

Mobility Fees and Impact Fees: **Recalculating Route**

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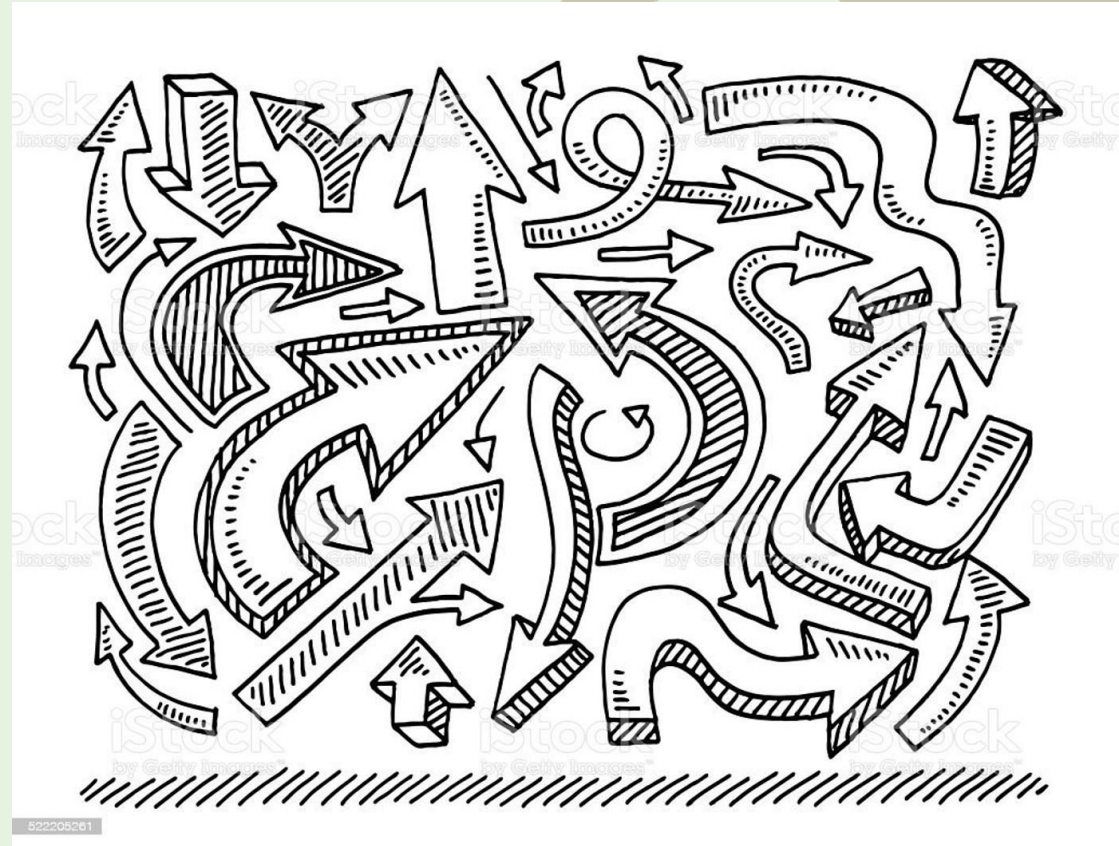
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Road Map

- Impact Fees
- Mobility Fees
- Florida Statutes
- Recent Case Law



IMPACT FEES



Impact fees are charges imposed against new development to fund capital facilities made necessary by that growth.

The purpose of the charge is to impose upon newcomers, rather than the general public, the cost of new facilities made necessary by their arrival.

REGULATORY FEES

- Origin of Impact Fees and Mobility Fees
- Offset Cost of Processing, Review or Monitoring
- Limited To Cost of Service
- Married exaction law with regulatory fee case law.

CASE LAW EVOLUTION



- Wald Corp. v. Metropolitan Dade County, 338 So. 2d 863 (3rd DCA 1976), cert. denied, 348 So. 2d 955 (Fla. 1977)
- Broward County v. Janis, 311 So.2d 371 (Fla. 4th DCA 1975)
- Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA), cert. denied, 440 So.2d 352 (Fla. 1983)
- Home Builders and Contractors Assoc. v. Palm Beach County, 446 So. 2d 140 (Fla. 4th DCA 1983), cert. denied, 451 So.2d 848 (Fla. 1983)

IMPACT FEES

Dual Rational Nexus Test

A reasonable connection between the need for additional capital facilities and the growth.

AND

A reasonable connection between the expenditure of fee proceeds and the benefits accruing to the growth.

COMMON IMPACT FEES



- Roads
- Parks Construction or Expansion
- Fire and EMS Facilities
- Water & Sewer Facility Expansion
- School Facilities
- Law Enforcement
- Libraries
- Public Buildings

MOBILITY FEES



Mobility fees are one-time charges imposed against new development to fund capital facilities necessary to mitigate that development's transportation impact on the transportation system.

"Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan. §163.3164(32), F.S.

MOBILITY FEE EVOLUTION



1985- transportation concurrency begins

2009- State convenes panel to investigate alternatives to transportation concurrency

2011 – Florida Legislature eliminated mandatory transportation concurrency

2013 – Local Governments “encouraged” to adopt alternative mobility funding system as alternatives to concurrency and proportionate fair share systems in §163.3180, F.S.

2019 – Mobility Fees are required to be consistent with §163.31801, F.S., the Florida Impact Fee Act

2024 – Mobility Fees and Mobility Plan defined in state law

MOBILITY FEES

“Mobility plan” means an alternative transportation system mobility study developed by using a plan-based methodology and adopted into a local government comprehensive plan that promotes a compact, mixed use, and interconnected development served by a multimodal transportation system in an area that is urban in character, or designated to be urban in character, as defined in s. 171.031.

§163.3164(33), F.S. (emphasis added)

IMPACT FEE v. MOBILITY FEE



SIMILARITIES:

- Mobility Fees are a specific type of transportation impact fee
- Subject to §163.31801, F.S. and the Dual Rational Nexus Test

DISTINCTIONS:

- Expanded Uses beyond Vehicular Centered Infrastructure
- Specific Improvement-Based Methodology
- Mobility Fees are intended to replace transportation concurrency and Proportionate Fair Share mitigation

FLORIDA STATUTES

- §163.3180, F.S.
- §163.3164, F.S.
- §163.31801, F.S.



FLORIDA IMPACT FEE ACT



- Until 2006 Impact Fees in Florida developed through case law, not legislation
- In 2006, the Florida Legislature adopted the first Florida Impact Fee Act, codified in Section 163.31801, Florida Statutes

FLORIDA IMPACT FEE ACT

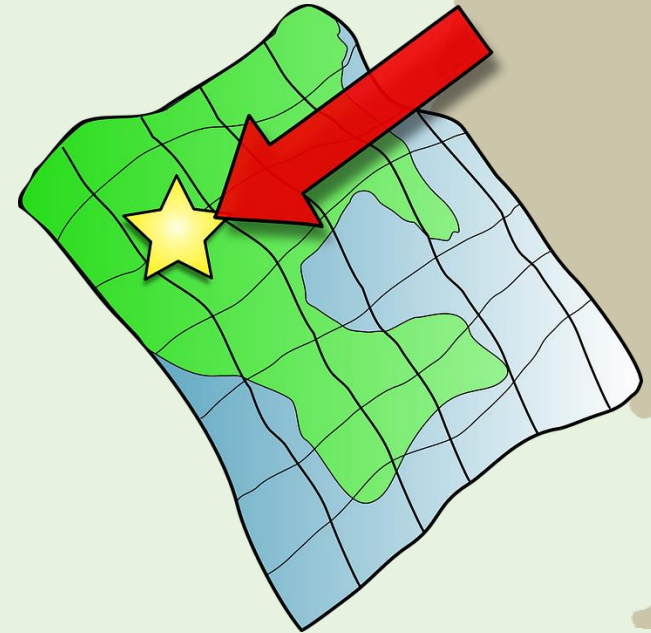
11+ Amendments

- (1) Traditional Legal Requirements
- (2) Procedural Requirements
- (3) Use Restrictions
- (4) Defense



TRADITIONAL LEGAL REQUIREMENTS

- Codification of Dual Rational Nexus Test
- Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.
- Credits
 - 2024 Amendments



PROCEDURAL REQUIREMENTS



- Most recent and localized data
 - 2024 Amendment
- Study must be adopted within 12 months of initiation if increase in fees
 - 2024 Amendment
- Accounting and Reporting in Separate Fund
- 90 days' notice
- Building Permit
- Affidavit from CFO
- Annual Financial Report
- Phasing Requirements

PHASING

Up to 25% = two equal annual installments

Up to 50% = four equal installments

- increase may not exceed 50 percent of the current impact fee rate.
- Impact fee may not be increased more than once every 4 years.
- No retroactive increases.
- Extraordinary Circumstances exception
 - Study to justify – less than 12 months old
 - At least two public workshops
 - Ordinance approved by 2/3 vote of governing body

USE RESTRICTIONS

- Public Facilities
- Infrastructure
- Administrative Expenses
- Debt



DEFENSE

- **Burden of Proof**
- **No deference**



MOBILITY FEE LEGISLATION



- §163.3164, F.S.
 - 2024 Amendment
 - Defined Mobility Fee and Mobility Plan
- § 163.3180, F.S.
 - 2024 Amendments

SECTION 163.3180, F.S.

2024 Amendments

- Proportionate Fair Share - §163.3180(5)(h)(1)c.
- Alternative Mobility Plan - §163.3180(5)(i)
- County/City Mobility Fees - §163.3180(5)(j)

NEW CASE LAW

Sheetz v. County of El Dorado,
601 U.S. 267 (2024)

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

Dolan v. City of Tigard, 512 U.S. 374 (1994)

SHEETZ v. EL DORADO COUNTY

- Narrow Ruling
- Court did not rule on whether the impact fee at issue was a taking
- Does not Prohibit Impact Fees, Mobility Fees, or other Reasonable Permitting Conditions
- Impact Fees and Mobility Fees will need to Comply with Nollan and Dolan





THE END

