

The Truth About Impact Fees

By William F. Ross and William F. Ross III

Impact fees – the truth is that an impact fee is the only “fair tax” in Georgia.

That is because it’s a FEE, not a tax. Many consider taxes—like property taxes and sales taxes—inherently “unfair” because there is no direct relationship between the taxes one pays and the return—the services—that the taxpayer receives. School taxes are a good example. It doesn’t matter whether you have one kid in school, six kids in school or no kids at all, the school taxes you pay are going to be based on the value of the property you own, for E-LOST how much you pay buying things and, through rebates from the State, how much you earn. There are some general benefits for everyone, even for businesses, in an educated population that is socialized in American culture and in an educated work force able to sustain economic growth.

A fee is legally different from a tax. Imagine that you pull into a parking lot and are asked how much property you own or how much you made last year in order for the attendant to know how much to charge you.

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Instead, everyone pays the same to park because it is a FEE—you are paying for the use of a space; what you pay is directly related to the service (the use of a parking space) that you receive.

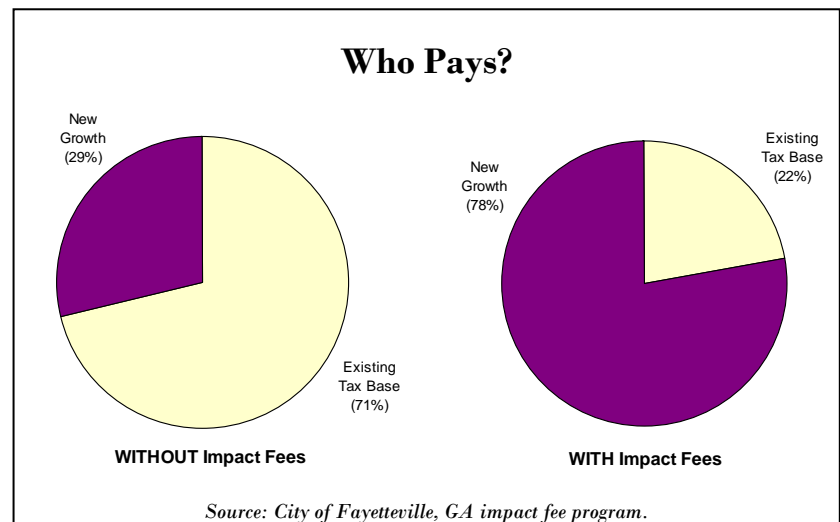
Impact Fees Level the Playing Field

Impact fees are no different from a fee to park your car. Everyone pays their fair share of a service (in the form of physical improvements) that they receive. If a community wants to improve the delivery of services to its citizens, those citizens should (rightly) pay for the improvements they will be receiving. If a community must build new facilities to accommodate new residents and businesses moving into the community, the new residents and businesses should pay their fair share of the costs. The very definition of an impact fee is that, if no new growth occurred, the facilities would not be needed. Certainly not by the residents and business that are already in the community and are adequately served by existing facilities.

Study after study has shown that existing taxpayers pay the vast

majority of the cost of improvements needed to serve new growth. As new houses are built and new businesses arrive, they also generate property and sales taxes. But it’s a slow increase compared to the taxes generated continuously, year after year, by the existing tax base. For instance, in the City of Fayetteville, GA, new growth over twenty years would pay less than 30% of the cost of capital projects needed to serve that growth through property taxes. The City currently charges an impact fee which, though less than the maximum allowed, increases the share from new growth to 78%. On the flip side, the existing tax base, instead of paying 71% of the capital costs to serve new growth will pay only 22%—a savings equivalent to 1.4 mils in property tax every year for twenty years (see pie charts below).

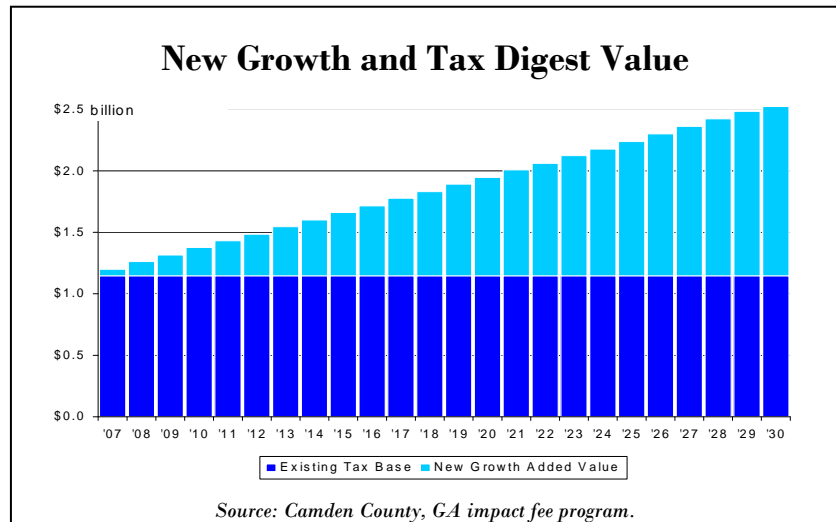
In its early years, as America grew by leaps and bounds, the concept became established that each generation pays for the next generation which, in turn, pays for the generation that follows. Westward expansion and the explosion of urban areas—our great cities today—relied on this approach to funding the cost of new growth,



most commonly through the issuance of bonds and other debt that pushed the cost forward, theoretically to be paid by future citizens and businesses. This model no longer works (if it ever did). The existing taxpayers have always shouldered the majority of the cost every year while new growth adds to the revenue stream incrementally. A simple example: if new growth is projected to double the tax digest over the next twenty years, the existing taxpayers today contribute the same each year while the newcomers contribute an incremental increase (say, one twentieth more each year) until twenty years later both groups are generating equal amounts. As the graph to the right shows, the full impact of new growth on the tax digest wouldn't be seen for years. In this example, based on the Camden County, GA impact fee program, without impact fees the newcomers will generate only 41% of the cost of new improvements, while the existing tax base will contribute 59% of the cost of new improvements which, by definition, are improvements that they didn't, themselves, even need.

Impact Fee Law Applies to All Communities

There's another element to impact fees that needs to be understood. The Georgia Development Impact Fee Act applies to every city and county in the State, whether or not the community adopts impact fees. That's because the law makes it illegal for a community to require a developer to build, dedicate or pay for anything that is a "system im-



provement.” While a community can continue to require a developer to provide “project improvements”—that is, improvements that serve only the development such as its internal streets and water and sewer lines directly serving the lots in a subdivision—improvements to the “system” that serves more than the particular development can be recovered only through an adopted impact fee.¹ These “system improvements” are those that serve multiple developments in an area or new growth in the community in general, and include the mains that bring water and sewer service to the development and other developments in the area, expansions of the water or sewer plants needed to handle the increase in water supply and treatment of sewage, police protection, fire and emergency EMS services, major road construction and widening, and parks and recreation facilities, to name a few. Without impact fees to pay for these “system improvements” occasioned by new growth, it's the existing taxpayers

who will shoulder the majority of these costs and, importantly, these costs are for facilities that those taxpayers themselves don't need.

Will Impact Fees Drive Away New Development?

There is no credible evidence that impact fees drive growth away from communities that have adopted impact fees. On the contrary, a study by Georgia Tech showed that there tends to be a run-up on building permits just before a community adopts impact fees (builders want to avoid the new cost), followed by a dip (reflecting the pre-fee excess in building permits issued) and then a recovery to normal levels such that the same number of permits (or often more) are issued over a year's time. This can be seen in the graph below. As one example of this common occurrence, building permit activity in Cherokee County, GA is shown both before and after the adoption of impact fees. Permit activity increased sharply in the month before fee collections began and then dropped in the following month. Within months the county was back to its twelve-month permitting average. Another study, this one by Dr. Arthur C. Nelson (a nationally recognized expert and

¹ The community and developer can enter into an agreement where the developer provides the system improvement for some consideration on the part of the jurisdiction, but such an agreement cannot be forced upon a developer.

author of many books on impact fees), showed that communities that adopted impact fees experienced no loss in development when compared to those without fees. Communities from fast-growing Roswell and Alpharetta to those as small as Senoia have had impact fees in place for many years with no slow-down in growth (until, of course, the start of the Great Recession which affected everyone). There are cases of major companies paying very large impact fees to locate where they wanted to be, rather than locating in a nearby non-impact fee community. The fact is that, stated by themselves, impact fees often sound like a major expense when, in fact, they may represent less than 1% of the cost of construction of a new home or business. In the words of one builder, “The cost of plywood can vary more than the impact fee between contract and construction.”

Some feel that the adoption of an impact fee will put a community at a competitive disadvantage. Again, there is no evidence that this happens. To the contrary, in Georgia there

are many instances of cities adopting impact fees while the county has none, or counties having impact fees while all or some of their cities do not. The age-old process of developers getting annexed into cities because they are offered more attractive zoning approvals (and thus greater profits) trumps impact fee considerations, whether they are escaping a county fee or buying into a city impact fee. A recent study prepared by a coastal county in Georgia revealed that, at least in their case, the total cost in all fees paid to build an average house in the county, with impact fees, was still less than to build the same house in either of the county’s major cities; with or without county impact fees, builders gravitated to developments in the cities anyway for a variety of market-based reasons.

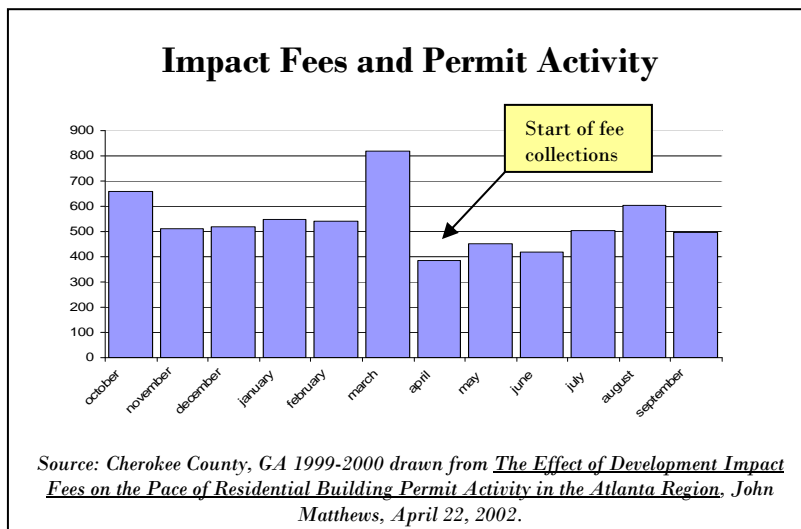
Impact Fees Can Spur Local Economic Development

The real secret in avoiding perceived negative effects of an impact fee is two-fold: 1) the community can adopt an impact fee that it feels will have no deleterious effect (usually lower than the maximum fee it could adopt) and 2) the ability to provide exemp-

tions for new development that the community determines to represent “extraordinary economic development and employment growth.” Exemptions are also available for “affordable housing.” While both exemptions are enabled by the State impact fee law, it is entirely up to the community to decide if it wants to provide exemptions and under what circumstances, even how they wish to define “extraordinary economic development” or “affordable housing.” Many communities provide no exemptions, others use them to attract particularly beneficial developments, and still others use them to encourage development in certain areas (such as their downtowns). Importantly, exemptions have been used in many different ways to achieve local and unique results—it’s up to the community.

How Much Will This Cost to Administer?

In spite of the rumors, implementation of an impact fee program has been integrated into the existing administrative structure and processes of most communities without disruption. In those few cases in Georgia where new personnel have been hired, it generally has been a new clerk in the finance department (often dividing their time between impact fees and SPLOST programs). Existing building permit staff assesses the impact fees when they calculate the building permit fee; a supervisor takes on the responsibility of being the Program Administrator; annual financial reports are incorporated into the community’s annual audit. Annual reports have to be submitted to the State, which summarize the impact fees account based on the most recent audit, and the community must update its Short Term Work Program. Graciously, the State impact fee



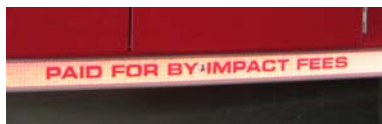
law allows an administrative fee of up to 3% to be included in impact fee collections to cover any additional expenses. Even the cost of preparing the study to establish impact fees, if any, can be recovered as part of the fees charged.

Who Actually Pays for All This?

Builders, whether home builders or spec commercial developers, currently pass on to their purchasers all of the fees they pay for permits, plan reviews and even rezoning costs, along with their overhead cost of doing business. They could hardly stay in business if they did not recover all of their costs through their sales or commercial rental rates. The same has applied to impact fees. Ultimately, the purchaser or occupant of new development pays the impact fee, which is only fair since it is ultimately the residents and business occupants who create the demands for additional services on the government, not the developers or builders. While builders and developers often express concern that impact fees raise their price points (which is debatable), experience in Georgia has shown the amounts of the fees to be negligible as a percentage of the total cost of land development and construction. Consider this—impact fees across the State generally cost less than linoleum flooring would. Impact fees are far lower than water and sewer connection fees or even the cost of a septic tank throughout most of Georgia.

What Happens When Development Slows?

Impact fees are self-regulating because there is a direct link between the pace of development (and thus the fees received) and the need for the improvement. In other words, the improvement projects that are intended to serve new growth are based on the demands created by that new growth. If development unexpectedly slows down, the need for the improvement is reduced and the project is scheduled for construction at a later time. Conversely, if development accelerates, the need is moved forward. Either way, the timing of construction of the improvement is related to the pace of impact fee receipts.



Isn't This the Wrong Time to Adopt Impact Fees?

The building industry certainly is in turmoil. Uncertainty over financing, adjusting the product to affordability, an oversupply of inventory and a lack of demand for new construction has every builder guessing. But many believe that imposing a new fee after the economy turns is the worst approach—an unexpected surprise in a rising market. Several communities have recently adopted impact fees with the

thought that now is the best time to let builders know what to expect so they can include these costs in their *pro formas* now in anticipation of better times to come.

What are the Alternatives?

Money is tight, and ever tighter in these recessionary times. Adopting impact fees enables a community to shift the burden of paying for the cost of new development from the existing taxpayers (who don't actually need the future improvements anyway) to those future residents and businesses who specifically and individually will need the improvements. As new homes are built, for example, the existing folks don't pay for the new fire station that has to be built—the new residents do. There are two alternatives to charging impact fees: one is to continue to devote a portion of tax revenue from existing taxpayers for these prospective capital projects while other desirable projects go wanting. The other is to allow the quality of life in the community to deteriorate by not building new improvements at all. More crowded parks, longer lines at the library, slower response times for fire and EMS emergency services, higher fire insurance rates, and longer waits for 911 to answer will be the result.

Many communities consider either alternative unacceptable when compared to adoption of an impact fee program that would cost them basically nothing while shifting the cost burden of development-driven public improvements to those who will create the actual demand for the services.

It's only fair.