

## **IMPACT FEES**

### **11-36a-102. Definitions.**

(8)(a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure. (**Excluded from definition:** Hook-up fees, inspection fees, service fees, and other permit or application fees.)

(3) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

### **10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.**

#### **Summary of 10-9a-305 – A municipality:**

- may NOT impose requirements for landscaping, fencing, aesthetic considerations, municipal building codes, or use of temporary classroom facilities
- may NOT require school to participate in the cost of any roadway or sidewalk, UNLESS reasonably necessary for the safety of the children or to connect to existing rights of way
- may NOT require the school to pay for municipal building inspectors
- MAY require a school to pay impact fees imposed by the Impact Fees Act

### **2009 Legislation – HB 259**

Schools can be exempted from being imposed Impact Fees if the local government affirmatively says so in its ordinance.

Take away – if you don't want to pay Impact Fees you need to lobby your state and local government officials to change the local and/or state law.

## **SCHOOL IMPACT FEES**

### **53A-20-100.5. Prohibition of school impact fees.**

(1) As used in this section, "school impact fee" means a charge on new development in order to generate revenue for funding or recouping the costs of capital improvements for schools or school facility expansions necessitated by and attributable to the new development.

- An impact fee may be charged to a public entity building project (such as the federal government, any state agency, a county, municipality, school district, local district, special service district, or charter school) but only for certain purposes.
  - Water rights and water supply, treatment, and distribution facilities.
  - Waste water collection and treatment facilities.
  - Storm water, drainage, and flood control facilities.
  - Municipal power facilities.
  - Roadway facilities.

- Public safety facilities.
- A public agency is entitled to credit against impact fees for system improvements “required of or provided by the development, just as any other developer would be.”
  - Off sets and credits.
  - In lieu dedications and improvements.
  - Paybacks
  - General revenues.
- A replacement school project may only be assessed impact fees if the new facility imposes more burdens on public facilities than the old school facility (including any portable or modular classrooms) did, if both the new and old facilities are served by the same public facilities.
- An impact fee enactment that provides an impact fee exemption for development activity attributable to a school district or charter school shall allow either a school district or a charter school to qualify for the exemption on the same basis.
- Facilities built by the state may not be charged impact fees to cover the costs of road facilities funded by the state or federal government.
- Upon written request, an entity charging impact fees, must include any system improvements that would be installed by the school district, in their capital facilities plan.

**No Delay** – The construction of a school or charter school may not be delayed because of a dispute over impact fees.

**Limitation on Expenditure Funds** – An entity charging an impact fee is limited to a six (6) year period of time in which it must expend the funds collected or return them to the developer.

#### **QUESTIONS TO ASK:**

1. What impact fees are being charged?
2. What other fees are being charged?
3. Is this a new facility or simply a replacement or renovation?
4. What improvements and dedications are being asked for?
5. Is there any oversizing being required?
6. Is each improvement or dedication a project or system improvement?
7. Is the project listed in the local government's capital improvements plan?
8. Are the improvements "System Improvements" listed in the local government's capital facilities plan?
9. Do any of the improvements have a value to the local government other than as a system improvement?
10. How has the local government charged impact fees to other schools and charter schools?

### **Education Facility -**

- Used for instruction of pupils.
- A structure on the same property used to support that use.
- Offices for school administration but not land or structures for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use.

### **Non "Educational Facility" School Use or Structure -**

- Is subject to zoning requirements.
  - Only as imposed on similar uses.
  - Can't use "tax exempt" status as reason for prohibiting or regulating land use or location.

### **Summary**

- Cities and Counties may impose exactions (individualized review) and impact fees (generalized regime) on schools in certain situations
- With a little work you can understand what your exactions / impact fees will be
- Exactions are easier to attack than Impact Fees, but regardless there may be room for negotiation
- If you have any questions, call an attorney that has experience in impact fees as they relate to schools – you could save thousands of dollars