

## **A PRIMER ON IMPACT FEES**

An impact fee is a charge to developments by municipalities for the increased cost of providing municipal services to new developments. Municipalities have statutory authority to charge impact fees (24 V.S.A. § 5203(a)); the selectboard or local legislative body may create an impact fee program via ordinance or bylaw. The ordinance or bylaw must allow for an appeal process. 24 V.S.A. § 5203(f).

Prior to instituting an impact fee program, municipalities must meet three requirements:

1. develop a reasonable formula to assess the fee (24 V.S.A. § 5203(a)).
2. have a capital budget in place (24 V.S.A. § 5203(a)).
3. the municipality must confirm its impact fee program with the appropriate regional planning commission (24 V.S.A. § 4350).

### **THE REASONABLE FORMULA**

A valid impact fee program depends upon the reasonable formula created to assess the fees. This formula is the key to the entire program and is based upon (1) the level of service for the capital project funded by the fee, and (2) a method of assessing how much impact a development will have on this capital project.

- “Level of service” equals how much water the town supplies, or how much wastewater the town processes, or the number of fire and/or police officers employed by the town, etc.
- Based upon: (1) current levels of service, (2) state or federal standards, or (3) a standard created in the town plan or capital budget. 24 V.S.A. § 5203(a)(2).
- Impact equals square footage of the development, or the number of bedrooms for each unit in the development, or the size of the total parcel, or any other method reasonably relied upon by the town.

### **AMOUNT OF IMPACT FEE**

The amount of the fee is established by the reasonable formula.

- The impact fee is equal to or less than the portion of the capital project that benefits the development.
- There are five factors to consider when creating the impact fee: (1) The cost of the existing or proposed facility; (2) grant, federal aid or fees paid by other developers that financed this project; (3) offsetting the impact fee with taxes or other fees paid by the developer to cover the cost of this capital project; (4) extraordinary costs incurred by the town in serving this new development; and (5) the time-price differential inherent in fair comparisons of amounts paid at different times. 24 V.S.A. § 5203 (c).
- Three factors that cannot be included in impact fees are: the operation, administration or maintenance of the capital project. 24 V.S.A. § 5203 (b).

The town may charge a fee equal to the total cost of this capital project if the development is the only user of the project. However, if a later development uses the project, the town must charge the newer development an impact fee. This fee is then

used to compensate the first development for the newer development's usage. 24 V.S.A. § 5203(b).

An example of how to calculate an impact fee: a new subdivision's water usage forces an increase in the town's water supply; the town charges an impact fee equal to or less than the percentage of water the subdivision receives multiplied by the cost to the town for increasing the water supply.

### **COLLECTING IMPACT FEES**

There are several options for collecting impact fees and any combination can be used.

- Collect them during the permitting process (require payment before issuance of permits). File a lien on the development property to compel payment of the fees.
- Accept installment payments of fees.
- Require a line of credit from a bank to guarantee the payment of the fee. 24 V.S.A. § 5204.

### **REPORTING AND REFUND REQUIREMENTS**

- Towns must follow specific reporting requirements if collecting impact fees.
- Account annually for collected fees and the capital projects funded by them.

Refunding of fees may be required if:

- The town fails to spend fees collected within six years. (A refund must be given if the development applies for a refund.) 24 V.S.A. § 5203 (e).
- The fee collected is greater than the actual expenses incurred. (The town must refund the unexpended portion within one year after construction ends.) 24 V.S.A. § 5203 (d).

### **EXEMPTIONS FROM IMPACT FEES**

A town may exempt certain developments from impact fees. The exemption is created when the program is created, and must clearly state the town's objective or policy for the exemption. For example, affordable housing developments are often exempt. An exemption will only be valid if a clearly stated objective or policy can be rationally related to the exemption.

- *Elizabeth Willhite, Intern, VLCT Municipal Assistance Center*

### **COURT RULINGS ON IMPACT FEES**

The Vermont Supreme Court has upheld the imposition of impact fees. In one instance, the Town of Hartford's impact fees program was challenged on the ground that it was not a valid exercise of municipal authority. The Court disagreed and ruled that the impact fee, which was used to finance the future expansion of the Town's sewage capacity, was a valid exercise of municipal authority. *Robes et al., v. Town of Hartford*, 161 Vt. 187 (1993).

The Court also created a standard of review for impact fees, which established that rates or charges fixed by a municipality are presumed reasonable and legally valid.

This places a heavy burden on challengers because they must be able to prove the fee is not reasonable. For example, a challenge to the Town of Williston's impact fees lost, in part, because the challenger failed to prove the impact fees were unreasonable. This fee program (to compensate for recreational and school services) was reviewed to determine if the Town's formula for assessing impact fees was valid. The Chittenden County Superior Court found that it was valid because the fee was based upon the level of service for the funded capital project. Next, the Superior Court applied the standard of review for this fee, which presumed the fee was reasonable. The challenger presented evidence that the fee could have been established using *different* formulas, but never established that the fee assessed was unreasonable. *H.B.A. of Northern VT v Town of Williston*, unpublished Chitt. Cnt. Sup. Crt. (2000).

Municipalities should be encouraged by these decisions. However, a more recent case ruled against a municipality when the Supreme Court found that the impact fee assessed was erroneously charged. In this case, developers who fell within the "grandfather clause" exemption of the City ordinance did not have to pay certain impact fees. *MBL Associates v. City of South Burlington*, 172 Vt. 297 (2001).

In sum, municipalities that implement a system of impact fees that follows the "reasonable formula" will be entitled to a strong legal presumption of validity. Moreover, it should be known that impact fees are a viable method of allocating costs for providing increasingly expensive governmental services.

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