Issue Brief: Impact Fees

HOUSING & BUILDING ASSOCIATION OF COLORADO SPRINGS

Local government has been pressured to have "growth pay for itself" over the past several years. One method that local governments turn to is the imposition of impact fees. Impact fees include a variety of fees to fund capital expenditures required by new development and are typically paid by the builder when a building permit is issued. Impact fees in Colorado range from water and sewer tap fees, water development and water acquisition fees, transportation fees, park fees, fire and police fees, and several other categories. There are literally hundreds of impact fees currently imposed and collected across the state by multiple local governments and for a wide variety of purposes.

Senate Bill 15, passed in 2001, imposed limitations and requirements on local governments that must be met to assess impact fees. The ability of local government to assess impact fees is further regulated through several court cases defining the criteria necessary for legally enforceable fees.

To be legally effective, impact fees must be legislatively adopted, generally applicable to a broad class of properties and intended to defray the projected impacts on capital facilities caused by the proposed development. To levy impact fees, a local government must also demonstrate a rational nexus between the fee and the intended capital improvements, show that the capital improvements will have a useful life beyond five years, and determine a rough proportionality between the cost and the benefit to the property. Finally, collected fees are required to be restricted and must be used for the intended purpose. If they are not used in a reasonable period of time, they are supposed to be returned to the payor.

Impact fees added to the cost of new homes in Colorado Springs over the past year include the Police and Fire Capital Expansion Fee and the Colorado Springs Utilities Water Resource Fee. Both fees now add about $6,000 to the cost of a new single-family home.

While the HBA supports public investments and improvements in order to develop communities and provide housing, we have several concerns about the use of impact fees.

First, impact fees are the least cost-efficient public improvement financing option. NAHB studies show that impact fees are not "pass throughs" and generally adds to the cost of a home. A $5,000 impact fee paid a year before a home sells typically adds $6,000 to $7,500 to the price of a new home. Paying the fees as late as possible, for example at the time of occupancy, is one way to make the impact less expensive.

In addition, transparency and accounting for impact fees can be problematic. Since collections and spending occur over longer periods of time, collections can be misallocated or "borrowed" and spent on other pressing priorities within a local government. If impact fees are imposed, the estimates used as a basis for calculating the fees must be scrutinized and be reasonable. Overestimating the future costs, thereby increasing the fees, is common. Cost estimates are often based on extremely conservative and worst-case cost assumptions.

Lastly, many infrastructure projects are very expensive, and "saving up" for them through the incremental collection of impact fees can unnecessarily delay important development needed in the community and significantly drive up the cost of infrastructure due to inflation and other economic considerations. Impact fees generally cannot be used as a basis to finance a project over time, so they are not able to secure upfront financing like bonds. This results in the intended investment being delayed until well past the time of need.

To address necessary infrastructure and other public improvements, local governments should first consider the alternatives to impact fees, including special district financing and developer exactions and obligations, especially those that are negotiated in annexation agreements, which provide capital resources quicker and at a lower cost to the homebuyer.

HBA recommendation: To address necessary infrastructure and other public improvements, the HBA believes:

- Local governments should consider alternatives to impact fees, including special district financing and developer exactions and obligations, especially those that are negotiated in annexation agreements, which provide capital quicker and at a lower cost to the homebuyer.

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