What Is An Impact Fee?

- monies collected through a set schedule (or formula?)
- spelled out in a local ordinance (or resolution?)
- levied only against new development
- to support infrastructure needed to serve new development
- to cover a proportionate share of an identified portion of that infrastructure

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General Legal Considerations

- A Regulatory technique, NOT a financing mechanism
- Based on the "impact" on facilities, NOT, *e.g.*, on building value, frontage
- NOT used on or to increase LOS to existing development
- Based on rational planning process and adopted CIP/capital budget

in Florida…

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)

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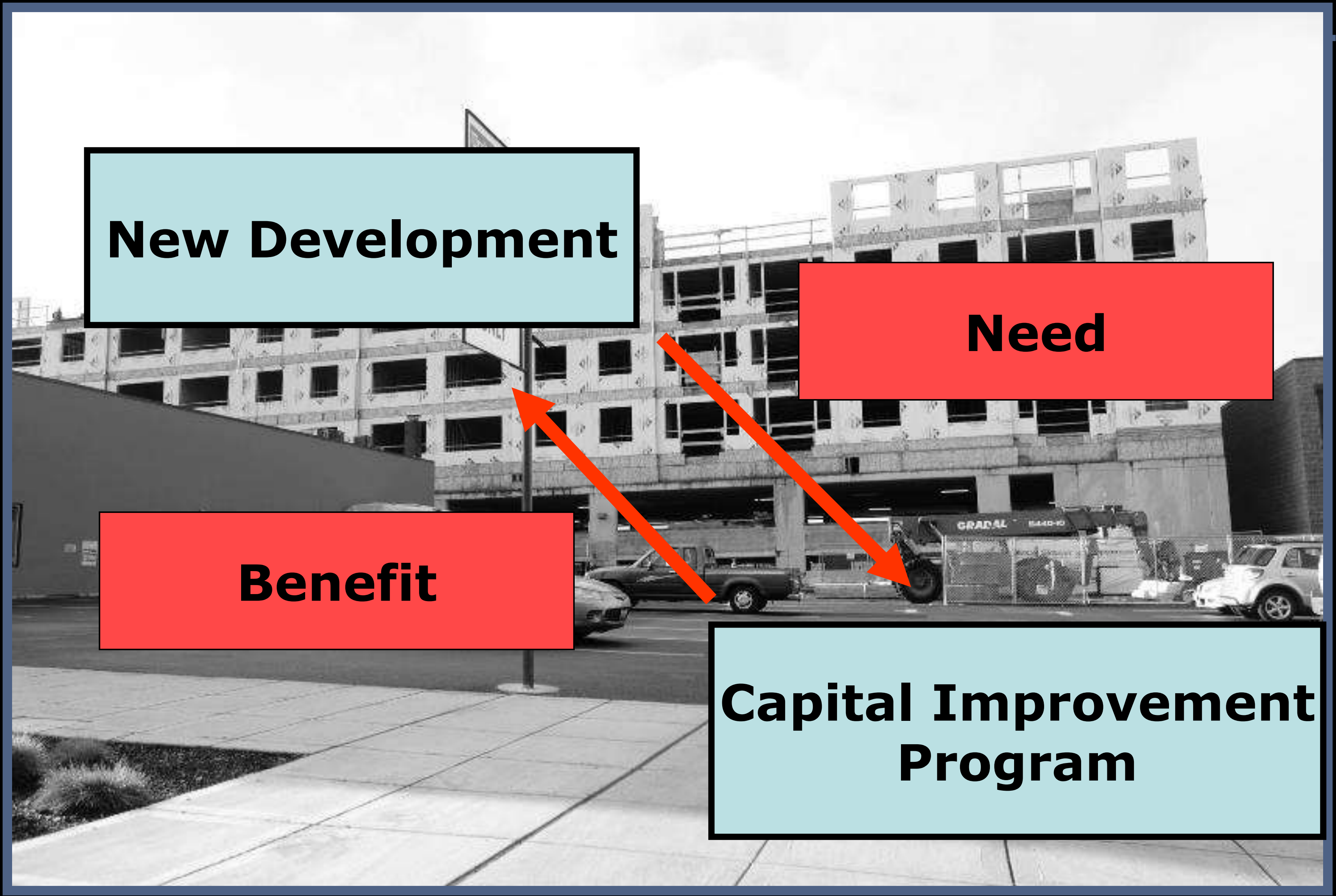
the General Idea ….



Nature of Relationship b/t Fees and Impact/Benefit?

"... or Other"

- **Georgia/California** – "reasonably related"
- **Nevada** - "necessitated by and attributable to"
- **Florida** – "necessitated by;" dual rational
- **Arizona** – "substantial nexus" (<2011, was "reasonable relationship")
- **Montana** – "reasonably related to and reasonably attributable to"
- **Cape Cod** – "a rational nexus"

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Authority

Home Rule Power

- Ohio
- Florida
- Kansas

Statutes

-Alabama
-Georgia
-Arkansas
-California
-South Carolina
-Texas
-Utah
-Massachusetts (CCCA)

Limitations on Authority

- “Fee versus Tax” Challenge
- Statutory Limitations
- Types of Facilities Allowed
  - Big categories and “small”

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Fee v. Tax

- **Taxes**
  - Primarily revenue-raising
  - Authority (usually) must be express
  - Proportionality not required
- **Impact Fees**
  - LU regulations that mitigate off-site impacts
  - Authority *may* be implied
  - "Rational nexus" required

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