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**IMPOSING DEVELOPMENT IMPACT FEES FOR SCHOOLS ON
RETIREMENT COMMUNITIES**

By: John G. Rappa, Principal Analyst

You asked if towns could charge impact fees on new age-restricted housing developments and use the revenue to improve or construct schools. You also asked if towns in other states could do this. The Office of Legislative Research cannot give legal opinions, and this memo should not be regarded as one.

CONNECTICUT LAW

Impact fees are imposed on new developments to pay for public improvements the developments necessitate. But Connecticut law does not explicitly allow towns to impose impact fees on any type of development for the purpose of improving or constructing schools or other types of public facilities. The Connecticut Supreme Court ruled that towns could impose a fee only if the statutes authorized it. It struck down a subdivision regulation that required developers to cover the town's cost of inspecting public improvements specifically because no statute authorized payments for this purpose (*Avonside Inc. v. Zoning and Planning Commission of Avon*, 153 Conn. 232 (1965)).

The legislature may have tacitly confirmed this reasoning since it subsequently authorized fees in lieu of parking spaces (CGS § 8-2c), open space land (CGS § 8-25), and affordable housing units (CGS § 8-2i). Connecticut land use law professor Terry Tondro wrote "the explicit state authorization in these two instances [parking and open space] will

undoubtedly lead a reviewing court to conclude that only in those cases may an impact fee be charged” (*Connecticut Land Use Regulation*, 2ed (1992), p. 261).

It appears that no towns impose school impact fees. We contacted the Connecticut Homebuilders Association and several land use planners, consultants, and attorneys and all reported that they knew of no town that imposes these types of fees.

OTHER STATES

Authorization

At least six states allows towns to impose impact fees for constructing schools and other public facilities. They are Arizona (Ariz. Rev. Stat. Ann. § 9-436.05), California (Cal Gov't Code § 66000), New Hampshire (N.H. Rev. Stat. Ann. § 674:21), Vermont (Vt. Stat. Ann T 24 § 129-10030), Washington (Wash. Rev. Code, § 82.02.050), and West Virginia (W. Va. State Code § 7-20-10). Only Washington allows towns to exempt elderly housing developments from paying the fees. New Hampshire does not exempt these developments, but at least one town, Londonderry, does.

Florida's statute requiring counties and municipalities to adopt land use regulations states that it must be construed to encourage the use of impact fees and other specified “innovative land development regulations,” but does not list the kinds of developments subject to the fee (Fla. Stat. Ch. 163, § 3202). The governor vetoed a 1999 bill prohibiting counties from imposing school impact fees if they fund schools with personal property tax revenue (HB 2179, 1999 Session).

A 1995 Utah law bans counties, municipalities, and other political subdivisions from imposing school impact fees until the legislature authorizes them (Utah Code Ann. § 53A-20-100.5). Apparently these jurisdictions were imposing these and other types of fees without explicit statutory authorization. That year, the legislature allowed them to impose fees for water, flood control, power, roadway, recreation, and public safety facilities and parks and open spaces (Utah Code Ann. § 11-36-102).

Statutory Components

Washington's statute authorizing fees is similar to those adopted by other states (Attachment 1). It specifies towns can impose fees only for

improvements necessitated by the new development and that the amount must reflect the costs specifically attributed to that development. It specifies the kinds of capital improvements the fees can fund and requires towns to keep the fee revenue in a segregated account. Towns must adopt ordinance specifying the fee schedule and the formula used to determine the amounts. Attachment 2 is Bellevue, Washington's school impact fee ordinance. Attachment 3 explains how Windham, New Hampshire calculated the fee amounts.

JR:eh