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CHANGES IN IMPACT FEES AND DEVELOPMENT OF PUBLIC FACILITIES

Two laws that passed in the 2005-06 session of the Wisconsin Legislature placed new restrictions on local governments' use of impact fees. These fees offset the costs of expanded public services and infrastructure often needed in response to new real estate development. A 2007-08 law subsequently modified some of the provisions that were enacted as part of the 2005 laws. This publication updates and expands our Legislative Brief 06-16, "New Restrictions on Impact Fees."

2007 Wisconsin Act 44, passed by the legislature and signed by Governor Jim Doyle on January 4, 2008, clarifies some of the changes made by the 2005 laws, changes deadlines for fee payments and refunds of unexpended fees, and addresses storm water facilities and parkland acquisition.

BACKGROUND

New residential and commercial development creates additional demand for a variety of public facilities and services. Impact fees assessed on developers have been used as a way of allocating a portion of the costs of these new expenses to the new development rather than funding the improvements solely through increased property taxes.

Wisconsin's statute on impact fees was enacted by 1993 Wisconsin Act 305, which created Section 66.55, Wisconsin Statutes (subsequently renumbered to Section 66.0617 in 1999 Wisconsin Act 150).

The law allowed cities, villages, towns, and counties to assess impact fees on developers to offset the capital costs for public facilities needed as a result of the new development, including roads and other transportation facilities; water, sewage, and storm water infrastructure; parks and recreational facilities; solid waste and recycling facilities; fire protection, emergency medical, and law enforcement facilities; and libraries. (For the purpose of the impact fee law, schools are not included in the definition of public facilities.)

A 1997 change in the law prohibited counties from assessing impact fees to recover costs related to transportation projects.

PROS AND CONS

Proponents of impact fees argue that the cost of the added demand for public facilities and services should be paid, at least in part, by the new development that is responsible for causing the impact rather than by existing property taxpayers. The "pay as you go" approach of impact fees, they argue, is fairer, more predictable, and encourages planning for growth in a community.

Opponents argue that impact fees could deter development, as developers and other businesses may choose not to locate in a community with impact fees. They add that impact fees can increase the cost of new homes and argue that it is unfair to force newcomers to pay new costs that could be spread among all property taxpayers.

2005-06 LEGISLATION

2005 Wisconsin Act 203 changed the time by which impact fees must be used before they are refunded. 2005 Wisconsin Act 477 removed the ability of counties to impose impact fees, restricted the scope of impact fees that municipalities may impose, and made other changes with respect to the payment and deposit of impact fees.

For additional information about the two 2005-06 laws, see LRB's Legislative Brief 06-16, "New Restrictions on Impact Fees."

2007 WISCONSIN ACT 44

Parks and recreational facilities. One provision of 2005 Wisconsin Act 477 narrowed the types of recreational facilities for which impact fees may be collected.

Prior to Act 477, impact fees could be collected to provide for "parks, playgrounds, and other recreational facilities," but Act 477 changed that to "parks, playgrounds, and land for athletic fields." 2007 Wisconsin Act 44 clarified the change made in the 2005 law to allow for continued collection of impact fees for "other recreational facilities that were substantially completed by June 14, 2006," which was the effective date of 2005 Wisconsin Act 477. The provision sunsets on January 1, 2018.

State law on subdivision regulation and regional plans generally prohibits fees for land acquisition as a condition of plat approval, but Act 44 created an exception by allowing cities, villages, and towns (but not counties) to assess fees for acquisition and initial improvement of land for public parks, with "improvement" referring to grading; landscaping; and construction or installation of utilities, sidewalks, and restrooms. Any such fees for parkland acquisition and improvement must be proportional to the need.

Effects of impact fees on affordable housing. 2007 Act 44 refined a preexisting

provision on assessing the effect of impact fees on the availability of affordable housing to specify that the estimate must include the "cumulative effect" of "all proposed and existing impact fees."

Deadlines. Before 2005 Wisconsin Act 477, impact fees were payable by the developer before issuance of a building permit or other required approval. Under Act 477, impact fees became payable by the developer or the property owner within 14 days of the issuance of a building or occupancy permit, but 2007 Wisconsin Act 44 now requires payment upon issuance of the permit.

Impact fees must be used to pay the capital costs of the public facility for which the fee was assessed, and any unexpended fees must be refunded to the current owner of the property within a time period specified in the local impact fee ordinance.

Local governments were responsible for specifying those time periods in their impact fee ordinances, accounting for appropriate planning and financing periods for the various types of facilities. 2005 Wisconsin Act 203 changed the time period by which impact fees assessed and collected be either spent or refunded from within a "reasonable period of time," as specified by the ordinance, to within seven years, with a possible extension of an additional three years in extenuating circumstances specified by a resolution passed by the local government.

2007 Wisconsin Act 44 generally changed the seven-year time period to 10 years, although the way in which that time limit is applied can depend on when the fees are collected.

For impact fees predating 2005 Wisconsin Act 203, the deadline for using impact fees collected before January 1, 2003, is December 31, 2012. An impact fee collected January 1, 2003 or later, but before April 11, 2006 (the effective date of 2005 Wisconsin Act 203), must

be used no later than the first day of the 120th month beginning after the date the fee was collected.

After April 11, 2006, fees that were collected *within* seven years of the effective date of the local fee ordinance must be used within 10 years after the effective date of the ordinance, with the possibility of a three-year extension in the event of extenuating circumstances. Any fees collected more than seven years *after* the effective date of the ordinance must be used within a reasonable period of time.

Professional service contracts. Act 44 created a new provision limiting the costs that a local government may pass along to another party. If a political subdivision contracts for engineering, legal, or other professional services, and passes the cost of those services along to another party under separate contract, the amount charged the other party may not exceed the rate the local government customarily pays for similar services.

Storm water facilities. One provision amended a list of types of facilities that a municipality may require a developer to construct according to municipal specifications if the municipality requires the developer to provide the facility as a condition for accepting the dedication of public streets or other ways. Act 44 added storm water

management or treatment facilities to that list, which also includes items such as sewerage; water mains; street lighting; grading and improvement of streets, alleys, sidewalks, and other public ways; etc.

Act 44 also created a new provision that requires that, unless the municipality agrees to an earlier date, at least 80% of the lots in a new subdivision be sold before a municipality is deemed to have accepted the dedication of lands within the plat for facilities (including detention ponds and infiltration basins) designed to reduce the quantity or quality impacts for storm water runoff. It also requires that a professional engineer certify that such a facility is functioning properly; that any required plantings are adequate, well-established, and reasonably free of invasive species; and that the facility is properly maintained.

EFFECTIVE DATES

2005 Wisconsin Act 203 took effect April 11, 2006. 2005 Wisconsin Act 477 took effect June 14, 2006. 2007 Wisconsin Act 44 took effect January 19, 2008.

FOR FURTHER INFORMATION

Copies of the acts referenced in this publication are available at:
www.legis.wi.gov/2005/data/acts/ and
www.legis.wi.gov/2007/data/acts/