

Case Law Update 2004, and other Miscellany

impactfee.org

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stare decisis

“... to stand by things decided ...”

“... it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation”

Black's Law Dictionary, 7th Ed.

The Usual Suspects

- **Authority**
- **Inconsistency with State Statutes**
- **Equal Protection**
- **Due Process**
 - *Substantive*
 - *Procedural*
- **Taking Claim**
 - *State Constitution*
 - *United States Constitution*
- **Other Constitutional Claims**
 - *Uniform Public Schools*
 - *Free Public Schools*

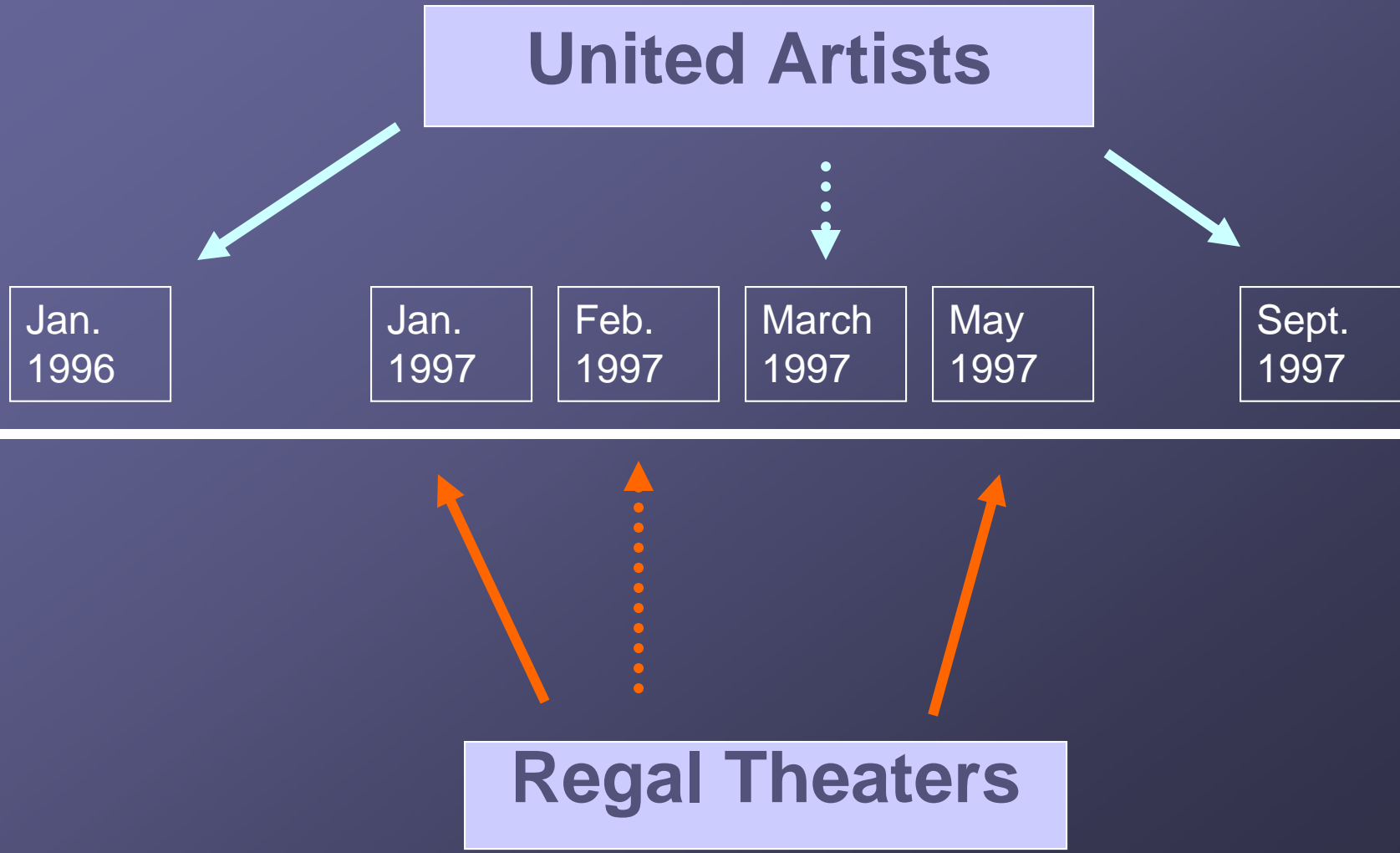
Greater Atlanta HBA v. City of Atlanta, CV-2633 (N.D. Ga. 2004)

- § 42 U.S.C. 1983
 - Taking
 - Due Process
 - Equal Protection
- “Benefit Prong”
- Refund and Appeal available for “method of collection” as well as fee amount, credits and refunds/reimbursements

*United Artists Theater Cir. Inc. v.
Township of Warrington*, 316 F. 3d
392 (3rd Cir. 2003)

- **Qualified Immunity**
- **Substantive Due Process**

United Artists Facts



Qualified Immunity

- protects governmental officials performing discretionary functions from suit
- so long as conduct does not violate:
 - “clearly established” constitutional rights
 - of which a reasonable person would have known

Substantive Due Process

- acts of government and governmental officials must “shock the conscience”
- “only the most egregious official conduct.”
- not enough to allege or show:
 - improper motive
 - bad faith
 - reasons unrelated to the merits

**Timing of
Imposition**

**Impact Fee
Imposed**

**Impact of
Development**

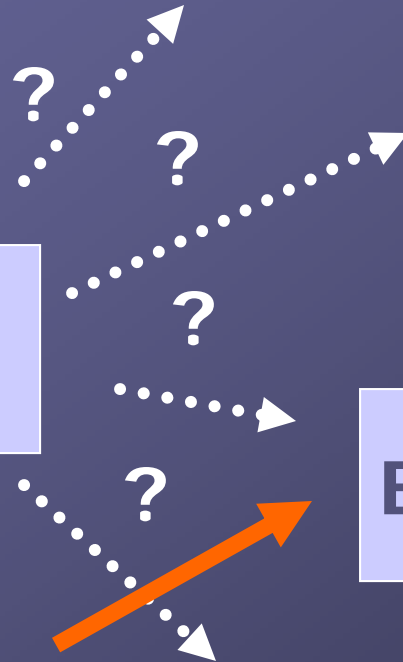
Rezoning

Subdivision

Building Permit

**Certificate of
Occupancy**

Capacity Provided



see Pavlina v. City of Vancouver,
94 P. 3d 366 (Wash. App. Ct. 2004).

Impact!?

“... preliminary approval is not new growth and development.

Growth and development occur when the approved project is under construction. ...

That is when the proposed project begins to affect the public facilities of a city and not at the preliminary approval phase.”

see Pavlina v. City of Vancouver,
94 P. 3d 366, 370 (Wash. App. Ct. 2004).

Gomes v. Ukiah Unified Sch. Distr., 2004 WL 2092022

- Government has statutory burden to show that the fee does not exceed the cost
- Must Project:
 - Students generated by new housing
 - Total amount of new housing
 - Cost of providing new school facilities

Cost-Basis and CIP

- Per Student Costs based on prototype “State cost formulas” predicated on new facilities for 3,000 new students
- District Projected only 306 new students in 10 years

Relationship between Fee Calculation and CIP

“We find little in the raw data to support a correlation between the basis for the District’s cost estimate (3 new schools) and the District’s actual new facility needs [(306 add’l students)].”

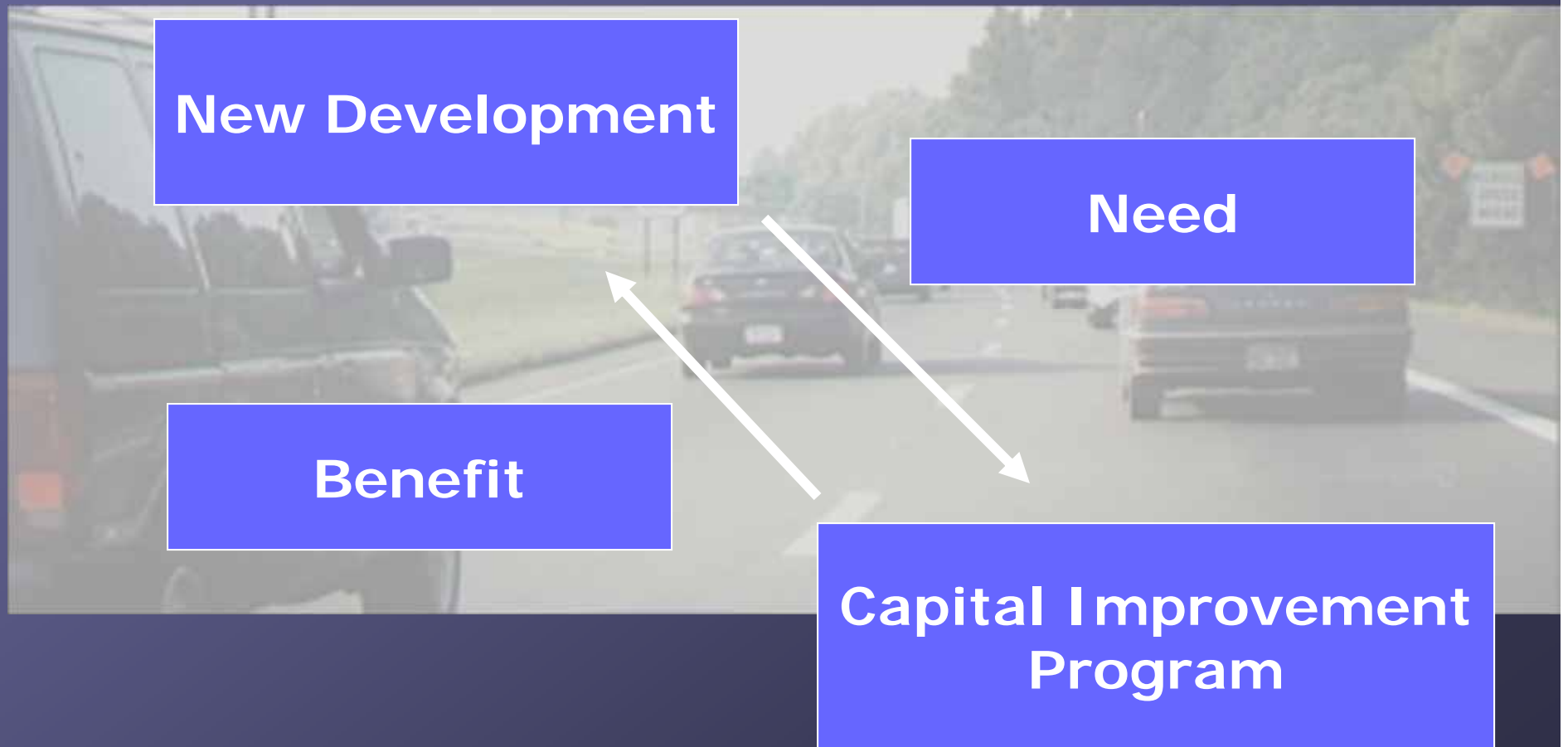
Gomes v. Ukiah Unified Sch. Distr.,
2004 WL 2092022, *7, n. 4.

But then again ...

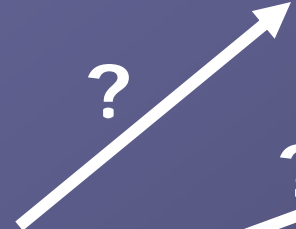
“The rule of *stare decisis* ... is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court...”

Burnet v. Coronado Oil & Gas Co., 52 S.Ct.
443 (1932) (J. Brandeis, dissenting)

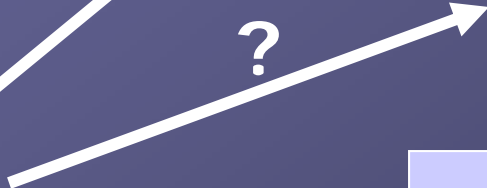
Capital Improvement Program



**CIP
Adopted/
Amended**



Fee Study



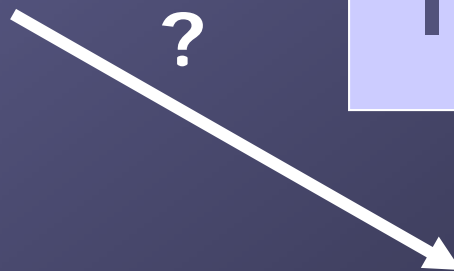
**Ordinance
Adoption**



Effective Date



Impact Fee Paid



**Impact of
Development**