DEVELOPMENT IMPACT FEES REPORT

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Newcomers arrive in the BACOG villages seeking new beginnings, family and community well-being, or the fulfillment of life plans. They come for the same reasons we all came: quality of life, unique natural areas, beautiful neighborhoods and homes, good schools, parks and libraries. They stay for the same reasons we all stay.

Newcomers bring with them hopes and dreams for the future. What they don’t bring with them are the roads, bridges, classrooms, libraries, parks, soccer fields and fire trucks that will be needed to realize our common dreams.

(adapted from the Florida State Comprehensive Plan Committee, 1987)

I. OVERVIEW

A. WHAT ARE DEVELOPMENT IMPACT FEES?

Development impact fees are payments required of new development in order to fund public capital facilities that are needed to serve residents of the new development. Impact fees are imposed by local governments to offset a proportionate share of the costs to construct or expand facilities. The facilities constructed may be off-site, i.e., located outside the boundaries of the new development. Impact fees differ from other developer exactions in that they are predetermined, scheduled charges -- not informally negotiated by the developer.

Impact fees may be used to fund new or expanded water and sewer systems, roads, parks, libraries, police and fire facilities, general government administrative buildings, emergency medical facilities, schools, solid-waste facilities, and even public cemeteries. Impact fees legally may not be used for maintenance, repair, operation or replacement of capital facilities. They legally may not be used for “soft costs” such as staffing, supplies and provision of services.

Fees are collected by municipalities and counties, usually at the time the building permit is issued, and spent for public projects under their jurisdiction such as roads, or they may be allocated to other governmental districts such as schools and libraries through intergovernmental agreements.
Impact fees are generally considered reasonable if (1) there is a reasonable connection between the need for additional facilities and the growth resulting from new development, (2) the fees do not exceed a proportionate share of the cost incurred by providing the facilities to accommodate the development, and (3) there is a reasonable benefit received by the development paying the fee. In Illinois, impact fee programs must meet the more stringent test of “specifically and uniquely attributable” rather than “rational nexus” (a reasonable connection). Section II explains this concept more fully.

B. WHY USE IMPACT FEES?

Struggling with funding public infrastructure outside development boundaries, municipalities benefited many decades ago from legislation that required land dedication for schools and parks from developers. By the 1940s, local government was authorized to require payments in lieu of dedication, although this did not address the needs for many other types of facilities. Increasingly, the growth ethic (“all growth is good”) of the earlier part of the century gave way to a new “managed growth” ethic that demanded that new development cover its costs.

The fiscal revolt of the 1970s and 80s saw taxpayers place restrictions on taxation of real property (tax caps) and increasing rejection by taxpayers of bonds for capital improvements to accommodate new development. Coupled with inflation, rising standards for facility construction, and rising expectations of existing residents for a broad range of government-provided services, local governments experienced great fiscal stress. Financing of government capital facilities has not kept up with either inflation or population growth since.

As a result, local government has been forced to look for new revenue sources to fund public infrastructure and facilities. One of these sources was impact fees. While only ten percent of localities in the U.S. used exactions before 1960, ninety percent employed some form of exaction by the mid 1980s. More and more, current public policy relies on local development controls such as annexation agreements, expanded user fees, and innovative financing, including impact fees, to generate revenues for the impacts of new development. This has been the evolution of public finance policy.

In the BACOG villages, there is little or no commercial or industrial development (with the exception of Barrington) to provide a tax base for generating revenues to governmental districts. Other towns like Schaumburg and Arlington Heights have more of this type of development, and residential property taxes may be lower and the need for impact fees therefore is less. (A number of municipalities, including Schaumburg, have impact fees in spite of their tax base.) Partly because of tax caps and partly due to the majority residential tax base, there is more pressure in an area like BACOG to identify additional public financing tools.

Without additional tools, the traditional alternative to impact fees is for taxpayers to approve referenda for tax increases and bonds to finance community needs, a cost largely borne by the existing community.
C. WHO BENEFITS FROM IMPACT FEES?

The broad answer to the question of who benefits from impact fees is “the entire community”. Community “quality of life” is maintained and enhanced when public entities have adequate funding to provide needed facilities. In the BACOG area, quality of life depends on good schools with an adequate number of classrooms, sufficient parks, playing fields and open space areas to accommodate the population, and maintenance of high-quality fire and emergency service, among other things. In the absence of adequate funding for these purposes, the standards that exist for these public facilities can decline as population grows, capacity is exceeded, and referenda fail – a situation this community faces already.

Different governmental entities (e.g., municipal, school districts, park districts) support the quality of life through their interconnectedness. Good municipal government alone does not produce high quality of life; good park districts without good schools do not produce this quality of life. Residents expect high quality services from each of these entities and cooperation among them to further community objectives.

In many communities, the municipal government gladly imposes impact fees on behalf of districts like the school and park district, to the benefit of all residents. After all, the people paying taxes to the municipality are the same people paying taxes to the school and park districts – and the same people benefiting from impact fees. Several of the governments contacted by BACOG explained that they impose and administer impact fees on behalf of other districts because of “community goodwill” and because it is “just the cost of doing business” in their area. Often, the responsibilities and costs of collecting data for the impact fee calculation are shared by the governmental entities, again in the spirit of community goodwill and because benefit accrues to all.

Sometimes overlapping powers of governmental units can create friction about who should be responsible for assessing revenues, as well as distribution of funds and accountability. This discussion can be somewhat political. The fact that local village boards may include realtors and developers, and local school districts may be have more education, health and service professionals because of personal interests also may affect the consideration of impact fees as part of development decisions and revenue collection. Additionally, there are opposing political views that impact fees are unrestrained government taxation or a way to alleviate the tax burden. These factors and others may create a situation of conflict among area residents, village boards, school and park boards, and other political interests and must be considered.

Practically speaking, impact fees can benefit the municipalities assessing and collecting the fees for uses such as roads and bridges, parks and government buildings. Fees also can benefit other governmental entities by being passed along, through intergovernmental agreements, to school districts, park districts, library districts, and police and fire districts.

The research done by BACOG approaches impact fees on a comprehensive basis and has considered the potential benefit to all types of entities (not just one type of district, such as schools). Following is Exhibit 1 that shows, for each BACOG municipality, the governmental...
entities and districts in the municipality that could benefit from impact fees collected on their behalf.

D. DEVELOPMENT STILL TO OCCUR WITHIN BACOG AREA

BACOG staff contacted each member municipality and some townships to develop an estimate of undeveloped land and unbuilt lots in the BACOG area. In addition to land within municipal boundaries, there are unincorporated areas within the BACOG boundaries that may be unbuilt. All of these properties would be subject to paying development impact fees and can provide an estimate of growth as well as an estimate of potential revenues from impact fees.

Exhibit 2, “Unbuilt Residential Property Within the BACOG Area”, reflects the rough estimates provided by the municipalities. It also includes information from Barrington Township; Cuba Township information is not available. Algonquin Township property is included in the Barrington Hills estimate. Exhibit 2 is contained on the following page.

It is important to consider the total number of units in BACOG that may be developed because of the cumulative effects of development generated by seven villages on the governmental entities within the BACOG area. While only a few building permits may be granted in any one village in any given year, seven villages’ worth of building permits would affect the geographically-broader districts, such as School District 220 and the Barrington Area Library, to a far greater degree.

Additionally, there is a cumulative effect of a growing population over time. If each year a village generates 20 building permits, for example, within several years new classrooms will be needed in the schools. Multiply this number by seven villages’ building permits and the need for facility expansion occurs much sooner.

If all seven BACOG villages were to impose impact fees in several categories, totaling perhaps $10-15,000 per dwelling unit, the total revenue generated for the villages and other governmental districts could approach $20 million. This is not only a substantial amount of revenue to those entities, but it represents an amount that would not be added to existing residents’ tax bills.

II. AUTHORITY FOR IMPOSING IMPACT FEES

A. STATE LEGISLATION ON IMPACT FEES

In Illinois, home rule municipalities have broad authority under the Illinois Constitution (Article VII, § 6, subsection (a)) to regulate land use for the protection of the public health, safety, morals and welfare. Illinois courts have found a similar – if slightly less broad – power to regulate land use and to impose some conditions on development for non-home rule communities under the implied police powers and the community planning provisions of the Illinois Municipal Code.

The relevant statutory provisions are to be found in 65 ILCS 5/11-12 which authorize municipalities to create planning commissions to address the development of the municipality.
and to establish reasonable requirements for such things as “the location, width, course, and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots...storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment...” 65 ILCS 5/11-12-5, §1.

The only law that specifically enables impact fees is contained in the Illinois Highways Code (added in 1989) which authorizes counties of over 400,000 and municipalities with home rule to impose impact fees to ensure that new developments bear their share of new road construction costs (605 ILCS 5/5-901 ff., added by P.A. 86-97 (1989). This division does not apply to municipalities that lack home rule. It does not regulate amounts of impact fees but limits them to a “proportionate share” of road improvements costs. Items that may be paid for by the impact fees are limited to those listed in the comprehensive road improvement plan.

B. CASE LAW ON IMPACT FEES IN ILLINOIS

Illinois courts have interpreted the above provisions to permit municipalities to impose land dedication requirements and fees-in-lieu of land requirements as a condition of development when the municipality can make a showing that the proposed regulations address an impact that is “specifically and uniquely attributable” to the proposed development. This “specifically and uniquely” attributable standard is one of the highest in the nation (higher, in fact, than that required by the US Supreme Court to satisfy US Constitutional requirements). It has proven to be a very high standard to meet requiring not only that the improvement directly and materially benefit the development, but also that the developer need only pay for the specific impact it causes and need not either redress previous problems nor pay for improvements required because of overall community growth.

The Illinois courts also have adhered to a rather strict interpretation of the statutes governing non-home rule communities, permitting them to impose dedication and fee-in-lieu of land requirements on a developer for land for new school facilities, but not yet explicitly permitting communities to impose conditions requiring payments for school buildings (not just grounds). Some courts and commentators have argued for a broader interpretation of the authorities to impose these conditions in accordance with the broader national trends, but thus far, at least, the issue remains unsettled in Illinois.

There continue to be questions and disagreement among professionals about the legality of impact fees. Some of these questions are:

(1) Is there constitutional/legal authority for a municipality to impose impact fees? The answer is generally agreed to be “yes” with the authority being somewhat different for home rule and non-home rule municipalities;

(2) Is the impact fee program structured in such a way as to be legal and defensible? Some argue that credits for future taxation revenues would have to be part of the impact fee calculation methodology, for example, or that fees for land are legal but fees for buildings are not; and
(3) Does the impact fee calculation methodology contain variables (such as cost per acre of land) that are true, i.e., are the variables based on appropriate and accurate information, as opposed to manufactured with the purpose of justifying the impact fee?

C. OTHER CONSIDERATIONS

1. Home Rule versus Non-home Rule Authority.

Broadly speaking, a community that is non-home rule has authorization to conduct business only by specific authorization under Illinois statutes; a home rule village can conduct any business it chooses except as expressly prohibited under Illinois statutes. The following BACOG villages have home-rule status: Barrington Hills, South Barrington and Lake Barrington.

Home rule can affect how a village structures an impact fee program. There is more, but still uncertain, legal authority for the home rule villages to adopt more categories of impact fees than school and park lands, for example. Any impact fee ordinance enacted by BACOG village would take the home rule factor into account; BACOG has been advised, however, that a non-home rule village may enact essentially the same impact fee program as a home rule village with certain additional safeguards like developer waivers. There are differing legal opinions on this point, there are both home rule and non-home rule villages within BACOG, and it is therefore critical for BACOG to obtain additional legal advice on this point.

2. Annexation versus Non-Annexation Imposition of Impact Fees.

A municipality may enact impact fees for (1) development under annexation agreements or (2) all development. Impact fees imposed under annexation agreements are highly defensible, with little risk involved, because the developer and municipality enter into these contracts voluntarily. If the developer does not agree to the terms of the agreement (including impact fees), the municipality does not have to allow the annexation. Conversely, if the developer agrees to the terms, he voluntarily signs a legally binding contract that describes his commitment to pay impact fees. If the municipality takes the impact fees under “annexation only” approach, however, the potential exists for many acres of unbuilt land, for example farmland or unbuilt subdivision lots, to avoid paying fees.

Alternately, a municipality may structure the impact fee program for all development, both annexations and land already within municipal boundaries. This captures funds to pay for the real impacts of all development, not just selective development. Although there is somewhat more risk than annexation only programs, the benefits are also greater, and a properly designed program will address the risks in its structure. Many communities, home rule and non-home rule, impose impact fees for all development; this is the more aggressive of the two approaches.

3. Linkage between Planning and Impact Fees.

Because impact fees in Illinois are not explicitly enabled by state legislation, it is important to tie impact fee programs to municipal regulation. Many states already require that fees be tied to land uses in the comprehensive plan and be used for facility needs described in the locality’s
capital improvements program. This applies when the impact fee is to be retained by the municipality for its own use for village-owned roads, parks, etc. as opposed to being passed on to another entity such as a school district.

A properly designed impact fee program begins with a long-term comprehensive plan that is based on population, employment, land use and other community projections. Communities often have, additionally, a capital improvement program (CIP) which is a short-term plan (typically two to five years) that describes infrastructure and capital improvements needed to fulfill the comprehensive plan. The CIP outlines timeframes, costs, and sources of revenue to pay for those facilities. Impact fees may be incorporated in the list of revenue sources needed to finance the CIP, and are in a sense, the last step in the land use planning process. All these plans may become critical to justifying the imposition of impact fees in a legal challenge in that they provide the rational basis for the impact fee program.

D. LEGAL IMPLICATIONS FOR THE BACOG VILLAGES

The BACOG villages -- both home-rule and non-home rule -- have authority to impose conditions, including impact fees, on new developments. The villages, however, must take care to ensure that any conditions imposed must be “specifically and uniquely” attributable to the impact caused. Particularly the non-home rule communities must also take care to ensure that the conditions either do not exceed the statutory grants of authority, or they must secure developer acquiescence to any decision to use money for purposes beyond those statutorily authorized.

Most significantly, if the BACOG villages want to impose impact fees for school construction (rather than or in addition to land), they will be entering into somewhat vague legal ground. While some have argued that the courts may be leaning toward approving such fees, there is, as yet, continued ambiguity about the authority of villages to use the money in that manner. However, as the discussion that follows suggests, this is exactly what some communities have done; some have secured the agreement of developers in this process, and some have not -- whereby they are assuming some degree of risk which they believe is outweighed by the benefit of the fees.

Most of the research for this section of the report was performed by Ruth Alderman Schlossberg of Barrington. Please refer to APPENDIX A, “Memorandum to BACOG: Legality and Regulations Surrounding the Imposition of Impact Fees In Illinois”, October 18, 2001, for additional legal information.

Please also refer to APPENDIX B, “Illinois General Assembly Legislative Research Unit: Development Impact Fee Information”, July 27, 2001, obtained through State Representative Rosemary Kurtz, for additional legal background and information.
III. SURVEY OF METROPOLITAN COMMUNITIES

BACOG staff surveyed the BACOG communities and other municipalities in the metropolitan area about their use of impact fees and their implementation methods. This work included calling municipalities, collecting background information and referrals on how the impact fee programs were structured, collecting and analyzing their ordinances, resolutions and fee schedules, and other work. Over 50 contacts were made with government and legal professionals. The Northwest Municipal Conference “impact fee comparison survey” conducted in the summer of 2000 was used, where it was reported that 25 out of the 32 villages that responded charge impact fees. The Highland Park “comparison of impact fees” chart was also used. (Background information compiled by BACOG in two preliminary reports, the Northwest Municipal Conference survey, and the Highland Park chart are contained in APPENDIX F.) Following is a summary of the survey and conclusions.

A. BACOG COMMUNITIES

Four of the seven BACOG municipalities have impact fee programs: Barrington, Deer Park, Lake Barrington and South Barrington. All of these four municipalities have school and park impact fees. Barrington also has library and municipal impact fees. Lake Barrington also has fire district fees upon annexation only. Lake Barrington and Deer Park have fees for commercial/industrial development also. This information is detailed further in Exhibit 3 on the preceding page.

For schools, one BACOG village charges a several hundred dollar set fee; the other three villages use a formula and assess a typical fee of two to three thousand dollars. For parks, the difference in programs is substantial, with set fees and formulas both in use and with the fees collected ranging from a low of $40 to a high of $2,500 in a set fee. Two villages have lower impact fees, and some negotiated, for already subdivided lots that are unbuilt within municipal boundaries; the more substantial scheduled fees are charged for new subdivisions, but these do not have to occur under annexations. Two BACOG villages have some impact fees for new commercial and industrial development.

B. OTHER COMMUNITIES

Information was collected by BACOG on approximately 40 metropolitan entities, including municipalities, counties, research firms, library and school districts. On the following pages are:

- Exhibit 4, “Surveyed Communities: Impact Fee Comparison”, which shows the communities contacted that have impact fees along with the dollar amount charged for each category of fee;
- Exhibit 5, “Surveyed Communities: Impact Fees Calculation Variables”, which describes the sources, factors (variables) and calculation methods used by each of those governments in their impact fee programs; and
- Exhibit 6, “Surveyed Communities: Home Rule Status and Annexation Notes”. The information on annexation provided by communities is not very clear, but it appears that most use some combination of negotiated fees under annexation agreements and a standard impact fee schedule for all other new development.
Information is from governments contacted by the BACOG staff and from information reported in published reports by other municipalities researching impact fees. BACOG does not verify the accuracy of the information reported about these governmental entities.

In reviewing these charts, the reader will find that there is a tremendous range of impact fees charged for school and park purposes, from a low in the hundreds of dollars to highs of over $20,000. Most municipalities have both school and park impact fees, and several also have library fees which are typically very low. It is important to note that the difference in total fees from municipality to municipality is largely due to differences in the calculation variables, such as cost per acre of land and building costs. A few have additional fees for municipal and fire/medical emergency purposes, and fees in these categories are generally very low. A few municipalities have impact fees under annexation agreements only, but the majority have fees for all new development.

Some broad conclusions are: (1) most impact fee programs use a calculation, or formula, to determine fee amounts and many use the Naperville formula based on that municipality’s success; (2) under this formula, calculations may vary somewhat between municipalities, but the same basic criteria and variables are used; (3) a vast majority charge impact fees for school and park land only, with a few referring to “facilities” in their ordinances but it not being clear if they charge or pay for facilities; (4) many charge for libraries (mostly for library facilities); (5) several have a few other categories of impact fees such as municipal and fire; (6) a large majority assess impact fees for both annexations and new development already within municipal boundaries; (7) some give credits for future tax revenues but employment of this feature is not consistent; (8) typical fees generated for schools and parks are in the several thousands of dollars, whereas typical fees for libraries, fire districts and other uses are typically around $100-200; (9) there are about the same number of villages that are home rule and non-home rule, and this does not appear to make a difference in whether a village imposes impact fees or not; (10) the counties imposing impact fees generally charge a few thousand dollars for housing development which is often less than the municipal impact fee programs within that county.

Also, the municipalities surveyed generally do not impose road impact fees, with the exception of Naperville. Because of the state legislation, the documentation required is massive and the standard that must be met to defend the reasonableness of road impact fees is very high. Road/transportation impact fees are regulated by state enabling legislation. This type of fee tends to be adopted in high growth areas, such as DuPage County, and counties have greater ability because of scale and costs to impose road impact fees. The four counties of the BACOG area, i.e., Lake, Cook, McHenry and Kane, do not have road fees (although Cook County was not able to officially confirm this). Kane County reported that they are in the process of developing a road fee program. Lake reported that road impact fees were adopted in the 1980s but were never collected; this was because local road deficiencies had to be corrected first and the funding for this purpose was never realized. Two attorneys who specialize in impact fees advised that the risk of litigation to the BACOG villages for road impact fees is substantial.
IV. CALCULATION OF IMPACT FEES

Calculation methodology is different for each type of impact fee: school land, school facilities, park land, park facilities, library improvements, fire/rescue, other. Possible methodology for each category is described in the following section. All categories and calculation methods are subject to review and recommendations from a legal professional.

A. SCHOOL LAND

New development generates the need for new classrooms and schools and the land upon which they will be located. This category of impact fee addresses the need for additional land for school sites. The following variables are contained in typical school land calculations.

1. Ultimate Population Per Dwelling Unit Variable.
Impact fee calculation methodology contains a variable for the number of children generated by dwelling unit type. Most communities use the most recent edition of the Illinois School Consulting Services (ISCS) “Estimated Ultimate Population Per Dwelling Unit” table published by Associated Municipal Consultants, Inc. which is included on the following page as Exhibit 7. The information presented in this table comes from data supplied by Lake, McHenry, Kane, DuPage, Will and Cook counties, and therefore it reflects average metropolitan population by housing type. Each municipality has the option of analyzing its local demographics to generate a more accurate table of ultimate population; this would be especially important if it was thought that local housing generated more school age children because this would increase the impact fee dollar amount.

The Illinois State Board of Education recommends the following standards for minimum site acreage for certain types of schools; the methodology for the State’s recommendations is contained in the letter designated Exhibit 8 on the following page. This data is regularly used by area municipalities when calculating school site land/cash fees, but higher minimum acreage requirements may be established locally, by the school districts within BACOG for example. Again, higher acreage standards would produce a higher impact fee.

<table>
<thead>
<tr>
<th>School Classification</th>
<th>Maximum Number of Students</th>
<th>Minimum Acreage</th>
<th>Acres per Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary (Grades K – 5)</td>
<td>600</td>
<td>11</td>
<td>.01833</td>
</tr>
<tr>
<td>Middle (6 – 8)</td>
<td>1,200</td>
<td>32</td>
<td>.02667</td>
</tr>
<tr>
<td>High School (9 – 12)</td>
<td>2,500</td>
<td>55</td>
<td>.02200</td>
</tr>
</tbody>
</table>

The following standards are in use by School District 220; they are based on the State Board of Education recommendations and existing local conditions.
### School Classification

<table>
<thead>
<tr>
<th>School Classification</th>
<th>Maximum Number of Students</th>
<th>Minimum Acreage</th>
<th>Acres per Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary (Grades K – 5)</td>
<td>600</td>
<td>11</td>
<td>.0183</td>
</tr>
<tr>
<td>Middle (6 – 8)</td>
<td>1,000</td>
<td>20</td>
<td>.0200</td>
</tr>
<tr>
<td>High School (9 – 12)</td>
<td>2,700</td>
<td>47</td>
<td>.0174</td>
</tr>
</tbody>
</table>

It was noticed during this study that the State standards for middle and high school exceed those in use by BACOG villages; because standards are lower locally, they result in lower impact fees locally. It is recommended that the area school districts be requested to update the local standards for use in designing a new local impact fee program. It is suggested that the school districts take into consideration the possible future necessity of acquiring/building on “green space”, not just re-building schools on existing sites, and develop a standard that would be both forward-looking and realistic. This could increase the amount of the impact fee that would result from the overall calculation.

### 3. Fair Market Value Per Acre of Land Variable.

One component of an impact fee calculation formula is value per acre of land for *improved* land (with drainage, streets, water/sewer, and other required improvements in place and ready for building). A community may employ all or one of the following to determine land value: comparative land values in nearby villages, recent local sales prices, and appraisals.

For example, several nearby communities use the following improved land values per acre, according to documents received by the BACOG office (BACOG does not guarantee the accuracy of this information):

- Crystal Lake: $35,000
- Elgin: $44,187
- Bartlett: $48,000
- Saint Charles: $100,000
- West Dundee: $105,000
- Carpentersville: $105,000
- East Dundee: $110,000
- Algonquin: $110,000

There appears to be inconsistency in the numbers above, but several factors play into the determination of value per acre: number of lots allowed per acre per local zoning (higher density may account for higher value per acre); availability of public water and sewer add value per acre; villages may establish higher land values for the purpose of increasing impact fee revenues (although their numbers still must be based on real data).
Local land values (property sales prices) have not been researched for this report. An effort was made to obtain an average per acre land valuation for the entire BACOG area by working with the assessors’ offices locally. The intent was to simplify the fee calculation method and to have all the BACOG villages use the same figure. This was found to be impossible, at least at the present time.

A local value per acre will need to be established for any impact fee program under consideration in the BACOG area. Obviously, the higher the land value used in the calculation, the higher the impact fee, keeping in mind that for the fee to be legal and defensible, the land value established must also be a true statement of local conditions. For this report, a figure of $100,000 per acre was used in sample calculations, for illustrative purposes only. In actuality, each village will need to develop an accurate per acre land valuation to use in the fee calculation.

A typical calculation for school land impact fee would contain the variables above in the following format:

\[ \text{Ult. School Population} \times \text{Acres/Child} \times \text{Value/Acre} = \text{Impact Fee/Unit} \]

SAMPLE CALCULATION for 4-bedroom detached single family house, using SAMPLE (not accurate) variables:

<table>
<thead>
<tr>
<th>School Classification</th>
<th>Ult.Pop.</th>
<th>Acres/Child*</th>
<th>Value/Acre**</th>
<th>Impact Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>0.530</td>
<td>0.01833</td>
<td>$100,000</td>
<td>$971</td>
</tr>
<tr>
<td>Middle</td>
<td>0.298</td>
<td>0.02666</td>
<td>$100,000</td>
<td>$795</td>
</tr>
<tr>
<td>High School</td>
<td>0.360</td>
<td>0.02200</td>
<td>$100,000</td>
<td>$792</td>
</tr>
<tr>
<td>TOTAL School Land Impact Fee</td>
<td></td>
<td></td>
<td></td>
<td>$2,558</td>
</tr>
</tbody>
</table>

*used State standards
**an estimate

B. SCHOOL FACILITIES

There are municipal impact fee programs that include fees for school facilities; clearly, new development generates the need for school buildings and facilities in addition to more land. A school site without a building would hardly serve new residents educational needs. This category of impact fees, “school facilities”, is intended to cover some of the costs of constructing or expanding school buildings and facilities.

It is essential to note, however, that impact fees for school facilities is a relatively untested area in Illinois. The courts so far have not given a definitive answer on this question as they have focused only on land dedication issues. As a result, some municipalities restrict their ordinances to land dedication/cash in lieu only except sometimes they are assessed under annexation agreements. The BACOG villages will need an opinion from a legal professional regarding a recommendation for this category of fee.
In this category, it is typical to give a sizable credit (10 to 75%) for the future revenue stream generated by future taxation. (See the following paragraph H for more information on credits.) This is recommended partly to achieve fairness and partly to ensure the impact fee is not so high as to invite litigation, especially in light of the fact that this category of impact fees has not been adequately addressed by the courts.

The following variables are typically contained in the calculation for school facilities impact fees.

1. **Ultimate Population Per Dwelling Unit Variable.**
The ISCS tables cited in the previous section and contained as Exhibit 7, or a local modification of the ISCS tables, would be used here.

2. **Square Footage Requirement Per Student Variable.**
This is a local determination made by the school districts involved, such as Districts 220, 95 and 300. It is recommended that the school districts be requested to update and refine their square footage requirements per student, and provide these to the municipalities for the calculation. Once again, the higher the square footage standard, the higher the resulting impact fee; they must, however, be true and accurate to be legal and defensible.

3. **Construction Cost Per Square Foot Variable.**
It is also a local determination as to what construction cost figures to use in the impact fee calculation. National construction costs do exist in reports such as RS Means “Building Construction Cost Data: 59th Annual Edition, 2001” (see bibliography), but these costs are substantially lower than building costs in this part of the country and in the Chicago metropolitan region. It is recommended that the local school districts produce the local construction cost data that would be used in the calculation.

Good documentation of building costs for adjusting the cost variables is needed. The school, park and other benefiting districts that could be included in an impact fee program must fully document their recent building and capital costs for use in the calculation. This process could begin immediately, and data collected over time could be used to regularly update the variables in the future.

A possible calculation for school facility impact fees would contain the variables above, and a credit, in the following format:

\[
\text{Ult.SchoolPop.} \times \text{Sq.Ftg./Child} \times \text{Cost/Sq.Ft.} \text{ (LESS CREDIT)} = \text{Impact Fee/Unit}
\]

SAMPLE CALCULATION for 4-bedroom detached single family house, using SAMPLE (not accurate) variables and a credit amount that is as yet unknown:
### Table: School Facilities Impact Fee

<table>
<thead>
<tr>
<th>School Class</th>
<th>Ult.Pop.</th>
<th>Sq.Footage/Child*</th>
<th>Cost/Sq.Ft.*</th>
<th>(CREDIT)</th>
<th>Impact Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>0.530</td>
<td>100</td>
<td>$115</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Middle</td>
<td>0.298</td>
<td>150</td>
<td>$130</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>High School</td>
<td>0.360</td>
<td>160</td>
<td>$155</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>TOTAL School Facilities Impact Fee</td>
<td></td>
<td></td>
<td></td>
<td>TBD</td>
<td>TBD**</td>
</tr>
</tbody>
</table>

*figures from the City of Elgin, as an example of local standards

**To Be Determined

It becomes clear in this example calculation that, without a credit, a very high fee could be generated.

### C. PARK LAND

This category of impact fee would address the need for additional land for new parks and open space for the population generated by new houses. The calculation may use a different set of variables, partly because all residents use parks (not just school children). The typical variables for calculating park land impact fees follow:

1. **Fair Market Value Per Acre of Land Variable.**
   As noted in the previous section for school land impact fees, this figure must be determined locally based on comparative land values in nearby villages, recent local sales prices, and/or local appraisals. A determination would need to be made for the definition of improved land (drainage, access roads, other) since park lands may or may not require the same improvements needed for school buildings.

2. **Minimum Site Acreage Standards Variable.**
   The National Recreation and Park Association, a national professional organization, recommends a standard of 10 acres land per 1,000 population. This standard includes needs for neighborhood, district and community parks. The standard is commonly accepted and used in the parks profession and may be used in impact fee program calculations. The standard is described below:

<table>
<thead>
<tr>
<th>Type of Park</th>
<th>Size Range</th>
<th>Minimum Acres per 1,000 Population</th>
<th>Minimum Acres Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighborhood park</td>
<td>3–19</td>
<td>5.0</td>
<td>.0050</td>
</tr>
<tr>
<td>District park</td>
<td>20–49</td>
<td>2.5</td>
<td>.0025</td>
</tr>
<tr>
<td>Community park</td>
<td>50+</td>
<td>2.5</td>
<td>.0025</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>10.0</td>
<td>.0100</td>
</tr>
</tbody>
</table>

The BACOG area per capita standard for park land could be higher than the national standard, especially if regional open space could be included. It is recommended that the national standard be evaluated by all local park districts, with assistance from other governmental and private entities involved in the provision of open space, to develop a local determination of park land per capita.
3. Ultimate Population Per Dwelling Unit Variable.
The Illinois School Consulting Services (ISCS) tables are typically used; they include not only the school children generated by dwelling type but also the adults, giving a “total per dwelling unit” for each dwelling type (refer to the last column on the ISCS table contained in Exhibit 7).

A typical calculation for a park land impact fee would contain the variables above in the following format:

\[
\text{Value/Acre} \times \text{Acres/Person} \times \text{Population} = \text{Impact Fee/Unit}
\]

SAMPLE CALCULATION for 4-bedroom detached single family house, using SAMPLE (not accurate) variables:

<table>
<thead>
<tr>
<th>Value/Acre*</th>
<th>Acres/Capita</th>
<th>Ult.Population/Unit</th>
<th>Impact Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>.01</td>
<td>3.764</td>
<td>$3,764</td>
</tr>
</tbody>
</table>

*an estimate

D. PARK FACILITIES

This category of impact fee would address a home’s proportionate demand on the park systems’ capital improvement needs, such as trails, shelters, driveways, ball fields, parking lots, swimming pools, and play equipment. For this category of impact fee, the research did not reveal any standardization for the calculation formula. Variables could include ultimate population per dwelling unit (total family), facility or other capital improvement costs per square foot, and minimum facility square footage per person; some of this data, however, was not generally available from other municipalities.

There are municipal impact fee programs that include fees for park facilities. This category of impact fees, “park facilities”, however, is an untested area in Illinois. The courts so far have not given a definitive answer on this question as they have focused only on land dedication issues. As a result, some municipalities restrict their ordinances to land dedication/cash in lieu only except sometimes they are assessed under annexation agreements. The BACOG villages will need an opinion from a legal professional regarding a recommendation for this category of fee.

In any category of impact fees for facilities, like park facilities, it is typical to give a sizable credit (10 to 75%) for the future revenue stream generated by future taxation. (See the following paragraph H for more information on credits.) This is recommended partly to achieve fairness and partly to ensure the impact fee is not so high as to invite litigation, especially in light of the fact that the courts have not adequately addressed this area. Again, without a credit, the resulting fee amount would be very high.

It is also recommended that the BACOG area park districts be consulted and requested to develop the cost figures and square footage requirements for the aggregate of park, recreation and open space that would be used in the calculation.
E. LIBRARY IMPROVEMENTS

Residents of new development will also use the local library system; new library buildings, additions, facilities, or improvements may be required. A library impact fee could calculate the proportionate cost to new development of expanding library grounds and/or facilities. The discussion below describes a library impact fee for facilities construction and/or expansion and does not address land costs because this is the most typical calculation methodology. The need to purchase land for new libraries, necessitated by large amounts of growth, could be included in an additional calculation but has not been done here.

In practice, impact fees for libraries vary very widely, from a set fee of $100 per dwelling unit to formula similar to those used for school facilities (that employ building costs, ultimate population, etc.) that result in impact fees of many hundreds of dollars. It is recommended that some type of formula (not a set fee), based on local library building costs, be used; however, any calculation would have to generate a low impact fee dollar amount because of the untested (in Illinois courts) nature of this category of fee and the risk of litigation. A substantial credit may be used.

The variables for calculating library impact fees might be:

1. Ultimate Population Per Dwelling Unit Variable.
The Illinois School Consulting Services (ISCS) tables are used. The “total per dwelling unit” (not just children) would be used.

2. Standard for Public Library Services Space Per Person Variable.
The Illinois Library Association Standards for public library services in Illinois specifies “... one square foot of library space for each new resident...”. This may or may not reflect library space standards locally, and the library districts should be asked to develop local standards.

3. Facility Building Cost per Square Foot (and/or Fair Market Value Per Acre of Land) Variable.
The RS Means “Building Construction Cost Data, 59th Annual Edition, 2001” gives an upper quartile cost (lower than northeastern Illinois building costs) of $127 per square foot. This figure will be used below for illustrative purposes. The library districts within the BACOG area would also need to develop a building cost per square foot figure for the purpose of local impact fee programs.

A typical calculation for a library facilities impact fee could contain the variables above in the following format:

\[
\text{POSSIBLE} \quad \text{Ult.Pop.} \times 1\text{ Sq.Ft./Person} \times \text{Cost/Sq.Ft. (CREDIT)} = \text{Impact Fee/Unit}
\]
SAMPLE CALCULATION for 4-bedroom single family detached home:

<table>
<thead>
<tr>
<th>Ult.Pop.</th>
<th>Cost/Sq.Ft.</th>
<th>(CREDIT)</th>
<th>Impact Fee/Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.764</td>
<td>$127</td>
<td>unknown</td>
<td>$478 or less</td>
</tr>
</tbody>
</table>

Again, the validity of this type of impact fee has not yet been addressed by the courts, so it is important to keep the total dollar amount of the fee relatively low. The sample fee above, at $478, is higher than that of most communities surveyed.

**F. FIRE/EMERGENCY MEDICAL**

This category of impact fee is for the proportionate costs of land, facility and capital equipment costs (possibly fire trucks and ambulances) to provide fire protection and emergency medical services to residents of new development. The research performed for the BACOG study did not fully detail calculation formula or variables for this category of impact fees, although several villages based the calculation on building costs, and one used a site dedication ratio of a certain amount of acreage per 1,000 population.

It is recommended, therefore, that the BACOG area fire districts and emergency service districts be consulted and requested to develop the cost figures, square footage requirements and capital equipment costs if the villages were interested in this category of impact fee.

This is also a category of fee that has not been tested in Illinois courts, and therefore, must remain relatively low to protect the municipalities against litigation. A credit may be used in the calculation methodology in order to keep the fee low. A legal opinion from village attorneys also is required, as in the case of all other impact fee categories.

**G. OTHER**

In order to take a comprehensive approach to impact fees, all independent governmental districts should be considered for appropriateness of development impact fees. At the BACOG roundtable discussion on impact fees held October 19, 2001, it was suggested by participants that the following districts may benefit from impact fees, and if it could be established that there is a reasonable connection between development and services provided by the district, they should be considered for a regional program:

- Community Colleges
- Forest Preserve/Conservation Districts
- Township Highway Fund
- Stormwater Management District
- Mosquito Abatement District

BACOG staff agrees that all districts should be considered; in fact, this report contains a section on future considerations that recommends conservation districts be considered for impact fees in the future. It must be recognized, however, that the farther “out on a limb” one goes from what is considered a typical program, the greater the risk of litigation to the municipality.
H. CREDITS AGAINST IMPACT FEES

A final step in calculation of impact fees may be making an allowance for the revenue stream generated by future taxation on new development; credits are generally given against facilities improvements only, not land impact fees. While this step is not always necessary (although there is legal disagreement on this position), it produces a more conservative program and calculation model.

The premise for credits is legality and fairness, that is, if new residents are to be charged for new capacity, they should not also have to pay a full share for existing facilities funded under general taxation. Only debt related to capacity/facilities is credited, and not debt for operational expenses of the district. Typically local governments using a credit in their calculation use a discount factor of from 10 to 75 percent. The discount may be determined locally by dwelling type and value, or may be a set amount regardless of dwelling type, estimated from local averages. An example of the latter method is used by Highland Park where a 10 percent discount against the total fee is given; the fee may be reduced further if the developer can demonstrate that the impact from the development is minimized based upon higher tax generation (higher home valuation) or fewer residents generated (like an empty nester development).

One option for structuring impact fee payments is the Dahlstrom model. In this model, as the price of the home increases, the fee decreases, by employing a sliding scale credit system. This is based on the premise that as the home price increases, the taxes generated increase, and thus higher and higher priced homes contribute more and more to the future property tax revenue stream -- and they should therefore pay less in an impact fee.

Another point to consider in credits is the bond and interest fund tax rate that is used to determine the future tax revenue stream credit. This rate will fluctuate depending on the status of the district’s building program. For instance, District 220’s building tax rate in 1996 was $0.16 per $100 equalized assessed valuation (EAV), but in 2001 the rate is $0.53 per $100 EAV, as a result of three successful building referenda. The “credit” models do not appear to account for significant changes, both up and down, in the bond and interest rate over time.

The credit methodologies have been criticized as being regressive because the wealthier (buying more expensive homes) pay less, and the middle and lower classes (buying moderate and low priced homes) pay more. In the BACOG area, with new home development in a price range above $500,000, it is likely that miniscule or no impact fees would be generated under these models.

Again, legal opinions differ on the necessity of credits in calculation methodology, and actual revenues from future taxation dedicated to land and facility costs are not completely understood. The BACOG villages may wish to study this further, both legally and fiscally, before committing to a specific methodology for impact fees.
V. ADMINISTRATION OF IMPACT FEES

In regards to cost, municipalities normally bear the cost of administering the fees because they benefit from some of the fees (police, fire, municipal, road), the community at large benefits, and because they want to promote community goodwill. There was general agreement in the BACOG villages and in the survey of other communities that impact fee programs are not difficult or time-consuming to administer, once all ordinances, intergovernmental agreements and required documents are in place. Crystal Lake estimated that the staff time to administer their impact fee program amounts to only a couple hours per quarter, and this is primarily for the distribution of funds.

APPENDIX C of this report contains model resolutions, ordinances, and administrative guidelines to give the reader an idea of procedures necessitated by an impact fee program.

A. FEE COLLECTION AND DISTRIBUTION

Typically, fees are collected at the building permit stage although they may be collected at subdivision. Fees are deposited into a special account and may not be co-mingled with a municipality’s general funds. Once every quarter (or other designated time period), the municipality distributes funds to the appropriate districts. A sample disbursement agreement is also contained in APPENDIX C. The beneficiaries are responsible for providing an annual report to the municipality on how the money was used. Additionally, the non-village entities may be required to pay periodically for updating of factors used in the impact fee formula, such as valuation of property.

Most municipalities require other districts to use the funds within ten years. A refund provision in the ordinance helps to ensure that the benefit requirement is met. Such a provision provides that the fee payer is entitled to have fees returned if they are not spent for the purpose for which they were collected within a reasonable period of time after their collection.

An administrative code may be developed to guide staff in implementing a program. Typical items to be addressed in the code would be: responsible parties, timing of payment, form of payment, determination of fees (also covered in ordinances), expiration of conditions, holding and distribution of fees, refunds, exemptions, credits, liability, appeals and enforcement.

At least one community, Naperville, collects impact fees based on a “mix” of housing types before the building permits are issued; as the building process proceeds, credits or debits are issued against the original impact fee payment to adjust for the type of homes that actually are built. This is not a typical arrangement, and it is not recommended.

Impact fees can be administered by a school district or park district, rather than by a municipality or county. This system is sometimes used when property is located in unincorporated areas of the county, or where a municipality does not have impact fees but the county does. In response to a letter sent by the county or district, the developer enters into an agreement directly with the district. Then a letter of satisfaction or receipt indicating the fee has been paid is presented to the
municipality before a building permit will be issued. This is a less typical administrative procedure and is not recommended.

B. LIABILITY

Liability for legal challenges is often addressed in the intergovernmental agreement between the municipality and the benefiting district. The agreement may contain a “hold harmless” provision and/or a “duty to defend” provision to protect the municipality. The municipality is considered a conduit for collection only and is not responsible for the costs of defense in case of a lawsuit. These provisions also give the municipality the ability to pursue repayment of fees, if court ordered, from the district.

It is especially important to employ hold harmless and duty to defend clauses in agreements when the districts supply building costs, acreage requirements, and other data to be used in the impact fee calculations. The liability resulting from use of inaccurate data would rightfully lie with the supplying district.

C. ACCOUNTABILITY FROM BENEFICIARIES

Accountability from benefiting districts is assumed to be contained in the required annual report from the district to the municipality. The impact fee program may be structured to require separate accounting for impact fees and to specify the type, extent and detail of the reports to be produced. A municipality may set as stringent a standard for reporting as it wishes.

VI. PHILOSOPHICAL ARGUMENTS ON IMPACT FEES

Following are some of the criticisms raised about impact fees overall. The arguments listed and discussed come from national and state literature on the subject as well as from local officials and residents of the BACOG communities. Additionally, BACOG hosted a roundtable discussion on impact fees for staff members from the seven member villages on October 19, 2001, and the issues and concerns raised at that meeting are included below (see APPENDIX D).

(Additional articles and newspaper articles on impact fee issues are contained in APPENDIX G.)

A. IMPACT FEES ARE TAXATION

Impact fees are sometimes criticized as being a hidden form of taxation even though the courts have determined that this is not the case. It is also argued that new homeowners pay more than their fair share of community infrastructure costs, i.e., double taxation. Traditional financing of new infrastructure has come from local property taxes; this method spreads the debt over time and over a growing population. It is argued that impact fees shift costs that were formerly borne by the community to new development. Under impact fees, the new homebuyer pays for a proportionate share of new infrastructure and pays for existing community infrastructure through his property taxes.
An exception to the double taxation idea is that typically the homeowner benefits from a “lag time” of 12 to 24 months during which the home is occupied but taxes are collected at unimproved land rates. Without impact fees, lag time can be a problem for governmental entities because tax revenues are not realized at the time of impact on existing facilities.

Some points to consider:
- Impact fees are generally imposed as a condition for approval in order to proceed with development; thus, they fall within the general system of land development regulation, and not revenue-raising (taxation) programs. The objective of impact fees is not to raise money, but rather to ensure adequate capital facilities, which is critical to the entire system of land use regulation (building codes, subdivision regulations, etc.) and protecting the public health, safety and welfare. Protecting the public from harm is an exercise of local government’s police powers.
- Land use regulation has changed since the first zoning enabling legislation of the 1920s: from no regulation at all, to zoning regulations, to subdivision controls requiring internal infrastructure to be provided by developers, to infrastructure external to developments being required of developers. Land use regulation has evolved, and it continues to do so.
- Impact fees cannot legally be used for anything but capital facilities. The far more burdensome costs of operation, maintenance, and staffing of public facilities are covered through general taxation.
- The structuring of an impact fee formula can build in credits for future revenues from property taxes for new homeowners in order to make impact fees programs more fair.
- Every dollar a developer does not pay for the impact of new development on schools, parks, etc. is paid by the existing resident/taxpayer.

B. IMPACT FEES INCREASE THE COST OF HOUSING

Who bears the cost of impact fees: original landowner/farmer, developer, or homebuyer? While impact fees are actually paid as part of the development process, usually at the time of building permit, it is generally agreed that the cost is shifted forward to the homebuyer in the form of a higher-priced housing unit. It is also possible that the cost of impact fees is passed backwards to the original landowner in the form of a lower price for undeveloped land.

In desirable and high-growth housing markets and especially in high-priced housing markets, any fee charged by the community including impact fees could easily be added to home prices; people would simply consider it a cost of living there. This is especially true in a large region where impact fees are similar from community to community, and there would be little likelihood of finding housing elsewhere at significantly lower cost. In a poor market or an area that is not desirable, it is more likely that some of the impact fee cost would be borne by the landowner or even partially absorbed by the developer.

Considerations:
- People look at several factors when deciding to buy a new home, including how high the taxes are. The taxes on a new house in a municipality without impact fees might be higher -- because of the need for more referenda, bonds, and existing indebtedness -- than
in a municipality with impact fees. The taxation burden issue could outweigh the drawback of the impact fee.

- Impact fees tend to increase the cost of existing housing, a benefit to existing homeowners, or a disadvantage because reassessed values might mean higher taxes.

C. IMPACT FEES AFFECT THE TYPE AND RATE OF NEW CONSTRUCTION.

The Heartland Institute’s 1999 study in the Chicago suburban region concluded that impact fees increase the price of new and existing homes; new home prices are raised by 70 to 120 percent of the cost of the impact fees. Existing homes that sold for prices greater than or equal to the price of new homes had price increases similar in size to those for new homes. The study also stated that fees may encourage developers to produce more expensive homes, thus pricing lower-income buyers out of the market, and they may place a disproportionate burden on poor and middle-income homebuyers since fees represent a higher percentage of the sale cost of a lower-priced home than a higher-priced home.

Imposition of fees may also affect the type and quality of new construction. In order to realize profit, developers may (1) produce fewer units of moderately-priced housing; (2) maintain the price of new construction but downgrade quality, lot size, floor space, or amenities; or (3) choose to build in other communities with no impact fees.

A University of Illinois Institute of Government and Public Affairs 1996 report by Brueckner additionally shows that when impact fees are adopted by a community that has already experienced substantial growth, (1) growth can stop and later resume more slowly, (2) house values rise throughout the community, and (3) social welfare increases because development, which is paying the full proportionate share of impact on infrastructure, occurs in more rational and “optimal” patterns as defined by the community.

D. IMPACT FEES MAY CAUSE LEAPFROG DEVELOPMENT OR COMPETITION AMONG VILLAGES.

There is concern development might “leapfrog” over communities with impact fees, with developers preferring to locate projects in areas without impact fees. This might occur in areas where communities have very similar zoning, development patterns and housing types, and where there is no great benefit or disadvantage to the developer to building in one town or another – with the exception of the cost of impact fees. There is also concern that not being able to negotiate the impact fees (they are *pre-determined, scheduled* costs) might put a municipality at a disadvantage against another municipality, when both seek control over a particular development.

Some counties have low impact fees, some have none, and overall this may be a factor in development and annexation of unincorporated land. An unincorporated property in a county with no or low impact fees may choose not to annex to a municipality with fees. This might result in slowed growth within the municipality but would also result in the development eventually being controlled by the county.
Some points to consider:

- Within and outside the BACOG area, each municipality has its own community character. For example, Barrington Hills offers 5-acre development, a particular niche, and South Barrington offers access to the expressway, part of its marketability. These factors play heavily in a developer’s decision to locate in one municipality or another.

- The BACOG communities are very high-end markets in terms of housing development. An impact fee would not add much, i.e., a “drop in the bucket”, to the cost of a home here. If a developer wants to locate in a BACOG community, and if a homebuyer wants to live in the Barrington area, the benefits of the “Barrington” name may easily outweigh the impact fee cost.

- Developers increasingly accept impact fees as “pay to play”. The League of Women Voters 1991 study (summary position on impact fees attached as APPENDIX E) documented local developers’ statements that they actually prefer pre-set impact fees to the unknown fees that result from negotiated arrangements. This point of view also has been described in journal articles and other publications. There is also less resistance when all parties are certain of the fairness of administration of fees and that fees will be used for appropriate purposes, i.e., developers know that they are paying for benefits they will receive.

- The increasing use of boundary agreements establishes authority/control between BACOG communities and other municipalities for where and what type of development may occur.

- The effect of slowing growth in a region may be a desirable end.

E. BACOG IS NOT A NOT HIGH-GROWTH AREA – IMPACT FEES ARE NOT JUSTIFIED.

It is true that certain types of impact fees may not be justified in an area of moderate or low growth such as BACOG. This point would apply to road impact fees, for example, where the addition of a few houses a year which are spread throughout a community, would not significantly impact any existing road, even over time. Adoption of a road impact fee program in the BACOG villages would be risky.

It is also true that the effects of new development on service districts such as school and library are cumulative, and only population -- not geographic location -- plays a role in establishing impact and need for new facilities. Although the geographic location of a road improved by impact fees is critical to the defensibility of the fee, children generated by new development cause the need for new classrooms, whenever they come and whatever geographic part of the community they come from. New facilities can be added incrementally in this situation, i.e., a school can receive an addition. The cumulative effect of slow population growth over time also helps to justify impact fees for schools, parks and libraries, as noted in the previous section on “Development Still To Occur Within the BACOG Area”. 
F. IMPACT FEES ARE A “BAND-AID” APPROACH TO THE LOCAL NEED FOR SCHOOL REVENUES.

The issue has been raised that residents have not been supporting school referenda. Other referenda take money away from schools because taxpayers selectively vote for some -- not all -- referenda on their ballots, and there have been numerous referenda questions from many districts (forest preserve, library, etc.) in the past few years. Impact fees would also unnecessarily target people who may not cause an impact because of not having children in school. Impact fees do not generate enough money to overcome these more basic underlying problems.

This last point is certainly true: impact fees will not replace tax revenues. Impact fees are intended only to supplement other resources and to help cover the shortfall in financing new facilities required to accommodate growth. The bulk of financing will continue to come from taxation at the local, state and federal levels.

Regarding impact fees targeting people who do not cause an impact, the Kasarda (School District 220’s demographer/consultant) report says that migration is occurring within the BACOG villages (i.e., people relocating within the BACOG communities, e.g., “buying up”) and that new families entering the Barrington area are younger, implying that more children will be in the schools for longer periods of time. Both of these trends may generate more children overall in the community and may place more demand on public facilities.

G. HIGH-COST HOUSES GENERATE MORE IN TAXES THAN THEIR IMPACT.

This is a fundamental argument against impact fees for high value areas such as BACOG, and it is the reason for some villages not to have impact fee programs or the reason calculation formula include credits for future taxes. The argument gets to the issues of fairness, taxation, legality of impact fees and local opinion.

It has been pointed out that most of the houses built in the BACOG area are of such high cost that they generate very high taxes. Most of the taxes go to the school district primarily to pay for (1) operating costs, and (2) payments on bonds issued to finance land acquisition and building of new school facilities. Some of the taxes residents of new development will pay once they occupy their home will go towards those bonds for land and buildings. Not only is this double taxation, according to the argument, but if the residents pay their portion -- or more -- of the impact through high taxes, there is no impact and should be no impact fee.

For example, assume the new homeowner’s home value to be $900,000 with EAV of $300,000, and total taxes of $18,000. About $12,000 goes to the school district, and about 15% currently, or $1,800, is for bond indebtedness. The ISCS table shows 1.6 school-aged children are generated from a four-bedroom home; with the cost per pupil for District 220 at about $9,300 per year (including indebtedness), the 1.6 children would generate an impact of $14,900, of which 15%, or $2,330, is for land and facilities indebtedness. With tax revenues in the first year of $1,800 for bond indebtedness, the $2,230 “impact” is nearly covered. As the cost of the home and therefore taxes goes up, the impact would approach $0 for any given year.
If the impact were figured from the calculations on page 14 (using building costs, etc.), the fee would start at $23,000 (about $2,500 for school land and $20,500 for facilities). Then a credit is applied based on $1,800 tax revenue/year for 20 years of the bond period, or $36,000, resulting in no school impact fee. In some areas of BACOG, the home values and therefore future taxes are in the range of this example, and impact fees would not result.

This reasoning is why some impact fee calculations include a credit: to offset the future taxes paid toward bond indebtedness for land and facilities construction. In addition to striving for fairness, a credit is given to attain the “specifically and uniquely attributable” Illinois test for legality. In other words, if the impact fee cannot be shown to specifically pay for the impact the new development creates, if the impact fee is higher than it should be based on the calculation for a very high cost home, for example, then the fee would be considered excess revenue and would not meet the legal standard.

There are several responses to this view. First, the impact is defined by the ISCS table standard of 1.6 students; if local demographics demonstrated higher numbers of school children, taxes might not cover impacts. Also, the proportion of the local tax bill that goes for capital costs could be substantially higher or lower than estimated, which would affect the equation and thus whether there is an impact. The break point -- where the value of the home and taxes generated by it (including differences among the counties tax policies) match the impact of the new development -- is not known. Is the break point a $800,000 house or a $1,500,000 house? Local studies would be needed to investigate these questions. Also, the district’s total bond indebtedness fluctuates every year, and the rate that is used in the credit calculation could be much higher or lower than that used in the example; this issue requires further analysis.

As importantly, whether to utilize impact fees is a matter of local opinion, attitude and discretion. The most conservative approach forces absolute proof of “specifically and uniquely attributable”, without exploring the unknowns in current taxation and district indebtedness scenarios, home valuation, and other general assumptions. A more liberal approach considers that Illinois is the most restrictive state in the US for using the “specifically” standard; that some perceive the courts as moving towards a more liberal interpretation of state laws on impact fees, i.e., part of an evolution in impact fee thinking; that with tax caps and a compromised ability to raise needed revenues, governmental districts must use other means like impact fees to finance public facilities; that the public and many governments do see impact fees as fair; and that the risk of lawsuits from typical, standard impact fee programs is not very high.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

Since the emergence of impact fees as a public financing tool about twenty-five years ago, much has been written and numerous cases have been litigated. Much research has already been done on the subject of impact fees. Heightened public awareness over the last decade has resulted in studies, reports and public meetings by community groups in the BACOG area. Barrington area residents seem well versed on the subject. It has been established that there is a sound legal basis for impact fees, and it appears there is substantial public support for impact fees in the BACOG area.
Impact fees are not a panacea for local governments to resolve fiscal stress – they only alleviate some of the capital costs of needed expansion of facilities and do not, and may not, address other “everyday” costs such as staffing, operations and maintenance. Impact fees may be used, however, as part of the total revenue and funding package developed locally and may help to relieve some of the tax pressure on existing residents.

This report on impact fees in the BACOG area brings not only general information but also a regional view to the subject. Needs and projections for the area and implications for a regional approach supplement the legal bases and philosophies. The many BACOG-area governmental entities and districts that stand to benefit from impact fees are described, a survey of other communities in the metropolitan area lends perspective to the study, and model documents and guidelines are included for review. It is concluded that the community at large would benefit from a regional uniform impact fee program. The benefits and risks of implementing impact fees must now be weighed by the BACOG villages, and a political determination made whether to proceed with a regional program.

Below are conclusions drawn from this BACOG research and report; they form the basis for the recommendations to the BACOG Board contained in the following section.

**Benefit and Justification**

- Over the past half century, there has been an evolution in public finance policy to include new finance tools such as development impact fees. Impact fee programs supplement traditional public revenue sources and help to cover the shortfalls caused by tax caps and other public finance restrictions.
- The effects of new development are cumulative, across the region and over time, and impacts from a growing population from new development are experienced by governmental districts that are responsible to provide service to all residents.
- While BACOG is a relatively built region, the potential development of remaining land and the resulting homes and population generated by those homes could substantially impact the ability of public service providers to maintain minimum levels of service acceptable to the residents of BACOG.
- There is still enough unbuilt property in the area to produce significant revenues and therefore justify the imposition and re-calculation of impact fees through a regional program.
- The benefit of impact fee programs in largely built up communities, such as the BACOG villages, falls mainly to existing residents.

**Legal**

- Illinois courts have established that municipalities, both home rule and non-home rule, have the legal authority to impose impact fees; home rule villages have a stronger position and more latitude in structuring their impact fee programs.
- The use of annexation agreements and other administrative tools (waivers) can make the municipality’s legal position stronger, especially for non-home rule municipalities, but they are not required.
• Legal issues still to be decided concern how impact fees are calculated and the use of credits, if fees can be charged for facilities (in addition to land), and if the test of “specifically and uniquely attributable” can be met.
• Because of untested (by courts) issues, impact fees for categories other than park and school lands must be kept very low. School and park impact fees probably could be increased substantially.
• The burden of proof for road impact fees is higher than can be achieved in most municipalities, and this category of fees is not feasible in the BACOG area.
• The comprehensive plans of the villages and the capital improvements plans of the villages and the other governmental districts are in place and provide the basis, with regular updating, for demonstrating the connection between public needs and impact fees.

Administrative
• Administration of impact fee programs is considered by all municipalities contacted to be a manageable task that is not very time-consuming.
• The level of accountability required by municipalities from benefiting districts differs, with each village setting its own standards. Reports are typically annual, but BACOG could establish a more frequent reporting timetable and/or higher standards based on local expectations for accountability.
• Many villages use provisions to transfer liability to the benefiting district; this is customary and may be employed by the BACOG villages.

Context and Regional Perspective
• The survey work done by BACOG and other municipalities and organizations demonstrates that impact fee programs have been adopted by numerous municipalities in the metropolitan area, and the same or similar calculation methods and variables are used by most.
• Impact fees can have sociological effects, including slowing growth and increasing the cost of housing, for both existing and new units; these effects probably would not be significant within BACOG because of the high-end market here.
• The districts contained within BACOG municipalities (school, park, library, etc.) will need to be involved with the municipalities for planning and intergovernmental agreements and for developing cost and other information for calculation variables.
• A regional approach within BACOG, i.e., developing municipal impact fee programs that are uniform, is possible and there is support from the municipalities to evaluate this concept.

B. RECOMMENDATIONS

Overall, the following are goals for a regional impact fee program for the BACOG area:
1. Comprehensiveness – evaluate all categories of fees and all governmental districts that could benefit from impact fees.
2. Regional Approach – achieve uniformity, or at least consistency, in impact fee categories, amounts and procedures across BACOG.
3. Higher Revenues – generate more funds from new development for the benefit of the entire BACOG area.
4. Defensibility – design a program that is legal, appropriate and can stand up to legal challenges.

Following are recommendations for the BACOG Board’s consideration of a regional impact fee program.

- Hire a legal professional to plan and design an impact fee program, to work with villages individually as needed, and to prepare all required ordinances and other legal documentation. Investigate the possibility of contributions toward this cost from benefiting districts (schools, parks, libraries, etc.).
- Evaluate all categories of impact fees for appropriateness and legality for adoption in all BACOG villages: school land, school facilities, park land, park facilities, library improvements, fire/emergency medical, conservation districts, storm water management district, etc.
- Investigate possibilities for fee programs to be adopted for all new development, not just development that occurs under annexation agreements.
- Incorporate additional protections for home rule BACOG municipalities into legal documents.
- All municipalities to review and update comprehensive plans and capital improvements programs to meet the standards required; BACOG to update comprehensive plan to include more detail on utilization of impact fees.
- Conduct a study of basic impact fee structures to include analysis of local property taxes, lag time in tax assessment and collections, home values, school district costs, other district costs, revenue stream generated by future taxation, costs to taxpayers of district bond repayment, etc. Evaluate the need for credits in the impact fee calculation.
- With municipalities working together, design impact fee calculation methodology, fee amounts, and administrative and other procedures to be used by all BACOG villages.
- Employ calculations described in this report, modified as needed, for each BACOG municipality, using ISCS ultimate population chart, National Parks and Recreation standards, local building costs, land value per acre per municipality, etc.
- Refine value per acre of land within each BACOG municipality.
- Structure impact fee calculations, using only accurate and reliable data, to generate higher fees than currently exist, if possible. Generating significantly higher revenues will mean imposing fees for school and park facilities; though inherently possessing more risk, this option should be fully considered.
- Include benefiting districts in planning and design of impact fee programs by municipalities and BACOG.
- Benefiting districts (schools, parks, fire, etc.) to fund studies to develop and provide data needed for variables for impact fee calculations, including minimum site acreage and facility square footage requirements and capital facility/equipment needs. Municipalities should not fund studies where primary benefit is to another district. Data for variables should be updated regularly, at least once per year.
• Incorporate transfer of liability provisions in legal documents so that benefiting districts will pay to defend in litigation against villages.
• Give special attention to accountability standards and reports required of benefiting districts.
• Seek input and comments from residents and perhaps the development community before official enactment of a regional impact fee program.

VIII. PROCEDURES TO ADOPT AN IMPACT FEE PROGRAM

One of the conclusions of the legal research for this report was that it is imperative that a professional/attorney with substantial experience in municipal and impact fee work be retained to make final recommendations and to prepare the documents for an impact fee program. This professional legal review and preparation is critical to defending a possible legal challenge from developers. This BACOG report can become the basis for structuring a program, but it is not a legal opinion and there is still much legal work to be done in developing the documents and data.

Action. Following a full presentation of this report to the BACOG Board along with commentary from legal experts and other professionals, the BACOG Board will decide whether and how to proceed with further consideration of a regional impact fee program. BACOG may: (1) hire a legal professional to immediately research the BACOG environment and make recommendations; (2) establish a BACOG Impact Fee Committee; (3) develop new working groups of the home rule municipalities and the non-home rule municipalities; (4) recruit other governmental districts to investigate their interest and ability to help develop data and pay for legal services; (5) take other action.

If there is interest in a regional program, it will be essential, as stated above, at some point to hire a municipal impact fee attorney; the cost of service to provide the legal documents and direction for the seven BACOG villages is estimated at $5-10,000, depending on the need for individual meetings with each of the villages, with costs increasing with additional meetings required. The benefiting districts such as school, park, library, fire, etc. districts may be willing to finance some or all of this cost.

Referrals for Legal Assistance. Several attorneys and planning firms have been recommended to BACOG staff by other municipalities, in the course of research on impact fees. They are:

Richard G. Flood
Zukowski, Rogers, Flood & McArdle
50 Virginia Street
Crystal Lake, IL  60014
815-459-2050
(recommended by numerous municipalities; donated time to BACOG research efforts; designs impact fee programs; defends municipalities in litigation; mentioned by numerous municipalities)
Mr. Mike Coppedge & John Cowlin  
Cowlin, Naughton, Curran & Coppedge  
20 Grant Street  
Crystal Lake, IL 60014  
847-459-5300  
(developed Crystal Lake’s program and handled their litigation; recommended by Crystal Lake)

Marvin Glink  
Ancel, Glink & Diamond  
140 South Dearborn, #600  
Chicago, IL 60603  
312-782-7606  
(represented Naperville in litigation; member of Illinois Municipal League Impact Fee Committee; recommended by Crystal Lake)

Tom Bayer and Patrick A. Lucansky  
Klein, Thorpe & Jenkins, Ltd.  
20 N. Wacker Drive  
Suite 1660  
Chicago, IL 60606  
312-984-6440  
(designs impact fee programs; defends municipalities in litigation; mentioned in reports, recommended by City of Naperville village attorney)

Mike Roth  
Wildman, Harold, Allan & Dixon  
2300 Cabot  
Suite 455  
Lisle, IL 60532  
630-955-6594  
(redeveloped Naperville’s program; defended Naperville on road fees; recommended by City of Naperville village attorney)

Tischler & Associates  
4701 Sangamore Road  
Suite N210  
Bethesda, MD 20816  
888-424-4318  
(referred by Naperville and Crystal Lake; not a legal firm)

Roger K. Dahlstrom  
Northern Illinois University  
Center for Governmental Studies  
Dekalb, IL 60115-2854  
(815) 753-1907  
(not a legal firm)
Sample Documents for Impact Fee Programs. The BACOG survey of other communities with impact fee programs included collecting numerous resolutions, ordinances and other documentation. Sample documents, included as APPENDIX C, are provided to give a sense of what is entailed in adoption of an impact fee program and the type of commitments and actions required.

IX. FUTURE CONSIDERATIONS

The BACOG group that worked on researching impact fees recommends the following topics for further study and consideration by BACOG village at a future time.

A. NEED FOR STATE ENABLING LEGISLATION

There is consensus among municipalities and the development community that current state statutes do not adequately address impact fees and must be amended to remove as many doubts as possible with respect to those fees. In the absence of state enabling legislation or constitutional authority, the legality of impact fees will be set by the courts and will certainly result in use of significant public funds in litigation.

Municipalities would be better protected when implementing impact fee programs if the State of Illinois would pass enabling legislation regarding all categories of impact fees. Legislation would provide standards for program design that would help with the defensibility of impact fee programs. Legislation would also clarify when and how impact fees may be used for capital facilities for parks and schools. BACOG villages would be well served to promote and support new legislation with local legislators.

B. INTERGOVERNMENTAL AGREEMENTS WITH ADJACENT COMMUNITIES

Some communities with impact fee programs have intergovernmental agreements with adjacent villages without impact fee programs; these agreements work to benefit park, school and other districts that cover both municipal areas. For example, Crystal Lake has an intergovernmental agreement with Prairie Grove whereby that municipality agrees to apply Crystal Lake impact fees to any new development within their mutual school district. Since Prairie Grove does not have an impact fee program, new development would pay no impact fees to the school district, except for the intergovernmental agreement.

In the BACOG region, intergovernmental agreements could be used to collect impact fees for school district 95, Ela Township Library District and other entities. The intergovernmental agreements would be executed by a BACOG municipality with another town, or possibly by a BACOG village with the township or county regarding unincorporated land.
C. CONSIDERATION OF CONSERVATION DISTRICTS

The county conservation/forest preserve districts stand to benefit from impact fees, if such a category of fees could be enacted locally. If it could be shown that new residents have need for regional passive-use open space (forest preserves) in addition to active-use recreational park space, it might be possible to design a fee for this purpose. The public has indicated its support for acquisition of open space by passing referenda in several counties in the last year.

D. CONSIDERATION OF COMMERCIAL/INDUSTRIAL/OTHER DEVELOPMENT

This report limits consideration of impact fees to residential development in the BACOG area although it is known that some municipalities, including two BACOG municipalities, do assess impact fees for limited purposes on new commercial and industrial development. Although substantial commercial and industrial development is not anticipated to occur here, opportunities for such development should be evaluated. If opportunities are identified, an impact fee component could be designed for those uses.

X. ACKNOWLEDGMENTS

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Edith Auchter                   League of Women Voters of the Barrington Area
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Barbara Benson                  Greater North Barrington Area Association
Marion Hubbard                  League of Women Voters of the Barrington Area
Sue Padula                      Barrington Area Development Council
Jim Peterson                    Barrington Area Development Council
Martha Rush                     League of Women Voters of the Barrington Area
Ruth Alderman Schlossberg       Resident
Linda Starkey                   President, Village of North Barrington

Special recognition is given to Loretta Peterson, BACOG Administrative Assistant, who researched and compiled the extensive community survey information for this report. Also recognized is local attorney Ruth Alderman Schlossberg who researched and wrote the legal brief on Illinois impact fee case law for BACOG.
XI. BIBLIOGRAPHY


Report respectfully submitted:

Janet L. Agnoletti, Executive Director
Barrington Area Council of Governments (BACOG)
10/23/01
EXHIBITS

Exhibit 1: Districts Contained Within Each BACOG Municipality
Exhibit 2: Estimated Number of Unbuilt Residential Properties in BACOG
Exhibit 3: BACOG Area Impact Fees
Exhibit 4: Surveyed Communities: Impact Fee Comparison
Exhibit 5: Surveyed Communities: Impact Fees Calculation Variables
Exhibit 6: Surveyed Communities: Home Rule Status and Annexation Notes
Exhibit 7: Illinois School Consulting Service 1996 Table of Estimated Ultimate Population Per Dwelling Unit, Children Per Unit
Exhibit 8: Illinois State Board of Education: Recommendations for Elementary and High School Spaces

APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C
Sample Municipal Resolution, Ordinances and Administrative Guidelines.

APPENDIX D
BACOG Roundtable Discussion October 19, 2001 and Attendance.

APPENDIX E

APPENDIX F
Research Information on Impact Fees:
- BACOG Preliminary Reports: (1) Survey of Impact Fee Programs in the Region and Calculation Methods, July 17, 2001; and (2) Supplement to Preliminary Report, June 7, 2001;
- Northwest Municipal Conference Survey (portion on impact fees only);
- Highland Park Impact Fee Survey.

APPENDIX G
Miscellaneous Journal and Newspaper Articles.