

- I. Development standards for Open Space, Green Space, Set-backs & Parks & Recreation
- II. Legal precedent for enabling local jurisdictions to have “growth pay its way”- Impact Fee’s & Exactions to help meet city goals for “Public Health, Safety and Welfare”
- III. Current Auburn City Code & examples

INFORMATIONAL OVERVIEW & DISCUSSION

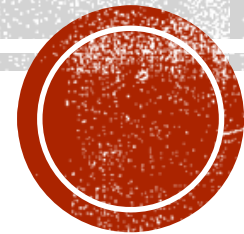
Auburn Planning Board
11.13.18



SUBDIVISION & DEVELOPMENT STANDARDS

& the allocation of the municipal costs of growth in the provision of services, roads, sidewalks, traffic mitigation, schools, and parks & recreation facilities =

the quality of the city and the long term lasting value of the development



OPEN SPACE (GREEN SPACE)

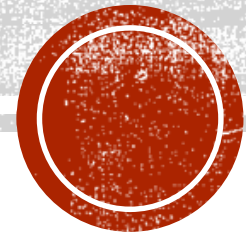
VS

**USABLE OPEN
SPACE OR PARKS**

Natural features, wetlands, woodlands, bare ground, stormwater, set-backs, yard requirements or lot coverage

versus

Developable or usable open space – which can be easily engaged for recreational purposes (either passive or active).



THE PURPOSE OF LOT COVERAGE, YARD REQUIREMENTS (SET-BACKS) & GREEN / OPEN SPACE

Green Space percentages are specified for drainage, aesthetic or softening buffers, protecting natural site features, and creating a more balanced or consistent character within a zone.

Often used interchangeably to meet the same goals.

Lot Coverage & building set-backs or yard requirements are specified to address urban pattern, percentage of impervious surface, and the separation or distance between buildings and uses for health and safety (light, air, noise, circulation & access)



II. FEDERAL AND STATE STATUTES

Maine 4354 - A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement. [1991, c. 722, §11 (AFF); 1991, c. 722, §8 (RPR).]

(3442 – sewer district assessments)



**THE FEE MUST BE
REASONABLY RELATED TO THE
PORTION OR PERCENTAGE OF
THE INFRASTRUCTURE USED
BY THE DEVELOPMENT. [1991, C.
18,§3 (AMD).]**



CONSTRUCTION OF OR FEES MAY BE REQUIRED FOR:

(1) Waste water collection and treatment facilities;

(2) Municipal water facilities;

(3) Solid waste facilities;

(4) Public safety equipment and facilities;

(5) Roads and traffic control devices;

(6) Parks and other open space or recreational areas; and

(7) School facilities. [1999, c. 776, §11 (AMD).]

[1999, c. 776, §11 (AMD) .]



IMPACT FEES

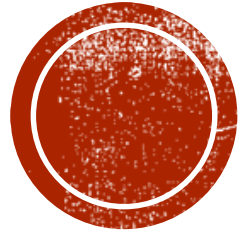
- A fee must be rationally linked (the "rational nexus") to an impact created by the development and the demonstrated need for related capital improvements **pursuant to a capital improvement plan and program.**
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a **proportionate fair share** of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.
- A fee cannot be imposed to address existing deficiencies **except where they are exacerbated** by new development.
- Funds received must be segregated from the general fund and **used solely for the purposes** for which the fee is established.



IMPACT FEES (CONTINUED)

- Fees collected must be encumbered or **expended within a reasonable timeframe** to ensure that needed improvements are implemented.
- Fees cannot be used to cover normal operation and maintenance or personnel costs, but **must be used for capital improvements**, or under some linkage programs, affordable housing, job training, child care, trails, etc.
- The fee established for specific capital improvements should be **reviewed at least every two years** to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.
- Impact fee payments are typically required to be made **as a condition of approval of the development**, either at the time the building or occupancy permit is issued.





**PROVIDE ON-SITE OR PAY
A FEE IN-LIEU-OF
(OR IMPACT FEE)**

Dedication of land (for parks, sidewalks, trails, transit stop) and/or contribute money toward the provision of the capital good that will benefit the development.

WAYS OF ESTABLISHING NEXUS

1. Calculating Fee : ..”the fee must be reasonably related to the portion or percentage of the infrastructure used by the development” (Portland example)
2. Fee based on % of total cost of specific infrastructure based on contributed impact (site and project examples)
3. Fee based on “fair market value of land or good otherwise provided” (current code)
4. Fee based on adopted flat fee’s or rates established every two years based on CIP, population & rate of growth.



EXAMPLES

30,000 sq.ft St.Mary's Medical Office building estimate of 99 AM and 123 PM peak hour trips, pays an off-site mitigation fee of \$21,078 towards a defined intersection improvement.

St.Dom's traffic study concludes that turn movements at the intersection of Turner & Gracelawn would exceed it's capacity. They are required to contribute to a redesigned intersection with turn lanes added.



III. ADOPTED SUBDIVISION CODE SEC.60-1367

- 1 contiguous acre per 1st 10 homes
- 5,000 sq.ft. per unit thereafter
- To be provided on-site or a fee equivalent in value paid to city or HOA for the rec & open space component not met.
- Parks & Rec Advisory Board contributes to determinations of fee use & new resident “needs”
- Does not address individual homes, or methodology below 10 units
- Requires a P& R District Map & CIP link to facility needs
- Requires individually calculated fee based on zoning & location – therefore subject to challenge & interpretation



BENEFITS TO REQUIREMENTS

- Parks & Recreation are the first to lose funding in a budget crunch – deemed "non-essential"
- P&R are most needed for multi-family developments where yards are not provided
- The distribution of parks & facilities is not equally distant nor do they provide the same equipment, active fields or park gathering spaces
- The city currently has more than 48 million in bonded debt, with 5-8 more bonded each year for capital improvements
- Each Ward or District has many distinct needs that are not included in dept. CIP budget requests due to larger dept. budget issues (i.e. \$300k debt for arena)
- School and Rec facilities are intertwined
- Even one fee would make a large impact on facilities



CURRENT EXAMPLE USING EXISTING CODE: 48 UNITS ON 2.9 ACRES

If it can not be
provided on site at this
density, Fee examples:



10 units(43,560 sq.ft.) +
38 units X 5,000 = 233,560 sqft
Or 5.36 acres



At \$2000 an acre X 5.36 =
\$10,720

At \$10,000 an acre = \$53,600

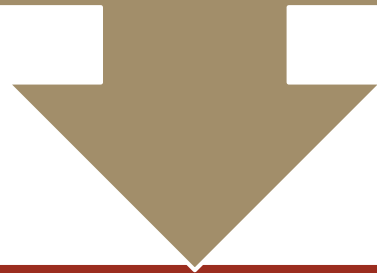
At \$43,000 an acre = \$230,480



**Either a reduction
in units is needed
or an in-lieu fee
would be paid,**



In order to meet requirements on-site:



15 units = 43,560 + 25,000 square feet =

68,560sqft.
Or 1.5 acres
of land

Could be
provided on-
site with 15
units

No Fee
required.

**FEE'S OR A
REDUCED
PROJECT
EXAMPLE**



AUBURN CURRENT LAND VALUES BY ZONING & TAX DISTRICTS GENERALLY

- **Residentially zoned districts**
 - \$ 27,000 – \$70,000 an acre = **\$43,125**
per acre on average
- **Commercially zoned districts**
(regardless of use, i.e...residential PUD
in a GB Zone)
 - \$45,000 - \$557,500 an acre = **\$195,286**
average per acre
(14 value classifications) in example
48 unit complex could owe 1 million \$!





Assumes lengthy review and processing by the Parks and Recreation and Planning Board (c, d, e, h & j) and possible redesign and evaluation by developer



Requires current *average market value of similarly zoned land in the immediate area* (b)



Fees could vary wildly and be counter productive I.E. GB developed as housing will pay substantially higher fees than suburban or Rural Residential.

A FEW CURRENT CHALLENGES



OTHER CHALLENGES WITH CODE

- Waivers in Sec.60-1366 (c) & (d) – definition and interpretation of “extraordinary hardship” , “subverting the intent of the ordinance”, negatively impacting “public health, safety and welfare”, or *not needed*.
- Developers will always request a waiver as it impacts their profits & Pro Forma
- A “standard” has not been established in 60-1365 as referenced in (a)
- A “*recreation/open space district map, made part of the ordinance as a guide*” (g) has not yet been created or made part of the ordinance
- The role of the Parks and Recreation Advisory Board in development exactions?
- The role of the Planning Board listed in all bullets is onerous & subjective



POSSIBLE ALTERNATIVE CODE FIXES

1. Create average residential value per acre across zones
2. Establish flat fee contribution per dwelling unit, based on unit type (per examples - tied to CIP costs per household)
3. Develop Standards not yet defined, such as net usable square footage per unit per examples w/ small fee option



MOVING FORWARD

- Parks & Recreation Advisory Board to review and discuss November 14
- P&R Department is creating a map and inventory by Ward of facilities and CIP project needs
- PRAB could work with staff and the PB to create optional amendments to the current code that would make it implementable
- A Work Group of 2 PB members & 2 PRAB members could be assigned to provide optional paths to both bodies in January
- The status quo could be maintained, PB could recommend removal of Sec.60-1367, or more clearly define under what specific conditions the requirement is waived

