

Impact Fees: Your Rights as a Fee Payer

BAGI Board Policy

We Support: LEGALLY IMPOSED IMPACT FEES

In 1991, the State of Indiana enacted an impact fee statute that allows local communities to collect impact fees (monetary charges) to pay for, defray or mitigate the capital costs and improvements to infrastructure necessitated to serve the proposed new development. Capital improvements are limited to: 1) a sanitary sewer system or wastewater treatment facility, 2) a park or recreational facility, 3) a road or bridge, 4) a flood control facility, 5) a water treatment facility. The statute provides a framework that local units of government must follow if they wish to adopt an impact fee.

BAGI Policy:

- BAGI will support no change in the current state law regarding impact fees.
- BAGI will be pro-active in helping communities locate broad based and appropriate sources of funding for needed infrastructure financing.
- BAGI will promote efforts that allow communities to make restitution for illegally charged fees prior to pursuing remedy by litigation.
- BAGI will support legal action against local units of government that collect fees contrary to state statute.

Impact Fees in Indiana

Since the adoption of the Impact Fee Enabling Legislation in 1991 (IC 36-7-4-1300 et. al.), communities in Indiana have had a clear set of guidelines for the implementation of impact fees. The homebuilding industry actively supported the Impact Fee Legislation and continues to promote legally introduced impact fees today, understanding the importance of maintaining infrastructure service levels for a community's overall well-being and attractiveness to new growth and development.

Unfortunately, after adoption, impact fees are at times calculated and applied without close adherence to the Impact Fee Enabling Legislation. The descriptions below include rights of fee payers established by Indiana Statute. The full Indiana Impact Fee Enabling Legislation (IC 36-7-4-1300 et. al.) can be found online at:

<http://www.in.gov/legislative/ic/code/>

Request Impact Fee Assessment

IC 36-7-4-1322

Fee payers have the right to request assessments on a development. If requested, the development must be assessed within 30 days of either (earlier of the two) (1) the date the fee payer obtains an improvement location permit or (2) date the fee payer submits the development plan for a development which is properly zoned for the proposed development.

The assessed fee can only be increased if the structural building permit has not been issued *and* the improvement location permit or development plans are changed to create a significantly greater impact. This limitation is in effect (1) as long as the improvement location permit is valid, if the date of the improvement location permit was used to assess the fee, or (2) for 3 years, if the fee was assessed based on the development plan.

If a fee payer requests an impact fee assessment on a development and the fee is not assessed within 30 days of the date of the improvement location permit or the submitted development plan (depending on which was used for assessment), a fee may not be assessed on the development unless the development plan is materially and substantially changed.

**This is particularly useful when impact fee updates are adopted, as this assessment request can be made during the 6 month delay period between ordinance adoption and implementation of the newly adopted fee increase.*

Request Prorating of Impact Fees in Phased Development

IC 36-7-4-1323

Fee payers that request assessments under section 1322 are entitled to have fees prorated for the purposes of payment in phased development. Only the prorated portion of the fee is due and payable upon issuance of a permit.

Installment Payment Plan

IC 36-7-4-1324

Fee payers have the option of paying part of an impact fee in equal installment payments if the fee is greater than \$5,000.

**See IC 36-7-4-1324 for details regarding timelines and requirements of installment payments.*

Refund of Impact Fees

IC 36-7-4-1332

If the infrastructure agency has failed to complete part of the infrastructure for which the impact fee was assessed within 24 months of the time allotted in the zone improvement plan or a time longer than necessary, a fee payer is entitled to a refund. Additionally, if a fee payer is denied the use of the infrastructure or the infrastructure agency has failed to make reasonable progress on the infrastructure within 6 years of the building permit or as specified in the zone improvement plan, a fee payer is entitled to a refund.

**All refund applications must be filed within 2 years after the right to obtain a refund accrued.*

Appeal of Impact Fee Amount

IC 36-7-4-1333

Fee payers are entitled to appeal the amount of the impact fee to the infrastructure agency's impact fee review board. This appeal must be made within 30 days of the issuance of the structural building permit for which the fee was assessed. If the fee is under \$1,000, however, the agency may require the fee payer to pay this fee in advance of the review or hold the structural building permit while the appeal is being heard.

Receive Credits for Infrastructure Improvements

IC 36-7-4-1335 (See also: IC 36-7-4-1313)

A local government may require, via written commitment or agreement as a condition to development approval, that infrastructure be dedicated or contributed. If the local government requiring the commitment or agreement has an impact fee in place for the type of infrastructure being required, the individual providing the infrastructure is entitled to a credit towards the impact fee. This credit applies in situations where a written commitment requires the construction of the infrastructure.

These infrastructure improvements (of the same type for which the impact fee is being charged) which are not uniformly required of development and are available for use by the public or will become public property are eligible for an impact fee credit if the improvements would remove a requirement for the agency to provide the improvement under the zone improvement plan, would be a useful addition to the plan, or would likely be included in future revisions to the plan.

**Additional restrictions on bonding, construction requirements, and determining amount of credit can be found in IC 36-7-4-1335.*

The above descriptions were created to help builders and developers generally understand their rights under the Indiana Impact Fee Statute. Although these descriptions do not include all possible rights with respect to impact fees, these items are the most commonly recognized rights under the statute. This description is intended to be a guide only and is not to be considered legal advice. Should you have questions about the application of a particular impact fee, please consult legal counsel.