Firehouse Lawyer

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Inside This Issue

AT LAST - IMPACT FEES FOR FIRE DISTRICTS!

They say the third time is the charm, and it must be at least the third time that the fire service in Washington has asked the legislature to allow fire protection districts to impose impact fees. But this time the legislature did just that, as it adopted House Bill 1080, which is now on the Governor's desk for signature. A veto is not at all expected.

This article deals with the next question, which is how does a district implement impact fees, once the board has decided that this tool is worth using in your fire district. However, I would first like to mention that the law is very simple, consisting of the amendment of one section in the Revised Code of Washington: RCW 82.02.090. All this legislation did was remove the following language in the definition of "public facilities", which already included fire protection facilities: "in jurisdictions that are not part of a fire district." Thus, with one short deletion, the bill removes the exception that had previously disallowed fire districts from imposing such impact fees, while allowing the same within cities.

So where do we go from here?

I have again reviewed a representative sampling of city impact fee ordinances or municipal codes dealing with that subject, in order to see how cities have gone about dealing with the issue. (This is merely another example of my philosophy in such matters--no need to reinvent the wheel.) The "basic principles" that I enumerate in this article are based simply on my observation or study of what those cities have done.

Principle No. 1: First adopt a Capital Facilities Plan. Since the essential premise of impact fees is that new development (growth) creates added demand for public safety services and facilities, I am assuming that your district has sufficient new growth--residential or commercial--to justify the plan and impact fee consideration.

The methodology to be used in developing the capital facilities plan should include a study of the district's capital needs in the short term, say within the next six years. Implicitly, that effort must start with a detailed inventory of the capital facilities that the district now possesses, followed by some analysis of already planned public facility construction and then concluding with a forecast of the future facility needs for the next six years. This necessarily includes some estimates of growth over the same time frame, including population projections to estimate residential construction, coupled with estimates of anticipated commercial and other construction within the district.

Next, the district needs to add the financial component to the process. The projected capital needs--essentially fire stations and apparatus needs--can be converted into dollar estimates based upon recent trends and data available for land acquisition, public works projects (both hard costs and the soft costs such as the cost for architects and project managers) and apparatus to serve the projected growth.

Once all of this data has been compiled, you should be ready for public hearings and adoption of the CFP by the Board of Commissioners. Of course that is only step one.

Principle No. 2: Develop a rational formula for the fees.

After the CFP is adopted in resolution form, you should be ready to develop your impact fee formula. I would recommend apportioning the costs of the capital facilities needs for the planning period between the new residential users and the other users of the services, whether they be commercial, industrial, or other. Some jurisdictions seem to allocate the costs on a 50-50 basis, expecting the new residential users to pay 50%, and assessing the other half of the impact fees to the commercial and other land uses. Although it certainly depends on the rate of projected growth for commercial, as opposed to residential customers, I would say a more sophisticated apportionment model might be derived from analysis of call volumes for the past few years, but recognizing that a commercial fire in a large structure or many structures requires a lot more fire service resources than a typical house fire.

Typically, cities have derived a formula providing for a per lot and/or per dwelling unit amount of impact fee for the residential users. For the commercial and other users, a per acre charge is typically derived. I would say the "rule of reason" would be applied by the courts in assessing the validity of such formulae. They probably do not need to be perfect to pass constitutional muster, but as economic legislation they must be supported by some rational basis.

Principle No. 3: Carefully craft your resolution.

Let us assume that you derive a fee of $1,000 per dwelling unit and a fee of $2,500 per acre for commercial and other uses. What else needs to be included in your impact fee resolution?

Of course, you need legislative findings as in all legislative endeavors. In this case, the board needs to make a finding that there is projected substantial growth, in population and commercial development, so as to create additional demands for service and therefore the capital facilities to provide the service to the new users of land in the area. And you need the usual definitions of key words. The Capital Facilities Plan should probably be contained in its own resolution, adopted prior to the impact fee resolution itself. But the impact fee resolution should have a detailed description of the formula and some explanation of how the formula was derived.

But the resolution should not stop there. It should also include a process for challenging the fee and a process for making needed adjustments for specific special cases or unusual circumstances. Some city impact fee ordinances even allow a developer to

submit an independent fee calculation prepared by a qualified expert, for the city to consider an adjustment.

A system of allowing credits should also be included to allow for developers who dedicate land or improvements in lieu of some or all impact fee payments. As with streets and sidewalks, it is conceivable that a developer could even construct some public improvements to be dedicated to the fire district, and this could also obviate any fees.

It goes without saying that an appeals process is needed, if the developer and the district simply cannot agree on the reasonableness or amount of the impact fee.

Refunds can also be provided for in the resolution. For example, some city ordinances provide for a refund of the impact fees, or some of them, if the city fails to expend or encumber the funds collected within a certain number of years. Essentially, these impact fee systems require holding the collected funds in a sort of escrow account (earning interest) and if not used within the required time, upon application by the developer, the refund plus interest is made.

The resolution should also include a section setting forth what the impact fees shall be used for and what they should not be used for. They should not be used to pay for deficiencies in facilities used to serve existing developments or citizens. We recognize that new facilities and apparatus, bought with impact fee money raised from new developers will also be used to service previously existing "customers" of the fire district. That is fine, but the impact fee money is not meant to make up for taxes or other fees that were needed to provide adequate services **before** the development even occurred! One might say this is the "flip side" or corollary of the Growth Management concept of concurrency. The developer of new housing or other land uses should provide funds to mitigate impacts to public services and infrastructure that the new development causes but not for prior "impacts" not caused by new development.

Last but not least, the impact fee resolution should include exemptions. One exemption might be applicable to all developments that have vested rights under Washington's well-developed vested rights doctrine, i.e. you cannot impose new fees or regulations on developments that have already filed a complete application for a building permit. Other typical exemptions include replacement structures, remodels, accessory buildings, other structures like fences or swimming pools, low income or affordable housing, and similar exemptions.

It is also advisable to include in the resolution a provision stating that the district may also seek mitigation of impacts under the State Environmental Policy Act (SEPA), or under the subdivision statute.

The foregoing is only a primer and outline of how a district might begin to develop an impact fee system and resolution. It goes without saying that a district might need to consult not only with legal counsel for the district but also might retain a consultant experienced with setting up such systems. I would like to publicly thank the Municipal Research Services Center for the use of their collections of codes and ordinances, such as those on impact fees of all types, including fire facilities.

OTHER LEGISLATION APPROVED

Just a short note about other bills that have been approved by the legislature and which are either on the Governor's desk or already signed by her. HB 2823 amends RCW 41.24 by adding new language to allow retired volunteer firefighters to return to service with their fire district, upon satisfactory examination by a physician.

ESB 6287 was approved. This law is aimed at protecting property owners of property located in a city from the obligations of excess levies previously levied by a fire district, at such time as the city is annexed into the district pursuant to the provisions of RCW 52.04. The key language of the new section essentially states: "All property located within the boundaries of a city...or town annexing into a fire

protection district, which property is subject to an excess levy by the city...prior to the effective date of the annexation is exempt from voter-approved excess property taxes levied by the annexing fire protection district...issued prior to the effective date of the annexation."

And speaking of fire districts annexing cities...the law authorizing cities to so annex has heretofore been limited to cities of under 100,000 population, but SB 6418 raises that to 300,000, which would only seem relevant to Spokane and Tacoma, Hmmm. One of those two must be up to something!

As many of our Washington State fire service readers know, service credit and final average salary can be affected by vacation leave and sick leave balances. But apparently there has been an issue when the leave balances include shared leave. Many public employers allow transfers of leave from one employee to another, or even to a needy employee from a leave pool. SB 6453 deals with shared leave in an attempt to make it the same as the aforementioned leaves when it comes time to retire. This new section in RCW 41.26 essentially states that a LEOFF Plan 2 member who has employer-authorized shared leave on the books shall receive the same treatment in respect to service credit and final average salary as normally received if using accrued annual leave or sick leave. Then the statute defines shared leave to mean and include direct or indirect transfers of annual leave, sick leave or other leave, including transfers form leave banks or pools. Also, shift trades can be shared leave.

Also on the Governor's desk is SB 6367, which would amend the Public Records Act to allow agencies to direct records requesters to a web site or the internet to deal with their records request. In this bill, the legislature simply found that the internet and agency web sites can save time and money. "Agencies are encouraged to make commonly requested records available on agency web sites." Also, RCW 42.56.520 is amended to allow a response to a PRA request by providing an internet access and link to the agency's web site, but if the records requested cannot be thus retrieved the statute allows the requester to so notify the agency which then must provide copies or allow the requester to view copies using an agency computer. Welcome to the twenty-first century.

One final bill on the Governor's desk is worth mentioning: EHB 2519. In response to the recent rash of horrific and violent deaths of police officers in our state, the legislature passed this bill, which deals with duty-related deaths of police and firefighters. The death benefit is raised to $214,000. The bill removes the 10-year service requirement in the LEOFF Plan 2 and State Patrol Plan 2 for survivors to qualify for a survivor annuity. The minimum annuity is now 10% of final average salary. The bill also requires, rather than permits, higher education institutions to waive payment of tuition, service and activity fees for children and surviving spouses. Please go to www.leg.wa.gov for more details.

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