



CASE REPORT

GMA - IMPACT FEES - RELATIONSHIP BETWEEN IMPACT FEE AND PROJECT-SPECIFIC DEVELOPMENT - INDIVIDUALIZED ASSESSMENT NOT REQUIRED.

The GMA impact fee statutes (RCW 82.02.050-.090) do not require local governments to calculate an impact fee by making individualized assessments of a new development's direct impact on each improvement planned in a service area. Drebick v. City of Olympia, ___ Wn.2d ___ (January 19, 2006).

I. Facts. John Drebick applied for a building permit to construct an office building in the City of Olympia. The City conditioned the permit on payment of a traffic impact fee. The City calculated the impact fee, consistent with its impact fee ordinance (adopted under authority of RCW 82.02.060), by taking the cost of all road improvement projects that development would necessitate within the City's designated service area, then dividing it by the total square footage of all new commercial office space likely to be built within the service area to reach an average rate per square foot for new commercial office space. Drebick argued that the fee charged for his proposed office building using the City's formula exceeded the individualized traffic-related effects of his project. The hearing examiner held that the impact fee could not exceed the individualized impacts of the specific project. The City appealed under LUPA, asserting that the hearing examiner's decision was based on an erroneous interpretation of the law. The Thurston County Superior Court reversed the hearing examiner's decision. Drebick took the matter to the Court of Appeals, Division II, where the court held that RCW 82.02.050(3) required that impact fees not exceed an amount reasonably related to the individualized impacts of a particular project. The City petitioned the Supreme Court for review.

II. Applicable Law and Analysis. The Supreme Court reversed the Court of Appeals, holding that the GMA impact fee statutes do not require local governments to calculate an impact fee by making individualized assessments of a new development's direct impact on each improvement planned in a service area. In support of its conclusion, and after a lengthy discussion of statutory construction, the court looked to the standard prescribed by the legislature in RCW 82.02.060(1), that the fee schedule shall be based upon a "formula or other method" for calculating the fees. The court also looked to RCW 82.02.060(6), which provides that the local government's impact fee ordinance "shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development." In this case, Olympia utilized a jurisdiction-wide service area as permitted by RCW 82.02.060(6). The court also recognized that RCW 82.02.090(8) provides that a service area shall be designated on the basis of sound planning or engineering principles.

III. Conclusion. Cities may require GMA impact fees using formulas without the need to individually assess impacts of a new development. Keep in mind that RCW 82.02.060 (4) allows a city to make adjustments in unusual circumstances to ensure that fees are imposed fairly, and that RCW 82.02.060(5) allows a city to consider studies and data submitted by a developer to adjust the amount of the fee. While this decision may have little or no impact on your city's impact fee process, it removes any doubt that formulas are an acceptable method of calculating GMA impact fees. If you have any questions regarding this case or any other impact fee issues, please contact your city attorney.