these specific growth rates, in order to derive the desired revenues, based on ambitious projections.

The goal was to create a revenue stream, sufficient to initiate the largest capital infrastructure campaign Collier County had ever seen. To do so the elected officials steadily raised impact fees on a single family home from approximately \$5,000 in 1993 to a staggering \$38,000 in late 2004. Commercial impact fees jumped as well, in some cases to millions of dollars for a single project. This was the rationalization required to build as much infrastructure as possible, as quickly as possible. The County then decided to bond the unpredictable stream of impact taxes. The basis being the ad valorem property tax dollars as security. This was required to obtain the proceeds that bond markets demanded, because they would not lend the money based on unpredictable impact tax streams.

Taxpayers may be surprised to learn that the capital improvements were built based on population estimates that 80,000 more people would be here today, which never materialized. Yet as the impact tax rose, there was no corresponding reduction in the property tax rate, even as values were soaring, which brings us to the current dilemma. Collier County has one of the highest taxes per capita, of any County in the State of Florida. One of the highest per capita debt (nearly $\frac{3}{4}$'s of a billion in debt), of any County in Florida, nearly three times the state average, and massive infrastructure that was purchased at a premium, which the expense of, will eventually fall to the taxpayers through ad valorem.

[Florida Tax Watch, comparison by County](#)

[Debt per Citizen in Collier](#)

The next major concern, looming on the horizon, is how we as a county, are to pay to maintain the excess infrastructure. The limited legal uses, as well as the unpredictability of the revenue, will preclude the budgeting of Impact taxes to pay for these items, which

means Collier County Government will be forced to raise ad valorem taxes to meet the maintenance and debt service.

The most common misunderstanding of the Impact Tax is the misrepresentation of it as a "Fee the builder or developer pays". Make no mistake, the builder/developer is the first in line to cut the check for the tax, but it immediately become a cost of goods sold to the end user. If a retail store or a restaurant has to pay more to a landlord or to the County to open his business, his product will axiomatically rise in price to compensate for that expenditure. It is no different than the cost of the product, electricity, payroll or any other expense incurred. This means the consumer, constituent or resident is paying a premium for those goods or services. This means the community is paying that tax, just in a covert fashion for the end user and a direct fashion for the business owner.

Impact tax imposition is set by County ordinance. Both the collection and the expenditure of these taxes are very specific. They are not legally allowed to be used for maintenance, repairs or any other expenses not directly related to actual growth. What this means is that if there is an existing water utility system that is in service and not over capacity needs an overhaul because it is nearing its service life, impact fees can't legally be used for this expenditure. If an existing facility has capacity for 25,000 people and needs to be rebuilt to accommodate another 10,000 people. Only the proportional rate of the increase can be paid for with impact fees.

Pay for police, emergency services, teachers etc. are not funded with impact taxes, because these are recurring services. Once a new school, or firehouse or police station is built and staffed these positions transition to the general fund and are not legally able to be funded through impact taxes.

The law changed several years ago which shifted the burden of proof regarding the legitimate calculation of the Impact Tax from the affected party, to the municipality charging the Tax. To date in Collier County there has been no legal challenge. It is our hope that empirical evidence, responsible projections, coupled with good stewardship of the general fund and Impact Tax reserves can be combined to move forward in a fashion that would make a challenge unnecessary. We also believe that at the end of a thoughtful evaluation of this Tax, the result will inevitably be a significantly downward adjustment, by providing immediate economic relief, which would in turn stimulate the stagnate business community we are currently experiencing.

The benefits would be immediate both to the entrepreneurs trying to create jobs, and to

the end users who are paying for those goods and services. How many businesses have decided not to expand or have decided to never start based on an extreme impact fee rate unique to Collier County? Businesses need to compete in the private sector. In Collier County a business has to pay a very large fee to government before it can get a permit to start a building, which can be a year or more before selling the first good. Bank credit has tightened and funds to pay these mysterious costs are limited especially a year or more before a business can open.

The upside is that we have the facilities, what now?

The question moving forward is do we use the experience of the past to mold the path of the future or do we ignore it, current conditions, and plow ahead? There is a legitimate and appropriate place in our government for impact taxes. Our only concern is to ensure that the taxes being paid are equitable, appropriate and applied to the just parties.