

## Fee for All

The end of the development boom has some municipalities reconsidering fees

By Joe Bosquin • October 21st, 2008

Like many municipalities across the country, Nassau County, Fla., has seen building permits plummet, down nearly 60 percent so far this year. That translates into a \$1.5 million hit—about half the fees it collected in all of 2007. Add in the lost development impact fees those permits would generate, and Nassau, which is squeezed between Georgia and the Atlantic Ocean in the northeast corner of the state, is looking at a nearly 5 percent haircut from its \$60 million annual budget. Make no mistake: In Nassau and other nearby jurisdictions, the fallout from the housing and development bust is very real.

“From a financial standpoint, a lot of local governments are struggling,” says Ed Sealover, Nassau’s county coordinator, who notes that Florida’s counties are particularly hard hit because the state doesn’t charge income tax, so municipalities depend largely on sales taxes, property taxes, and development fees for income. “It’s just very difficult to fund your capital needs right now,” he adds.

To fend off that spiraling trend, Nassau’s Board of County Commissioners did something nearly unthinkable in local government: It decided to charge less with the hope of gaining more. Starting July 1, the county cut its building permit fees in half for 12 months and put a moratorium on development impact fees for six months, except those levied for schools. The aim? To encourage development at a time when there is none.

“We did this because of the economy. Development and construction have died here in



Nassau County,” Sealover says. “The board took these two actions with the hope that they might spur some development to take place again.”

Given the early returns, it just might work. One local home builder reported closing on two homes the week the moratorium took effect because he cut his prices by another \$5,000, about the same amount the fee moratorium will save him per future lot going forward. “It has given our members an opportunity to offer buyers a better deal because, from a builder’s standpoint, all the money is from the same pot,” says Corey Deal, director of government affairs for the Northeast Florida Builders Association. “They’re able to work in that discount for the impact fee that they won’t have to pay later.”

### Please Don’t Go

Nassau County isn’t alone. Long reticent to revisit development fees calcified during the boom, some jurisdictions are beginning to

reconsider their pay-or-go away stances. The reasoning is simple. With developers squeezed by broken financial markets and stagnant land prices, many have decided to wait out the downturn, or even walk away from deals struck in headier times. Given that trend—and the looming possibility of collecting no fees at all—some municipalities are now willing to discuss other possibilities.

Take the city of Sacramento, Calif. Located in the center of a state notorious for its myriad fees and lengthy entitlement process, the city has taken the first step to simplify its fee structure. While the ultimate price to build in the area—which can range from \$50,000 to \$100,000 per door—won’t immediately come down, the number of fees developers have to wade through should. Fee deferments are on the table, and this fall the city is expected to take the first steps to reduce the more than 60 separate fees it now charges to just three. While no timeline is in place to implement the fee reduction, other jurisdictions in the area, such as Roseville, Calif., have already voted to defer their fees through the end of the year at least.

“We wanted to get it down to one, but three is a good place to start,” says Bill Thomas, Sacramento’s director of development services. With other municipalities charging less on a national scale, Thomas says Sacramento has had to up its offerings to keep new development coming to town. That means making it easier—if not less expensive—to do business there. “The single-family, residential-type developers are getting a lot less patient with

impact fees,” adds Thomas, who notes he’d eventually like to lower fees outright. “In a lot of places in the Midwest, they don’t have fees at all. We were motivated to simplify all these fees because it’s the right thing to do, but we were also motivated because we’re competing with places such as St. Louis where it’s a lot cheaper to build. It’s time for us to step up to the plate.”

Observers say Sacramento’s approach makes sense. “The smartest cities right now are expediting permitting so that they can extend their developer’s ROI and advance the city’s broader goals,” says Constantine A. Valhouli, principal at Bradford, Mass.-based consulting firm The Hammersmith Group. “You still have the same fees, but if it takes one month instead of six, your holding costs just went down by five months’ time. That has a direct financial impact on the developer.”

## Show Me the Money

Of course, government being what it is, not all localities are going fee-less, and developers still gripe about trends heading in the other direction. That’s particularly true in high-barrier-to-entry markets. In New York, for example, the state recently increased its development filing fees by \$10,000 to help staff the office that processes them. The result has been an increase in costs, even at a time when financing for projects is scarce.

“In New York City, our filing fees have increased exponentially,” says Luigi Rosabianca, a managing member at New York-based development law firm Rosabianca & Associates. “Is a person that’s developing a multimillion dollar project going to stop because they have to pay \$20,000 in fees versus \$10,000? No. Does it make it more onerous? Of course, it eats into the bottom line.”

Yet many municipalities can’t reduce impact fees, no matter what the economy does, according to Robert H. Freilich, a land use attorney at Los Angeles-based Miller Baroness and author of *21st Century Land Development Code* (APA Planners Press, 2008). “The question is, as development slows down, do fees go lower? The answer is generally no,” Freilich says. “In 95 percent of cases, the city does not have the ability to lower the fee amount because the fees are established through the general plan. It’s a major process that takes several years to deal with.”

In Nassau County, for instance, the fee structure wasn’t changed; it was just put temporarily on hold. But Freilich points out that “negotiated development agreements,” which can be struck outside a municipality’s fee structure, aren’t held to the same legal threshold. Using that method, a municipality can negotiate charges with a developer, and vice versa.

That’s how the process works in Arlington County, Va., where applicants automatically have the right to develop to the densities established in the zoning code. But because those “by right” densities are lower than what real-world developers need to be profitable, each project goes through a negotiated development agreement, or what amounts to an approval by special exception. The process has the advantage of taking current conditions into account.

“Because we negotiate every individual project, the agreement should be fair and reasonable at the time it is negotiated,” says Terry Holzheimer, director of economic development for the county. If conditions change, developers can file a site plan amendment, though Arlington has seen only one of those recently. “We have not seen market conditions change radically,” Holzheimer adds. “Some of our peak housing prices for condominiums have come down a bit, but only by 2 [percent] or 3 percent.”

## Let’s Make a Deal

Consider these three ways to take control of development fees.

- **Ask for a deferral.** While many municipalities can’t change their fee structures outright, they may be able to place a moratorium on them. Simplified fee structures can also save money by saving time in the application process.
- **Ask for an approved development agreement.** Arranged outside of a municipality’s formal fee structure, these agreements can be more flexible, giving both municipalities—and developers—wiggle room.
- **Threaten to walk.** If all else fails, tell your local government officials you’ll have to consider other locations. Given current conditions, many towns are competing against one another and don’t have the luxury of passing on potential property taxes.

On a national scale, however, where markets are experiencing the fallout of the downturn, municipalities who keep charging yesterday’s fees like there’s no tomorrow could soon find themselves in a pinch. “The fees are part of the problem that’s making deals not work,” says Ralph Grebow, CEO of the Florham Park, N.J.-based land banker Atlantic Cos. “It’s not just that sellers want too much for their ground, it’s that the improvement costs—which include the impact fees—are still too high.” In those areas, Grebow says, developers may have no choice but to stay out of the game or walk away entirely until things turn around.

If they do, municipalities will have no where to run in order to stay in the black.