



# **National Impact Fee Roundtable Annual Conference 2007**

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## **2007 Case Law & Legislative Update**

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# Presentation Overview

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- Oregon Case Study
- Recent Cases
- Recent Legislation and Amendments
- Panelist Discussion & Trends

# SOSS Committee v. Sarasota County, 957 So.2d 671 Fla. 2<sup>nd</sup> DCA

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- **Facts:**

- County required residents in Phillippi Creek Water Basin to abandon septic systems and hook up to central sewer
- Required payment of a \$1,642 “capacity” or “recoupment” or “user” fee
- Appears undisputed that a portion of the fee proceeds would be used to pay debt on existing sewer capacity

# SOSS Committee v. Sarasota County

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- **SOSS:** Expenditure of \$10M of projected \$23M in fee revenues on existing debt amounts to improper benefit to existing users
- **County:** Modern day financing and “Concurrency” requirements necessitate “payment of *existing* debt to permit further *expansion.*”

# SOSS Committee v. Sarasota County

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**Appellate Court:** "... we are inclined to reject SOSS's arguments that the revenues from an impact fee can *never* be used to pay existing indebtedness or that the amount of the impact fee cannot be based in part upon a recognized need for future capacity... ."

# SOSS Committee v. Sarasota County

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“... requires the circuit court to *carefully review* the calculation of the impact fee and the intended expenditures from the revenue generated by that fee to assess whether the fee meets the *dual rational nexus test*...”

**Reversed & Remanded**

# SOSS Committee v. Sarasota County

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## Footnote 2:

“This test appears to afford some deference to the local legislative body by relying on terms like “reasonable” and “rational,” although the application of the standard in the various cases *suggests something more stringent than a “rational basis”-type review.*”

# Catawba Indian Tribe v. Rock Hill, 2007 WL 2729124 (SC)

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- **1999:** City/Tribe Agreement
  - City Provides Water & Sewer “Services”
  - Tribe Agrees to Annexation
  - No \$ Mentioned
- **2002:** 4 Extension Ks for “construction of water mains & sewer facilities”
  - Tribe to pay:
    - \$260K for sewer mains
    - \$126K for water mains
    - \$3,630 for installation of 66 water meters

# Catawba Indian Tribe v. Rock Hill (cont'd)

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- **March 2003:** Water/Sewer Impact Fee Ordinance Adopted
- **August 2003:** City imposed \$100K in impact fees for “water meter and service installation”
- **Tribe:** alleges fee violates Contract Clause of U.S. Constitution

# Catawba Indian Tribe v. Rock Hill (cont'd)

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- **Contract Clause:** “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts.
- **3-part Test:**
  - Has there been an impairment?
  - If so, was it “substantial?”
  - If so, was it pursuant to a “legitimate exercise of the state’s sovereign powers?”
- **Issue:** Whether contracts were for:
  - water *meters & mains* only; or
  - also for initiation of *water services* too

# Catawba Indian Tribe v. Rock Hill (cont'd)

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- **Holding:** Impact Fee Ordinance (for “water services”) did not impair Contracts (for meters and mains)
- **Impact Fee Ordinance:**
  - “... new service,
  - water and/or wastewater extension requests and agreements,
  - additional meters, or
  - upgrades of existing services

that will create any new or additional demand on the City’s water and/or wastewater systems.”

Washington Co. v. Village of Jackson v. St. Joseph's Hospital, 2007 WL 1543897 (Wisc.)

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- **Village/Hospital Agreement:** Water/Sewer Agreement for “connection fees” of \$1,080,000
- **Hospital refused payment;** claimed contractual fees were improperly imposed “impact fees”
- **Held:** Not impact fees; contract *unambiguously* referred to “connection fees;” extrinsic evidence inadmissible

# HBA Cent. Arz. v. Maricopa, 158 P. 3d 869 (Az. Ct App.2007)

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- **Pinal County Had No Impact Fees**
- **August 2000 & March 2003**
  - Development Agreements, between
    - Pinal County
    - 3 developers
- **October 2003:** Maricopa Annexes Developments
- **August 2005:** Maricopa Adopts Impact Fees; imposing \$5K / lot on Developments

# HBA Cent. Arz. v. Maricopa (cont'd)

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- **County Development Agreements:**
  - Developer Makes Improvements
  - “no surcharge or impact fees or exactions or impositions of any kind...by the County...”
  - “... binding upon County and Developer and their respective successors and assigns.”

# HBA Cent. Arz. v. Maricopa (cont'd)

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- **HBA:**
  - City is a successor in interest to County
  - City's impact fees prohibited by County's Agreement
- **City:**
  - County Lacked Authority to waive impact fees by Agreement
  - City not bound by County's Agreement

# HBA Cent. Arz. v. Maricopa (cont'd)

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- Statutory Dev. Agree. Authority:
  - Burdens/Benefits are binding on “... successors in interest and assigns.”
  - is broad, “may cover all matters relating to the development of the property...”  
(comm. *including waiving impact fees that don't exist in jurisdictions that don't exist*)
- **Note:** Alachua Co. v. Fla. Rock, original jurisdiction can no longer enforce development agreement

# “Where are they Now?”

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“We find little in the raw data to support a correlation between the basis for the District’s cost estimate (3 new schools) and the District’s actual new facility needs [(306 add’l students)].”

*Gomes v. Ukiah Unified Sch. Distr.,*  
2004 WL 2092022, \*7, n. 4

***Gomes v. Ukiah Unified Sch.  
Distr., 2007 WL 242366***

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- **Original Fees:** to be used for “construction and/or reconstruction of school facilities as identified in *the plan.*”
- **Remanded in 2004** so District could produce the plan and for trial court to determine if fees exceeded the reasonable costs of *the plan.*



***Gomes v. Ukiah Unified Sch.  
Distr., 2007 WL 242366***

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- District could not produce the plan
- Trial Court allowed District to introduce new evidence
- 5 years after Fees adopted; 4 years into litigation, District claimed fees would be spent on new 600-pupil elementary school

***Gomes v. Ukiah Unified Sch.  
Distr., 2007 WL 242366***

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“ ... trial court should not have permitted the introduction of ... a new set of documents to prove a *newly-minted theory...*

this kind of post hoc rationalization fails to conform to the procedures required by law.”

River Walk Apartments v. Twigg, 914  
A.2d 770 (Md. Ct. App. 2007)

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**2000 Agreement (Mayor Grimes):**

- Owners:
  - dedicate R.O.W.
  - pay \$1/s.f. “deferred contribution special assessment”
- City:
  - would impose “no additional fee for the special assessment...or contribution required in conjunction with future permits...nor ... additional impact fees.”

# River Walk Apartments v. Twigg, 914 A.2d 770 (cont'd)

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- **2002:** Water/Sewer & Park Impact Fees adopted
- **2004 Agreement** (Mayor Dougherty):
  - Deferred R.O.W. dedication
  - Confirmed \$1/s.f. charge
  - waived charges for any other “offsite improvements”
- **2004:** City denies applications; requires both “\$1/s.f. charge, plus impact fees”

# River Walk Apartments v. Twigg, 914 A.2d 770 (cont'd)

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- **Owner:**
  - City bound by Mayors' Agreements to waive subsequent fees
- **City:**
  - Agreements waived only “regulatory fees,” not water/sewer/park DIFs
  - DIFs are taxes (in MD), which can only be waived by General Assembly

# River Walk Apartments v. Twigg, 914 A.2d 770 (cont'd)

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- **Trial Court:** SumJudg for Owners
- **City on 1<sup>st</sup> Appeal:**
  - Contractual waivers by Mayors were void
  - Waivers by ordinance only
  - Agreements were “private agreements” between Owners and 2 mayors
- **Owner on 1<sup>st</sup> Appeal**
  - Contracts amounted to “purchase” of R.O.W., which mayors were authorized to undertake

# River Walk Apartments v. Twigg, 914 A.2d 770 (cont'd)

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- **Ct. Spec. Appeals:**
  - Reversed SumJudg for Owners
  - All fees and fee waivers must be authorized by ordinance
  - Mayors' Agreements were *ultra vires*

# River Walk Apartments v. Twigg, 914 A.2d 770 (cont'd)

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- **Ct. of Appeals:**

- Under MD law, impact fees may be adopted by *legislative act* only; therefore, may only be waived by legislative act.
- Contractual waivers and *mayor-created* “special assessment fees” are unauthorized
- Municipalities not bound by *ultra vires* acts by it or those allegedly acting on its behalf

# Reflections on Recent Cases

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- Proportionate Share and *ad hoc* exactions playing greater role in impact fee discussion
- Calculations and CIPs increasingly at issue
- Terminology matters; specificity on development agreements
- Comprehensive/Consistent Approach to CIP/impact fees/exactions