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Outraged by impact fees? Talk to the experts...

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Photo by Heath Haussamen

"I am outraged," were the words with which BIA executive director David Roewe began his [August 2010 newsletter](#). The source of his outrage was a "bunch" of cost increases on Las Cruces home construction. Among those increase were impact fees, a topic that is being discussed both in Las Cruces and Albuquerque. In [a recent article in The Las Cruces Bulletin](#), Roewe said the following:

"The city is like a kid in a candy store that wants all this candy but doesn't have money to afford it. They're coming after this industry," he said. "They're pushing people outside of the city."

[I've argued before](#) that impact fees are a fair and practical way to pay the new costs that result from new development. After reading Roewe's claims, I scheduled a meeting with city staff.

But they don't look like bureaucrats

Having recently heard so much about the incompetence of bureaucrats, I wasn't sure what to expect when I visited city hall. As I walked down the hallway to the administrative offices I peeked in windows looking for [Dilbert-style](#) cubicles filled with mid-level managers burning piles of tax dollars at their desks. But everyone I met along the way greeted me with a brisk smile and friendly "Good morning."

Assistant City Manager Robert Garza, Facilities Director Brian Denmark and Public Works Director Michael Johnson arrived for our meeting about a half-minute early so that we could start on time. After a few minutes of conversation I was impressed with each of them, both with their crisp professionalism and their broad grasp of city issues. We soon began discussing their reasoning behind impact fees. They presented two main problems with the current system for funding infrastructure, both of which could be addressed by adding new development impact fees for roadway facilities, storm water drainage, and public safety facilities (fire, police and rescue).

Problem 1: The current system is inefficient

The current system allows for piecemeal infrastructure funding that makes it difficult to complete projects in a timely, cost-efficient manner. Sonoma Ranch Boulevard in Las Cruces is an example many of us can relate to. When the project was first discussed in 2005, the original cost to build Sonoma Ranch Boulevard all the way, and all at once, from Lohman to I-70 was estimated at about \$8 million. The city council at the time thought this was too much to ask the developer to pay up front so they stuck with the current piecemeal system where roads are built as subdivisions fill in. According to the Las Cruces Sun-News, here's what then-mayor Bill Mattiace thought:

"It looks like a very advantageous program for the city," Mattiace said. "It looks like Philip Philippou is saving the city money."

But – like so many of Philippou's plans (detailed [here](#)) – things didn't play out that way. Instead, we ended up with a road that was built piece by piece and in fits and starts. The project stretched over a number of years and cost about \$15 million, potentially costing Sonoma Ranch home buyers nearly twice as much as the original proposal. **With impact fees for transportation, the road could have been well-planned and built all at once, which would result in lower costs to the city, developers and home buyers alike. A better road for less money makes sense to me.**

Problem 2: Insufficient funds

The second problem that impact fees seek to address is that **the city cannot pay afford to pay the cost of the new infrastructure required by the new development.** For example, city staff told me that a small fraction of our gross receipts tax is the only dedicated funding for our public safety facilities. This results in \$1.5 million annually, which is about the cost of building and operating a single fire station for one year. That's not enough to pay for our infrastructure needs.

Impact fees are the most practical, proven way to breach the funding gap caused by new development. This is only one example, among many, of the city's inability to pay for essential infrastructure – like roads, drainage and public safety facilities – that is caused by new development.

Impact fees are a fair and proven funding solution

[As I've argued before](#), impact fees are an effective way for new development to pay the cost of new infrastructure without unfairly commandeering the tax revenue of existing neighborhoods. Rather than repeat myself on that topic, I'd like to respond to a few of the claims that opponents of impact fees have made.

They say:

Impact fees are unfair.

Reality:

By law, impact fee amounts are determined by sophisticated, proven formulas that determine the new infrastructure costs of new development. By law, impact fees cannot exceed this real cost (and, to avoid lawsuits, are often a bit lower than the real cost). With impact fees, the people who benefit the most from the new infrastructure (developers, home builders and new residents) pay most but not all of the new costs associated with the development. Without impact fees, existing neighborhoods pay for parks and fire stations that are nowhere near their homes, and the infrastructure in their neighborhood deteriorates. **Impact fees are a fairer way to pay for growth.**

They say:

The new fees will impact affordable housing.

Reality:

This argument is a bit disingenuous because it makes it sound like a lot of affordable housing would be built if not for the increased impact fee. In fact, few developers have committed to building affordable housing. A recent analysis, according to city staff, found that there was a shortage of 4,000 units of affordable housing in Las Cruces. This means that, if houses in their price range were available, lower- to middle-income people who are renting right now would buy one. To use costs of affordable housing as a reason not to impose impact fees is, at best, disingenuous.

That said, experts agree that affordable housing can be complicated by badly applied impact fees. To avoid this, the experts have devised strategies (such as waivers and variable impact fees based on unit size) to make sure that affordable housing can be built. Besides, any homes built close to existing infrastructure would avoid large impact fees.

Finally, we should remember that the fees that get passed on to the home buyer are not all paid at once but rather over the life of the home mortgage. According to the staff, the increased and new fees would likely result in about less than one dollar a month over the span of a 30-year mortgage.

They say:

Impact fees are a hidden tax that discriminates against outlying regions of the city.

Reality:

Equating fees with taxes is a rhetorical tactic meant to confuse readers. Fees and taxes are not the same thing. Fees are payments for services, and paid by the individuals who directly benefit from those services. For example, we might pay a fee to get into a state park for a picnic lunch. We are enjoying the picnic lunch and the scenic vistas so we pay the fee. On the other hand, we pay taxes to maintain the state parks over time for the general good whether or not we visit state parks. Here's how Albuquerque City Councilors Isaac Benton and Debbie O'Malley made the differentiation in an [Albuquerque Journal op-ed](#):

"First, an important correction: An impact fee is not a tax.

"A tax pays for general government services and the general public gets the primary benefit. A fee pays for a specific service and the individual payer gets the primary benefit. The fee covers only the cost of the service received.

"With impact fees, the service is infrastructure — roads, storm drains, parks, trails and public safety facilities — that will serve the area where development occurs."

Since the infrastructure of the new development primarily benefits the new residents, they bear most of the costs of the development. That's a fee, not a tax. Furthermore, by building in areas that require additional infrastructure, developers and new residents are choosing to live in areas where there are higher fees. If they want to pay lower fees, they can choose to build a house where the burden on infrastructure is not as great. This isn't discriminatory; this is fair.

An excise tax?

Near the end of the Bulletin article, Roewe makes two statements. First, he argues that we should institute an excise tax "that affects everyone" rather than institute impact fees, which only impact the people who would primarily benefit from the development. Next, he argues that "an economic downturn is the worst time to implement impact fees."

I'm confused.

It's the wrong time to charge specific fees for actual services but it's the right time to institute a tax on all citizens, even though most of them won't benefit from the new infrastructure? Really? After reading comments like these from Roewe and then discussing the issue with the city staff, smart money is on the staff. Not at all blustery, or prone to exaggeration – like the outraged Roewe – the city staff that I met with were reasonable, smart, hard-working people, and not beholden to a particular industry.

Last thoughts

I could quibble with many more of Roewe's statements. According to staff, for example, his cost estimates are all on the "very high" end, which exaggerates his grand total and causes a false sense of anxiety among his readers. Furthermore, his claim that impact fees cause sprawl doesn't make sense. As I've argued before, impact fees will be lower in more developed areas, **thereby incentivizing development closer to existing infrastructure** (basically resulting in the opposite of sprawl). The people who choose to build further away from existing infrastructure will pay a fee to cover the extra cost of their services. I could keep going but I think this is enough.

As recent history has shown, our current methods for handling the cost of new development is both inefficient and unsustainable. In municipalities across that country, impact fees have proven to be a fair and practical way to raise the funds necessary to develop infrastructure efficiently and equitably.

Finally, don't be outraged. Talk to the experts. Call your councilor or the city staff. Get the facts. Your neighborhoods depend on it.

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