

LAND USE LAW: EXACTIONS AND FEES

“What’s in it for us?”
— Anonymous Local Government Official (during review of a land use application by a wealthy developer)

Exactions

“Whatever the wisdom of such a policy, it would transfer an interest in property from the landowner to the government. For that reason, any such demand would amount to a per se taking similar to the taking of an easement or a lien.”
Koontz v. St Johns River Water Management District, 133 S.Ct. 2586 (2013)

Utah Code 17-27a-507:

(1) A county may impose an exaction or exactions on development proposed in a land use application, ...if:

- (a) an essential link exists between a legitimate governmental interest and each exaction; and*
- (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.*

Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (There must be an essential link between an exaction and a legitimate government interest.)

Dolan v. City of Tigard, 512 U.S. 374 (1994) (Establishes “rough proportionality” test for exactions.)

Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013) (Exaction analysis applies whenever government imposes conditions on approval of a land use application.)

B.A.M. Development, LLC v. Salt Lake County, (“BAM II”), 2008 UT 74 (Rough proportionality analysis compares the expense to the property owner with the cost to address the development’s impact.)

- The Take-Away: Development pays its own way, but not more.

Fees

For a service fee to be valid, the fee must “bear a reasonable relationship to the services provided, the benefits received, or a need created by those who must actually pay the fee.”
V-1 Oil Co. v. Utah State Tax Commission, 942 P.2d 906, 911 (Utah 1996)

Utah Code 17-27a-509 (Application & Review Fees):

- (1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:*
- (a) the actual cost of performing the plan review; and*
 - (b) 65% of the amount the county charges for a building permit fee for that building.*
- (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical floor plans.*
- (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county water, sewer, storm water, power, or other utility system.*
- (4) A county may not impose or collect:*
- (a) a land use application fee that exceeds the reasonable cost of processing the application or issuing the permit; or*
 - (b) an inspection, regulation, or review fee that exceeds the reasonable cost of performing the inspection, regulation, or review.*
- (5) (a) If requested by an applicant who is charged a fee or an owner of residential property upon which a fee is imposed, the county shall provide an itemized fee statement that shows the calculation method for each fee.*

Utah Code 11-36a-202 (Impact Fees):

- (1) A local political subdivision or private entity may not:*
- (a) impose an impact fee to:*
 - (i) cure deficiencies in a public facility serving existing development;*
 - (ii) raise the established level of service of a public facility serving existing development;*
 - (iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement;*
 -*
 - (c) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.*

- The Take-Away: Land use fees are cost recovery only.