

OUTREACH

DEVELOPMENT



GROWTH



AWARENESS



VISION

MUNICIPAL IMPLEMENTATION TOOL # 5 :
IMPACT FEES



Delaware Valley Regional
Planning Commission

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As cities and communities grow, the demands on the infrastructure and the costs to maintain or expand that infrastructure rise. Historically, the government funded infrastructure improvements because of its public purpose. However, due to rising costs, the funding stream for these capital improvements has dwindled and communities must find innovative ways to finance development. Local officials face the challenge of finding creative and equitable ways of funding infrastructure through methods such as impact fees, special taxing districts, and tax increment financing.

Impact fees are financial payments made to a municipality by a developer to provide some or all of the physical improvements needed by a proposed development and its impacts on the surrounding community. Fees may be levied for capital improvements such as sewers, streets, water lines, parks, and schools. These direct contributions can also come in the form of dedications of land, construction of certain facilities, or payment of fees in lieu of these facilities. Many communities provide for impact fees through ordinances, because they must be directly related to a public purpose. With the costs of development and sprawl becoming overwhelming to many communities, impact fees are becoming an option for many municipalities to combat the rising tax burden on residents.

Why Does DVRPC Care about Impact Fees?

This brochure is part of a series being published by the Delaware Valley Regional Planning Commission (DVRPC) in support of the region's adopted long-range plan, *Horizons 2025*. The Plan provides an integrated land use and transportation vision for the region's growth and development through the Year 2025, and specifically seeks to encourage core city revitalization, stabilization of older townships and boroughs, growth management in growing suburbs, and preservation of rural communities and natural areas. In Pennsylvania and New Jersey, townships, boroughs, and cities have the primary authority and responsibility to implement these policies. This series of brochures introduces local officials and citizens to planning tools that may be useful in their communities and provides some options for local action.

Various resources are available to provide additional information on impact fees. This brochure provides a national perspective on impact fees and issues regarding their usage. DVRPC has published several reports on impact fees and development techniques to support revitalization and mixed-use development strategies in the region. Interested readers are encouraged to consult the sources listed on pages 10 and 11 for more details on the topics summarized in this brochure.



Impact fees are a means to help finance a variety of needed services and facilities that result from additional growth by:

- Providing a better quality of life for residents by financing the infrastructure needed to support additional population, employment, and development in a community
- Reducing the need to impose higher taxes on existing community residents to finance additional facilities and services
- Supporting comprehensive plan implementation in the municipality
- Helping to manage growth in developing communities as well as in older revitalizing communities.

“Impact fees are a means to help finance a variety of needed services and facilities that result from additional growth...”

Two issues generally determine the constitutionality of an impact fee: the municipality's statutory right to impose the fee, and determining whether the impact fee is in fact a fee or an unauthorized tax. Both Pennsylvania and New Jersey have adopted enabling legislation allowing municipalities to require on-site dedication of land as a condition of subdivision or site-plan approval, but language about impact fees differs in each state's legislature.

The New Jersey Municipal Land Use Law (MLUL) has granted municipalities the power (40:55D-42) to require developers to pay a pro rata share of water, sewer, and drainage facilities demanded by new development but does not clearly define when such fees can be imposed. In January 2004, Bill A780, the "Municipal Development Impact Fee Authorization Act" was introduced in the NJ legislature. It will revise the MLUL and provide municipalities a clear distinction on how and when to impose impact fees. New Jersey also has an enabling fee for street improvements but this can only be charged if a municipality has adopted both an impact fee ordinance and a Master Plan that contains a circulation and transportation element.

Enabling legislation authorizing municipalities to impose impact fees for nontransportation facilities does not exist in Pennsylvania. However, Act 47 and Act 209 of 1990, which amended Article V of the Municipalities Planning Code (MPC), provide for the use and management of impact fees for transportation capital improvements. Act 47 allows municipalities to delineate a Transportation Development District (TDD), following the completion of a comprehensive transportation study that assesses the existing conditions of the district and identifies necessary improvements. A transportation improvement program must be prepared and impact fees can then be imposed for transportation capital improvements, but they must be based on (1) the total costs of the road improvements; (2) included in the capital improvement plan; and (3) be located within a given transportation service area affected by new development. Acts 67 and 68 of 2000 revised Article V-A of the MPC to permit joint municipal impact fee ordinances. Each municipality involved must establish an advisory committee and adopt land use assumptions, a roadway sufficiency analysis, and a capital improvement plan for the multi-municipal service area. This approach has not been widely used given its complexity. As of April 2004, there are two new legislative proposals in Pennsylvania regarding impact fees: HB 1061, "Development Impact Fees" and HB 1179, "Educational Impact Fees and Assessment."



Communities can prepare for new growth by maintaining a capital improvement program and having an up-to-date comprehensive plan.

The need for impact fees has been generated by several issues: 1) a decrease in federal funding for infrastructure improvements; 2) an increase in costs of replacing or expanding public facilities and; 3) a resistance to increased taxes. Impact fees tend to be most useful in municipalities that are located in the path of growth or that have significant land available for development or redevelopment. They provide a guide for orderly development and mitigate the negative impacts of new development, while passing costs onto new development rather than existing taxpayers.

Planning Requirements for Impact Fees

Before implementing an impact fee requirement, municipalities should review their state enabling legislation and develop and maintain a current comprehensive or master plan as well as a capital improvement program (CIP). These will serve as the "backbone" of a legal impact fee ordinance. In order to defend the impact fee ordinance, municipalities should assess and define current and projected need for additional or expanded public facilities. In addition, the following information should be included:

The **Comprehensive or Master Plan** should include definitions of land use, current and projected demographics, and land use and future development areas.

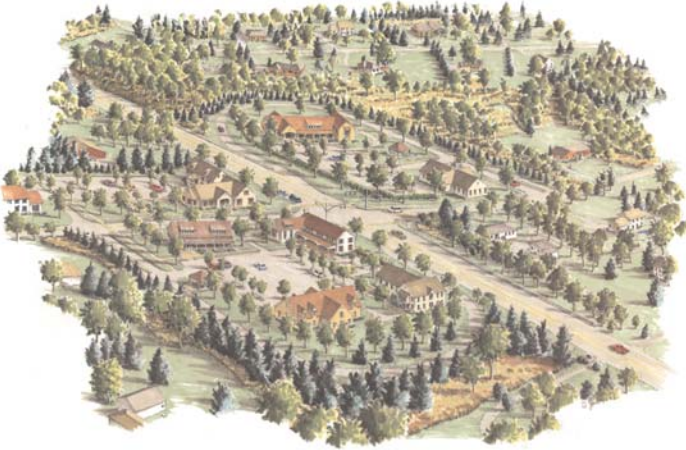
The **Capital Improvement Program** should include an inventory of facilities and their current condition; standards that will be used to measure future need against; projected cost of new facilities that will be needed by future development outlined in the master plan and; a prioritized schedule for the construction of these facilities.



Impact fees can help provide a better quality of life to a community's residents.

Impact fees provide a specific benefit to those people paying the fee in direct proportion to the amount that they pay. The following points should be included in an impact fee ordinance:

- Impact fees should only be used to construct facilities that have become necessary by the new development
- The fee amount should be calculated on the expected impact of each individual development on new infrastructure to ensure developers only pay their fair share
- Municipalities should require the impact fee be directly related to a capital improvement program and address the needs of planned development in a comprehensive or master plan
- Any revenue collected under the impact fee requirement should be put in an escrow account separate from the municipality's general fund
- The fee ordinance should provide for the refunding of impact fees to the developer after a specific time period if the improvement for which the fee is collected is not provided.



“Municipalities should develop a system that works for their community...”

There is no "cookie-cutter" formula to develop an impact fee ordinance. Municipalities should develop a system that works for their community, consistent with state enabling legislation. The following is a guide for communities to follow to develop such an ordinance.

- Appoint a committee of different interests - builders, developers, staff, and community leaders - to bring a comprehensive view.
- Provide clear and precise definitions in the ordinance. A targeted percentage of the infrastructure that will be constructed through impact fees should be spelled out.
- Illustrate how the impact fee will be calculated. Several formulas and options exist, so the ordinance should be as specific as possible.
- Establish a proper administrative structure that will effectively use the collected fees.
- Coordinate the approach with the pertinent county planning agencies and state departments.
- Involve the municipal solicitor or a special attorney familiar with impact fees.



Communities can take a proactive approach towards development and its impacts.

Winslow is a growing community in southeastern Camden County, at the edge of the Pinelands. The Township adopted an impact fee ordinance, known as "off-tract improvement ordinance" in August 1989 to ensure that developers would be responsible for a pro-rata share of the off-site improvements that will become required by additional growth. The ordinance follows the guidelines outlined in NJ's

MLUL and only requires payments for circulation improvements, water, sewer, and drainage facilities. The ordinance states that the improvements must bear a rational nexus to the needs created by the development and the fee is based on the circulation and utility service elements of the township's adopted master plan.

Winslow Township allows for two types of payment requirements: full cost allocation or proportional allocation. If the development necessitates the construction of off-site improvements that will benefit no other development, the developer may be required to pay the full cost of the improvements. If other properties will benefit from the improvements, the developer will only be required to pay his share of the cost of the improvement based on the project's traffic impact analysis and anticipated peak hour traffic flows.

The off-tract improvement ordinance provides the planning board with the power to decide whether the township or the developer will be responsible for constructing the necessary improvement. Construction of the improvement must begin within 15 years and developers are entitled to a pro rata refund of any fees left over after construction is completed. For further information, contact Edward McGlinchy, Zoning Officer, at 856-767-4224.



Impact fees can help communities provide other amenities to residents.

Uwchlan is a small community in central Chester County. The Township adopted a traffic impact fee ordinance in June 1992, consistent with Pennsylvania's statewide impact fee legislation. The impact fee ordinance covers a 7 square mile area of the township, in accordance with the maximum area allowed by the MPC. Before adopting the ordinance, an impact fee advisory committee was formed. The first step was to complete a 10-year land use assumptions report and a build-

out analysis within the impacted area. As required by law, copies of the build-out and land use assumptions were forwarded to the county and contiguous municipalities for comment. A traffic impact study and roadway sufficiency analysis, based on the land-use analysis, was then completed. Using this information, the committee designated a 7 square mile area to be covered by the impact fee ordinance, identified roadway improvements needed to correct deficiencies and those needed to accommodate future growth. The projected cost of the transportation improvements within this service area was estimated and then became part of the transportation capital improvement plan.

Finally, the advisory committee drafted the impact fee requirement, considering the estimated total cost of the improvements as well as the share of these costs attributed to new developments within the service area. The fee is based on the estimated number of trips generated by the development at peak evening rush hour and multiplied by \$750 per trip. For further information, contact Thomas Cooke, Zoning Officer, at 610-363-9450.



“Special assessment districts can be used in lieu of impact fees to generate revenue...”

Traditionally, infrastructure is financed through public or private means. Local or state governments have issued bonds to publicly finance infrastructure construction and use local revenue to service debt. Under public financing methods, the entire community shares the cost of constructing new facilities. With private financing, it is those individuals or businesses that directly benefit from the new facility that share the burden of the cost, such as the dedication of land or impact fees. Special financing districts can be used as an alternative to impact fees or be combined with impact fees in order to lessen the burden on the resident taxpayer.

Special assessment districts can be used in lieu of impact fees to generate revenue, especially in areas where new development is unlikely or where the municipality wants to limit extra fees as an incentive for infill development.

In areas where development is already occurring, impact fees and special financing districts can be combined to require developers to pay an impact fee and the commercial establishments can pay increased property taxes to offset the cost of necessary infrastructure improvements and maintenance costs.

American Planning Association (APA)

The APA is the leading organization for planners across the nation. They publish several periodicals each month to keep planners and other professionals up to date with new trends in the planning field. For more information, visit www.planning.org or call 312.431.9100.

National Association of Home Builders (NAHB)

The NAHB represents the building industry and affiliated state builders associations. They provide information regarding public policy, research, and education about housing and its impacts for its members, as well as the public. For more information, visit www.nahb.org or call 800.368.5242.

The Brookings Institute

Brookings is an independent organization that provides research, analysis, education, and various publications on public policy issues about economics, foreign policy, and governance. For more information, visit www.brookings.org or call 202.797.6000.

International City/County Management Association (ICMA)

ICMA is an organization for city managers, administrators, and staff in cities, towns, counties, and regional entities through the world. The organization provides technical and management assistance, training, and information to its members and the local government community. For more information, visit www.icma.org or call 202.289.462.

Delaware Valley Regional Planning Commission (DVRPC)

DVRPC is the federally designated Metropolitan Planning Organization for the Delaware Valley and works to foster regional cooperation for its nine member counties. DVRPC has previously published two documents about impact fees: Transportation Impact Fees: Panacea or Problem? and Regionwide Assessment of Non-Transportation Impact Fees. For more information, visit www.dvrpc.org or call 215.592.1800.

SOURCES

Callies, David L., *Impact Fees and Other Land Development Conditions*, Paper presented at the American Planning Association Conference, Boston, Massachusetts: April 1998.

Dicker, Todd J., and Kolo, Jerry, *Practical Issues in Adopting Legal Impact Fees*, State and Local Government Review, Vol. 25, No.3, Fall 1993.

DVRPC, *Implementation of Transportation Partnerships in Southeastern Pennsylvania*, April 1988.

DVRPC, *Linking Land Use and Transportation Planning*, Report 20, October 1994.

DVRPC, *Regionwide Assessment of Nontransportation Impact Fees*, September 1989.

DVRPC, *Transportation Impact Fees: Panacea or Problem?* April 1999.

Municipal Planning Code 1990-2000, *A Decade of Amendments to the Pennsylvania Municipalities Planning Code (Act 247 of 1967)*, pgs. 89-94.

Nelson, Arthur, C. and Moody, Mitch, *Paying for Prosperity: Impact Fees and Job Growth*, June 2003.

New Jersey Municipal Land Use Law, 1975.

Townsend, Bradford, "Development Impact Fees: A Fair Share Formula for Success," *Journal of Public Management*, April 1996.

Created in 1965, the **Delaware Valley Regional Planning Commission (DVRPC)** is an interstate, intercounty and intercity agency that provides continuing, comprehensive and coordinated planning to shape a vision for the future growth of the Delaware Valley region. The region includes Bucks, Chester, Delaware, and Montgomery counties, as well as the City of Philadelphia, in Pennsylvania; and Burlington, Camden, Gloucester and Mercer counties in New Jersey. DVRPC provides technical assistance and services; conducts high priority studies that respond to the requests and demands of member state and local governments; fosters cooperation among various constituents to forge a consensus on diverse regional issues; determines and meets the needs of the private sector; and practices public outreach efforts to promote two-way communication and public awareness of regional issues and the Commission.



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