



City of North Port

Office of the City Attorney

4970 City Hall Boulevard
North Port, Florida 34286
(941) 429-7260
www.cityofnorthport.com

Interoffice Memorandum

To: Peter D. Lear, City Manager

Cc: Cari Branco, Assistant City Manager
Charline Lowrie, Finance Director
Michael Golen, Assistant City Attorney

From: Amber L. Slayton, City Attorney *ALS*

Date: September 22, 2018

Re: Use of Impact Fee Revenue

You inquired about the legal requirements of utilizing transportation impact fee revenue near the development generating the revenue, as opposed to other parts of the city.

Impact fees are “scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development.”¹

The Florida Supreme Court has adopted the dual rational nexus test for determining the constitutionality of impact fees.² If the City’s impact fees were to be challenged, the City would bear the burden of demonstrating reasonable connections between:

- (1) “The need for additional capital facilities and the growth in population generated by the subdivision”; and

¹ *Save Our Septic Sys. Comm., Inc. v. Sarasota County*, 957 So. 2d 671, 673 (Fla. 2d DCA 2007) (quoting Ronald H. Rosenberg, *The Changing Culture of American Land Use Regulation: Paying for Growth with Impact Fees*, 59 S.M.U. L.Rev. 177, 206 (Winter 2006) (citation omitted).

² See Fla. Const., art. VII, § 1(a).

(2) “The expenditures of the funds collected and the benefits accruing to the subdivision.”³

In focusing on the second prong, the Florida Supreme Court has held that impact fees cannot be used countywide:

The language of the test itself belies the assertion that a countywide standard should be employed. The first prong of the test explicitly requires a nexus between the County's need and the “growth in population generated by the subdivision.” ... Similarly, the test's second prong ensures that “benefits accru[e] to the subdivision.” ... Thus, the explicit references to subdivisions indicate that the standard is not tailored to countywide growth, but to growth of a particular subdivision.⁴

The use of the funds must provide “a unique benefit to those paying the fee.”⁵ Otherwise, an impact fee is an invalid tax because “the services to be funded by the fee are the same general police-power services provided to all... residents.”⁶ Further, “when new facilities must be built in any event, looking only to new users for necessary capital gives old users a windfall at the expense of new users.”⁷

This analysis must be applied to the specific facts of any given impact fee calculation and expenditure. There is no bright-line test that establishes the parameters of where the revenue may be used. However, based on the Florida Supreme Court's rulings that use of the revenue must provide a unique benefit to the development and it may not be used across the entirety of the city, the rational nexus will likely become more attenuated as the use of revenue reaches farther away from the development.

³ *St. Johns County v. N.E. Fla. Builders Ass'n*, 583 So.2d 635, 637 (Fla. 1991) (quoting *Hollywood, Inc. v. Broward County*, 431 So.2d 606, 611–12 (Fla. 4th DCA 1983)); see also *Save Our Septic Sys. Comm.*, 957 So. 2d at 675; *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 134 (Fla. 2000).

⁴ *Volusia County*, 760 So. 2d at 134 (quoting *St. Johns County v. N.E. Fla. Builders Ass'n*, 583 So.2d 635, 637 (Fla. 1991)).

⁵ *Collier County v. State*, 733 So.2d 1012 (Fla. 1999); see also *Volusia County*, 760 So. 2d at 134–135.

⁶ *Collier County*, 733 So.2d 1012.

⁷ *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 321 (Fla. 1976).