



American Planning Association  
**Wisconsin Chapter**

*Creating Great Communities for All*

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## Municipal Impact Fees in the State of Wisconsin - The Do's and Don'ts

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**Tell us a little about you...**

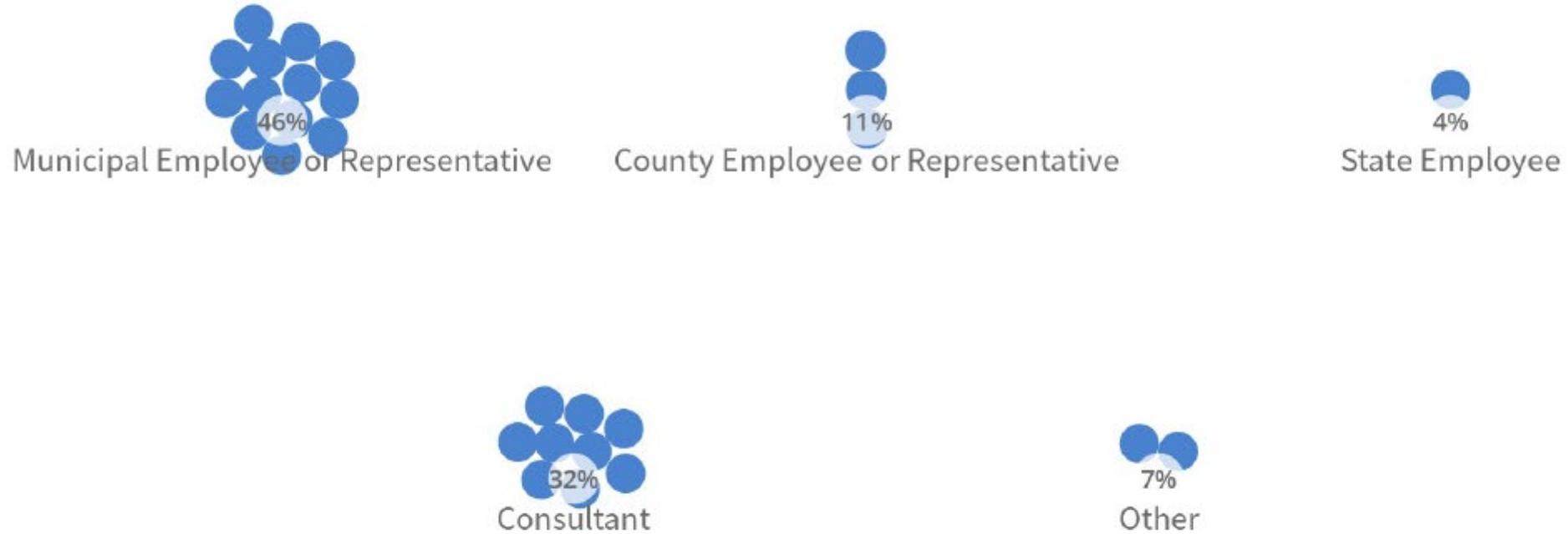
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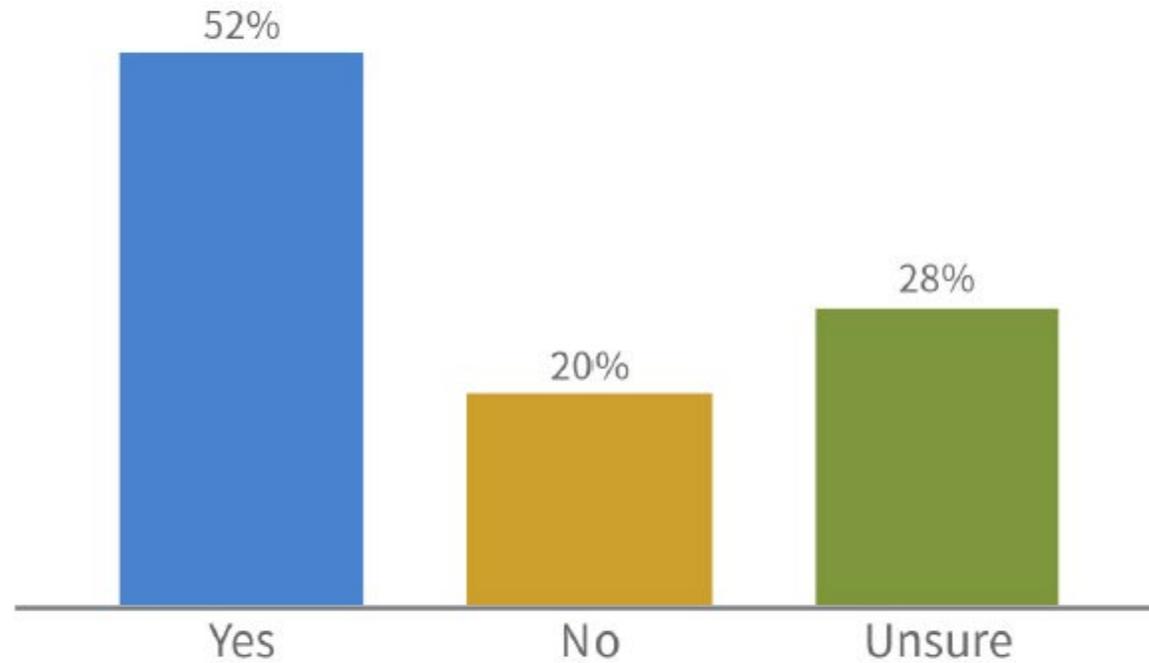


# Chose which best describes you



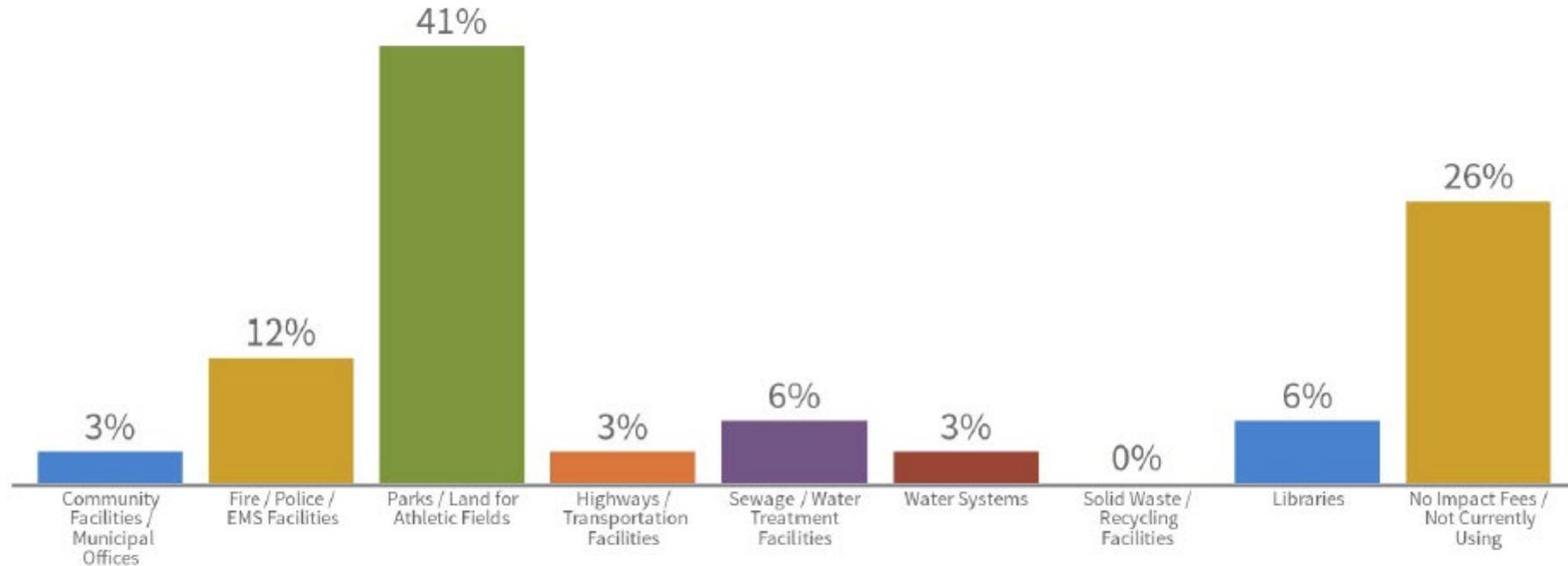


# Does your municipality currently have an impact fee?



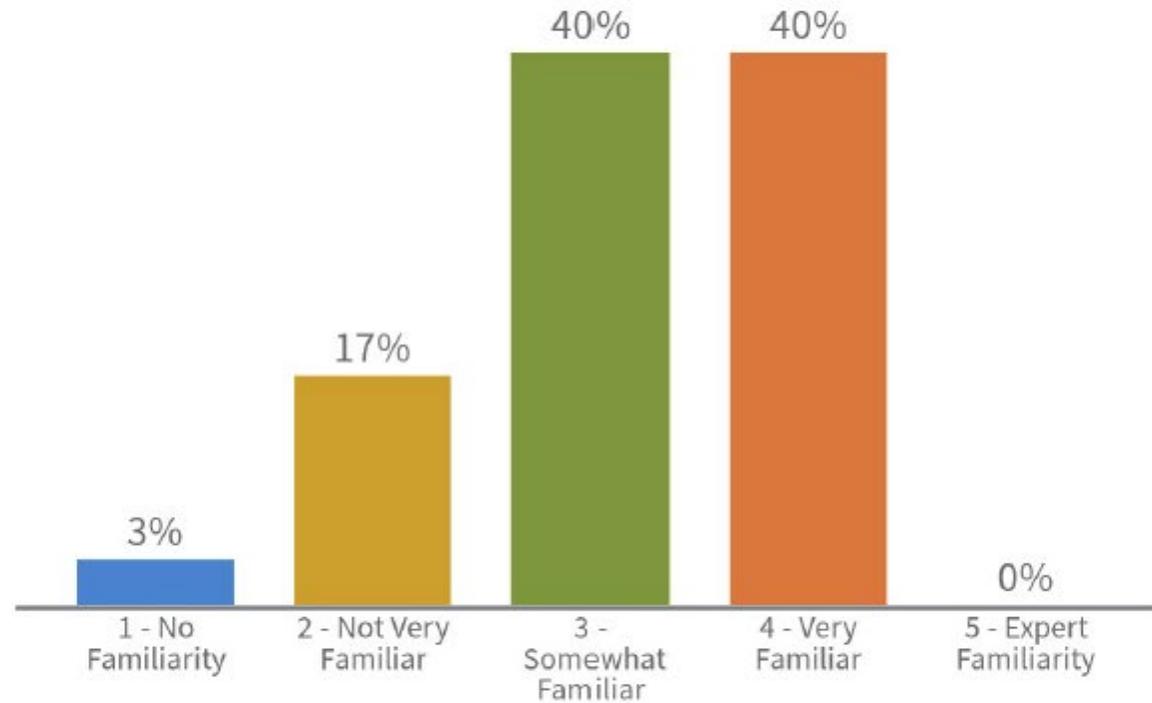


# What types of impact fees do you impose?





# Please rate your familiarity with impact fees





# What impact fees are you most interested in?



**Thank you for participating!**



# What is an Impact Fee?

Wisconsin State Statute Reference and Authorization is:

Wis.Stat. 66.0617 titled “Impact Fees” (initially enacted to be effective May 1, 1995)

## Impact Fee

One-time fee to fund capital improvements (the “Capital Costs”) necessitated by **CAPACITY** requirements **ABOVE** and **BEYOND** the effective capacity of **CURRENT INFRASTRUCTURE** **BECAUSE OF NEW DEVELOPMENT.**

May also referred to as a:

- Capital Facility Impact Fee (“CFI”)
- Development Impact Fee (“DIF”)

**Municipal TIP:** Impact fees should be considered as a part of or when conducting **comprehensive planning** and **capital improvement planning** for a municipality.

# Common Uses of an Impact Fee in Wisconsin

- Community service facilities (municipal offices, community centers, etc.)
- Fire, law enforcement, and emergency medical facilities
- Parks, playgrounds and land for athletic fields
- Highways, transportation facilities, and traffic control devices
- Sewage and water treatment facilities
- Water pumping, storage and distribution systems
- Solid waste and recycling facilities
- Libraries

# Terms & Definitions to Know ...

“**Developer**” means a person that constructs or creates a land development.

“**Impact fees**” means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a municipality.

“**Land development**” means the construction or modification of improvements to real property that creates additional residential dwelling units within a municipality or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a municipality.

“**Service Standard**” means a certain quantity or quality of public facilities relative to a **certain number of persons, parcels of land or other appropriate measure**, as specified by the municipality.

# The Standards of Any Impact Fee ...

- a) Shall bear a **rational relationship** to the need for new, expanded or improved public facilities that are required to serve land development. May not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed.
- b) **May not exceed the proportionate share of the capital costs** that are required to serve land development, as compared to existing uses of land within the municipality.
- c) **Shall be based upon actual capital costs or reasonable estimates** of capital costs for new, expanded or improved public facilities.
- d) **Shall be reduced to compensate for OTHER capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under Chapter 236 or any other items of value. *Wis.Stat. 66.0617(6)d***

*Continued next slide*



Reference the individual state statute and local municipal ordinances for specifics.

# The Standards of Any Impact Fee ...

- e) **May not include amounts necessary to address existing deficiencies** in public facilities.
- f) **May not include expenses for operation or maintenance** of a public facility.
- g) **Shall be payable by the developer or the property owner to the municipality** in full upon the issuance of a building permit by the municipality.
- h) An Impact Fee to be imposed **must not be arbitrary or capricious**, meaning the value needs to be based upon an assessment of the current capacity and the potential capacity upon anticipated, yet reasonable growth, to meet public service needs.

# The Foundation of Any Impact Fee

1. **Public Facilities Needs Assessment.** It **SHALL** include, but not be limited to, the following:
  - a) **An inventory of existing public facilities, including an identification of any existing deficiencies.**
  - b) **An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development** for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.
  - c) **A detailed estimate of the capital costs** of providing the new public facilities or the improvements or expansions in existing public facilities.
  - d) A public facilities needs assessment or revised public facilities needs assessment that is prepared **SHALL be available for public inspection** and copying in the office of the clerk of the municipality **at least 20 days before a public hearing.**
2. **Ordinance approving the Impact Fee.**

# Wisconsin Case Law as Precedent

2005: Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown, [2005 WI App 103](#), [282 Wis. 2d 458](#), [698 N.W.2d 301](#), [04-1433](#).

**An association of developers had standing to challenge the use of impact fees. As long as individual developers had a personal stake in the controversy**, the association could contest the use of impact fees on their behalf. Further, individual developers subject to the impact fees do have the right to bring their own separate challenges.

Sub. (6) allows a municipality to **impose impact fees for a general type of facility without committing itself to any particular proposal before charging the fees**. The needs assessment must simply contain a good-faith and informed estimate of the sort of costs the municipality expects to incur for the kind of facility it plans to provide.

# Wisconsin Case Law as Precedent

2005: Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown, [2005 WI App 103](#), [282 Wis. 2d 458](#), [698 N.W.2d 301](#), [04-1433](#).

Sub. (9) **requires impact fees ordinances to specify only the type of facility for which fees are imposed.** A municipality **must be allowed flexibility to deal with the contingencies inherent in planning.**

Subs. (2) and (6) (b) **authorize municipalities to hold developers responsible only for the portion of capital costs whose necessity is attributable to their developments.** A municipality cannot expect developers' money to subsidize the existing residents' proportionate share of the costs. **If impact fees revenues exceed the developers' proportionate share of the capital costs of a project, the municipality must return those fees to the current owners of the properties for which developers paid the fees.**

# Wisconsin Case Law as Precedent

2010: St. Croix Valley Home Builders Association, Inc. v. Township of Oak Grove, [2010 WI App 96](#), [327 Wis. 2d 510](#), [787 N.W.2d 454](#), [09-2166](#).

When the plaintiff home builders association alleged a town enacted an impact fee ordinance that disproportionately imposed the town's costs on development and **the ordinance contained a mechanism for appealing these issues, but the association did not use it**, the circuit court did not erroneously exercise its discretion when it concluded the association should have used the ordinance's appeal process before bringing its claims to court.

# Wisconsin Case Law as Precedent

2014: *Bentivenga v. City of Delavan*, [2014 WI App 118](#), [358 Wis. 2d 610](#), [856 N.W.2d 546](#), [14-0137](#).

The primary purpose of a tax is to obtain revenue for the government as opposed to covering the expense of providing certain services or regulation.

**A “fee” imposed purely for revenue purposes is invalid absent permission from the state to the municipality to exact such a fee.**

A “fee in lieu of room tax” that did not help the city recoup its investment in a development but rather was a revenue generator for the city that was collected from the owners of condominiums in a specific development who chose not rent their units to the public was imposed without legislative permission and was therefore an illegal tax.

# Citations to be Aware of ...

- ❑ If the total amount of impact fees due for a development will be more than \$75,000, **a developer may defer payment of the impact fees** for a period of 4 years from the date of the issuance of the building permit or until 6 months before the municipality incurs the costs to construct, expand, or improve the public facilities.
- ❑ **Shall be reduced to compensate for OTHER capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under Chapter 236 or any other items of value. *Wis.Stat. 66.0617(6)d***

# Citations to be Aware of ...

- ❑ **Low-Cost Housing.** An Impact Fee ordinance may have an exemption from, or a reduction in the amount of, impact fees on land development that provides low- cost housing.
- ❑ At the time that the municipality collects an impact fee, it **shall provide a report to the developer** from which it received the fee **of an accounting of how the fee will be spent.**
- ❑ **Impact fees that are not used within 8 years after they are collected** to pay the capital costs shall be refunded must return those fees to the current owners of the properties for which developers paid the fees. (2005 MBA v. Germantown)

# Use of Impact Fees...

2005: *Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown*, [2005 WI App 103](#), [282 Wis. 2d 458](#), [698 N.W.2d 301](#), [04-1433](#).

**Requires impact fees ordinances to specify only the type of facility for which fees are imposed. A municipality must be allowed flexibility to deal with the contingencies inherent in planning.**

**NOTE:** When developing a Needs Assessment Plan and a Capital Improvement Plan for improvements required as a result of new development, prepare definitions or descriptions of the capital projects for which an impact fee is to be used.

**Be specific (to specify). But be broad to allow for flexibility.**

**For example**, does a neighborhood park included a pedestrian/bike path capital improvement?

# Use of Impact Fees... EXAMPLE

Impact fees in Wisconsin are governed by the State's impact fee statute (Section 66.0617), which was adopted in 1993. **Act 477, which became effective in 2006**, modified the list of eligible park facilities. Previously, the statute had authorized impact fees for “parks, playgrounds and other recreational facilities;” now, it authorizes fees for “parks, playgrounds and land for athletic fields.” It does not appear that this change had a substantive effect on the authority to assess fees for park land, but it may exclude the use of fees for some recreational facilities located outside of parks.

Here lies the appropriate use of wording to accommodate the construction of pedestrian/bike path in a municipality.

It is imperative that if imposed fees are collected under a Park Impact Fee and as pursuant to statute directed to the **capital cost** associated with the construction, improvement or expansion of park system **public facilities**.

It would be in the interest of the municipality to have this “Linear Park” be identified as a park, which will include a pedestrian/bike trail as a public improvements or **public facility**. Meaning, the pedestrian/bike trail is only one element (or amenity) as a **public facility** of this “linear park.”

A municipality may consider the following definition to the purpose of using Park impact fees to finance and fund the construction, improvement, or expansion of a park services on a municipality's Park owned lands:

# Use of Impact Fees... EXAMPLE

For example: “**Linear Park**” shall mean any municipally owned park/open-space of less than 60 feet in width with a length of greater than 200 feet that connects one municipally owned lands and real property to another park owned property or other municipal, state or federally owned lands and real property of recreational purposes or open space to be a “Linear Park.” for the purposes of design and development for extending connections to similar park-owned recreational land with park amenities and opportunities.

Once you have a definition of a linear park, a municipality should have the ability to fund or finance the **capital costs** of park **public facilities** from **impact fees** imposed to construct, improve or expand **public facilities** to be used as parks, playgrounds and land for athletic fields under the definition of **public facilities**. Therefore, the logic behind the a “Linear Park” with playground/athletic amenities connected by a pedestrian/bike path.

Deference to your legal opinion and advice is always recommended.

# How is an Impact Fee Calculated – PART II, Calculate the Impact Fee

- 1. Inventory existing public facilities** – village has 20 park acres.
- 2. Identify desired service level standard** – village wants to provide 10 park acres for every 1,000 residents.
- 3. Identify existing facility deficiencies based on service level standard** – 5 more acres needed to serve 2,500 current residents.
- 4. Identify public facility, improvement or expansion needs based on projected growth and service level standard** – addition of 500 new residents will necessitate 5 additional park acres.

## How is an Impact Fee Calculated – PART II, Calculate the Impact Fee

- 5. Estimate reasonable capital costs of anticipated facilities** – new park facilities, totaling 10 acres, will cost roughly \$20,000.
- 6. Subtract cost of facilities attributable to deficiencies** – \$10,000 is attributable to deficiencies and \$10,000 to new development.
- 7. Calculate impact fee based on anticipated growth** – \$10,000 divided among 250 anticipated new homes is \$40 per home.

# How is an Impact Fee Calculated

**STEP 1** Conduct a needs assessment for each anticipated public facility

|              | POPULATION   | PARK ACRES | SHARE | COST            |
|--------------|--------------|------------|-------|-----------------|
| Current      | 2,500        | 20         |       |                 |
| Deficiency   |              | +5         | 50%   | \$10,000        |
| Project      |              | +5         | 50%   | \$10,000        |
| <b>Total</b> | <b>3,000</b> | <b>30</b>  |       | <b>\$20,000</b> |

Service Level Standard: 10 park acres / 1,000 residents

**STEP 2** Calculate Park Impact Fee based on anticipated growth

$$\mathbf{\$10,000 \div 250 \text{ anticipated new homes} = \$40 \text{ per home}}$$

# Village of Summit, WI Example

Previous Town Hall  
(2005)



New Village Hall  
Concept



Existing Village Hall  
(2020)



- ❑ **The Village (then a Town) adopted a Needs Assessment in October of 2005 to collect for future expansion of a Law Enforcement facility.** Much of the Needs Assessment was performed using measurement metrics based on population and service standards for the Law Enforcement agency.

- ❑ **A recommendation was developed that a new or expanded police station of 7,276 square feet would be necessary to accommodate new growth.**

- ❑ **Approximately 33%, or 2,371 square feet was attributable to new growth.** The remaining square footage was to replace their existing facility, as well as to eliminate previously existing deficiencies.

- ❑ **The 2005 Needs Assessment had listed a 2025 population project of 5,870.**
- ❑ **The Village's 2017 estimate was 4,757.**
- ❑ **The Wisconsin Department of Administration's 2040 population project (2018) was 5,525.**
- ❑ **Based on these projections, the current facility will adequately satisfy current conditions and projected future growth estimates at this time.**

# Some Recent Events to Consider ...

## City's impact fee snafu amounts to \$1.1 million

■ Port discovers it collected too much from developers, home builders for years, will now refund money

By KRISTYN HALBIG ZIEM  
Ozaukee Press staff

The City of Port Washington collected almost \$1.1 million more in impact fees than it should have over the past 21 years, and on Tuesday aldermen voted unanimously to return this money plus interest to the individuals and companies that were overcharged.

During the next two to three weeks, those 105 individuals and businesses affected by the error will receive letters notifying them of what happened and outlining the procedure to collect their refunds, officials said.

Those refunds range from \$16 for a single homeowner to more than \$150,000 to a developer, City Administrator Tony Brown said.

The good thing, Mayor Ted Neitzke said, is that the excess funds collected by the city were never spent so they are available to be refunded.

DETLEFSON.

"Thankfully we're able to absorb that with no impact on taxpayers," he said.

Impact fees are a mechanism used by municipalities to charge future residents for that portion of public improvements to facilities that benefit them. They are charged to anyone building in the community, be it an individual property owner, a developer or a commercial or industrial property owner.

In Port's case, impact fees were charged beginning in 1999 for four projects — additions to the police and fire stations and the library and upgrades to the wastewater treatment plant.

According to the city, it collected \$3,952,780 million in impact fees from 820 properties between 1999 and 2020.

The total amount it should have collected for those four projects was \$2,854,803 million — \$1,097,977 million more than it. *See Fees on page 4B*



OZAUKEE PRESS THURSDAY, AUGUST 19, 2021 4B

## Fees: New administrator noticed 'red flag'

FROM PAGE 1B

should have. Currently, the city has \$2,014,315 million in impact fee reserve accounts, officials said, adding the debt for the four projects has been paid off.

With interest, the city will refund \$1,176,898 to the 105 impacted individuals and businesses.

According to state law, the refunds must be paid to the person or entity that originally paid the fee, Neitzke said.

That means the developers who paid the fee for the subdivisions they built will be the ones receiving the repayment, he said, even though they passed that cost onto the people who purchased lots and houses in these developments.

The city will "encourage those home builders to reimburse the home buyers," Brown said. "Beyond that, it's a private matter."

The impact fee collection error was discovered by Brown after he was hired last spring, Neitzke said, and the city has been looking into the matter ever since.

Brown said he met with department heads after being hired, and when he asked about the impact fee funds no one could clearly answer his questions. They didn't understand the process and how it worked, he said, and how the funds were to be spent.

"That shot up a red flag to me," he said. "This is something that needs to be looked at."

The city has spent much of the last year

looking into the error, Brown said, hiring former Mayor Mark Gottlieb as a limited-term employee to review all the impact fees charged since they were implemented.

Gottlieb determined that the city had overcharged for the impact fees, and the city then hired Ehlers and Associates to validate those findings, Brown said. The firm verified Gottlieb's work.

The problem came in an Excel worksheet used by the city to calculate impact fees, Brown said.

"Initially, it was a miscalculation," he said. "I think it was an honest error."

Mistakes were made in putting together the Excel program, he said, and over time these mistakes were compounded by the fact that the city continued to collect impact fees even after the debt for the four projects was paid off.

"This isn't like we're talking a couple extra weeks (of collections)," Neitzke said. "This is years."

Neitzke noted that there were some people who were undercharged impact fees, but said the city will not seek to recover these funds.

The impact fee error should have been discovered earlier, Neitzke said.

"We have to fire our auditor. They should have caught this," he said.

"We're not confident in their ability to perform the scope of services to provide an audit for the city," Brown said.

Baker Tilly has been the city's auditor for at least the past six years, he said.

The staff members responsible for the mistake no longer work for the city, Brown said, adding they left for other reasons.

Since finding the mistake, the city suspended the impact fee program in December and put into place processes to ensure such errors don't occur again, Brown and Neitzke said.

"There should have been a program review like we have in place now," Brown said. "For whatever reason, that wasn't done."

The city will revamp its impact fee ordinance before reinstating the program, he said. This will likely be done in the next year since the city, which is looking at developments that will add about 300 houses to the community, is facing some major capital expenses for items that include improvements to the sewer and water utilities and building projects that could include work on the library and potentially a new firehouse.

Brown said that the city will now notify the people and businesses who paid the fee about the issue and give them an opportunity

## Revaluation: Tax hike doesn't necessarily follow value increase

FROM PAGE 3B

have increased in value, Mack said. While

to reclaim the excess funds.

Some development companies that paid the fees may be out of business now, he said, in which case unclaimed funds would be turned over to Ozaukee County to try and track down the owners.

Eventually, Brown said, these funds may be turned over to the state's unclaimed property fund.

Officials acknowledged it will take some time for the city to rebuild trust lost as a result of the mistake.

"I think it's going to be hard reputationally for a while," Brown said, adding the city is being as open as possible about what happened "to hopefully build some faith with the citizens and businesses. We're trying to be transparent with this and correct an error we identified."

Neitzke concurred, noting the city has taken a year to investigate the matter and come up with a solution.

"This is an integrity issue for the city," he said. "We want to let people know what happened and why and what we're going to do to correct this so we can rebuild trust."

Mack said.

"After the Board of Review, the

## When Should an Impact Fee Be Challenged?

A municipality charging an impact fee generally should follow the guidelines listed in this document. After reviewing this list, if you believe your municipality has not followed the rules, you may wish to consult with legal experts to determine if the impact fee should be challenged.

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All answers to the following questions should be a **yes**. A **no** answer indicates a potential problem with the impact fee.

1. Did the municipality conduct a thorough public facilities needs assessment prior to passing the impact fee ordinance to determine what municipal facilities need to be expanded to accommodate new development?
2. Is a copy of that assessment available for your review?
3. Does the needs assessment take excess capacity into consideration? If you are being assessed an impact fee for sewage treatment plant expansion, yet the plant has adequate excess capacity to serve your development, the municipality may have a hard time proving in court that the impact fee is needed.
4. Does the needs assessment include a capital improvements plan, clearly indicating when and how much the city will be spending to address the facilities' needs?

## When Should an Impact Fee Be Challenged?

5. Does the capital improvements plan include an accurate accounting or estimate of the expected cost of the needed improvements?
6. Are those costs fairly allocated? In other words, is the proposed development paying only its share of the cost of the improvement? How did the municipality calculate the amount of the impact fee? If it simply took an average of what other municipalities are charging, that impact fee may not meet the fairness test.
7. Is the amount of the fee based on the proportional impact your units create? A simple per-unit impact fee that doesn't recognize the difference between the impact of larger homes and efficiency apartments may not stand the fairness test.

Note: The ordinance should assess impact fees on all types of development that create the impact. Ordinances that charge only residential development may be subject to challenge if other types of development also create the impact.

8. Will the improvement that your impact fee is paying for benefit primarily the new development? You shouldn't be paying an impact fee to build parks on the other side of town.

# Presentation Takeaways...

## Questions for You to Consider

### Does your Municipality impose Impact Fees?

- Capital Improvement Planning
- Long Range Planning
- Land Development Anticipated
- Economic Development
- Which Impact Fees are enacted?

### If No,

- Is the municipality in the process of enacting an Impact Fee?

### If Yes,

- When was it enacted or last amended?
- Identify the Impact Fee(s) and READ the ordinance(s).
- Has effective capacity changed since enacting the Impact Fee?
  - Consider if there is a need for an updated Needs Assessment.
- Is the municipality considering an update to its comprehensive plan or capital improvement plan?
- Is the impact fee reasonable and fair, not arbitrary or capricious, meaning is it based upon the statutory standards of an impact fee.
- Consider term specifics and project descriptions/definitions.
- Review the Public Facilities Needs Assessment Report for accuracy and application of the Wis.Stat. 66.01617.

# Questions?

# THANK YOU!

## Contact us if you have additional Questions



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