From the Desk of Executive Director
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Revisions to Impact Fee Law

On January 4, 2008, Governor Doyle signed Assembly Bill 341 into law. It was published as 2007 Wis. Act 44 on January 18, 2008, and therefore became effective the next day. This new law revises the impact fee law, primarily Sec. 66.0617 of Wis. Statutes. Our Association supported AB 341 because we believed that the changes to the impact fee law enacted in 2006 seriously limited local government's ability to use impact fees to pay for new public facilities, which are necessary to accommodate development in the town, village, or city.

First let's talk about impact fees in Wisconsin, which have been authorized by law since 1995. Impact fees are a concept where local government charges a fee upon approval of a residential development, usually a subdivision plat, based upon the projected public facilities that will be needed to provide service to the new development. The intent is to require that new development pay for these additional costs rather than pass the burden upon existing taxpayers. **Public facilities** is defined in Sec. 66.0617 (1)(f) of Wis. Statutes to mean "**highways, as defined in Sec. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing, and distributing water, parks, playgrounds, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries.**" The statute goes on to state that public facilities, under the Wisconsin law, does not include facilities owned by a school district.

Specific procedures are required for towns, villages, and cities to enact impact fees. First, before enacting an impact fee ordinance, the town, village, or city must prepare a needs assessment for the public facilities for which the impact fees will be imposed. The details of the needs assessment are spelled out in Sec. 66.0617 (4)(a) of Wis. Statutes. The needs assessment must include (i) an inventory of existing public facilities; (ii)an identification of the new public facilities or improvements to existing public facilities that will be required to meet the needs of the new land development; (iii) a detailed estimate of the capital costs of providing these new facilities or improvements to existing facilities.

Second, the local government must hold a public hearing (after giving a Class I notice) on the proposed ordinance imposing an impact fee or an amendment to an existing impact fee ordinance. The needs assessment described in the paragraph above must be available for public inspection at least 20 days before the public hearing to enact or amend the impact fee ordinance.

Third, **the statute states standards for impact fees under Sec.66.0617 (6)**:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(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 ch. 236 or any other items of value.
(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.
(f) May not include amounts necessary to address existing deficiencies in public facilities.
(g) Shall be payable by the developer or the property owner to the municipality in full within 14 days of the issuance of a building permit or within 14 days of the issuance of an occupancy permit by the municipality.

One of the key standards is the very first standard, that an impact fee "shall bear a rational relationship to the need for new, expanded, or improved public facilities that is required to serve the land development." While impact fees are intended to require new development to pay for the added public facilities to serve the new development, the new development is not responsible for the share of public facilities or improvements that existing development should pay for. The public needs assessment should identify what this proportionate share of the public facility improvements should be borne by the new development versus existing development.

While impact fees in Wisconsin have been in the law since 1995, significant changes to the law were enacted by 2005 Wis. Act 477, which became effective in June, 2006. These changes were pushed through by organizations trying to limit the use of impact fees over the objection of municipal associations. The changes enacted in 2006 limited the time to hold impact fees from the date of collection to seven years. Impact fees were not payable until 14 days of issuance of a building permit or occupancy permit and not at the time of the plat approval (as historically been required). The 2006 changes also prohibited the use of "fees in lieu of land dedication," a common practice used by many municipalities in lieu of full fledge impact fees.

Now to the new act signed by Governor Doyle in early January, 2008. **2007 Wis. Act 44 modifies some of the most significant changes enacted in 2006.**

First, impact fees may now be held for ten years from the time collected plus three years longer if the municipality finds due to extenuating circumstances or hardship a longer time to hold the impact fees is needed.

Second, impact fees collected before January 1, 2003, must be used for the purpose for which it was imposed not later than December 31, 2012. {The changes in 2006 required that any impact fees held beyond these time limits must be paid to the current owner of the property upon which the unused impact fee was imposed, has not been changed by Act 44.}

Third, the change in 2006 that provided impact fees were only payable to the town, village, or city upon the issuance of the building or occupancy permit, has been modified under 2007 Wis. Act 44 to provide that impact fees are payable at the time of issuance of a building permit.

Fourth, the municipality may not pass on costs for professional services (in reviewing plats) in excess of the actual fees paid by the municipality. Further the third party professional may not charge a rate for reviewing plat in excess of the rate customarily paid for the similar services by the municipality.

Fifth, Wis. Act 44 modified the changes in 2006 which prohibited the use of fees in lieu of land dedication. The new law allows such fees to be imposed by the municipality for the acquisition or initial improvement of land for public parks. These fees must bear a "rational relationship" to the need for parkland or park improvements.

Sixth, a new provision not included in the impact fee law, provides the municipality must accept as a public facility for which the

municipality is responsible, "storm water management or treatment facilities" (such as storm water sedimentation ponds) under certain conditions. These conditions are: (a) the storm water management facility must have been shown on the preliminary plat as a "Dedicated to the Public for Storm Water Management Purposes"; (b) the storm water facility does not have to be accepted until 80% of the lots in the subdivision have been sold; and (c) a professional engineer certifies to the municipality that all of the following conditions have been met: (i) the storm water facility is functioning properly in accordance with the plans and specifications of the municipality, (ii) any required plantings are adequate, well-established, and reasonably free of invasive species, and (iii) any necessary maintenance, including removal of construction sediment has been properly performed.

Seventh, the effective date for the changes related to the fees in lieu of land dedication for parks and storm water facilities are applicable to preliminary plats submitted for approval after the effective date of the law (which would be after January 19, 2008).

While this new act does not return town, village or city authority with regard to impact fees to the law prior to 2006, the new law does make the use of impact fees more practical. We would commend Rep. Mark Gottlieb of Port Washington for his work in getting the groups that had passed the changes in 2006 to the table and accepting these revisions.

We would encourage all towns and villages that have impact fee ordinances to review their current ordinances and consult with their town or village attorney to revise them accordingly to comply with 2007 Wis. Act 44 and take advantage of the revisions that this new law gives municipalities. The new law can be obtained at the Wisconsin State Legislature's website at: http://www.legis.state.wi.

We will have information on these changes at the upcoming WTA District meetings in the next two months.

If your town or village does not have an impact ordinance, but are experiencing new residential development which is placing a burden on your existing public facilities, you may want to consider adopting an impact fee ordinance. We would suggest consulting with professional services (engineers and other professional consultants) to consider the benefits of an impact fee ordinance for your town or village.

Revisions to Boundary Agreement Law

Governor Doyle also signed AB 254 into law on January 4, 2008, which was published as **2007 Wis. Act 43** on January 18, 2008. This bill is the work of a Legislative Council Study Committee created in 2004 on "Municipal Annexation." The new law makes modifications to Sec. 66.0307 of Wis. Statutes regarding "Boundary Agreements by Cooperative Plan." Our Association did not oppose the bill, but have continued to express our concern that the bill did not go far enough to force cities and villages to negotiate and attempt to reach cooperative boundary agreements.

2007 Wis. Act 43 first simplifies the current procedures in Sec. 66.0307, by substituting for the current detailed planning requirements, a general requirement for consistency with a comprehensive plan. The bill also reduces from 120 days to 60 days the minimum number of days that must pass, following the last authorizing resolution by a participating municipality, before the public hearing on the proposed cooperative plan may be held. The length of time involved under Sec. 66.0307 under the past law had been a criticism of the law.

Act 43 also provides an incentive for towns, villages, and cities to negotiate the development of a cooperative plan through mediation. If a city or village refuses to