



TOWN COUNCIL WORK SESSION

September 03, 2024 at 7:00 PM
250 River Circle - Alpine, WY 83128

AGENDA

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YouTube LINK FOR LIVE FEED:

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1. **CALL TO ORDER** - Mayor Green
2. **DISCUSSION ITEMS**
 - a. Colin McAweeney, Western Regional Manager - TischlerBise
3. **ADJOURNMENT**

Land Development

THE NATIONAL ASSOCIATION OF HOME BUILDERS

Dear Reader:

This article is from the National Association of Home Builders quarterly magazine, *Land Development*. TischlerBise is a fiscal, economic, and planning consulting firm specializing in fiscal impact analysis, impact fees and revenue strategies. Our other major services are market feasibility studies, economic development analysis, capital improvement programming, and growth policy planning.

TischlerBise has prepared over 600 impact fees for the following services:

- Schools
- Roads
- Water
- Wastewater
- Stormwater
- Parks and Recreation
- Open Space and Trails
- Police
- Fire
- Municipal Facilities and Equipment
- Libraries
- Transit
- Electric

TischlerBise's impact fee studies include those for clients in the following states:

- Alabama
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- Arkansas
- California
- Colorado
- Delaware
- Florida
- Georgia
- Idaho
- Illinois
- Iowa
- Maryland
- Massachusetts
- Mississippi
- Montana
- New Mexico
- North Carolina
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- Texas
- Utah
- Virginia
- West Virginia
- Wisconsin

Our private sector impact fee clients include: Home Builders Associations; Private Developers; and others.

Not one of 600+ impact fees prepared by TischlerBise has been challenged. However, when TischlerBise has critiqued impact fees for the private sector, the fees have been reduced or eliminated. We think our experience with the public and private sector is invaluable.

Please call us at 800/424-4318, visit www.tischlerbise.com or email us at info@tischlerbise.com to obtain further information or to discuss our impact fee consulting services, including our impact fee feasibility analysis, as well as full fiscal impact evaluations.

IMPACT FEES— UNDERSTAND THEM OR BE SORRY

by Paul S. Tischler

Anyone who has developed land in the last 10 to 15 years knows that the popularity of impact fees as a local government revenue source has skyrocketed. The three major reasons for the proliferation of fees are state and local limitations on tax hikes; federal, state and local mandates increasing costs without a concomitant increase in accompanying revenues; and perhaps most importantly, the great reluctance of elected officials to raise taxes. Impact fees are especially appealing because they are usually passed onto future (absentee) voters. Therefore, it

Development impact fees are growing increasingly attractive to local governments. Developers need to understand impact fees if they are to spot illegal uses and improper calculation of the fees.

is imperative that developers understand fees or risk becoming the victim of either their illegal use or the improper calculation of fee amounts. This article provides some examples of illegal fees, discusses caveats pertaining to the calculation and use of impact fees, and offers a set of recommendations for ensuring the equitable application of fees.

Illegal Impact Fees

Hundreds of today's impact fees are probably illegal; yet, for two major reasons, the fees remain largely unchallenged. First, the fee amounts are noticeably small and thus are not particularly burdensome. Second, developers and builders are fearful of delaying development by bringing a legal challenge against a fee. One of the more blatant examples of an illegal fee is the fee for public art in a California jurisdiction. The impact fee, calculated only against nonresidential space, pays for art exhibited in such public spaces as museums. Rationally speaking, such a fee – if it is to be imposed at all – should

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probably be assessed against residential units. After all, it is residents who generally find the time to visit museums after work or on weekends.

Less subtle and unsupportable examples of illegal fees include the imposition of police and fire fees against housing, but not against nonresidential development. (Impact fees should not discriminate by type of land use.) Or how about the calculation of a park impact fee based on desired levels of service rather than on lower, existing levels of service? Another example pertains to school impact fees for a geographic area that will not generate the need for any increase in school facilities in the foreseeable future. Also likely to be illegal is the application of hypothetical future student generation rates, which are considerably higher than the actual rates experienced by the jurisdiction. Flaws in the methodology of calculating fees or inaccurate data assumptions can result in hundreds or, in some cases, thousands of dollars per house in unsubstantiated fees.

Monitor the Process

Increasingly, state law requires fee-imposing jurisdictions to include representatives of the private sector on fee review or liaison committees. This is certainly an important step in making sure that private as well as public sector interests are accorded the opportunity to participate in the review process. Often, however, the few private sector representatives are as overwhelmed as the other committee members by pages and pages of text, reams of data, and maybe even undecipherable tables. Consequently, the committee, including its private sector representatives, simply takes the path of least resistance and agrees to a consultant's methodology, data and technical recommendations.

Given that the actions of the committee automatically vest the fees with a measure of credibility, it is imperative that all interested parties monitor the impact fee process. If local builders defer their involvement until fee amounts are determined, they will be faced with an uphill struggle to amend the impact fee report and its recommendations – especially if the other members of the committee and the larger public have already “bought into” the methodology and its data assumptions.

Even though impact fees raise several questions regarding their technical aspects, they also point to several caveats that are particularly germane and understandable to the interested party. A few of these are discussed below.

1 Recognize that impact fees pertain only to new capital facilities that directly benefit the payer. Many observers still believe that impact fees can be used for capital facilities that benefit existing residents. In fact, impact

fees, are assessed and collected to fund only those capital facilities whose need is generated by new development. Further, expenditure based on impact fee collections must demonstrate a direct benefit to those paying the fees. Under many statutes, an existing facility is eligible for impact fee financing if it was deliberately oversized to accommodate new development.

Knowledgeable and willing homebuilders must participate in and evaluate all of the relevant information related to the impact fee determination process.

2 Be aware that the impact fees collected must be spent within a reasonable time period. A mandated or general rule-of-thumb holds that about six years is a reasonable period in which to expend fees, although 10 years may suffice. In most cases, the jurisdiction must operate on the good faith assumption that the money will be spent for a specific facility or facility type within the mandated period. The time limitations encourage or require the preparation of capital improvement plans.

3 Educate the electorate on what impact fees do and do not accomplish. As already noted, fees fund only those capital facilities necessitated by new development. Fee collections cannot be allocated to rehabilitation, retrofitting, or replacement of existing capital facilities. The greater cash cow of operating expenses, not covered by impact fees, must be explained to the electorate. Otherwise, the public will wrongly expect that impact fees can solve the full range of local fiscal problems.

4 Make certain that fees are assessed only to maintain current levels, versus future levels, of service – unless a jurisdiction has adopted a plan to address existing deficiencies and is actually implementing this plan. Some communities and their consultants tend to use a level of service that is not met elsewhere in the jurisdiction. It is illegal to extract from new development fees to pay for a higher level of service unless the jurisdiction is using other funds to bring other parts of the jurisdiction up to this same level of service.

5 Do not rely solely on the jurisdiction's assumptions; instead, obtain your own background information. Various local government departments may not be familiar with the requirements of impact fees and are therefore unlikely to understand clearly the difference between adopted and

existing levels of service, the relationship between service delivery areas and existing and new capital facilities, and several other issues. If the builders ask local jurisdictions the right questions, they should also be able to extract the needed information.

Some of the questions to ask are: What is the basis for the land use projections? How were service areas ascertained to meet the rational nexus requirements? How were levels of service and cost factors determined? How have credits for other payments been considered?

6 Analyze the capital improvement budget. Potential impact fee revenues need to be related to the capital improvement budget or capital improvement plan. That is, there should be capital projects in the plan that can legitimately use impact fees. It is important for builders to become familiar with this budget and its validity over both the short and long terms.

7 Be familiar with the likely geographic service areas in order to evaluate the rational nexus requirement. In summary, rational nexus requires a reasonable relationship between the need for the capital facility and the use of impact fees directly benefiting those paying. To show a

direct benefit to the development paying the impact fee, jurisdictions tend to describe larger service areas than may be appropriate.

8 Can a jurisdiction provide the needed capital facilities? The recommended impact fees should demonstrate some relationship to what the jurisdiction is capable of providing (i.e. Has the jurisdiction been spending much money on this category in the capital improvement budget?). Whether due to time lag, backlog of existing facilities, debt ratios, or political constraints, the effort that goes into setting an impact fee will be diminished if the jurisdiction cannot provide the needed capital facilities in a timely fashion (assuming that the impact fee does not pay 100 percent of the new cost).

9 Understand the importance of granting credits. Under the provisions of some state statutes, the future tax payments of a house or nonresidential property that are used to cover the debt service of a particular capital facility need to be credited against the impact amount on a discounted basis. Even in states that do not require granting credits, the “spirit” of impact fees is to avoid double payments.

Reality Testing

As already mentioned, impact fees are popular because elected officials perceive them as a free revenue source not paid by current constituents. As a practical matter, several of the flawed impact fee methodologies gained acceptance because the fee amount ultimately proved to be much lower than the amount discussed in the impact fee report. Of course, in some jurisdictions, lower



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Please send the following:

- ☐ Reprint “20 Points to Know About Impact Fees”
- ☐ Reprint “Impact Fees – Understand Them or Be Sorry”
- ☐ Excerpts from: ICMA IQ Report “Introduction to Infrastructure Financing”
- ☐ Recent *Fiscal & Economic Newsletters*

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Information about TischlerBise Consulting Services:

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fees are subject to annual increases.

It is important that the community imposing an impact fee is experiencing significant growth. If not, the jurisdiction will be unable to generate enough revenues to make the impact fee process worthwhile. Impact fees incur a set of administrative costs and, in most cases, are legally required to be segregated from the general fund by type of account, type of activity, and geographic subarea (where appropriate).

For home builders, two nontechnical points are worth noting. First, several of the homebuyers assessed impact fee payments are already residents within a given jurisdiction. In some jurisdictions, over 50 percent of purchasers are trade-up buyers and therefore have been paying for capital facilities through the property tax from the time they started residing in the community. Elected officials should be aware of this conundrum.

In some cases, those preparing the fees hide behind “sophisticated” models and use them as an excuse not to explain the methodology and the supporting data.

Second, impact fees give rise to an “intergenerational equity” issue. Many of us and almost all of our parents lived in a community where the capital facilities were paid

as part of the regular tax burden. The increasing reliance on impact fees and other exactions means that households moving into a community must now buy into the capital facilities with a one-time fee.

Steps to Take

From the outset, a private sector advisory group should be convened to participate in the impact fee review process and to ensure that private interests present their concerns as a unified front. Experience suggests that such groups allow for more rational input into the fee determination process, help avoid methodological flaws in setting the fee, and ensure the application of relevant data. All members of the advisory committee should be able to understand the data used to justify the fee. “Garbage in” will produce “garbage out” and will generally lead to unjustifiably higher impact fees.

Paul S. Tischler is a principal of TischlerBise a fiscal, economic and planning consulting firm with offices in Bethesda, Maryland, and Pasadena, California. The firm has prepared over 600 impact fees for communities around the country. None of the impact fees have been challenged. In representing the private sector, TischlerBise has succeeded in reducing impact fee amounts or, in one instance, eliminating a fee altogether.

Note: Please let us know if you would like to receive a copy of “20 Points To Know About Impact Fees”, a reprint from *Planning* magazine.

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Dear Reader:

We are pleased to present this article, originally published in *Planning* magazine. TischlerBise is a fiscal, economic and planning consulting firm specializing in:

- ☐ Fiscal Impact Analyses
- ☐ Impact Fees
- ☐ Capital Improvement Programs
- ☐ Revenue Strategies
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TischlerBise has never had to defend any of our 600+ impact fees in court. However, when TischlerBise has critiqued impact fees for the private sector, the fees have been reduced or eliminated. We believe this public and private sector experience is invaluable.

The infrastructure categories for which TischlerBise has prepared impact fees include the following:

- Schools
- Roads
- Water
- Wastewater
- Stormwater
- Parks and Recreation
- Open Space and Trails
- Police/Sheriff
- Fire
- EMS
- General Government Facilities
- Libraries
- Transportation
- Electric
- Jail/Detention Center

TischlerBise has conducted impact fee (and other one-time fee) studies in the following states:

- Alabama
- Arizona
- Arkansas
- California
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- Delaware
- Florida
- Georgia
- Idaho
- Illinois
- Iowa
- Maryland
- Mississippi
- Missouri
- Montana
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- Nevada
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- North Carolina
- Ohio
- Oklahoma
- Rhode Island
- South Carolina
- Texas
- Utah
- Virginia
- West Virginia
- Wisconsin

Please contact TischlerBise at 800-424-4318, www.tischlerbise.com, or info@tischlerbise.com to obtain further information, receive the reprint, **"Impact Fees – Understand Them or Be Sorry,"** TischlerBise Fiscal & Economic Newsletters, or to discuss TischlerBise's impact fee and other consulting services.

20 Points to Know About Impact Fees

by Paul S. Tischler
TischlerBise, Inc.

Impact fees are an increasingly popular revenue source to local governments. While there are a number of advantages to impact fees and related exactions, there are limitations. As communities and development groups become more sophisticated about what should be expected from a thorough impact fee study, they will become more critical and their level of expectation will increase. This article briefly notes 20 nontechnical points of which one should be aware.

1. *Impact fees are viewed as a free revenue source without any constituency requirement.*

Impact fees may be voted in without an election, usually apply only to new development (which does not yet exist) and are perceived to exclude current taxpayers. Therefore, impact fees are a fairly painless and free revenue source since there is no obvious increase in cost to current voters.

2. *Impact fees pertain only to new capital facilities which reasonably benefit the payer.*

Many people still believe that impact fees can be utilized for capital facilities which benefit existing residents. However, expenditures utilizing impact fees must show a reasonable benefit to those paying. Under some statutes, an existing facility can be included in an impact fee calculation if it was oversized to serve the new development.

3. *The impact fees collected must be spent within a reasonable time period.*

A mandated or general rule-of-thumb is about six years, although ten years may suffice. In most cases the jurisdiction must have a good idea that the money will be spent within the reasonable

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time period for a specific facility. This encourages capital improvement programs to be prepared.

4. *The electorate may think that impact fees will pay for all new capital facilities, therefore negating the need for higher taxes.*

This expectation by the electorate could lead to long term negative political consequences. Even if impact fees are eligible to pay for all capital facilities, which is highly unlikely, they will not negate the need for higher taxes due to operating costs.

Educate the electorate on what impact fees do and do not accomplish.

5. *Educate the electorate on what impact fees do and do not accomplish.*

Impact fees relate solely to capital facilities for new development. They do not pertain to rehabilitation, retrofitting, or replacement of existing capital facilities. Also, the greater cash cow of operating expenses must be explained to the electorate. Otherwise, their expectations will be artificially high.

6. *The amount of impact fees must be politically acceptable.*

The amount that is politically acceptable will vary by state and jurisdiction. If an impact fee of \$1,500 is the politically acceptable amount, while the maximum justifiable is \$8,000, it may not make sense to pursue some impact fees. This depends on how much revenue can be obtained by impact fees and/or other sources.

7. *The community should be growing.*

A 3-5% growth rate may allow the community to raise a reasonable amount of revenues and also show the need for additional capital facilities due to growth. A very low growth rate will generate minimal revenues and new capital facilities may not be needed in the foreseeable future for most services.

8. *Planning departments are probably the most appropriate center for managing impact fee activity.*

The calculation of impact fees is closely related to land use and rational nexus. Planning departments are generally the most appropriate center for managing this activity. Impact fee calculations are not primarily an accounting or engineering exercise. Because rational nexus requires one to show a benefit of the impact fee to the capital facility or the particular service, land use issues are very important. Also, projections, usually provided by planning departments are very important. In jurisdictions where there is an active planning department, this department will probably be the most appropriate center for managing impact fee activity. This should not preclude other departments, such as finance and budget, from playing an integral part.

Current levels of service must be met.

9. *Current levels of service must be met unless there is a plan to address existing deficiencies.*

There is a tendency for communities and their consultants to assume the adopted level of service for the impact fee study. You cannot extract a higher level of service and commensurate fee solely from new development unless there is a plan to address deficiencies generated by the current population.

Do not rely solely on departmental assumptions.

10. *Do not rely solely on departmental assumptions; instead, obtain your own background information.*

Because departments may not be familiar with the requirements of impact fees, they are unlikely to clearly understand the difference between adopted and existing levels of service, service

delivery areas and their relationship to existing and new capital facilities and several other issues. If the right questions are asked, they should be able to provide the information. The most fail-safe way to ensure this is to obtain your own information from the departments.

11. *Analyze the capital improvement budget.*

The potential impact fee revenues will need to be related to the capital improvement budget or capital improvement element. It is important for the analyst to be familiar with this budget and its validity, both short and long term.

12. *Be familiar with the possible geographic service areas in order to comply with rational nexus.*

As the development community becomes more concerned about pass-throughs due to tighter markets and fiscal constraints, they are more likely to look at the geographic service areas and their relationships to their project. There is a tendency for jurisdictions to have larger service areas than may be appropriate. The service areas will vary by type of activity.

13. *Can a jurisdiction provide the needed capital facilities?*

The recommended impact fees should have some relationship to what the jurisdiction can actually provide. Whether it is due to time lag, backlog of existing facilities, debt ratios or political constraints, the impact fee work will be diminished if the jurisdiction cannot provide the needed capital facilities (assuming that impact fees do not pay 100% of the new cost).

14. *Beware of granting credits.*

In some state statutes, the future tax payments of a house or nonresidential property which are utilized for debt service of a particular capital facility will need to be credited on a discounted basis against the impact fee amount. Even in states where this is not required, the “spirit” of impact fees is to avoid any double payments. Therefore, credits will be granted in most cases.

15. *What are the realities of charging nonresidential development.*

In many states the jurisdiction may not discriminate between different types of land use for the same service. In one county, a road impact fee was not implemented because the officials did not wish to add another fee to nonresidential development. This particular jurisdiction wanted to attract as much nonresidential development as possible. The question of charging nonresidential development should be raised and answered near the outset of the study in order to avoid extra work if the answer is no.

16. *Be aware that some new home buyers are already residents within the jurisdiction.*

In some jurisdictions 50-70% of new home buyers are trading up within the same jurisdiction. The reality is that these people have been paying for capital facility needs through their existing tax base from the time they were in the community and are now being asked to pay a second time. As a point of information, elected officials should understand this.

17. *Decision makers should be aware of the “intergenerational equity” issue, a negative aspect of impact fees.*

In many cases, impact fees mark the change from intergenerational equity to site-specific equity. Many of us and almost all of our parents lived in a community where the capital facilities were paid as part of the regular tax burden. The use of impact fees and other exactions means that those who move into a community are now buying into capital facilities with a one time fee.

Educate elected officials on impact fees.

18. *Educate elected officials on impact fees.*

For many elected officials the term impact fee means a new revenue source that can be utilized in tight times. The only thing they may know

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about impact fees is that existing taxpayers will not have to pay them. However, there are important pluses and minuses to the use of impact fees which have been noted above and which should be conveyed to elected officials.

Including a public/private sector advisory group may ease the acceptance process.

19. *Including a public/private sector advisory group may ease the acceptance process.*

Using this type of group educates everyone on the openness of the process and reasonableness of the data as well as providing a means to reveal, before the end of the study, any major oversights which might have been made. TischlerBise recommends this process to its clients and in over 90% of the cases it is accepted. By coming to closure with such a group prior to the final report, there are fewer acrimonious hearings and less chance of litigation.

Garbage In – Garbage Out.

20. *Garbage In – Garbage Out.*

The above 19 points focus more on the non-technical issues; however, they allude to a number of technical issues, such as rational nexus. As noted, communities and development groups will become more sophisticated regarding the substantiation of impact fees. The relationship of level of service, geographic areas, capital improvement budgets, and comprehensive plans are all critical in devising a solid impact fee study. Perhaps most important is the need for the analyst to “get his feet dirty” by reviewing the local data to ensure that it is valid to be included in the study itself. An adopted recreation plan does not necessarily mean the data is valid for impact fee calculations. Overcrowded school conditions may need to be reflected in the level of service definitions. Garbage in will result in garbage out.

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