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Idaho sifts through impact fees: Leaders, builders debate who pays for growth

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The city of Middleton is feeling the wrath of the building industry these days.

The city is trying to figure out how to make growth pay for itself, and the solution it came up with involved developers paying a flat fee per house. Commercial development would also see a new fee structure.

At a December 2008 public hearing, about 20 builders, real estate agents and others spoke out against the fees. And on March 16, Middleton's planning and zoning commission sent the proposed fees back to an advisory committee for retooling.

Middleton City Clerk Ellen Smith said the city has always struggled to maintain existing infrastructure, so when the housing boom necessitated infrastructure expansion, the city was swamped.

"We have very little resources. ... It just gets harder and harder to do the things we need to do as a municipality," she said.

Idaho Building Contractors Association lobbyist Jeremy Pisca said concerns about the Middleton impact fee ordinance were both technical and personal.

He said builders wanted to make sure Idaho's impact fee law – which was made with builders' input and sets forth specific guidelines about how impact fees are used – was followed. Builders also wanted to ensure that impact fees, even if lawful, were not crippling.

"If you're going to purchase a lot and build a house, you have to do it in a manner that you can still feed your family," Pisca said. "The vast majority of builders are small mom-and-pop builders, so $9,000 [proposed fee in Middleton] is substantial."

Middleton is not the only jurisdiction debating impact fees. Making sure private development doesn't inflict unreasonable hardship on taxpayers is an issue up for debate around the state.

Public utilities have recently jumped into the impact fees spotlight.

Rep. Bert Stevensen, a Republican from Rupert, proposed a bill that would allow public utilities to set up fees for new customers "to partially recover the costs of public utility capital investment in new facilities to serve customer growth."

Stevensen withdrew the bill in early March, planning to revise it.

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Pisca said the proposed legislation didn't spell out clearly enough what exactly a builder would be responsible for.

But that doesn't mean developers are off the hook for paying for utilities expansion. Idaho Power Company has asked the Idaho Public Utilities Commission to allow the company to increase charges on builders through changes to the Rule H Tariff.

Builders pay hook-up fees to Idaho Power now, but some or all of those fees are refunded as new Idaho Power customers move in. Changes to the tariff would include elimination or reduction of the refunds and increased fees for the installation of distribution lines. Idaho Power also wants the tariff to make it clear that Idaho Power does not bear the full cost to relocate power lines if the relocation comes at the request of a non-government party.

The changes to the tariff would serve a similar purpose to the House bill.

"It's the same principle;… (it's) trying to get new growth to pay the costs for new construction," Idaho public utilities spokesman Gene Fadness said in a February interview.

Martin Johncox – a self-described "government/land use nerd," public relations consultant and Boise-area blogger – wrote in a recent blog entry that having plentiful power means being able to accommodate new companies thinking about relocating to the area. With new employers in place, "the same building industry that might oppose those fees would profit greatly from the new homes and businesses that would result," he wrote. He said opposing the utility impact fees proposed in Stevenson's bill would be "shortsighted" for the development industry.

Boise Attorney Chris Meyer, who has represented development companies in various court cases, said everyone benefits from attracting new companies, not just developers.

"I don't know why that burden (funding the power infrastructure to support new businesses) falls particularly on new development," he said. "…Why single out developers unless they're causing particular damage? … We shouldn't simply be looking to developers as deep pockets to allow taxpayers to get a break. If these things are good, sound investments for a community as a whole, taxpayers should step up to the plate and shoulder that burden."

He said while cities and counties have approached impact fees the wrong way in the past, they're starting to figure out how to follow Idaho's impact fee law.

"I think local governments are starting to realize that they are in danger of killing the goose that lays the golden egg," he said. "… For those few developers that still have the financial wherewithal to move forward with sound, smart development, cities need to be very careful about whacking them with unreasonably high impact fees."

Pisca said despite the cases of a few cities and counties looking to raise impact fees, municipalities are largely giving the issue a rest for the moment as construction lulls. He said there has even been talk around the legislature about an impact fee holiday, though nothing has been proposed.

A move like that would be welcomed by developers.

"It's not time to try and slow the horse down," said Dan Richter of SunCor, developer of the north Ada County planned community Avimor.

Richter said Avimor is paying for the growth it's bringing to the valley, including paying for tens of millions of dollars of offsite infrastructure development. And he said developers aren't opposed to impact fees – they benefit from the overall health of their area as much as anyone else – but the contributions developers are already making are often forgotten.

"Growth does not burden the rate payers as is rumored," he said. "Developers pay more than their fair share."

A study this year by a National Association of Home Builders economist backed up his claim. It found that in Ada County, the income municipalities receive as a result of development – both from fees paid directly to them by developers and from the economic activity and resultant taxes generated by new residents – is more than enough to pay for the additional infrastructure and services growth necessitates.

But Ada County Highway District's Gary Inselman, manager of right-of-way and development services, said the agency made the decision in the early 2000s to not require growth to pay for all the roadway expansions and improvements that come along with it. ACHD pays 10 percent of the cost.

"That was a compromise with the development community at that time," Inselman said. "In the end, it becomes a question of what's a fee that can be set at a level that is politically palatable to the area. I think we have a program that works, and is set at a level that is working particularly in these economic times. No one wants to see a big jump in any fee – then you get the argument that you're driving away growth in business."

He said some developments, like planned communities Hidden Springs and Harris Ranch, are exceptions to the normal procedure. The cost to improve Dry Creek and Cartwright roads, among others, was completely covered by impact fees. And a portion of the long-awaited East ParkCenter Bridge is being paid for by impact fees from Harris Ranch.

Pisca said while some jurisdictions are still figuring out how to collect impact fees in a legal and palatable way, others have decoded the process in a way that works for developers and service providers.

"Builders are complying with impact fees in other jurisdictions and are getting along fine with their jurisdictions," he said. "To assume we're opposed to them in the first place is wrong. Builders, even though they may groan at first because they're the ones paying, they understand that you've got to build capital improvements, you've got to build infrastructure. They're not so naïve to think these things are just going to pop out of thin air."