



North Coast Building Industry Association

IMPACT FEES

The North Coast BIA is opposed to impact fees that are not specifically limited to funding construction of capital improvements or facility expansions needed as a direct result of new residential construction. Anything beyond this scope results in the payment of an illegal tax.

Federal and state funding of infrastructure for new roads, highways, sewer, water, and other facilities and federal assistance for maintaining old infrastructure has steadily decreased. This has increased pressure on local governments to find alternative sources of funding. Impact fees are user taxes imposed on a specific constituency within a community. Many jurisdictions have attempted to impose such fees on builders and developers, which costs are ultimately passed along to the consumers and are thus not good for the homebuilding industry. Problems arise when these impact fees are being used to pay for services and improvements that would otherwise be available for the new development through existing obligations to pay taxes.

In the 2012 case of *Drees Co. v. Hamilton Twp.*, the Ohio Supreme Court determined that certain impact fees imposed by a limited home-rule township were an improper tax not authorized by general law. The Court used the factors in *State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow* to determine whether the assessments were actually taxes:

1. Whether or not the fees were imposed in furtherance of regulatory measures designed to address specific problems;
2. Whether or not the fees are deposited into a segregated fund limited to enforcement of the regulatory measures, not deposited into an unrestricted general fund;
3. Whether or not the fee is imposed in return for a service provided by the government to the charged users above and beyond that provided to any other taxpayer; and
4. If assessment of the fee was directly related to whether or not there are sufficient funds in the fund balance to provide the service and it was increased or reduced accordingly.

The Court explained that calling them “fees” does not establish that they are not taxes. Instead, the Court looked to the substance of the assessments and found that they did not result in any direct service to the landowner and were instead a revenue-generating measure designed to support infrastructure improvements benefiting the entire township. The impact fees were imposed to offset increased services and improvements needed because of the development and were intended to prevent any diminishment of services to anyone in the township.