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SUBJECT: Development Impact Fees for Schools in Georgia

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I. Introduction

There is interest in making Development Impact Fees available for school funding in Georgia. Development Impact Fees for schools are used in at least ninety-seven jurisdictions in the U.S., eighty-six outside of California. These fees, where they are imposed tend to be larger than development impact fees collected for any other purpose. The basis for establishing and collecting Development Impact Fees exists in Georgia law, but schools are not included as an eligible use. To include schools, the law would have to be amended. If the law is amended, care should be taken to assure that development impact fees for schools are calculated in a way that maintains a reasonable and equitable relationship between needs for school facility development and demand generated by different types of housing.

This memorandum looks at:

1. The extent of the use of Impact Fees for schools elsewhere.
2. Georgia Law as it presently affects the ability to use Impact Fees in this state.
3. The mechanics of Impact Fees as they relate to school funding.
4. The timing of the collection of Impact Fees and construction.
5. Whether Impact Fees should fund the total cost of a new school.

II. Use of Development Impact Fees for School Funding in the U.S.

Each year Duncan Associates, an engineering and planning firm in Austin, Texas, conducts a national survey regarding actual use of Development Impact Fees by local governments throughout the United States. The survey does not claim to identify every jurisdiction that uses impact fees and does not estimate how many it might miss. The survey treats California as a special case,

reporting national results with and without California. The 2005 survey reports (nationally without California) finding:

- 206 jurisdictions actively using impact fees for capital facilities:
  - The average total combined fee on a new single family residence was $5,361.
  - The average total combined fee on a new multi-family residence was $3,204.
  - The average total combined fee on 1,000 square feet of new retail space was $3,159.
  - The average total combined fee on 1,000 square feet of new office space was $2,107.
  - The average total combined fee on 1,000 square feet of new industrial space was $1,445.

- 86 jurisdictions outside of California using impact fees for schools. (California is also a special case when it comes to impact fees for schools. In California, non-residential development is charged impact fees; no other state appears to allow that practice.)
  - The average school related impact fee on a new single family residence was $2,867.
  - The average school related impact fee on a new multi-family residence was $1,687.

The survey picked six jurisdictions in Georgia using Development Impact Fees (the survey did miss Fulton County's Development Impact Fees):

- Alpharetta
- Atlanta
- Canton
- Cherokee County
- Forsythe County
- Roswell.

These jurisdictions are reported to use Development Impact fees for various combinations of road, park, library, fire, and/or police facilities. For new single family houses, the lowest reported fee is $1,130 in Forsyth County where fees are charged for police, library, and fire facilities. The highest reported single family fee is $1,998 in Roswell. Impact fees in Roswell support roads, police, and fire facilities (Mullen 2005).

To help put the cost of these fees in perspective, we have calculated the increase in monthly mortgage payments on a 30 year note with an effective 6 percent rate of interest:

- National average single family total fee: $5,316 = $32.14/month
- National average school only fee: $2,867 = $17.19/month
- Roswell total impact fee: $1,998 = $11.98/month.

III. Present Georgia Impact Fee Law

Development Impact Fees in Georgia are enabled by §36-71 O.G.C.A. Development Impact Fees may be imposed only to pay for a particular development's proportionate share of the cost of additional public facilities needed to support all new development (§36-71-2(8) and (19)). The type facilities that may be supported in Georgia by Development Impact Fees are defined at 36-71-2 O.C.G.A.:

(16) 'Public facilities' means:
- (A) Water supply production, treatment, and distribution facilities;
- (B) Waste-water collection, treatment, and disposal facilities;
- (C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;
- (D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
- (E) Parks, open space, and recreation areas and related facilities;
- (F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and
- (G) Libraries and related facilities.

Schools are not included. For local governments to be enabled to establish and collect this part of the law would need to be amended to include schools. But, consideration must also be given to amending at least two other parts of the Georgia Code to accommodate Development Impact Fees for schools.

First, Development Impact Fees in Georgia may be collected not earlier than the time building permits are issued and they are collected by the issuing authority. School boards do not issue building permits, so provision must be made for cities or counties to act in behalf of school boards.

Second, Georgia's Development Impact Fee Act contains extensive requirements to help assure that localities imposing and collecting Development Impact Fees meet the *rational nexus* test. Experience in other parts of the United States shows that schools should take steps above and beyond those needed for roads, libraries, fire stations, and so on, to comply with the *rational nexus* test.

IV. *Rational Nexus* Test and Development Impact Fees for Schools

The *rational nexus* "test requires that there be a connection (*nexus*) established between new development and the new or expanded facilities required to accommodate that development; identification of the costs of those new or expanded facilities needed to accommodate new development; and the appropriate apportionment of that cost to new development in relation to benefits reasonably received. Failure to meet this … test may result in a court declaring the fee to be an unauthorized tax or an unallowable exercise of local government power." (Nichols, Nelson et al. 1991, p. 82)

Simply put, this means that:

- Demand = number of new units *times* the demand per unit
- Needed Capital Improvements = Service Standard *times* Demand
- Impact Fee = Cost of Capital Improvements *divided by* the number of new units.

For example, suppose:

- A municipality projects that a specific part of its community will grow by 1,000 single family houses in the next five years
- The average household size in the community is 2.5 persons
- The municipality has adopted and uses a standard of providing eight acres of park and open space land for every 1,000 residents
- Land in the area costs an average of $20,000 per acre
- Then:
  - 1,000 new housing units × 2.5 persons per unit = 2,500 persons
  - 2,500 persons ÷ (8 acres per 1,000) = 8 × 2.5 = 20 acres needed
  - 20 acres @ $20,000 per acre = $400,000 acquisition cost
  - Parks Development Impact Fee = $400,000 ÷ (1,000 new units) = $400 per unit.

The basis for this calculation is contained in Georgia Law at §36-71-3 O.C.G.A.

> (a) Municipalities and counties which have adopted a comprehensive plan containing a capital improvements element are authorized to impose by ordinance development impact fees…

Calculation of school impact fees follows the same process but may be much more complex because of complicated demand factors; the fact that a school is a building plus land; that there are elementary, middle, and high schools all with different development standards; and potentials of outside funding. Nichols, et al., for example, tell the story of a school impact fee in Ann Arundel County, Maryland. The process is quite involved, incorporating a six step calculation to arrive at the total fee. The steps include accounting for state financial participation and the per student building cost plus the per student land cost for the elementary, middle, and high schools. The total fee is allocated over students. But because the fee is paid on a per house basis, the number of elementary, middle, and high school students per type of housing unit – single-family, duplex, etc. – is also incorporated into the final calculation. Needless to say, this is a difficult estimate to make. The attached Appendix briefly shows demand calculation for a school impact fee in Clovis, California.

Being able to account for the impact of different housing types is important. As an extreme example, in 2000, the Florida Supreme Court ordered the Volusia County School Board to return $90,000 in impact fees it had collected from a development that allowed only people 55 and older as residents (Sandham 2000).

V. Timing of Impact Fee Payments

Use of Development Impact Fees presents some special timing problems that must be taken into account when doing capital improvement planning and finance using this tool. The two most important issues are:

- how long the funds may be held before they are spent, and
- how can facilities be built before housing creating demand are permitted and fees actually paid.

Under §36-71-9(1), a fee payer may request the return of the fee, plus interest, if the money has not been spent or encumbered for the facility for which it was collected. The implication of this requirement is that impact fees are difficult to use in slow growing areas where fees sufficient to support construction accumulate only over a long period.

On the other hand, §36-71-4 (k) permits cities or counties to impose impact fees to recover costs previously incurred for an already constructed facility that will serve the new development paying the fee. This provision was included in the Georgia Development Impact Fee Law so that governments could build the facilities prior to the construction of homes, offices, etc. that create the need, and then reimburse themselves as building permits are issued. The implication here is cities and counties may use a revolving capital construction fund (e.g. an active use of "rainy day" money), short term bank loans (similar to tax anticipation notes), or similar tools as part of an impact fee financing program.

School impact fees will accrue to the school district at the time the housing permit is taken out. It is reasonable to assume that construction and sale of the housing unit takes 6 to 9 months from the time the permit is taken out. It is likely that permits for a large development will be taken out just prior to the start of each unit, or set of units, not all at once. The time it takes for the build out the development will depend on how fast housing demand is growing. Thus, it is not likely that impact fees will allow for up-front financing of a new school if the objective is to have the school on-line when student demand reaches a level that requires a new school.

If development impact fees are made available to school systems in Georgia, these kinds of timing considerations should be included in finance and construction plans.

VI. Development Impact Fees as a Portion of Total Facility Cost

Development Impact Fees are generally not used as a sole source of funding for a given capital facility. There are two general reasons for this. The first reason is tied to the *rational nexus* test and the second is political.

Perhaps the best way to illustrate the interplay of *rational nexus* is with funding of a major street improvement. There are three reasons a major transportation artery may need upgrading (say, widening):

1. First, the street may not be currently meeting its service level standards at current demand levels. In other words, it is unacceptably congested now and needs widening for that reason alone. The cost associated with addressing this part of an upgrade cannot be borne by impact fees. Generally, general funds are used for this purpose.
2. Second, development outside the jurisdiction may be adding traffic to the street. For example commuters from Cobb County going to work in Gwinnett County maybe adding to congestion in North Fulton County. Development impact fees may not be used to pay for part of an upgrade reasonably related to this source of demand. Generally, state participation is required.
3. Third, planned development is expected to add a significant number of new trips to the street. Development Impact Fees are appropriate to meet this part of the demand.

Thus, if a new 300 student school is to be built to 1) relieve overcrowding at an existing school for 150 students and 2) to provide space for an expected increase of 150 students due to new housing development in the neighborhood, Development Impact Fees may only be used to finance one-half the cost.

Politically, development impact fees for schools can become quite expensive and generate considerable opposition from home builders. Such opposition may or may not be well founded. Home builders argue that impact fees increase costs and distort their markets, although as noted above the monthly mortgage payment for most fees is relatively modest. But school facilities typically are more expensive and the impact fees for schools are usually not imposed on commercial and industrial development. In the above example of Anne Arundel County, the full 1987 cost per single family house was $8,004, or $47.96 per month at 6 percent on a 30 year loan. In 2005, the cost could be substantially higher.

Home builders and new home buyers also argue that it does not seem fair that up to a point, all facilities – schools, for example – were built with everyone sharing the cost, but suddenly all costs are shifted to new-comers.

For these reasons, city councils and county commissions frequently set development impact fees to collect only a portion of the total calculated cost and pass the remainder of the cost to other sources. In Anne Arundel County, the school impact fee was set at 15 percent of the amount recommended by the technical studies (Nichols, Nelson et al. 1991).

Appendix
Clovis Unified School District
STUDENT GENERATION RATE METHODOLOGY

The student generation rates for new residential units were determined using an address-match methodology in which address lists for all dwelling units constructed in the District between 1995 and 2000 were matched with the addresses of all enrolled students. Separate lists for single family and multiple family units were prepared so that generation rates for each type of unit could be determined. The unit addresses were then compared to the addresses of all enrolled students within the District to determine the number of students in each grade residing in the units included in the lists. The number of matched students was divided by the number of units to determine the student generation rates ...

The dwelling unit lists were compiled using the Transamerica Intellitech MetroScan software program CD for Fresno County and building permit data from the City of Fresno, City of Clovis and Fresno County. The MetroScan program, which uses County assessor and other public data sources, allows for the selection and exportation of desired property data. The student address list was provided by the District.

STUDENT GENERATION RATES (NEW RESIDENTIAL UNITS)

----------Single Family----------		----------Multiple Family----------	
Grade	**Students**	**Grade**	**Students**
SP	17	SP	4
K	274	K	24
1	289	1	24
2	263	2	32
3	272	3	25
4	257	4	24
5	232	5	28
6	230	6	23
7	258	7	19
8	232	8	27
9	237	9	21
10	205	10	
11	213	11	19
Total	3,156	Total	320
Number of Units	5,085	Number of Units	1,066
Student Generation		Student Generation	
K-6	0.3607	K-6	0.1726
7-8	0.0964	7-8	0.0432
9-12	0.1636	9-12	0.0844
K-12	0.6206	K-12	0.3002

(Michael Paoli and Associates, 2001)
Http://www.cashnet.org/resource-center/resourcefiles/74.pdf.

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