The Basics of Development Exactions

- ***Development Exactions***: *A provision in the development approval process that requires a developer to give or provide something to a local government.*
- Exactions include things like:
  - --land donated for a park, school, fire station, etc.
  - --physical improvements on site (completed park, stormwater ponds)
  - --physical improvements off site (turn lanes)
  - --cash payments that go into a fund utilized to purchase land for open space, parks, schools, etc.
- Exactions are a part of the development approval process; exactions are provided in order for the development to be approved.
- There is a long history of requiring developers to provide some sort of targeted "gift" or "donation" in order for a proposed development to be approved.

Factors Driving the Development Exactions

1) *They help to hold property taxes down by utilizing an alternative revenue source (the developer) to pay for infrastructure improvements.*
2) *Perceived to be an affective growth management tool (growth "pays for itself").*
3) *Received in the form of a lump sum instead of a stream of payments (impact fees or user fees)*
4) *Diversifies the local approach for providing infrastructure.*
5) *Popular with elected officials.*
6) *Provide an opportunity for planners to negotiate with developers over the provision of infrastructure.*

The Basics of Impact Fees

- ***Impact Fees****: A monetary charge imposed by local government on new development to recoup or offset a proportionate share of public capital facility costs required to accommodate such development with new facilities.*
- Communities have long relied upon general funds, federal dollars, and GO bonds to pay for infrastructure. In many cases this places the cost for new infrastructure on existing residents, not new residents.
- Impact fees have developed as an alternative form of financing infrastructure that targets new residents for funding.
- Impact fees have been called the "most rational step in the evolution of local government infrastructure finance."
- Impact Fees are derived in large part from land development regulations - not revenue or taxation programs.
- The objective is to ensure adequate capital facilities to support new development.

Factors Driving the Popularity of Imp. Fees

1) *Protect existing residents from the additional costs of new development.*
   - Helps keep general tax burden down
   - Forces new residents to pay for "their" infrastructure
2) *Help to synchronize development with the installation of new infrastructure (concurrency).*
3) *Help to impose "price discipline" on new development because it makes developers internalize infrastructure costs.*
4) *Development can proceed when local government cannot pay.*
5) *Revenue exclusively earmarked for infrastructure.*
6) *Local government will construct public facilities in a planned and systematic manner since a CIP is required for fee imposition.*
7) *Impact fees can mollify anti-growth or slow-growth forces.*

Impact Fees: The Legal Context

- Two important US Supreme Court cases; Nolan and Dolan. *Rational Nexus* (Nolan) and *Rough Proportionality* (Dolan)
- *The Rules of Thumb for Impact Fees*
  1) There must be a reasonable connection between the need for additional facilities and the growth resulting from new development. (*Rational nexus*)
  2) There must be a reasonable connection between the expenditure of the fees collected and the benefits received by the development paying the fees. (*Rational nexus*)
  3) The fees charged must not exceed a proportionate-share of the cost incurred or to be incurred in accommodating the development paying the fee. (*Rough proportionality*)

The "Rational Nexus" Test

The courts test the rational nexus of an impact fee across five factors:

1) *Development must benefit from facilities financed by impact fees it pays.*
2) *Fees should be earmarked to finance only those facilities that benefit contributing development.*
3) *Fees must be expended within a reasonable amount of time.*
4) *Fees should be expended within a zone or district where a development is located.*
5) *Double taxation must be avoided by crediting development for other payments made to pay for these same infrastructure facilities (such as property taxes).*

Impact Fees: Benefit Considerations

- In their book on *Fiscal Impact Analysis*, Burchell, Listokin et al argue that certain adjustments should be made to impact fees.
- Specifically, they discuss the concepts of:
  1) *Equity Adjustments*
  2) *Fiscal Impact Adjustments*
- **Equity Adjustment**: The impact fee must reflect the net cost of infrastructure provision generated by development.

  This helps to avoid double taxation that may occur when new development pays property taxes (or other fees) used to finance the same infrastructure being paid for in part by impact fees.
- **Fiscal Impact Adjustment**: The impact fee should reflect the net fiscal impact of development.

  This provides for the fair treatment of growth in that "fiscal winners" are treated differently than fiscal losers.

The Generic Proportionate-Share Impact Fee Process

Step 1: Determine the Quantity of Needed Infrastructure Improvements
- How much capacity is required for the expected new development?
- Use local *LoS Standards* to estimate capacity required.

Step 2: Estimating Costs of Capacity Augmentations
- How much will new sewer, park, road, etc. facilities cost?
- Use *Capital Improvements Program* to help in this process.
- Take into account inflation, changing prices for labor and materials.

Step 3: Allocating Cost of Capacity Augmentations to Beneficiaries
- Allocate costs on a per unit (R) or per square foot (C or I) basis
- Take into account the potential impact on infrastructure.

Step 4: Take Into Account the Necessary Adjustments
- Equity Adjustments (no double taxation)
- Fiscal Impact Adjustments (increased taxes due to development)

Step 5: Collect and Spend Impact Fees

Lullwater Woods in Chapin County

Proposed Lullwater Woods Development

- 2,350 total units
  - 1,500 Single family evenly split between 2BR, 3BR, 4BR
  - 850 Garden apartment units (split evenly between 1BR, 2BR)
- Lullwater TownCentre
  - 200,000 SF of Retail Space
  - 500,000 SF of Office Space
  - 12 screen movie theater
- 36 Hole Golf Course

The Generic Proportionate-Share Impact Fee Process

Step 1: Determine the Quantity of Needed Infrastructure Improvements

- How much capacity is required for the expected new development?
- Use local *LoS Standards* to estimate capacity required.

Step 2: Estimating Costs of Capacity Augmentations

- How much will new sewer, park, road, etc. facilities cost?
- Use *Capital Improvements Program* to help in this process.
- Take into account inflation, changing prices for labor and materials.

Step 3: Allocating Cost of Capacity Augmentations to Beneficiaries

- Allocate costs on a per unit (R) or per square foot (C or I) basis
- Take into account the potential impact on infrastructure.

Step 4: Take Into Account the Necessary Adjustments

- Equity Adjustments (no double taxation)
- Fiscal Impact Adjustments (increased taxes due to development)

Step 5: Collect and Spend Impact Fees

A Parks Impact Fee for Lullwater Woods

Step 1: Determine the Quantity of Needed Improvements

County LOS Standards

Parks: 5 acres per 1,000 population

Population to be Generated by Lullwater Woods

SF 2BR = 1,135 GA 1BR = 690

SF 3BR = 1,610 GA 2BR = 937

SF 4BR = 2,130

Total Population = 6,502

Total Demand for County Parks

Approximately 32.5 acres

The Generic Proportionate-Share Impact Fee Process

Step 1: Determine the Quantity of Needed Infrastructure Improvements

- How much capacity is required for the expected new development?
- Use local *LoS Standards* to estimate capacity required.

Step 2: Estimating Costs of Capacity Augmentations

- How much will new sewer, park, road, etc. facilities cost?
- Use *Capital Improvements Program* to help in this process.
- Take into account inflation, changing prices for labor and materials.

Step 3: Allocating Cost of Capacity Augmentations to Beneficiaries

- Allocate costs on a per unit (R) or per square foot (C or I) basis
- Take into account the potential impact on infrastructure.

Step 4: Take Into Account the Necessary Adjustments

- Equity Adjustments (no double taxation)
- Fiscal Impact Adjustments (increased taxes due to development)

Step 5: Collect and Spend Impact Fees

A Parks Impact Fee for Lullwater Woods

Step 2: Estimate Costs of Augmenting Capacity

The Chapin County CIP

- A new park in the southwest portion of the county (near LW) has been placed on the Chapin County CIP. This park will be a total of 112 acres and will include both active and passive recreational facilities.
- The costs of this park are as follows:

Land Acquisition:	$1,200,000
Comfort Stations (restrooms): 2 @ $82,000 each	$164,000
Playing Fields:	$110,000
Total Costs	$1,474,000

- Existing county residents are expected to "consume" 50% of the benefits provided by this park. Therefore, new residents are expected to pay for half of these costs (or 56 of the park's acres).

The Generic Proportionate-Share Impact Fee Process

Step 1: Determine the Quantity of Needed Infrastructure Improvements

- How much capacity is required for the expected new development?
- Use local *LoS Standards* to estimate capacity required.

Step 2: Estimating Costs of Capacity Augmentations

- How much will new sewer, park, road, etc. facilities cost?
- Use *Capital Improvements Program* to help in this process.
- Take into account inflation, changing prices for labor and materials.

Step 3: Allocating Cost of Capacity Augmentations to Beneficiaries

- Allocate costs on a per unit (R) or per square foot (C or I) basis
- Take into account the potential impact on infrastructure.

Step 4: Take Into Account the Necessary Adjustments

- Equity Adjustments (no double taxation)
- Fiscal Impact Adjustments (increased taxes due to development)

Step 5: Collect and Spend Impact Fees

A Parks Impact Fee for Lullwater Woods

Step 3: Allocating Costs of the Park to Beneficiaries

Percent of New Park to be Paid by Lullwater Woods

Total Acreage to be Paid for by New Developments: 56 acres

Total Demand from Lullwater Woods: 32.5 acres

Percent of New Demand from LW: 58%

Percent of New Park Costs to be Paid by Lullwater Woods

Total Costs to New Developments: $737,000

Percent of New Demand from LW: 58%

Lullwater Woods' Total Bill for the Park: $427,460

How Can/Should Lullwater Assess this Impact Fee?

- *Simple method*: Total Bill/# Units for a per unit cost
- *Housing Type Method*: Assess by Unit Type and # of Bedrooms
- Other methods?

A Parks Impact Fee in Chapin County

Step 3: Allocating Costs of the Park to Beneficiaries Cont'd

- *Simple method*: Total Bill/# Units for a per unit cost

  $427,460 / 2,350 = **$181.90**

Housing Type Method: Determine Population Impact by Unit Type and # of Bedrooms

SF 2BR: 1,135/6,502 = 17.5% * $427,460 = $74,633

SF 3BR: 1,610/6,502 = 24.8% * $427,460 = $105,841

SF 4BR: 2,130/6,502 = 32.8% * $427,460 = $140,055

GA 1BR: 690/6,502 = 10.6% * $427,460 = $45,340

GA 2BR: 937/6,502 = 14.4% * $427,460 = $61,591

Impact Fees by Unit Type and # of Bedrooms

SF 2BR = $74,633/500 = **$149.27**

SF 3BR = $105,841/500 = **$211.68**

SF 4BR = $140,055/500 = **$280.11**

GA 1BR = $45,340/425 = **$106.68**

GA 2BR = $61,591/425 = **$144.92**

The Generic Proportionate-Share Impact Fee Process

Step 1: Determine the Quantity of Needed Infrastructure Improvements

- How much capacity is required for the expected new development?
- Use local *LoS Standards* to estimate capacity required.

Step 2: Estimating Costs of Capacity Augmentations

- How much will new sewer, park, road, etc. facilities cost?
- Use *Capital Improvements Program* to help in this process.
- Take into account inflation, changing prices for labor and materials.

Step 3: Allocating Cost of Capacity Augmentations to Beneficiaries

- Allocate costs on a per unit (R) or per square foot (C or I) basis
- Take into account the potential impact on infrastructure.

Step 4: Take Into Account the Necessary Adjustments

- Equity Adjustments (no double taxation)
- Fiscal Impact Adjustments (increased taxes due to development)

Step 5: Collect and Spend Impact Fees

A Parks Impact Fee in Chapin County

Step 4: Take Into Account the Necessary Adjustments

Equity Adjustment

- If property tax money were used to retire the debt on the new county park, then we would need to determine the level of support for the county park paid for by each residence's property taxes. Suppose we calculated that approximately $30 of property taxes was to retire the debt on the county park for the average home, then we could provide an Equity Credit towards the impact fee of $30.

Fiscal Impact Adjustment

- We would likely find that residential uses within Lullwater Woods are a "fiscal loser"; the local government spends more on services to these land uses than it receives in taxes and other fees.

  Therefore, no Fiscal Impact adjustment is required.

Step 5: Collect and Spend Impact Fees

- Money is collected and must be spent specifically on the new county park (or another park that benefits Lullwater Woods) and not towards any other project.

"Issues" with Impact Fees

Despite their increasing popularity, impact fees have some important problems that require attention from planners:

- Impact fess increase the cost of housing; negative effects upon housing affordability.
- Impact fees have been called "unfair"; they discriminate against new development by requiring extra fees.
- Impact fees may cause double taxation when new development pays fully for new infrastructure and pays property taxes that may be applied towards new infrastructure.
- Impact fees may shift development to localities without fees; they require a strong market demand for development to be successful.
- Impact fees are often be viewed as "anti-growth" and are therefore sometimes not politically feasible.

Implementing Impact Fees Successfully

The successful implementation of impact fees requires:

- *Good comprehensive planning* that foresees infrastructure needs
  --Comprehensive plan with stated LOS standards
  --Annually prepared CIP with good data on planned infrastructure projects and their attendant costs
- *Give adequate notice to developers that impact fees are coming*
- *Tailor impact fees to local context*
- *Fair administration; Utilize consistent land use practices*
- *Use clear, easily followed formulas for determining fees*
- *Collect impact fees when the home is sold* not when it is platted or permitted
- *Allow developers some input into the timing, location, and design of capital facilities* (they are paying for improvements, so they will want some say)

Offsets and Impact Fees

- Development exactions are often used to help "offset" a development's infrastructure impacts. For example, a developer may construct and dedicate a new park to the city or make traffic improvements (turn lanes) as part of a project.
- ***Offsets***: These facilities may offset a development's impact fees because the development has paid for part or all of its proportionate share of a given infrastructure system in infrastructure improvements.
- The offset of impact fees should occur only:

  --When the improvements are made off-site

  --If on-site, the facilities must be open and accessible to non-locals**

  --When improvements are not solely for the benefit of the individual development. For example, a new turn lane or traffic signals to get into a new development would not qualify as an offset for an impact fee.

  ***On-site improvements usually are not valued as fully as off-site improvements and may not be deemed an offset at all.*