

## CHITTENDEN SUPERIOR COURT DECIDES IMPACT FEE CASE

In *Home Builders Association of Northern Vermont, Inc. v. Town of Williston*, the Chittenden County Superior Court upheld the Town of Williston's impact fee ordinance. It remains to be seen whether the Home Builders Association of Northern Vermont (HBA) will appeal the decision to the Vermont Supreme Court. However, the Superior Court decision provides a detailed legal analysis of impact fee ordinances that any Vermont city or town considering adopting impact fees should review.

The central issue in the case is the validity of the Town of Williston's impact fees for recreation and schools. The HBA challenged the basis for the impact fees by questioning the methods that Williston utilized to calculate its recreation and school impact fee. In its decision, the Chittenden County Superior Court concludes that the town employed "reasonable" formulas to calculate its impact fees and that there is an adequate nexus between the nature and amount of the fees and the projected impacts from new development. The Superior Court began its analysis by restating the established legal principles that "Vermont municipalities have only such powers as are expressly granted by the legislature" and that all "reasonable and substantial doubts concerning municipal authority are resolved against the municipality." The Superior Court also recognized that municipal acts are presumed to be reasonable and the individual or entity challenging the municipal act has *the burden to prove such act is unreasonable*.

The Superior Court's decision highlights the fact that the key to adopting a valid impact fee ordinance is to develop a "reasonable formula" for assessing impact fees that reflects "the level of service for the capital project to be funded." 24 V.S.A. § 5203(a)(2). In addition, a city or town must develop a means of assessing the impact associated with the development. 24 V.S.A. § 5203(a)(2).

To meet its burden of proof, the HBA made several specific arguments related to the basis of Williston's impact fee and Williston's failure to comply with Vermont's impact fee statute. These arguments include a claim that Williston should have factored in the impact of existing dwellings on schools – not just focus on the impact of new-home construction; Williston provided no documented explanation for imposing 30% of the cost of new recreational facilities on new dwellings; Williston failed to utilize the state minimum requirements to calculate school costs; Williston's capital budget did not include specific impact fees; and Williston failed to comply with law by not providing an annual accounting for each impact fee collected. It is important to note that these are just *some* of the arguments that HBA raised in attempt to invalidate Williston's impact fee ordinance.

With regard to the HBA's arguments relating to the basis for the impact fees, the Superior Court held that the HBA failed to meet its burden to prove that the fees are not reasonable and there is not a "rough proportionality" between the fee imposed and the impact from the development. The Superior Court's conclusion on these points is best summarized in the following finding:

*In general, Home Builder's experts have convinced us that specialists with Ph.D's could engage in more sophisticated analysis, and arrive at impact fee projections and calculations involving greater subtlety. But they have not persuaded the court that Williston's "cookbook" methods resulted in the new development paying more than its proportional share of the capital costs of school or recreational facilities necessary to serve its own marginal needs.*

This is an important point for municipalities. The Superior Court recognizes that highly educated experts can propose viable alternatives to the developing impact fee projections. However, the *standard* for enacting valid impact fees is not whether experts will agree with a municipality's projection. The standard is that the impact fees must be based on a reasonable formula that results in new development paying its proportional share for the capital project that will benefit or is attributable to the project. 24 V.S.A. § 5203(b). Moreover, a developer must prove that the fee is not reasonable, not that experts can arrive at an alternative fee that may be viable.

The Superior Court also rejected HBA's claim that Williston is precluded from enacting impact fees because it omitted impact fees from its capital budget. The Superior Court recognized that the statute requires a municipality to adopt a capital budget and program pursuant to Title 24 Chapter 117 as a prerequisite to enacting impact fees. 24 V.S.A. § 5202(a)(1). However, the Superior Court stated that while mandated, the capital budget and program are "proposals," and these proposals are not invalid for failure to include a specific impact fee component.

In deciding this issue, the Superior Court held that the statutory requirement that municipalities state the proposed method of financing for capital projects, including the amount to be financed by impact fees, does not mean that municipalities *must* include impact fees in their capital budgets prior to levying impact fees on new development. The Superior Court views the capital budget process as a flexible

planning process that is not intended to bind municipalities with regard to funding capital projects. As a matter of practice, however, municipalities should include impact fees in their capital budgets if impact fees to fund long-term capital projects are being contemplated at the time that the budget is proposed.

Finally, the Superior Court agreed with HBA's argument that Williston did not maintain an annual accounting as required by law. 24 V.S.A. § 5203(e). The Superior Court rejected Williston's defense that, while it did not provide a detailed annual accounting, all the data necessary for an accounting was available to HBA. However, the Superior Court found that HBA suffered no damages as a result of Williston's failure to perform the accounting. Accordingly, the Superior Court did not impose a penalty on the town.

In sum, municipalities should be encouraged by the Superior Court's decision to uphold Williston's impact fees as reasonable in the face of expert testimony intended to call into question the basis for the town's fees. Municipalities must continue to develop reasonable impact fee formulas and establish that the fees relate to specific capital projects that will be affected by the project. However, in the eyes of the Chittenden County Superior Court, municipalities are *not* required to hire Ph.D. economists in order to enact valid impact fees. VLCT will track this case and inform its membership if the HBA appeals the decision to the Vermont Supreme Court.

*VLCT News*, November 2000