

Impact Fee Waivers and Exemptions

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“Planning is Politics ...”

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Dual Rational Nexus Test

The local government must demonstrate a reasonable connection, or *rational nexus*, between:

- **the need for additional capital facilities and the growth in population generated by the subdivision; and**
- **the expenditures of the funds collected and the benefits accruing to the subdivision**

Hollywood, Inc. v. Broward County

431 So.2d 606 (Fla. 4th DCA 1983)

Exemptions and Waivers

- **Exemptions** – Uses to which the impact fee ordinance *does not apply*, based on a finding of **No Impact**
- **Waivers** – Uses otherwise subject to the impact fee ordinance, but for which payment is not required, in order to advance **Planning** objectives

Exemptions

No Impact on Facilities

- **Senior Housing on Schools**
- **Commercial Uses on Schools**
- **Nonresidential Uses on Parks**
- **Suburban Residential Uses on:**
 - **Neighborhood/Urban Parks**
 - **Central Sewer**
- **Jurisdictional**

Promote Exemptions

- Infill/High Density Development
- Affordable Housing
- Base fees on D.U. Size
- Strengthens the nexus

Waivers

Statute-based

- Schools
- Governmental Uses

Planning-based

- Affordable Housing
- Infill/Compact Development
- Economic Development

Authority-based

Avoid Unfunded Waivers

- Essential Fairness
- Fiscal Integrity
- Effectiveness
- Legal Exposure?

Waiver-based Challenges – *Equal Protection*

■ U.S. Const. Amend. XIV, §1

■ Strict Scrutiny

- Suspect Class (race, national origin)
- Fundamental rights (voting, speech)

■ Rational Basis

Waiver-based Challenges – *Fair-Share Claims*

- Disproportionate Burden to Non-Exempt Class

- Disproportionate Benefit to Exempt Class
 - *St. Johns County v. Northeast Florida Builders Ass’n, Inc.*, 583 So.2d 635 (Fla. 1991)
 - *Volusia Co. v. Aberdeen at Ormond Beach*, 760 So.2d 126 (Fla. 2000)
 - *Wellington River v. King County*, 2002 WL 31103632

***St. Johns Co. v. Northeast Florida Builders Ass'n, Inc.*, 583 So.2d 635 (Fla. 1991)**

- ***“Needs” Prong met***
- ***“Benefit” Prong not met***
- **Fee v. Tax**
- **Free Public Schools**
- **Uniform School System**

Volusia Co. v. Aberdeen at Ormond Beach,
760 So.2d 126 (Fla. 2000)

- Covenants, Conditions, and Restrictions
- 30 years a magic number?
- “Potential” impact
- “incidental benefit” not enough

Alternative Approaches

- Waive Impact Fee Obligation for Desired Development
- Local Government pays the Impact Fee from “Non-Impact Fee” funds
- Set aside Non-Impact Fee funds for waivers

Practice Tips

- Promote Necessary Exemptions
- Avoid Unfunded Waivers
- Findings supporting Exemptions and Waivers
- Defensible Methodology