

# Impact Taxes: The Opportunity in North Carolina

Municipalities need better ways to allocate the costs of new growth to the appropriate people. New residential construction frequently places a great demand on existing municipal services and facilities, burdening city finances when inflation and increased expectations about the quality of services have already stressed municipal resources. Capital expenses such as roads, water and sewer lines, and new buildings particularly drain existing revenue sources. So do increased expenditures for police and fire protection, recreation, schools, and library service. Cities have traditionally dealt with such demand by raising property taxes, increasing their bond indebtedness, or instituting benefits charges such as special assessments and subdivision exactions.

But increased property taxes are increasingly unpopular and in some ways unfair. To the extent that increased local costs are generated by new residents, older residents are penalized when property tax revenue is used to finance new services. Bond debts paid from general tax revenue cast a similar burden on old residents; they pay the taxes but have no need for the services occasioned by new growth. Benefits charges are attractive because they shift the burden of costs to the users and beneficiaries of the facilities and services. However, traditional benefits charges may be limited by state law to specified purposes and thus are not a totally satisfactory fiscal solution.

## Impact Taxes — Another Financing Device

Another way to distribute the costs of new growth is to establish an "impact tax." An impact tax is a fee charged to new construction to pay for its cost to the community. Impact taxes have been established in different forms in at least three states — Florida, Nevada, and California. The taxes differ among these states according to the construction activities taxed, the impacts paid for by the taxes, and the similarities of the taxes to more traditional financing devices. However, the taxes have a common purpose: to allocate more equitably the costs of new construction.

Impact taxes could be valuable in areas of North

Carolina where rapid growth is overtaking the ability of communities to establish and expand services and facilities. These areas include coastal and mountain communities experiencing recreational second home development as well as cities with rapidly expanding suburbs. This article describes the different forms of impact taxes currently used by other states and the legal issues that might arise upon their use in North Carolina. The effects of such taxes on housing, the environment, and city growth are also addressed.

## Residential Construction Tax

A tax established in Nevada illustrates one form of impact tax, the "residential construction tax." Nevada, by state statute, has established this tax on new residential subdivisions.<sup>1</sup> The statute authorizes municipalities to tax new subdivisions to raise revenue for parks, playgrounds, and recreational facilities. The statute does not limit the amount of the tax to be charged, but the tax is to be spent "insofar as it is practical and feasible to do so, for the benefit of the immediate area from which it was collected." Such a tax relieves the entire community from establishing or improving recreational facilities solely because of the needs of new residents.

Municipal administrators will recognize that this kind of impact tax is very similar to a fee-in-lieu of subdivision exactions. Municipal subdivision regulations often require that new residential subdivisions dedicate lands or improvements, such as streets or water mains, in return for permission to subdivide land. Where subdivisions are too small to contribute a significant amount of land, or where improvements are not planned for location in the immediate area, municipalities may attempt to charge a fee rather than exact the land or improvements. Fees-in-lieu, however, are not favored by state courts, particularly if the fees are not specifically

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authorized in state subdivision enabling statutes or if there is inadequate assurance that contributing subdivisions will receive some special benefit. Nevada's impact tax resolves these problems by being specifically authorized and by setting a legislative standard that subdivisions be benefitted "insofar as practical and feasible."

As one fiscal arrangement, a North Carolina city might consider the Nevada type of "residential construction tax." The Nevada type of tax would present two difficult issues in North Carolina: statutory authorization, and the standard of use to which the fees may be put. Unlike Nevada, North Carolina does not specifically authorize such a tax. Neither does the state authorize its equivalent, the fee-in-lieu. However, cities may require the dedication of land for parks in return for permission to subdivide.<sup>2</sup> Such land dedication requirements have been the basis for some state courts to allow fees-in-lieu where the fees are not specifically authorized by statute. The modern, minority view is that fees-in-lieu can be inferred from state statutes which require land dedications where fees would be used for the same purposes as the dedications. This is true in Wisconsin, where fees may be exacted to finance parks and schools "made necessary by the influx of people into [new] subdivisions."<sup>3</sup> If North Carolina were to follow the modern example, fees-in-lieu would be permitted for recreational purposes. This inference may be aided by the broad rule of construction written into the North Carolina statute regarding cities and towns:

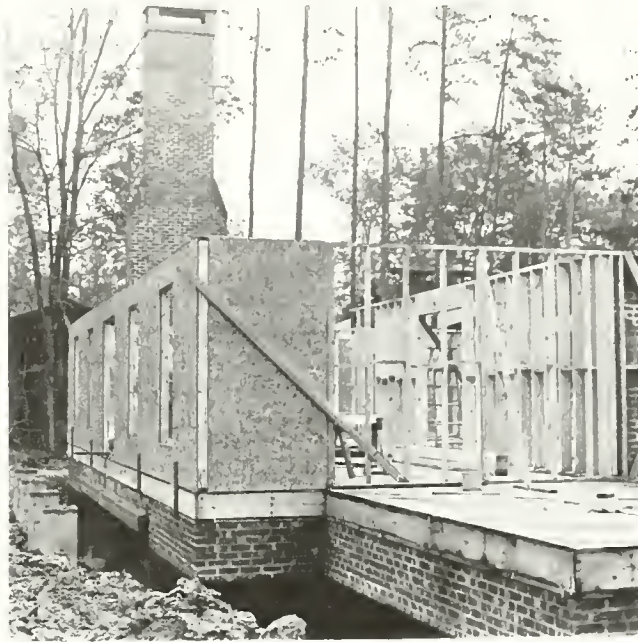
The provisions of this chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary to carry them into effect.<sup>4</sup>

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Many states also follow a liberal standard for the use of subdivision exactions and fees, requiring simply a "reasonable relation" between the use of the subdivision fees and the subdivision that was taxed.<sup>5</sup> North Carolina courts have not addressed this issue. It is possible, however, that a more strict relation will be required as in Illinois, where subdivision exactions must be to the special benefit of the subdivision.<sup>6</sup> This strict standard precludes consideration of total municipal needs and thus is limiting for impact tax purposes. This standard might, for example, require that facilities be located within the subdivision and may not provide for the extra costs of services and administration generated by such facilities which are administered centrally by the municipality.



Impact taxes help cover the costs of extending public services to new development.

Photo by Rob Nichols

There are other potential problems with an impact tax based on the fees-in-lieu concept. North Carolina courts may invalidate the tax on two additional grounds upon which similar development permission fees have been found invalid in other courts. First, an impact tax which is measured in terms of the value of the property to be developed might be characterized as a property tax. Such a tax attached to building permits in Florida has been found to be an invalid property tax.<sup>7</sup> A fee measured by the value of property does not necessarily have to be classified as a property tax; a clear basis in other legal authority, such as subdivision regulation, will help to prevent this classification. If characterized as a property tax, a North Carolina impact tax would also be invalid on constitutional grounds of uniformity<sup>8</sup> and as unauthorized by statute or special municipal election.<sup>9</sup> Second, the tax might be characterized by the court as an invalid revenue raising license fee. When a city licenses for regulatory purposes, such as when building permits are issued, license fees are permissible only to the extent that they pay for the administrative cost of the license. In many states, building permit fees used to offset the public costs of development have been determined to be invalid uses of city regulatory power to raise revenue.<sup>10</sup> Giving permission to a developer to subdivide is considered to be a part of a municipality's regulatory power, although the grant is not normally termed a "license." If the court were to equate subdivision permission with building permission, it might similarly find that regulatory power was impermissibly used for revenue. This argument has been used to oppose inference of fee-in-lieu from land dedication requirements.

## Water and Sewer Connection Tax

A second kind of impact tax has been established in Florida. The Florida Supreme Court in 1976 approved the use of a fee charged upon new water and sewer connections which would pay for system expansion made necessary by the new users. In *Contractors and Builders Association v. City of Dunedin*, the court said that "we see nothing wrong with transferring to the new user of a municipally owned water and sewer system a fair share of the costs the new use of the system involves."<sup>11</sup> In accepting the Dunedin tax, with its limited purpose, the court made clear that the allocation of costs is to be carefully calculated. Expansion is not to be financed entirely from new charges if old users will also benefit from the expansion. In this instance, old users must also contribute their share.

The Florida impact tax is similar to a "user fee," a traditional financing tool for municipally-operated facilities. In the case of water and sewer facility use, municipalities commonly charge a larger, up-front connection fee as a part of the user fee. Unlike the impact tax, however, user fees and connection fees are not generally used to cover the cost of facility expansion. Rather, municipal bonds may be issued to finance the construction, or special assessments may be made on the property owners whose property is to be benefitted. The impact tax is also different from connection charges and special assessments in the standard by which the fee is assessed. The Dunedin impact tax is based upon the resident's use of the facility. Special assessments are based upon the increase in the value of property after the improvement. Connection charges are not determined by any particular standard required by law, except that of "reasonableness."

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North Carolina cities may consider an impact tax such as that approved by the Dunedin court as another fiscal alternative. Indeed, sewer and water connection charges are used extensively in North Carolina and often substitute for special assessments in paying for water and sewer facility improvements.<sup>12</sup> Utility rates and user charges are mostly left to municipal discretion if the operation is a public enterprise. By statute, public enterprises are to be operated within "reasonable limitation," while rate schedules may vary according to "classes of service."<sup>13</sup> It is unclear if the same strict cost allocation required in the Dunedin case between new users and old users would be required of an impact tax in North Carolina. The practice in North Carolina has apparently been to use the fees liberally for

general municipal benefit. Profits of one public enterprise have in fact been used to finance other public enterprises. W. J. Wicker of the North Carolina Institute of Government attributes low property tax rates found in some medium sized North Carolina cities in the 1960s to their use of electric service fees as general revenue.<sup>14</sup> Another common financing policy is to use surplus charges on water service to finance sewerage service.

## Business Privilege License Tax

A third type of impact tax is used in California.<sup>15</sup> The tax is levied on the construction business and is typically determined according to the number of bedrooms in each new residential building. Taxes up to a maximum of \$1000 have been placed on each dwelling; this revenue is used to finance a wide range of municipal services related to the new development. The tax has also been levied on commercial and industrial construction based on square footage of the constructed building.

California's tax is recognizable as a kind of "business privilege license tax" which municipalities commonly levy on businesses for the privilege of doing business within the city's jurisdiction. In most jurisdictions, license tax revenue is treated as general revenue with no restrictions placed upon its use. In the case of the California impact taxes, the funds are usually placed in special accounts for financing activities related to the new construction. These impact taxes have a major advantage over the other impact taxes discussed. The California taxes are more flexible as they can finance a range of services and improvements. The Nevada tax finances only recreation-related improvements, while the Florida tax finances water and sewer construction. In contrast, the impact tax in the California city of Rancho Palos Verdes is generally reserved for "serious economic and environmental problems created by the occupancy and construction of [commercial, industrial and residential] facilities within the city."<sup>16</sup> The tax does not have to be spent for the direct benefit of those taxed. This flexibility allows for a more relaxed allocation of costs and benefits.

In North Carolina, an impact tax based on the California type of business privilege license fees appears to be a promising device. North Carolina cities are given broad authority to levy privilege taxes on all businesses, trades, or occupations carried on within their municipal boundaries except as limited by law.<sup>17</sup> State statutes limit privilege taxes by prohibiting municipalities from taxing certain businesses, and by limiting some taxes to certain dollar amounts. It appears that North Carolina state statutes limit privilege taxes on construction so as to preclude the California kind of construction tax. However, a similar "subdividing tax" is a possible alternative.

The state construction tax now in effect is levied by the state on contractors and construction companies, as set forth in Section 105-54 of the General



Capital expenditures to provide services to new subdivisions can burden current residents.

Photo by Rob Nichols

Statutes. Cities are limited to an annual levy of ten dollars on contractors. The state levies a two part tax. The first tax, an annual hundred dollar "contractor's bidders tax," is levied on any construction business that offers or bids to construct any improvement or structure whose cost exceeds \$10,000. The second tax is a "contractor's project tax" levied at the award of a contract and graduated according to the contract price or cost of the project. The project tax ranges from \$25.00 to \$625.00. Subcontractors are exempt while employed by a contractor who has paid the tax.

It may be argued that exempting subcontractors from state license taxes opens the door for municipal taxation of subcontractors as an alternative to taxation of general contractors. Municipalities are not specifically prohibited by statute from levying taxes on subcontractors. However, the state's subcontractor exemption is likely to be regarded as part of an integrated regulatory scheme for construction taxes, and therefore as precluding a municipal subcontractor's tax. A separate ground for challenging a subcontractors' tax would be that classification between subcontractors and other construction companies is not a reasonable classification for purposes of an impact tax and violates equal protection guarantees. In fact, contractors could be seen as the more reasonable objects of a municipal impact tax because they are responsible for organizing and supervising construction and thus bear responsibility for attendant growth.

Municipalities have two other alternatives in pursuing this type of impact tax. The first is to lobby for a change in the state law which would enable municipalities rather than the state to levy construction

taxes. The second, and more immediate alternative, is to levy a tax on the business of subdividing. Cities, under the privilege tax statute, are given broad authority to tax "businesses, trades, or occupations." A major issue regarding a subdivision tax is whether the activity of subdividing can be considered a business, trade, or occupation under the statute. The term "trade" has been defined by the North Carolina court as "any employment or business embarked into for gain or profit."<sup>18</sup> The element of profit is certainly present in most subdivision activity. The question of whether the activity is a business would seem to be simply a matter of fact, ascertainable by criteria set forth in an impact tax ordinance.

California courts appear ready to accept the premise, for the purpose of impact taxes, that subdividing can be a business. This understanding has evolved because of the courts' increasing familiarity with the impact tax concept. The following experience illustrates problems that an impact tax in North Carolina might meet. In the early 1960s, the city of Santa Ana, California, charged an impact tax payable at the time of subdivision platting. The tax was overturned, partially on the finding that subdivision was only incidental to the larger activity of development construction and could not therefore be taxed separately.<sup>19</sup> A later case involving Santa Clara, California, relied on the Santa Ana case to strike down a fee on the business of "subdivision, building and development" levied at the time of subdivision platting or building permission.<sup>20</sup> California cities were careful, following these cases, to impose impact taxes only on construction and then only at the time of occupancy or the issuance of a building

permit. An important factor in these cases was the courts' insistence on characterizing the tax, even when specifically nominated as a tax, as an inappropriate use of regulatory powers under the state Subdivision Map Act. Because the taxes were levied at the time of subdivision, the courts equated the tax with fees-in-lieu. Fees-in-lieu, unlike privilege license taxes, cannot be used for general revenue purposes and were thus held invalid.

Later California courts have been more careful to distinguish between taxing and regulatory powers. The same court that disapproved the Santa Ana tax has since upheld a construction tax payable upon receipt of a building permit. The court recognized that issuing the building permit at the same time as levying a tax did not make the tax a regulatory device, but was simply a reasonable time for the payment of the tax.<sup>21</sup> In the latest California case, it was argued that the impact tax in Rancho Palos Verdes was a prohibited subdivision exaction, or that it was an invalid license fee because it was levied at the time a building permit was issued. The argument was specifically dismissed.<sup>22</sup>

The distinction between regulatory and revenue purposes, regardless of the time the tax is charged, will be essential for the acceptance of a subdividing tax in North Carolina. The revenue basis of the tax in the statutory power to levy a privilege license tax must also be understood. North Carolina courts may accept the separate classifications of subdivision and construction more readily than the California courts. For one thing, businesses that might otherwise be considered included under the general classification of another business may be taxed separately and simultaneously in North Carolina. For example, merchants have been taxed simultaneously on the business of selling second hand clothing and the business of general merchandising. Because one business concerns itself with land and the other with improvements on the land, a similar distinction in the case of subdividing and construction might also be upheld.

## Constitutional Issues

At least two other legal issues should interest municipalities considering an impact tax: the constitutional issues of due process and equal protection. These issues may be said to center around a concern for fairness in the use of the tax. The tax itself is based on the notion that community financing of new residents can be inequitable to old residents. However, it is possible that the "cure" will be more harmful than the "disease," especially if the tax is not structured to allocate costs as fairly as possible. Constitutional acceptability of the tax will depend on the court's perception of the general fairness of the tax. The court will also be influenced by the details of tax application. By keeping constitutional standards in mind, cities can better assure themselves of a fair and acceptable tax.

## Due Process

An important constitutional consideration is that of due process. An impact tax must not be unreasonable, arbitrary or capricious, or confiscatory, or it will be found to be in violation of due process rights given in state and federal constitutions. The determination of what meets the due process requirement differs somewhat between courts and techniques. In the absence of relevant case law in North Carolina, due process requirements for impact taxes are difficult to predict. The general test in regulatory matters is that the objective of the regulation must be reasonable and the means used be reasonably related to achieving the objective. User fees and subdivision exactions have their basis in the municipal power to regulate and will come under this test. The reasonableness of different means of subdivision exaction has been variously interpreted. For example, in many states subdivision exactions may take the form of a fixed percentage of lands. In other states, this method has been found to be an inadequate reflection of needs specific to new developments.<sup>23</sup> A fee-in-lieu, then, may or may not be acceptable if based on fixed values, such as the value of subdivision property. The means chosen in Dunedin to assess user fees were found reasonable because charges borne by new connectors were restricted solely to their future use. The due process test for privilege taxes is more liberal: the tax must

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simply have some fiscal relation to benefits given by the city. This standard provides more flexibility in fashioning an impact tax.

A due process taking will be found if either taxes or regulation are confiscatory. What is confiscatory is, again, a matter of judicial judgement. Land dedication exactions have been found to be a taking where the value of lots after dedication dropped by 40 percent.<sup>24</sup> However, these occasions are extreme and a lesser decline may be quite acceptable. A taking argument was presented in the case of the Rancho Palos Verdes tax, but was dismissed because the tax added only one to two percent to the sale price of a home.

## Equal Protection

A second major constitutional issue is that of equal protection. To satisfy equal protection requirements, impact taxes must not discriminate between persons similarly situated, and classifications must be based on real differences and have some relevance to the purposes for which classification is made. As in the due process analysis, the equal protection questions center around what is "fair" to

those affected. Classifications by municipalities have been given some deference in state courts. For example, a privilege tax burdening residential construction at a higher rate than commercial or industrial construction was found not to be discriminatory in California. The classification was considered justified for the reason that residential construction imposes greater burdens on police and fire protection and other services.<sup>25</sup> Likewise, in Rancho Palos Verdes, the fact that contractors paid smaller license fees than developers did not create an equal protection problem, nor did the distinction between construction of new homes (which was taxed) and expansion of old homes (which was not). The different degrees of impact on municipal services in these cases were considered significant enough to justify different treatment.

On the other hand, the Supreme Court of Utah has decided that license taxes associated with building permits unconstitutionally discriminate between old and new residents. The court conceded that new residents increase the cost of governmental services, but disapproved use of a license fee to solve the problem. The court recommended that raising service costs would be more acceptable.<sup>26</sup> The distinction between old and new residents was approved by this same court one year later, however, for sewer connection charges.<sup>27</sup> In this case, it appears that the device and not the distinction primarily concerned the Utah court. If municipalities clearly justify distinctions made between taxpayers, and supplement their arguments with data, it seems unlikely that equal protection will be a major stumbling point.

Impact taxes may be subject to stricter judicial scrutiny if the taxes involve suspect classifications or fundamental interests under the traditional federal equal protection analysis. Suspect classifications include classifications based on race and, in some cases, wealth; fundamental interests include the right to travel. Impact taxes discriminating between races or income groups, or interfering with migration, may therefore be disfavored under a constitutional analysis. An exclusionary effect might be anticipated from a tax which significantly increases housing costs. Higher housing costs will discourage lower income residents, who are frequently minority racial groups as well, and will also have a chilling effect on migration. However, results of litigation regarding exclusionary housing make it unlikely that impact taxes will fail because of possible exclusionary effects.<sup>28</sup> The Supreme Court has ruled that racially discriminatory effects of governmental action are not sufficient to find an equal protection violation. Instead, a racially discriminatory intent must be found. This ruling places a significant burden of proof on plaintiffs alleging discrimination. Narrow standing requirements for right to travel complaints have made it difficult for potential residents to acquire standing to sue, even if they are willing to go to court to be able to secure housing. If standing is ac-

quired, lenient court review may result in upholding a measure that places "reasonable restrictions" on that right. On the other hand, some states have shown concern about exclusionary practices. The New Jersey court requires municipalities to consider the "regional general welfare" when regulating land use and housing. The California court has noted with concern the exclusionary possibilities of subdivision exactions,<sup>29</sup> and North Carolina courts may show a sensitivity to the problem.

## **Planning Considerations**

Legal considerations give some guidance about how to structure an impact tax to meet the requirements of fairness and sufficient legal authority. A number of other consequences that might flow from the tax should also be considered. These consequences can be beneficial or detrimental to municipal planning efforts.

## **De-emphasis of Property Taxes**

Impact taxes may help decrease municipal reliance on property taxes as a revenue source. This effect results directly from the impact-tax objective of requiring new residents to pay for new services. If those services are normally paid from property taxes, the impact tax can substitute for property tax expenditures. American cities in 1975-76 relied upon property taxes for more than forty percent of municipally generated revenues. In North Carolina, property taxes supply 77.4 percent of all local taxes. The success of the California referendum on "Proposition 13" makes evident the political dissatisfaction of taxpayers with property tax burdens. An impact tax can provide some assistance with that burden; however, it must be recognized that impact taxes are limited in the extent that they can replace property taxes. Property taxes pay for a wide range of services and improvements, while impact taxes such as user fees and fees-in-lieu are useful for specific, limited services and improvements. The

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impact tax, in the form of a privilege tax, could be used for more purposes, but it is not expected that total revenues from the privilege tax could be a major source of revenue as compared to other sources.

## **Leveraging Funds**

Available revenue from all impact taxes might nevertheless be used to leverage other available funds and may, therefore, be of increased usefulness. For example, impact tax funds may be used to match federal or state grants, and, by being a substitute, free general municipal revenues for other general municipal projects. While financing new services, revenue from a privilege tax may be used

simultaneously to further other municipal policies. For example, revenue might be used to improve services in neighborhoods needing revitalization if the neighborhoods are adversely affected by the new development. Municipal services, particularly capital improvements, can be used to guide growth to certain locations within the city or to encourage certain types of growth such as high density housing. The revenue may also be used to buy open space to improve or preserve the physical environment of the city.

### **Indirect Regulatory Consequences**

The impact tax will have indirect regulatory consequences through its influence on private development decisions. The tax may affect housing costs and the type of housing made available. This is because housing costs are greatly influenced by the cost of land, which is in turn influenced by the profit expected by the subdivider who sells the land. Subdividers will attempt to maximize their profits by raising the price of land to what the market will bear. They will also attempt to pass the cost of a subdivision tax or subdivision exaction to the consumer by adding it to the cost of the land. If the subdivider is not able to pass along the tax or gain the profit that he desires, one of three results may occur. First, the businessman may reduce his expected profit and sell anyway. Because subdividers are often heavily financed in their acquisition of land, they are interested in selling quickly to minimize holding costs; in this case, a reduced profit is a likely result, with an absorption of the tax. The second result might be that the subdivider will withdraw land from the market, which will increase the cost of the land as it becomes more scarce in relation to demand. A third result might be the simple tacking on of the tax to the land costs — if the market will bear the costs. With increased land costs, housing density might likewise increase.

If housing costs rise, the tax may be responsible for an exclusionary effect discussed above. This effect should be of concern to the municipality not only for legal reasons and reasons of equity but for planning reasons as well. If the city employs people who are not able to live within its boundaries, the effects of increased commuting may include greater congestion, transportation, and environmental costs as well as a sprawl pattern of development.

The impact tax may have other environmental effects. By delaying or discouraging subdivision development, the tax may help to preserve open space within the municipality. This is especially true for marginal lands where the developer cannot expect to gain a large profit for either market reasons or land conditions. The tax, however, is at most a delaying factor which may allow a municipality time to implement more effective open space preservation techniques. The tax may, in fact, place more pressure for development on choice agricultural lands by withdrawing marginal lands from the market. The tax can also help to preserve open space by en-

couraging higher density development. Perhaps the largest environmental benefit would result from municipal spending of tax revenues to provide public facilities and services. This spending can supplement other techniques, such as special assessments, user fees, and municipal bonding, and add to the quality of such services as sewerage, water, and solid waste disposal. Rancho Palos Verdes has labelled its impact tax an "environmental excise tax." Tax revenue is placed in a special fund to improve the "ecology of the city, or any distressed or environmentally endangered portion thereof."

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Finally, the impact tax can be expected to influence the city's growth patterns. The tax will do this less directly than other growth management control devices. For example, the location of growth through such techniques as zoning, capital improvements programming, and transportation planning can be very directly influenced. The rate of growth is also directly influenced by management techniques of development timing and the scheduling of public improvements. By increasing land costs or delaying development as previously described, the tax affects the rate of development. Increased land costs may also direct the location of growth to the boundaries of the municipality or other particular locations, such as agricultural lands. The influence of the tax in this manner, however, is greatly determined by market considerations. The consistent and complementary use of more direct growth management techniques will increase the effectiveness of the tax as a growth management device.

### **Conclusions**

Impact taxes can be beneficial in financing the costs of new development in North Carolina, but their advantages and disadvantages must be weighed. The most flexible of the impact taxes are privilege license taxes, which can fund many types of municipal expenses with no requirement that the tax specially benefit the development taxed. Privilege license taxes are also specifically authorized by North Carolina statute. However, municipalities are preempted from levying a privilege tax of more than ten dollars on construction and must therefore test the use of a proposed tax on the business of subdividing. User charges might also be the basis of a different form of impact tax, such as that levied on new connections to water and sewer lines. User charges are mostly limited to paying the costs of the facility used, but in North Carolina user charges have been employed to

finance other municipal services without court challenge. This device may not be as flexible in practice as a privilege tax, but would be on the safest legal grounds when used in a limited manner similar to the Dunedin tax. Fees-in-lieu are useful to pay for park and recreation needs created by new subdivisions. Besides being limited in scope, fees-in-lieu carry the risk of being unacceptable to North Carolina courts, especially if the fees are not limited to benefitting the subdivision concerned.

Municipalities may wish to use each of the different forms of impact taxes; one is not exclusive of the others. The taxes may also be used to supplement other types of benefits charges, such as special assessments and traditional subdivision exactions. In this way, a fiscal "package" may be prepared to account for all the costs of new development.

It is important that cities act with awareness of the consequences of impact taxes on other municipal policies concerned with housing, environment, and city growth. It is also important that cities act with concern for the equitable allocation of the tax. Taxes

should not be allocated to unfairly burden new residents. New growth can indeed have beneficial effects for the entire community, and these effects should be recognized in the total growth cost computation. For example, new residents may bring new business to support the economic base of the city and region, and new residents will eventually contribute their share of property tax revenue to city coffers.

Taxes should also be spent for the type of impacts new residents create. The process of determining those impacts and allocating costs requires research into fiscal and other impacts of development. Guidance for this research is available in planning literature.<sup>30</sup> The experience and fiscal records of cities themselves will also be valuable aids to the process. Finally, the process of allocating costs through impact taxation requires political decisions about the types of impacts for which new residents are held accountable and the extent to which they will be taxed. Planners, attorneys, and other municipal administrators can help assure that such political decisions are fair and informed.

#### Notes

1. Nev. Rev. Stat. secs. 278.4983-4987.
2. North Carolina Gen. Stat. sec. 160A-372.
3. *Jordan v. Village of Menomonee Falls*, 28 Wis.2d 608, 138 N.W.2d 442 (1965), *appeal dismissed*, 385 U.S. 4 (1966).
4. North Carolina Gen. Stat. sec. 160A-4.
5. Various standards for the relation of subdivision exactions to subdivision benefits are discussed in Heymand and Gilhool, "The Constitutionality of Imposing Increased Community Costs on New Subdivision Residents Through Subdivision Exaction," 73 *Yale Law Journal* 1119-1157. See also Comment, "Subdivision Exactions: The Constitutional Issue, the Judicial Response, and the Pennsylvania Situation," 19 *Villanova Law Review* 782.
6. See, e.g., *Pioneer Trust and Savings Bank v. Village of Mt. Prospect*, 22 Ill. 2d 375, 176 N.E.2d 799 (1961), where the test used was that exactions must be "specifically and uniquely attributable" to the subdivision. The test was interpreted to mean that land dedication could not be required for school sites if school needs were partially attributable to the needs of existing residents.
7. See, e.g., *Vendetti-Siravo v. City of Hollywood*, 39 Fla. Supp. 121 (1973); *Tavis Development Corp. v. City of Sunrise*, 40 Fla. Supp. 41 (1973); *Broward County v. Janis Development Corp.*, 311 So.2d 371 (Fla. App. 1975).
8. North Carolina Constitution, Art. v, sec. 2.
9. *Ibid.*, Art. ii, sec. 4.
10. See, e.g., *Daniels v. Borough of Point Pleasant*, 23 N.J. 357, 129 A.2d 265 (1957); *Merrelli v. City of St. Clair Shores*, 355 Mich. 575, 96 N.W.2d 144 (1959).
11. *Contractors and Builders Association v. City of Dunedin*, 329 S.2d 315 (Fla. 1976).
12. Warren J. Wicker, *Materials on Municipal Government in North Carolina* (Chapel Hill: Institute of Government, University of North Carolina), 1969.
13. North Carolina Gen. Stat. secs. 160A-312-314.
14. Wicker, *Materials*, pp. 96-98.
15. See, e.g., *Modesto*, California Code secs. 8-2,701-1707 (1964); *San Jose*, California Code Art. xvi (1973); *Oakland Municipal Code* ch. 5, Art. xxvi.
16. *Westfield-Palos Verdes Company v. City of Rancho Palos Verdes*, 73 Cal. App.3d 486 at 492; 141 Cal. Rptr. 36 (Cal. App. 1977) at 40, n.2.
17. North Carolina Gen. Stat. Sec. 160A-211. See also a useful publication on the municipal business license tax which explains the statute, provides a sample ordinance, and contains the results of a survey of actual use of the tax in North Carolina in Gray, *Business License Taxation by North Carolina Cities and Towns: 1976 Edition* (1976).
18. *Lenoir Drug Co. v. Town of Lenoir*, 160 N.C. 571, 76 S.E. 480 (1912).
19. *Newport Building Corp. v. City of Santa Ana*, 210 Cal. App.2d 771, 26 Cal. Rptr. 797 (Ct. App. 1962).
20. *Santa Clara County Construction and Homebuilders Association v. City of Santa Clara*, 232 Cal. App. 2d 564, 43 Cal Rptr. 86 (Ct. App. 1965).
21. *Associated Homebuilders v. City of Newark*, 18 Cal. App. 3d 107, 95 Cal. Rptr. 648 (Ct. App. 1975).
22. *Westfield Palos Verdes Company v. City of Rancho Palos Verdes*.
23. *Frank Ansuini, Inc. v. City of Cranston*, 264 A. 2d 910 (N.J. 1970).
24. *East Neck Estates, Ltd. v. Luchsinger*, 61 Misc.2d 619, 305 N.Y.S.2d 922 (1969).
25. *Associated Homebuilders v. City of Newark*.
26. *Weber Basin Home Builders Association v. Roy City*, 26 Utah 2d 215, 487 P.2d 866 (1971).
27. *Home Builders Association of Greater Salt Lake v. Provo City*, 28 Utah 402, 503 P.2d 451 (1972).
28. For a discussion of constitutional aspects of exclusionary housing, see Godschalk et al., *Constitutional Issues of Growth Management* (1977).
29. *Associated Home Builders of Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal.3d 633, 94 Cal. Rptr. 630, 484 P.2d 606 (1971). The same problem is alluded to in the dissenting opinion in *Jenad, Inc. v. City of Scarsdale*, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673 (1966).
30. See, e.g., Keyes, *Land Development and the Natural Environment* (1976); Muller, *Economic Impacts of Land Development* (1976); Muller, *Fiscal Impacts of Land Development* (1975); Council on Environmental Quality, *The Costs of Sprawl: Literature Review and Bibliography* (1974).