ROCKY MOUNTAIN LAND USE INSTITUTE THE WILDERNESS CITY:

NATURE, CULTURE, ECONOMY IN THE NEXT WEST

Private Payment for Public Goods: Implementing Private Revenues in the West

Friday

Friday Morning Session 8:30–10:00 a.m.

ROBERT H. FREILICH, D. Sc., LLM. – Freilich & Popowitz, Los Angeles, CA ROBERT W. BURCHELL, Ph.D. – Rutgers University, New Brunswick, NJ JAMES C. NICHOLAS, Ph.D. – University of Florida (Emer.), Gainesville, FL JACK S. NYMAN – M.Arch. M.Des.S. – Baruch College, CUNY, NYC, NY ROCKY MOUNTAIN LAND USE INSTITUTE THE WILDERNESS CITY:

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Monetizing Renewable Energy and Rainwater Capture: Revenues for Local Government

> ROBERT H. FREILICH, D. Sc., LLM. Freilich & Popowitz, Los Angeles, CA

Town of Ramapo, NY: Golden v. Town of Ramapo, 285 N.E.2d 291 (N.Y. 1972)



San Diego General Plan: Growth Management Element, Freilich & Leitner, Principal Consultant, 1979



Concurrency

- Timing and Sequencing (police powers)
- CIP (fiscal powers) 20 year prioritized CIP
- Carrying Capacity of Existing and Planned Infrastructure
- Establishing Levels of Service (LOS)



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Wilkinson v. Board of County Com'rs of Pitkin County 872 P.2d 1269 (Colo. App. 1993)

County's growth management quota system (GMQS) requiring new subdivision applications to compete for limited number of available new building rights allocated by county each year constituted reasonable exercise of county's police power, since GMQS regulation achieved objectives enumerated in state statutes by regulating population density, **phasing development of services and facilities**, and regulating land use based upon impact on community. <u>West's C.R.S.A. § § 29–20–104(1)</u>(e–g), <u>30–28–115</u>.

See also, **Boulder Builders Group v. City of Boulder** 759 P.2d 752 (Colo. App. 1988) (population quota)



Regulatory Mechanisms for Open Space, Agriculture and Wilderness Preservation

- Preferential property tax treatment
- Exclusive agricultural zones
- Flexible zoning: clustering, bonus density and planned developments
- Agricultural districts by soil, productivity and location to public facilities
- Purchase/Transfer of development rights programs first appellate Florida case (Hollywood)
- Capital improvements program and concurrency system
- Conservation easements

Renewable Energy & Rainwater Capture

Monetizing renewable energy and rainwater capture further enhances city and county revenues while achieving reductions in global warming and GHG emissions. Monetization produces the following benefits:

- Tie-in to Smart Growth and New Urbanism;
- Reduces Impact Fees and/or Utility rates for water and electrical energy;
- Reduced fossil fuel energy consumption and GHG;
- Provides fiscal and economic benefits public and private entities;
- Protects ecosystems.

FREILICH & POPOWITZ LLP

Renewable Energy & Green Building: Reduced energy consumption and GHG

Buildings in the United States account for:

- 39% of total energy use,
- 12% of total water consumption,
- •68% of total electricity consumption, and
- ■38% of greenhouse gas (GHG) emissions.

U.S. EPA, 2004

Buildings in the United States emit more GHGs than any other country in the world except China.

Renewable Energy & Green Building Fiscal Benefits to Owners & Local Government

Greening buildings prior to installing rainwater capture and/or solar systems, will better:

- Insulate buildings to reduce energy expense;
- conserve water;
- improve indoor and outdoor air quality; and
- Increase the use of recycled materials.
- Leading to reduced maintenance, electrical and water utility costs and enhance the overall value of such buildings; and
- Increase Fiscal Revenues to both municipalities and private owners.

FREILICH & POPOWITZ LLP

Monetization of Solar, Wind & Rainwater Capture

- Rooftop solar energy systems reduce electrical utility energy rates by 80%
- Rainwater capture systems reduce utility water rates by 30 - 50%
- Building a mounted wind turbine facility of 4 10 kW costs \$30,000 - \$40,000 installed and can meet **100%** of the electrical needs of a home and eliminate electrical utility costs
- Installing solar and wind facilities, with a PID bonding the savings of energy costs to the purchaser, will reduce the cost to the developer by 100%

Direct Economic Benefits

- Reduction in energy costs (24% for commercial and 33% for office buildings)
- Higher rents (36.5% greater per square foot)
- Sustained occupancy rates (4.1% higher)
 - Higher sale value (64% higher per square foot)
- Additional tax credits, deductions and incentives

Public Improvement Districts (PIDs)

- A Renewable Energy or Water Recapture Public Improvement District or Public Utility:
 - Reaches all owners within the jurisdiction.
 - Provides renewable energy and water recapture capital improvements.
 - Aggregates procurement and financing.
 - Works through municipal finance markets.
 - Generates revenue for the local government and avoids problems of PACE priority with mortgages.

Public Improvement Districts (PIDs)

Municipality gets:

- Long-term returns.
- Improved financial structuring.
- Higher valued property that generates additional property tax revenue.
- Creation of new jobs, increasing occupational licensing taxes and sales tax revenue.

Energy Financing

A strategy as to how to form a renewable solar energy process that will bring in POUs and IOUs, to obtain credit for renewable energy portfolios. The city or county will form a PID covering their respective jurisdictions. Residential and non-residential property owners will have the right to voluntarily opt into the PID. The PID or the local government will issue bonds or notes backed by monthly assessments on the owners equal to the cost of installing and maintaining the solar system. The size of the system (4 to 10 KV) will be based on the amount of savings that the installed system will generate from existing and anticipated future rates, including for summer peak hours, with the highest electricity rates. The local government adopts standards to govern the location, size, design and engineering of the systems to insure that the savings will cover the assessments with some left over for the owner. Freilich & Popowitz have drafted proprietary code provisions. The property owner will pay the assessments from the money he/she would otherwise have paid directly to the utility sufficient to amortize the investment. The POU or IOU for the service area, will enter into an agreement with the local government and the PID, guaranteeing any defaults in assessment payments, providing a secondary source of security for the credit rating of the bonds or notes.

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Friday Morning Session 9:00–10:15 a.m.

The CIP as a Coordinator of Revenues for Capital Facilities

ROBERT W. BURCHELL, Ph.D., CO-DIRECTOR Rutgers University, New Brunswick, New Jersey

Capital Improvement Plan – What Is It? A Short- to Medium-Term Guide (4 – 10 years)

- Identifies significant construction projects or equipment purchases
- Provides a schedule for planning and construction
- Establishes a ranking or prioritization of projects
- Indicates which projects can be funded during the initial and subsequent periods of the CIP
- Provides jurisdictional bounds for the projects' locations
- Identifies funding sources and provides a financial plan for implementation

What Are Capital Improvement Projects As Part of the Capital Improvement Plan?

- Roads, bridges, water/sewer systems
- Heavy equipment and vehicles
- Office equipment
- The above items have a high cost and useful life of multiple years
- Also may involve studies, engineering and design cost, land acquisitions, or landfill reclamation

Why Do a Capital Improvement Plan? Why Is it Necessary to Do?

- To use taxpayers dollars wisely
- To focus on the deliberate construction, replacement, or repair of capital facilities
- To bring all types of players and geographic locations into the process
- To inform citizens where investments are being made
- To avoid abrupt and unplanned-for expenditures
- To place the jurisdiction in a better position to garner and effectively use state and federal funds

Steps to a Capital Improvement Plan (CIP): What Is the Sequence of Events in CIP Derivation?

<u>STEPS</u>

- One: Identify capital improvement projects and costs
- Two: Prioritize capital improvement projects
- Three: Narrow the project list in terms of ability to pay
- Four: Distribute projects by cost over CIP years
- *Five:* Prepare a fiscal analysis to help gauge future ability to pay
- Six: Seek review and comment by the public
- Seven: Pass information to the impact fee preparer
- *Eight:* Prepare a financial plan for implementing the CIP
- Nine: Adopt the Capital Improvement Plan
- Ten: Include the CIP in the Comprehensive Plan

Step One – Identifying Capital Improvement Projects and Costs

- This is done through a series of meetings related to the CIP at geographic locations throughout the jurisdiction at the beginning of the CIP process
- Additional meetings are held with community/county department heads and staff
- More meetings are held with interested parties, developers, owners of property
- All projects, from each of the above sources, are brought forward with estimates of costs

Step Two – Prioritizing Capital Improvement Projects

The reason for prioritizing is to determine which projects will receive more versus less attention during the initial 4- to 10-year period. Weightings vary according to locally-determined priorities

Priorities can be calculated using a six-category scale:

- x 1.33 1. Reduces a threat to public safety
- x 1.00 2. Improves the quality of local public services
- x 1.00 3. Provides incentive for economic development
- x 1.00 4. Reduces long-term public operating costs
- x 1.33 5. Furthers the goals of the Comprehensive Plan
- x 1.33
 6. Leverages nonresidential investment in terms of number/type of residential properties served
- Projects are given a rating multiplied by the above weightings, and results are averaged to determine an overall score

Step Three – Narrowing the Capital Improvement Project in Terms of Ability to Pay

- Projects are reviewed with department heads to verify costs and correct for duplications or omissions, and to ensure projects can be supported with public money
- Projects are pared down both in cost and number and are classified into three potential funding groups:
 - 1. Current
 - 2. Deferred
 - 3. Indefinite
- Current projects are likely to be funded
 Deferred projects are lower priority, to be funded possibly in the next 4–10 years
 Indefinite projects probably will not be funded

Step Four – Distributing Projects over Years, Showing Likely Funding Sources

- This step arrays projects by likely funding sources. These are:
 - State Grants
 Federal Grants
 Various Bonds
 TIF
 PIDs
- 6. Special Assessment Districts
- 7. Impact Fees
- 8. Dedications
- 9. Developer Agreements
- 10. State Road Fund
- This provides some sense of what must be obtained from the local jurisdiction's funding sources
- Projects are displayed by planning area or adequate public facilities district

Step Five – Conducting a Short Fiscal Analysis

- This projects growth into the future in the form of housing units and employment
- These projections form the basis for estimates of forthcoming property tax, GRT, and other revenue
- This provides some idea of what can be raised via traditional revenue sources
- The fiscal analysis should show a fiscal future with adequate revenue growth in most fund categories

Step Six – Seeking Review of the Capital Improvement Program (CIP)

- Schedule meetings to have hearings on the CIP.
- Ensure at meetings that planning staff and financial staff are there to assist in defending priorities or exclusion from funding.
- Present finalized CIP indicating overall dollar magnitude of plan, including key capital projects of each type.
 - Attempt to convey that this is an updatable and malleable document such that projects are neither institutionalized nor frozen out.

Step Seven – Passing Information from the CIP to the Impact Fee Preparer

- Information from the CIP serves as input to the impact fee calculation.
- This is information on which projects are repair or rehabilitation versus new.
- This is information on the sources to pay for these projects other than by impact fees.
- This is information on the location and timing of projects.

Step Eight – Preparing a Financial Plan To Carry Out the CIP

- A financial plan follows the CIP.
- It includes an analysis of the costs of the CIP and the revenue sources to pay for the costs.
- Each revenue source is defined, specified as to current and future magnitudes, and a structure is initiated to enable implementation.
 - This is a detailed plan of future revenues as well as who will assume responsibility for these revenues.

Step Nine – Adopt the Capital Improvement Plan

- The Capital Improvement Plan should be adopted by resolution.
- The CIP is not a regulation and does not have to be formally passed by the city council or county commissioners.
- It should receive similar recognition and treatment as the comprehensive plan.
- The CIP is an implementer of planning objectives and should be viewed as such.

Step Ten – Including the CIP as Part of the Comprehensive Plan

- The CIP should also be included by reference in the Comprehensive Plan.
- In addition, the CIP should be linked with the Adequate Public Facilities Ordinance to schedule timing and location of development.
- The CIP should be viewed as a gatekeeper for development: No capital facilities, no development.
- The CIP could be, but does not have to be, adopted as a component of the Comprehensive Plan.



If not done carefully, as with impact fees, lawsuits will result. **ROCKY** MOUNTAIN LAND USE INSTITUTE THE WILDERNESS CITY:

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Deriving Impact Fees Using the CIP as a Guide

JAMES C. NICHOLAS, Ph.D. – Univ. of Florida, Gainesville, FL

Model Drawn from New Mexico

- The New Mexico Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] requires as a precondition for impact fees:
 - Preparation and adoption of "Land Use" Assumption development projections
 - Preparation and adoption of a CIP
 - Base impact fees on the CIP and consistent with the Land Use Assumptions

Santa Fe Land Use Assumptions



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Santa Fe's Growth

New People	26,544
Dwelling Units	12,195
Employees	3,368
Non-Res Floor Area	1,562,860
Additional VMT - Daily	
Total Area	463,867
SDA-1	271,899
SDA-2	163,376
SDA-3	28,592

Levels of Service

Parks, Open Space & Trails

- Parks
- Open Space
- Trails
- Sheriff
- Corrections
- Fire/Rescue

- 1.2 acres per 1,000
- 8.16 acres per 1,000
- 0.2 miles per 1,000
- 111 FT² per 1,000
- 1,615 FT² per 1,000
- 2,472 FT² per 1,000

Levels of Service - Continued

Water & Sewer		
Residential		1 ERU
Non-Residen	tial	0.27 ERUs
Roads		
SDA-1	LOS	D
SDA-2	LOS	С
SDA-3	LOC	С
Stormwater		24 hour retention

The CIP – All Facilities

- ALL FACILITIES
- Impact Fee Eligible
- Existing Deficiencies
- Other Revenues
- Cost of Growth
- Impact Fees

\$312,062,817 \$90,104,142 \$164,576,774 \$82,275,637 \$64,788,965

Still Needed

\$82,697,078

The CIP - Parks

- Parks, Open Space and Trails
 - Total Capital Improvements
 - Not Impact Fee Eligible
 - Impact Fee Eligible
 - Existing Deficiencies
 - Cost of Growth

\$62,479,000 \$0 \$62,479,000 \$6,823,550 \$4,159,950

Impact Fees - Parks

Park, Open Space & Trail Improvements				
Total	\$62,479,000			
Anticipated Revenue	\$51,495,500			
Net County Cost	\$10,983,500			
Existing Deficiencies	\$6,823,550			
Cost of Growth	\$4,159,950			
New Population	27,607			
Cost per Capita:				
Total	\$2,263.18			
Growth Cost	\$150.69			

Impact Fees - Parks

	_	_		
	Occupancy	Cost	Credit	Net Cost
Residential single- family	2.185	\$4,945.65	\$4,616.36	\$329.30
Low-rise apartment	1.631	\$3,691.20	\$3,445.43	\$245.77
High-rise apartment	1.440	\$3,258.87	\$3,041.88	\$216.99
Condominium townhouse	1.782	\$4,033.56	\$3,764.99	\$268.57
High-rise condominium	1.440	\$3,258.87	\$3,041.88	\$216.99
Mobile homes	2.839	\$6,424.20	\$5,996.46	\$427.75
Hotel	2.176	\$4,923.86	\$4,596.01	\$327.85
Bed & Breakfast	2.000	\$4,526.35	\$4,224.97	\$301.38
RV Park	2.400	\$5,431.62	\$5,069.96	\$361.66
Campground	2.400	\$5,431.62	\$5,069.96	\$361.66
Vacation Rental Unit	2.400	\$4,945.65	\$4,616.36	\$329.30

The CIP - Roads

SDA-1 Total Capital Improvements	\$14,347,888
Existing Deficiencies	\$5,516,593
Cost of Growth	\$4,545,780
SDA-2 Total Capital Improvements	\$22,712,184
Existing Deficiencies	\$12,482,196
Cost of Growth	\$8,116,063
SDA-3 Total Capital Improvements	\$4,351,763
Existing Deficiencies	\$2,284,011
Cost of Growth	\$2,081,185

New Travel

New VMT (2010-2030)	
Area – Miles per Day	463,867
SDA-1	271,899
SDA-2	163,376
SDA-3	28,592

Cost per VMT

New VMT and Improvements by SDA					
Area	New VMT	Cost per VMT			
SDA-1	\$4,525,780	271,899	\$16.65		
SDA-1	\$8,116,063	163,376	\$49.68		
SDA-1	\$2,081,185	28,592	\$72.79		
Total	\$16,349,640	463,867	\$35.25		

Road Impact Fee

Land Llag	Net Road Cost per Unit			
Land Use	SDA-1	SDA-2	SDA-3	
Residential single- family	\$600	\$1,791	\$2,626	
Hotel per Room	\$464	\$1,385	\$2,029	
Industrial park per 1k	\$459	\$1,371	\$2,009	
General Office per 1k				
50,000 to 100,000 sf	\$364	\$1,086	\$1,571	
Shopping Center per 1k				
50,000 to 100,000 sf	\$616	\$1,838	\$1,178	
Fast food with drive-through	\$278	\$829	\$1,215	
New car sales per 1k	\$578	\$1,727	\$2,530	
Convenience market per 1k	\$547	\$1,633	\$2,392	

Impact Fees -- Summary. . . .

Parks -- \$217 - \$330/unit

Roads -- \$1,176 - \$2,626/unit

Impact Fees are under consideration

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> What Is Wrong with Impact Fees?: The Real Estate Industry's Perspective

JACK S. NYMAN M.Arch. M.Des.S. (r.e) Baruch College, The City University of New York, NYC

Overview

- States with Impact Fee Acts
- Definitions, State Acts & Standards
- Impact Fees vs. Special Assessments
- Framing the Question
- Industry Perspective
- Value Creation
- Economics
- Current Trends
- Conclusions



Homebuyer's Perspective



Definitions

- Impact Fees
- Special Assessment
- Infrastructure







Definition: Impact Fee

A charge on new development to help fund and pay for the construction of the needed expansion of offsite capital improvements caused by the new development.

An impact fee is implemented by a local government.





States with Impact Fee Acts



State Impact Fee Enabling Acts Clancy Mullen, Duncan Associates

Impact Fee Act Standards

State	Guiding Terms	No Higher Level of Service	Construction Credits	Revenue Credits
Arizona	Reasonable relationship		explicit	explicit
California	Reasonable relationship	explicit	explicit*	explicit*
Colorado	directly related	explicit	explicit	
Idaho	proportionate share; reasonably relates	explicit	explicit	explicit
Montana	proportionate share; reasonably relates	explicit	explicit	explicit
Nevada	necessitated by and attributable to		explicit	
New Mexico	proportionate share; necessitated by and attributable to		explicit	
Oregon	Equitable share		explicit	explicit
Texas	necessitated by and attributable to	explicit	explicit	explicit
Utah	proportionate share; roughly proportionate; reasonably related		explicit	explicit
Washington	proportionate share; reasonably related	explicit	explicit	explicit

*

Developer credits explicit for road and park in-kind contributions; revenue credits explicit for special district taxes used to finance schools

> State Impact Fee Enabling Acts Clancy Mullen, Duncan Associates 56

Definition: Special Assessment

- A unique charge that government can assess against real estate parcels for public projects.
- This charge is levied in a specific geographic area known as a Special Assessment District (S.A.D.)
- A special assessment may only be levied against parcels of real estate which have been identified as having received a direct and unique "benefit" from the public project.

Water, sewer, roads, paving / typical improvements

Impact Fee vs Special Assessment

	Impact Fee	Special Assessment
Paid by	Home builder (new home buyers)	Property owners within a service area, including existing homeowners and new home buyers.
Area	New development	Larger geographic area
Standards	A reasonable relationship to the burden imposed to provide additional necessary public services to the development.	Real estate which have been identified as having received a <i>direct and unique</i> "benefit" from the public project.
Typical Uses	Water, sewer, roads, police, fire	Wastewater treatment plant. parks, libraries.



Impact Fee: Framing the Question

What are the costs actually *created* by new growth?

VS.

What costs does the city *decide to incur* and charge new growth for?

Does the service provide a benefit to the community as a whole? If it does, it is a community service obligation, not a new growth obligation

Real Estate Industry Perspective

- Impact fees should *maintain* services, not expand services.
- Builders are willing to pay legitimate impact fees.
- Municipalities will attempt to assess Impact Fees for area-wide services instead of specific impacts.

For area-wide services, special assessment districts or service areas are an equitable method to distribute such costs.

Value Creation: Property Taxes

- When a developer builds a house, the municipality gains a revenue stream.
- New house = property taxes collected by the municipality for the life of the property
- An annuity created by the developer.

Present Value of 40 year annual annuity					
Discount Rate \$1,000 \$2,000					
3.0%	\$23,115	\$46,230			
4.0%	\$19,793	\$39,586			
5.0%	\$17,159	\$34,318			
6.0%	\$15,046	\$30,093			
7.0%	\$13,332	\$26,663			

Economics of Impact Fees

- Unfair to burden homebuyers with impact fee costs that are then paid through mortgage.
- Potential buyers are "crowded out" by impact fees.
- \$1000 impact fee adds \$220 in "hidden costs" of financing, brokerage commission & developer profit.
- TOTAL FEE COST IS \$1,220

Description	Price	Mortgage Rate	Mortgage Payment	Taxes and Insurance	Minimum Income Needed	Households that can afford house
· · · · · · · · · · · · · · · · · · ·	* - <i>·</i>	/	• • • • • • • -	^	• -• · · · • •	- / /
Without Fee	\$243,300	6.25%	\$1,412.97	\$300.68	\$ 73,441.86	34,609,498
Including Fee	\$244,520	6.25%	\$1,420.05	\$302.19	\$ 73,810.13	34,344,271
Difference	\$1,220		\$7.09	\$1.51	\$ 368.27	265,227

Households Priced Out of the Market by a \$1,000 Impact Fee that Increases the Median New Home Price by \$1,220

Source: National Association of Home Builders

Impact Fee Trends

ArizonaTexas



Arizona: Impact Fee Changes

- May 2011, Arizona state law changed
- Added a definition of services: Fire, police, water, sewer, streets, parks and libraries.
- Added in a 10 year refund provision for unbuilt projects, 15 years for water and sewer servicing
 - (TX, CA have 5 year refund periods)
- Previously, cities were

charging impact fees for build-outs planned in 30 yrs.





Arizona: Impact Fee Changes (cont'd)

The statutes "haven't been updated in the 20 years since they were adopted, and we grow differently, we build differently and cities plan differently"

Spencer Kamps, chief lobbyist for the Home Builders Association of Central Arizona.



Texas Impact Fees

- Developer/builder-friendly compared to Arizona and California
- Average fee between \$3,000 and \$5,000 / unit
- Cost-sharing agreement structure:
 - Cities fund infrastructure
 - If the developer builds on the city's master plan, city reimburses developer.
- Only project specific improvements are the responsibility of the developer.



Impact Fee Statute / Problems



Trends in Impact Fees

- Fees are being cut or reduced to encourage development.
- State definitions and limits to impact fees are being set as a check on municipalities.



Conclusions

- Impact fees need to be targeted for defined services.
- Impact fees are a cost & thus a burden to buyer
- Should explore alternative methods of delivery?



Homeowner Impact

