Ask Simon

Q: I run a small regional development company that is looking to branch into new areas, but I am worried about the impact fees imposed by the county. How can I keep them from taking advantage of us?

A: Development impact fees are legal under a state statute, but there are certain requirements the county or municipality has to meet and the fees can only be used for certain types of expenses.

As an initial matter, the municipality must have enacted a comprehensive plan, which comes with its own requirements. Municipalities that are sophisticated enough to have a development impact fee ordinance usually have met this requirement, but it is still worth looking into in areas with very recent growth.

The meatier requirements are on the type of improvements that the fees can be collected for and the type of expenses the fees can be used to pay. The impact fees are intended to help municipalities offset the costs of expanding public services as necessary for new development. That means the fees can only be collected to pay a reasonable share of the increased costs caused by the new development’s burden on public services. The municipality also has to calculate the fees based on actual historical growth patterns and reasonable estimates of future costs. It cannot just demand what it wants developers to pay.

You should also look at what the impact fees are being used to fund. The fees can be used for a broad list of public facilities and improvements, including water and sewer, roads and bridges, parks, emergency facilities, and even libraries. But the fees can still only be spent on the category and service area of improvements for which the fees were imposed. The fees also cannot be used for any costs the municipality might happen to incur—the expense has to involve public improvements or facilities that create additional capacity for services for the new growth.

Finally, keep in mind that you are entitled to a refund of the fees if the municipality fails to properly use or encumber the funds within six years.