IMPACT FEE MISCONCEPTIONS

by

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Across the State of Georgia, more and more local governments are considering development impact fees as an alternative funding source to pay for capital improvements. In this regard, development impact fees have often been characterized as the salvation of cash-strapped local governments faced with the increasing demands of growth. This broad characterization has often overshadowed the truth about what impact fees can (and cannot) do. In the public discourse over development impact fees, support for or opposition to impact fees is often based on a core set of misconceptions. From the perspective of the residential building industry, it is therefore important to understand the most common misconceptions about development impact fees and the underlying reality.

As an initial matter, what is a development impact fee? In Georgia, a development impact fee is a fee imposed on development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development. The Georgia Development Impact Fee Act, O.C.G.A. section 36-71-1 et seq. establishes the manner in which development impact fees are calculated, imposed, collected and spent by counties and municipalities throughout the State of Georgia. The Development Impact Fee Act was adopted, in part, to ensure that adequate public facilities would be available to serve new growth and development in rapidly growing communities and to prevent duplicate and ad hoc development exactions. Although Georgia law authorizes all counties and municipalities in the State of Georgia to impose impact fees by local ordinance, local governments must comply with the specific procedures set forth in the Act in the course of adopting and implementing a development impact fee program.

The first major misconception about development impact fees concerns when and under what circumstances an impact fee may be appropriate in a particular jurisdiction. Development impact fees are not necessarily appropriate in every jurisdiction. Nonetheless, many local officials believe that if development impact fees are appropriate for one county or municipality, then development impact fees must be appropriate for all counties and municipalities. One size, however, does not fit all, particularly when it relates to development impact fees. As the Georgia Department of Community Affairs has noted, "[e]ach local government is unique, and only a thorough analysis at the local level can determine whether impact fees are a practical alternative for a given community." Factors such as the projected population growth rate, the adequacy of traditional funding mechanisms, the inventory of existing capital improvements, the local government's capital improvement plan, the local government's service delivery strategy and the effect of development impact fees on the local economy are all factors that a county or municipality should consider prior to the adoption of development impact fees as a means of funding capital improvements. Moreover, the implementation of a development impact fee program represents a significant policy shift in a local government's approach to funding capital improvements. Increasingly, however, counties and municipalities are by-passing any serious discussion of the need for and appropriateness of development impact fees in an effort to expedite the adoption of a fee program.

The second major misconception about development impact fees concerns the manner in which a county or municipality can spend the fees. Far too often, a local government official will view development impact fees as the answer to all of a local government's capital improvement needs. However, the Georgia Development Impact Fee Act imposes numerous limitations on how, when and for what purposes impact fees can be spent. For example:

(1) Impact fees cannot be used to pay for new schools. Nonetheless, many public officials and members of the public profess support for impact fees under the mistaken belief that development impact fees can be used to build new schools and thereby alleviate overcrowded conditions. The Georgia Development Impact Fee Act, however, lists only seven categories of "public facilities" that can be paid for with development impact fees. Schools are not included on that list, nor are courthouses, general government offices, health departments and solid waste facilities.

(2) Impact fees do not pay for costs of maintenance, personnel and operations. Although development impact fees can be used to construct the specific types of public facilities and capital improvements designated in the Act, the fees cannot be used to cover the maintenance costs, personnel costs and other operating costs that will necessarily be incurred by a local government once those facilities and improvements have been built and are in operation. Rarely, however, does a local government consider those costs before proceeding forward with the implementation of an impact fee program.

3) Impact fees can only be used to pay for capital improvements with a useful life of ten years or more. As such, computers, printers, telephone equipment, police cars, sheriff's cars and items of furniture are generally not impact fee eligible. A local government must pay for these items -- which are frequently necessary for the proper use of an impact fee eligible facility -- from a non-impact fee revenue source.

(4) Impact fees cannot be used to upgrade existing public facilities for the benefit of existing residents or to improve the quality of services received by current residents. Many members of the public incorrectly believe that impact fees can be used to improve the level of public services that they are receiving from their local government. In fact, under existing law, impact fees can only be used to construct system improvements intended to serve new growth and development. To the extent a local government seeks to improve the level of services received by current residents, it must do so with revenue derived from a non-impact fee source.

(5) Impact fees collected for one category of system improvements cannot be used to fund the construction of system improvements in another category. For example, assume

a county collects an impact fee for a road project and a separate impact fee for a new park. In the event that the road impact fee revenue is less than expected or the cost of the project exceeds projections, the county cannot use the impact fees collected for the new park to subsidize the construction of the road project.

(6) Impact fees must be spent or encumbered within six years after the fees were collected. If the fees are not spent or encumbered within this six year period, the fees must be refunded to the feepayor.

Another major misconception about impact fees is that only new residents or new businesses are required to pay the fees. By way of example, an editorial in a local paper in Columbia County, Georgia once referred glowingly to impact fees as an "admission price" to be paid by new residents to the community. The underlying notion is that current residents have "paid their way" through property taxes and sales tax and that new residents and businesses should do the same through the payment of impact fees. However, the belief that impact fees are only paid by new residents or businesses is simply not correct. The Act specifically provides that development impact fees, if adopted by a local government, are imposed on all development. The Act defines the term "development" to include "any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities." This definition is not limited to new residents or businesses. Accordingly, anyone who builds or purchases a new home -- whether a resident of that community for fifty years or five days -- will pay the same impact fee.

Finally, it often comes as a shock to local elected officials that impact fees are paid by all new development, not just residential development. Subject to certain specific exceptions, commercial and industrial development are required to pay their proportionate share of development impact fees. As a consequence, during the course of adopting an impact fee program, concerns are frequently expressed by elected officials and members of the public about the effect impact fees may have on commercial and/or industrial development. The common response to these concerns is to assure the public that state law permits a county or municipality to "exempt" certain commercial and/or industrial projects from paying impact fees. This is true. However, the granting of an exemption is only half the story. In fact, once an exemption is granted, the local government is required to pay into the impact fee fund the amount of the exempted impact fees from a non-impact fee revenue source. Accordingly, the effect of any exemption granted by a local government is that current taxpayers end up subsidizing the amount of the exempted impact fees.

The issue of whether development impact fees are appropriate for a particular jurisdiction demands serious and thoughtful consideration, study and discussion. This process should be based on the reality of what impact fees can and cannot do, not myths and misconceptions.