

Our town is in the midst of a housing boom, most of which is financially out of reach of our residents. Can we levy an impact fee on this new development, the proceeds from which would be put into a fund to create affordable housing in our town?

Impact fees may only be used for certain purposes under both Vermont and federal law; affordable housing typically does not fall into one of those permitted purposes.

The two primary purposes for imposing impact fees are to pay for the cost of municipal and school capital projects that are directly and proportionately attributable to the new development.

Aspen, Colorado has a unique impact fee bylaw that permits the town to levy an impact fee on new development for the purchase of school lands, school buildings, recreation facilities, and *housing for school employees and their immediate families*. Some would say that this is clear authority to impose impact fees on new development to pay for much-needed affordable housing for local residents. That's not the case. This bylaw authorizes an impact fee to pay for capital school projects. Arguably, housing for teachers and staff is an appropriate school capital project, and therefore, the town of Aspen has decided that it's a fair policy to provide housing for those employees.

This does not open the door for a town to impose impact fees to pay for affordable housing for anyone who fits into a certain income category. To the contrary, this regulation is very narrowly tailored to provide housing only for employees of the school district, something that is permitted under both impact fee enabling legislation and the local bylaw.

While funding affordable housing is a laudable community goal, it's not something that may be done via the imposition of impact fees.

Towns seeking to use impact fees should be cautious to not view them as a way to fund any and all new municipal projects. The use of impact fee proceeds is subject to very strict rules in how the monies may be used. In particular, there must be a reasonable relationship between the fees assessed and the capital construction that will be financed by the fees. A basic example would be a new subdivision that requires the town to construct a sewer and water line extension, a project for which there is a clear relationship between the fee assessed and the eventual outlay. Additionally, impact fees are restricted as to the types of projects they may be used for, and the timeline in which they must be spent. Towns seeking to impose impact fees should work closely with their regional planning commission, town attorney, or the VLCT Municipal Assistance Center.

- Brian Monaghan, Staff Attorney, VLCT Municipal Assistance Center

(Editor's Note: See also "A Primer on Impact Fees" in the May 2004 issue of the VLCT News.)

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