

June 27, 2008

Croton Watershed Town and Planning Board Members, Planners
Bedford, Carmel, Cortlandt, Kent, Lewisboro, Mt. Kisco, New Castle, North Castle, North Salem,
Patterson, Pound Ridge, Somers, Southeast, Yorktown, New York

Dear Supervisor ...

Statements have been made by town planners at recent Putnam County public meetings that **impact fees** on new development, outside of recreational fees, are illegal in New York State. We wish to offer some information from a different perspective.

With impact fees being used in over half the states in the country, it is time for our state with among the highest taxes in the nation to also use them. Studies locally and nationally show that development projects demand more in services than they pay in taxes. Impact fees provide one way to help ensure that existing residents will not bear the cost of new facilities necessitated by the new development.

Although NYS does not have enabling legislation, some NYS lawyers have stated that municipalities have the legal right to impose impact fees as part of the SEQR process, particularly in view of NYS being a strong proponent of Home Rule. NYS legislature has never said impact fees are illegal. They merely haven't yet been implemented in NYS and the question has not been litigated. Under SEQRA, lead agencies may impose conditions on specific developments in order to mitigate their provable adverse impacts on the environment. A lead agency can require a developer to pay money to cover that developer's share of mitigation measures that are to be paid for by the town, but those fees must be in approximate proportion to the impact of the particular development.

The "Guilderland" case

http://www.impactfees.com/caselaw_pdf/Cas%20Law%20Builders%20v%20Guilderland.pdf

that planners mistakenly cite as proof that impact fees are illegal in NYS was actually quite narrow and determined only that traffic impact fees may not be imposed by local governments because the court found that financing of transportation facilities is preempted by state law. In the attached publication from March 24, 1999 New York Law Journal Local Impact Fees – Home Rule Powers Should Permit Municipalities To Act, it says "...the Court in Albany Area Builders Ass'n v. Town of Guilderland did not rule that local governments are forbidde from imposing all types of impact fees -- indeed, the Court emphasized that it specifically was not deciding 'the controversial question . . . whether local 'impact fees' are permitted.'"

Most suitable land is already built out so that new development is unfortunately being allowed on steep slopes, thick forests, and in wetlands and their buffers, none of which should be allowed if we are to protect our water quality. However, if towns are continuing to grant permits for such development, the impacts must be mitigated with increasingly expensive infrastructure and maintenance. The least that can be done for allowing this unsuitable development is to charge impact fees for the high price of infrastructure and its maintenance, the additional services to support such development and to acquire open space.

School impact fees should be imposed when subdivisions of single-family homes or condominium units are built that will bring children into school systems. For more information on impact fees, their uses and implementation, please see attached "Making An Impact" and my articles at: http://www.newyorkwater.org/content/newsletters/07_Sep_Oct.pdf and http://www.newyorkwater.org/content/newsletters/08_March_April.pdf .

As global warming intensifies storm events and flooding, placing stormwater devices in wetland buffers or invading our precious remaining wetlands for any reason should no longer be allowed. Trees have an enormously high value on cleaning the air, cooling temperatures, holding soil in place and cleaning the water by its roots absorbing pollutants. Each and every tree should be carefully evaluated before felled. Forests need to be preserved to maintain good water quality in our wells, ground water storage and recharge, climate moderation, flood control, storm damage prevention, wildlife habitat, species preservation, recreation and aesthetic qualities. We applaud asking developers of large developments to donate part of their property for park land to preserve as open space but an impact fees assessment to acquire open space should also be implemented.

Over the last several years, fiscal responsibility has been shifted from federal and state governments to local units. For example, municipalities are now required to share more of the burden for transportation costs than in the past. Merely charging recreational fees for more playing fields leaves out of the equation the impact fee funding tool that could be imposed to ease the increasing financial burden to taxpayers for the high cost of development's consequential infrastructure and its maintenance especially with current inflation and skyrocketing school and property taxes. **Residents should not be burdened with extra costs due to unsuitable development. The developer must pay his fair share.**

The view that it is illegal to impose impact fees is erroneous and all the more unfortunate since it appears to be widespread among town planners. We would appreciate your weighing in on this important subject with your opinion and look forward to your response.

Sincerely,

Fay C. Muir, President

Please visit www.newyorkwater.org