

Agenda Summary August 27, 2025

Agenda Item No. B-1 Impact Fees

Summary: The Selectboard requested time to discuss impact fees. The authority to impose impact fees is provided in 24 VSA Chapter 131: <https://legislature.vermont.gov/statutes/fullchapter/24/131>.

Under Vermont law an impact fee is defined as “a fee levied as a condition of issuance of a zoning or subdivision permit that will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. The fee may be levied for recoupment of costs for previously expended capital outlay for a capital project that will benefit the users of the development.” 24 V.S.A. § 5201(3).

It is important to note that an impact fee cannot be used to fund operations or replacement of existing capital obligations. Section 5203(b) states, in part, “The fee shall be equal to or less than the portion of the capital cost of a capital project that will benefit or is attributable to the development and shall not include costs attributable to the operation, administration, or maintenance of a capital project.” The municipality may require a fee for the entire cost of a capital project that will initially be used only by the beneficiaries of the development so assessed...”

Section 5203 (e) states, in part, “The municipality must spend the fee on the capital project, for which the fee was intended, within six years of when the fee was paid. If it fails to do this, the owner of the property at the expiration of the six-year period may apply for and receive a refund of his or her proportionate share of that fee during the year following the date on which the right to claim the refund began.”

In short, impact fees may be imposed to pay for new capital capacity improvements that benefit or will be used by those in a new development. It is not to pay for existing infrastructure repair, replacement, or operating cost. If the capital capacity improvement is implemented and the impact fees don't cover the cost, then municipal taxpayers must absorb the excess cost. An alternative to impact fees is for the Development Review Board to include in their findings a condition that the developer install and directly pay for the improvements subject to agreement, provided the exaction to those improvements has an essential nexus to, and has a “rough proportionality” to the expected impacts of the development. If there were expected to be several new developments that benefited from capacity improvements undertaken by the municipality, then the Selectboard can use impact fees to recover costs and spread out the burden, provided the Town has followed the statutory process to implement such fees, which includes developing and adopting a multi-year capital program. If a particular development received all of the benefit of a capital improvement, then the DRB could require the developer to pay for the entire cost. Also, a developer may choose to pay the entire cost if they wanted to advance their development and the improvements were necessary to advance their development.

Town Plan & Policy Impact: Impact fees, when aligned with a municipal plan and capital improvement program, help ensure that infrastructure keeps pace with growth. They are most effective

when paired with zoning and land use regulations that guide development and anticipate future needs. The current Stowe Town Plan (2018) does not identify the adoption of impact fees as an implementation task.

Fiscal & HR Impact: The Town currently does not have any non-utility capital capacity improvement projects planned or any non-utility debt service related to capacity improvements. Therefore, it currently does not have any basis to adopt impact fees as it relates to the General Fund Capital Fund (taxes).

If the Selectboard desired to impose impact fees to pay for General Fund capital capacity improvement projects identified in its capital budget, the Town would need to develop a capital improvement program and hire a consultant to develop an ordinance. This ordinance would include a reasonable impact fee to be assessed to new units based on its anticipated proportional share of the cost of a capital improvement benefiting the development. Any regulatory ordinance should be reviewed by Town Counsel prior to consideration for adoption by the Selectboard.

The Town does have planned water and sewer capacity improvements. 24 VSA § 3311, applicable to waterworks, permits a municipal corporation to “establish rates by meter service or annual rents to be charged and paid at such times, and in such manner as such municipal corporation shall determine for the supply of water to the inhabitants of such municipal corporation and others.” 24 VSA § 3311(a), applicable to municipal sewer systems states, “A municipal corporation, through its board may establish rates, rents, or charges to be paid as the board may prescribe. The board may establish annual charges separately for bond repayment, fixed operations and maintenance cost and variable operations and maintenance costs dependent on flow.”

Rather than assess impact fees under 24 VSA Chapter 131, the Town has historically used general rate setting authority under the aforementioned utility statutes to pay for water and sewer capital infrastructure improvements. The Town has used allocation fees that are assessed to new users to help finance the capacity expansions of the water and sewer systems. The existing debt that funded past water and sewer system expansion is scheduled to retire in FY’28. The Town is likely to take on new bonded debt in the foreseeable future to replace the Lower Village Pump Station and for Water Quality/Capacity improvements. At that time, the Town could continue using allocation fees assessed to new users and water/sewer rates assessed to existing users to repay that debt. Alternatively, it could assess the bonded portion of capital capacity maintenance expenses to all users by including it in water and sewer rates, and it could repay the portion of the debt allocated to new capacity by using impact fees. If so, the Town would need to apportion what percentage of the debt is related to existing demand and what portion is tied to new capacity to enable future development, and this would be in addition to the other requirements of 24 V.S.A. Chapter 131 to adopt impact fees, including hiring a consultant to conduct a study and developing an impact fee ordinance.

Recommendation: Discuss and advise if the Selectboard has any questions or any further information. Creating and administering an impact fee program is involved and would take considerable staffing and consultant time. Impact fees may be useful tool consider in the future, but the Town is currently not positioned to adopt them.

The Vermont Statutes Online

The Statutes below include the actions of the 2024 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 24 : Municipal and County Government

Chapter 131 : Impact Fees

(Cite as: 24 V.S.A. § 5203)

§ 5203. Procedure

(a) A municipality may levy an impact fee on any new development within its borders provided that it has:

(1) been confirmed under section 4350 of this title and, after July 1, 1992, adopted a capital budget and program pursuant to chapter 117 of this title. The plan or capital budget and program may include:

(A) indication of locations proposed for development with a potential to create the need for new capital projects;

(B) standards for level of service for the capital projects to be fully or partially funded with impact fees;

(C) proposed locations and project lists, cost estimates, and funding sources;

(D) timing or sequence of development in the identified locations; and

(2) developed a reasonable formula that will be used to assess a developer's impact fee. The formula shall reflect the level of service for the capital project to be funded and a means of assessing the impact associated with the development such as square footage or number of bedrooms. The level of service shall be either:

(A) an existing level of service;

(B) a State or federal standard; or

(C) a standard adopted as part of a town plan or capital budget.

(b) The amount of an impact fee used to fund a capital project shall be determined according to a formula developed under subsection (a) of this section. The fee shall be equal to or less than the portion of the capital cost of a capital project that will benefit or is attributable to the development and shall not include costs attributable to the operation, administration, or maintenance of a capital project. The municipality may require a fee for

the entire cost of a capital project that will initially be used only by the beneficiaries of the development so assessed. In this case, if the project will be used by beneficiaries of future development the municipality shall establish a formula consistent with the formula developed under subsection (a) of this section to require that beneficiaries of future development pay an impact fee to the owners of the development on which the impact fee has already been levied.

(c) In determining the amount of a fee that will be used to fund a capital project, the municipality may account for:

- (1) the cost of the existing or proposed facility;
- (2) the means, including State or federal grants and fees paid by other developers, by which the facility has been or will be financed;
- (3) the extent, if any, to which impact fees should be offset to account for other taxes or fees paid by the developer that will cover the cost of the capital project;
- (4) extraordinary costs incurred by the municipality in serving the new development;
- (5) the time-price differential inherent in fair comparisons of amounts paid at different times.

(d) In determining the amount of the impact fee to compensate the municipality for expenses incurred as a result of construction, the municipality shall project the expenses that will be incurred. If the actual expense incurred is less than the fee collected from the developer, the municipality shall refund the unexpended portion of the fee within one year of the termination of construction of the project.

(e) The municipality shall provide an annual accounting for each impact fee showing the source, amount of each fee collected, and project that was funded with the fee. The municipality must spend the fee on the capital project, for which the fee was intended, within six years of when the fee was paid. If it fails to do this, the owner of the property at the expiration of the six-year period may apply for and receive a refund of his or her proportionate share of that fee during the year following the date on which the right to claim the refund began.

(f) The municipality shall establish the formula and procedure for levying an impact fee by an ordinance or bylaw adopted under chapter 59 or 117 of this title. Such ordinance or bylaw shall include a provision for administrative appeal of the impact fee assessed. (Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989; amended 1989, No. 106; 1989, No. 280 (Adj. Sess.), § 11c.)