DEVELOPER CREDITS

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OPEN SPACES. VIBRANT PLACES.

Credit Against Entire Fee or Individual Components?

Many impact fees have discrete components used to calculate fee

- Schools (land, buildings, buses)
- Utilities (plant, transmission lines)
- Transportation/Mobility (transit, bicycle/pedestrian, roadway)
- Public Safety (vehicles, buildings, equipment, land)
- Parks and Recreation (water access , fields, courts, trails, buildings etc.)

If developer provides for just one component, credit against entire impact fee, or just against component of fee provided?

Credit Against Entire Fee or Individual Components?

Pros of Using Entire Fee for Credit

- Only one account needed for each impact fee collected; easier to administer
- Local government and developer have flexibility to spend on whichever component is most needed
- Developer more likely provide the land, improvement or equipment

Credit Against Entire Fee or Individual Components?

Cons of Using Entire Fee for Credit

- May never collect funds for other needed components (e.g. credits issued for multiple developer donated land sites for schools or parks, leaving insufficient funds for facilities or buildings)
- May not be able to fund some of the equipment or facilities assumed in the facilities plan
- Fee payers may argue that not getting full benefit of fees paid if some components never built or acquired

Credit Against Entire Fee or Individual Components?

Pros of Using Fee Components for Credits

- Ensures that funds (or contributions in lieu of funds) being collected for all components of fee
- Greater consistency with facilities plan
- Prevents developer from avoiding the expensive components of fee (e.g. buildings) by providing cheaper components (e.g. land)

Credit Against Entire Fee or Individual Components?

Cons of Using Fee Components for Credits

- Requires multiple accounts for each impact fee; greater administrative burden
- Less flexibility for expenditures
- Takes longer to accumulate funds for needed facilities (unless allow borrowing between funds)
- Developer may not be willing to build some facilities if available credit not worth cost

Transferability Issues

- If too liberal with granting and transferability of credits, can devalue credits and adversely impact local government cash flow
- If credits devalued too much, developers less likely to make contributions for credits
- If allow credit transfers outside of benefit district, risk legal argument that fee payers not benefitted by creditable improvements
- If don't allow credit transfers at all, risk argument that developer has been issued "worthless" credits, particularly if developer's project built out
- Pasco allows credit transfers, but only once project is built out, and only in same benefit district
- If allow, need clear rule regarding proof of transfer and ownership (e.g. developer executes assignment of credits to third party and then loses land to bank in foreclosure; who owns?)

Issues with Determining Amount

- Determining developer need vs. public need (e.g. traffic signal, intersection improvements, 4 lane roadway that unlocks development)
- Require competitive bidding?
- Credit for construction management? Bonding? Insurance? Legal expenses? Utility relocations? Commingled retention areas?
- Costs that exceed engineer's estimate and/or CIP amount?
- When issue or release credits? Progress payments? When complete? When accepted by local government?

Ownership Issues

- If developer uses Community Development District (CDD) or HOA to fund improvements, still issue credits or refund to developer?
- If two or more parties arguably entitled to same credit or refund, consider requesting indemnification from party receiving the credit or refund
- How evidence the entitlement to a credit? Issue a certificate? Creation of credit account?
- How evidence transfers?