Can the board of water commissioners levy an impact fee on new development?

No, but the selectboard may do so by creating an impact fee program via ordinance or bylaw. 24 V.S.A. § 5203(a).

An impact fee is a charge levied by a municipality on a new development to cover the cost of capital projects that will benefit or are attributable to the new development. For example, a municipality may levy an impact fee on a new subdivision for construction of a water line extension. Such a fee, however, may only be charged if a municipality has:

1. a municipal plan in place;
2. developed a reasonable formula to assess the impact fee (24 V.S.A. § 5203(a));
3. a capital budget and program in place (24 V.S.A. § 5203(a));
4. and confirmed its impact fee program with its regional planning commission (24 V.S.A. § 4350).

Without the ability to levy an impact fee, the board of water commissioners could charge to recover the cost of connecting new users to the municipal water system. The board would do so by amending the municipality's water ordinance. Technically speaking, however, this fee would be a one time "hook-up fee" and not an "impact fee." The commissioners' authority to assess a hook-up fee derives from 24 V.S.A. § 3313(a) which states "(w)ater commissioners shall have the supervision of such municipal water department and shall make and establish all needful water rates, charges, rules, and regulations for its control and operation."

We advise you to amend the ordinance to read that all charges, rates and rents shall be adopted by the board of water commissioners at a regular or special meeting by resolution. Approving these fees by resolution and not as an amendment to a water ordinance will insulate them from the political process by forgoing the possibility of being disapproved by virtue of permissive referendum.

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