Duquesne Law Review

Volume 31 | Number 3 Article 3

1993

Impact Fees in Pennsylvania

Vance G. Camisa

Duquesne Law Review

Volume 31, Spring 1993, Number 3

Impact Fees in Pennsylvania

*Vance G. Camisa**

INTRODUCTION

Impact fees are fees fixed by a specific formula charged to developers by a municipality prior to the issuance of required approvals and/or permits.[1] The policy supporting such fees is that each new development should pay its share of the impact on the infrastructure, public services and facilities of the municipal body.[2]

Some states have adopted legislation specifically authorizing the imposition of impact fees.[3] Other states, in the absence of legislation expressly authorizing impact fees, have implied the authority

* Attorney, Bethlehem Steel Corporation, Bethlehem, Pennsylvania. B.A. 1983, J.D. 1988, University of Pennsylvania. The author gratefully acknowledges the invaluable assistance of D.D. Hendley, L.L. Deppe and D.A. Midash, and indebtedness for insightful critique from Charles W. Campbell Jr., Esq..

1. See Netter, Dilworth, *Local Government Exactions from Developers*, 1 Prac Real Est Law 23, 29 (1985); Robert L. Weinberg, *A Primer on Acceptable Development Fees*, Prob & Prop (Jan./Feb 1989) at 6, 8 ("Weinberg, *Primer*"); David W. Sweet, Lee P. Symons, *Pennsylvania's New Municipalities Planning Code: Policy, Politics and Impact Fees*, 94 Dickinson L Rev 61, 82-83 (1989) ("Sweet and Symons, *Planning Code*").

Impact fees should be distinguished from exactions, the latter of which are not fixed charges, but are subject to negotiation. See Weinberg, *Primer* at 8; Sweet and Symons, *Planning Code* at 83.

2. See Theodore C. Taub, *Exactions, Linkages, and Regulatory Takings: The Developer's Perspective*, 20 Urban Law 515, 522 (1988) ("Taub, *Exactions*").

3. See, for example, Taub, *Exactions* at 518-19 (cited in note 2) (discussing Florida legislation endorsing impact fees); Rita Setta, *Negotiations Ensue over Impact Fees Flap*, Phila Bus J, at 16B (Nov 13-19, 1989) ("Setta, *Negotiations*") ("[I]mpact fee legislation has been passed in . . . Florida, Virginia, California, Vermont, Texas, Maine, Oregon and Washington."); Brian W. Blaesser, Christine M. Kentopp, *Impact Fees: The "Second Generation"*, 38 Washington U J Urban & Contemp L 55, 71 n 50 (1990) (identifying impact fee legislation in Arizona, California, Florida, Georgia, Illinois, Maine, Texas and Vermont).

for such fees from home rule provisions.[4] Still other states have invalidated impact fees not expressly authorized by either state statute or constitution.[5]

Although impact fees are relatively new to Pennsylvania,[6] they appear to have rapidly proliferated.[7] Developers and municipalities remain at odds as to the propriety of these fees. As municipalities feel the effect of cuts in federal and state funding, developers are being asked to pay for an expanded array of projects including parks, fire equipment, street lights, curbs, recreation centers and libraries.[8] Developers, in reaction to this increased burden, have begun to challenge the authority of the municipalities to charge impact fees. Because the added costs are passed on to the new home buyer, builders "contend that new-home buyers end up paying twice for municipal services: through their taxes and the inflated cost of their home."[9]

This Article shall examine existing Pennsylvania impact fee legislation and three recent court decisions that squarely address the question of impact fees, in an effort to clarify the parameters of impact fees in Pennsylvania.

---

4. See, for example, Taub, *Exactions* at 526, n 27 (cited in note 2) (discussing impact fees in Wyoming, Utah, Ohio, and Colorado).

5. See, for example, Id at 525 n 61.

6. *Reserve Co. of Pennsylvania v Manheim Township Bd. of Comm'rs*, 72 Lancaster L Rev 61, 65 (CP Lancaster Co 1990) ("*Manheim II*").

7. Cf., Joe Ferry, *Is It New Or Revised? A $50,000 Question*, Phila Inquirer, H10 (Horsham Neighbors Section) (Apr 12, 1990) (discussing impact fees in Hatfield Township); Charles Pukanecz, *Developers Sue over 'Illegal' Fees*, Phila Inquirer, B3 (Bucks Neighbors Section) (Feb 15, 1990) (discussing impact fees in Bristol Township); Kathy Boccella, *Builders Being Hit to Pay for Local Services*, Phila Inquirer, A1 (Final Ed) (Jan 29, 1990) (discussing impact fees in Lower Makefield and Newtown Townships); Kerry Lippincott, *Board Waives $56,000 Fee*, Phila Inquirer, C14 (Chester Neighbors Section, Penna ed) (Jan 11, 1990) (discussing impact fees in West Caln Township); Setta, *Negotiations* (cited in note 3) (discussing impact fees in Lower Makefield and Newtown Townships).

8. See Boccella, *Phila Inquirer*, at B3 (cited in note 7); cf., Kenneth B. Bley, Michael L. Tidus, *Developers Get Bad News on Impact Fees*, Natl L J 21, 24 (Jan 18, 1993) ("As long as politicians view exactions imposed on new developments as politically palatable, new and increased exactions are likely to result.").

9. Id; David F. Sheppard Jr., *Impact-Fee Bill Maligned Unfairly*, Phila Inquirer, 8-A, col 5 (Editorials) (Oct 2, 1990) ("Who is the loser here? The home buyer, of course."); *Manheim II*, 72 Lancaster L Rev at 72 ("Through the imposition of impact fees the cost of housing could conceivably be driven to levels beyond . . . low cost housing . . . ."); Gus Bauman, William H. Ethier, *Development Exactions and Impact Fees: A Survey of American Practices*, 50 L & Contemp Probs 51, 54 (1987) (discussing the "double taxation problem").

I. Impact Fees for Recreational Facilities

The recreational facilities provisions of the Pennsylvania Municipalities Planning Code (the "MPC")[10] provided, until very recently, the only specific legislative authority for the imposition of impact fees in Pennsylvania.[11] Section 10503(11), with respect to permissible contents of subdivision and land development ordinances, provides:

> Provisions requiring the public dedication of land suitable for the use intended; and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval, provided that:
>
> . . . .
>
> (ii) The ordinance includes definite standards for determining . . . the amount of any fee to be paid . . . .
> (iii) The . . . fees . . . are to be used only for the purpose of providing park or recreational facilities accessible to the development.
>
> . . .
>
> (v) The . . . fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision.
> (vi) A fee authorized under this subsection shall, upon its receipt by a municipality, be deposited in an interest-bearing account, clearly identifying the specific recreation facilities for which the fee was received. . . . Funds from such accounts shall be expended only in properly allocable portions of the cost incurred to construct the specific recreation facilities for which the funds were collected.
> (vii) Upon request of any person who paid any fee under this subsection, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality had failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid.
> (viii) No municipality shall have the power to require the construction of recreational facilities or the dedication of land, or fees in lieu thereof, or private reservation except as may be provided by statute.[12]

This statute empowers municipalities to impose recreation impact fees on developments, although, strictly speaking, the fees are fees in lieu of dedication of land.[13] The option with respect to the

---

10. 53 Pa Stat §§ 10101-11006-A (Purdon 1972 & Supp 1992).

11. For a more thorough discussion see notes 101-104 and accompanying text; Sweet and Symons, *Planning Code* at 88-89 (cited in note 1) (discussing recreation impact fees under the MPC).

12. 53 Pa Stat § 10503(11).

13. Although this statute may be more properly characterized as a fee-in-lieu-of-dedication, because the courts have treated such fees as impact fees, see note 104 and accompa-

manner in which the municipality shall be compensated is left to the developer.[14] If the developer opts to pay the impact fee, the ordinance, pursuant to which the fee is imposed, must set forth "specific standards" with regard to the setting of the fee and the fees must be reasonably related to the use of the recreational facilities by the development.[15] The development must have access to the recreational facility.[16] Once received by the municipality, the funds must be segregated, and used for the recreational facility at issue within three years or refunded to the developer.[17]

Thus, impact fees are permitted in the narrow circumstance of recreational facilities,[18] and even then, within relatively strict and exacting parameters. More recent legislation authorizes the imposition of impact fees with respect to a broader and more fundamental area of impact — transportation. Part II of this Article shall analyze this new impact fee authorization and the standards applicable with respect to it.

II. Transportation Impact Fees

Section 10503-A(a) of the MPC provides:

> The governing body of each municipality other than a county, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal impact fee ordinances and, thereafter, may establish, at the time of municipal approval of any new land development or subdivision, the amount of an impact fee for any of the off-site public transportation capital improvements authorized by this act as a condition precedent to final plat approval under the municipality's subdivision and land development ordinance.[19]

Not only does Article V-A of the MPC, the Municipal Capital Improvement Article (the "MCI Article"), authorize the imposition

---

nying text, the distinction for purposes of this Article is one without meaning. Cf., John J. Delaney, Larry A. Gordon, Kathryn J. Hess, *The Needs-Nexus Analysis: A Unified Test for Validating Subdivision Exactions, User Impact Fees and Linkage*, 50 L & Contemp Probs 139, 142-43 (1987) ("The user impact fee is similar to the exaction in-lieu-fee[;] . . . Courts have treated user impact fees in a fashion similar to that commonly accorded in-lieu exaction fees.").

14. See 53 Pa Stat § 10503(11).

15. 53 Pa Stat § 10503(11)(ii).

16. 53 Pa Stat § 10503(11)(v).

17. 53 Pa Stat § 10503(11)(vi), (vii).

18. See notes 101-103 and accompanying text.

19. 53 Pa Stat § 10503-A(a). The MPC defines an "impact fee" as "a charge or fee imposed by a municipality against new development in order to generate revenue for the funding costs of transportation capital improvements necessitated by and attributable to new development." 53 Pa Stat § 10502-A(a).

of impact fees, it also specifically prohibits the imposition by any municipality of construction, dedication or payment of any off-site improvements or capital expenditures of any nature, or any contribution in lieu thereof, any exaction fee, or any connection or tapping fee, except as specifically authorized by the MPC.[20]

Prior to the adoption of any impact fee ordinance, the municipality would be required to prepare and adopt a transportation capital improvements plan.[21] An impact fee advisory committee, responsible for the preparation of the plan, must be formed, consisting of between seven and fifteen members, forty percent of which must be representatives of the real estate, commercial and residential development, and building industries.[22] Alternatively, the municipality may designate the municipal planning commission as the impact fee advisory committee.[23] The plan must be based partially upon land use assumptions with respect to future growth and development, to be developed by the advisory committee.[24] Prior to the issuance of a written report with respect to the land use assumptions, the advisory committee must hold a public hearing.[25]

Once the land use assumptions have been adopted by the municipality, the advisory committee must prepare a roadway sufficiency analysis, which should include all highways, streets and roads that would be impacted by future development.[26] The analysis should address the existing levels of sufficiency and preferred levels of service, and identify existing deficiencies that must be remedied to accommodate existing traffic.[27]

The projects to be considered for inclusion in the capital improvement plan should be identified by the advisory committee on the basis of the land use assumptions and roadway sufficiency analysis.[28] Among the components to be included in the plan are: (i) a specification of the road improvements attributable to the

---

20. 53 Pa Stat § 10503-A(b).

21. 53 Pa Stat § 10504-A(a).

22. 53 Pa Stat § 10504-A(b)(1)-(2).

23. 53 Pa Stat § 10504-A(b)(3). If the planning commission does not include the 40% industry representatives, a sufficient number of ad hoc voting members from the industries' ranks shall be appointed and serve when the planning commission acts in its capacity as the impact fee advisory committee. Id.

24. 53 Pa Stat § 10504-A(c)(1).

25. Id. Upon completion but prior to the adoption of the capital improvements plan, the advisory committee should hold another public hearing. See 53 Pa Stat § 10504-A(e)(3).

26. 53 Pa Stat § 10504-A(d)(1).

27. Id.

28. 53 Pa Stat § 10504-A(e)(1).

projected future development; (ii) the projected costs of providing necessary road improvements attributable to projected future development; and (iii) the anticipated revenue from impact fees.[29] The estimated revenue from each individual capital improvement to be provided from impact fees must be separately identified for each project.[30]

Impact fees may not be used to fund projects to remedy existing deficiencies or improvements attributable to forecasted pass-through traffic.[31] Further, impact fees may not be used to fund more than fifty percent of the total cost of improvements to state highways.[32]

The MCI Article, then, calls for detailed analyses and research, culminating in reports, recommendations and public hearings, prior to the adoption of impact fee ordinances. Further, the developer's perspective would not be lost in the process because of the forty percent representation requirement.[33] The measure of control imposed by the MCI Article on municipalities that desire to enact impact fee ordinances would not vanish upon the adoption of such an ordinance, but, rather would be maintained with respect to the administration thereof.

The MCI Article requires that a per trip cost for transportation improvements within a subject service area be derived by dividing the total cost of road improvements in the capital plan (attributed to and necessitated by new development), by the number of anticipated peak hour trips generated by all new development.[34] In turn, the specific impact fee for a given new development would be determined by multiplying the per trip cost by the estimated number of trips to be generated by the new development.[35] Further, the municipality would be required to include, with its impact fee ordinance, boundary descriptions and fee schedules for each of the service areas covered by the ordinance.[36]

The fees actually collected under the ordinance must be placed in an interest bearing account designated solely for impact fees, and the account must clearly identify the transportation service

29. 53 Pa Stat § 10504-A(e)(1)(iii), (iv)(C), and (vi).
30. 53 Pa Stat § 10504-A(e)(1)(vi).
31. 53 Pa Stat § 10504-A(e)(2).
32. Id.
33. See notes 22-23 and accompanying text.
34. See 53 Pa Stat § 10505-A(a)(1).
35. 53 Pa Stat § 10505-A(a)(2).
36. 53 Pa Stat § 10505-A(b).

area from which that fee was received.[37] Funds collected from a specific service area must be spent in that same service area.[38] Additionally, a developer would receive a credit towards impact fees in an amount equal to the fair market value of land dedicated by the developer for future rights-of-way, alignment or widening of roads, and for the value of any road construction, called for under the capital improvements plan, performed by the developer.[39]

Finally, impact fees already collected would be refundable under certain circumstances, including upon the termination or completion of a plan where undisbursed funds remain,[40] and if the municipality fails to commence construction of road improvements within three years of the scheduled construction date.[41]

In sum, while empowering municipalities to charge impact fees, the MCI Article also provides a rigorous and strict series of standards and procedures that must be met and followed by a municipality as a requisite to justifying and properly adopting and enforcing an impact fee ordinance.

---

37. 53 Pa Stat § 10505-A(d). This requirement is similar to the segregation of funds required with respect to recreational facilities impact fees. See note 12 and accompanying text.

38. 53 Pa Stat § 10505-A(d).

39. 53 Pa Stat § 10505-A(f).

40. 53 Pa Stat § 10505-A(g)(1).

41. 53 Pa Stat § 10505-A(g)(2). House Bill 1361, HR 1361, Session of 1989 (Printer's No 3942) (the bill that became the MCI Article) along with a companion bill, see HR 444, Session of 1989 (Printer's No 3941), received the unanimous vote of the Pennsylvania House on October 2, 1990. See Enda, *House Backs Bill on Setting of Impact Fees*, Phila Inquirer, at 6-B, col 1 (Oct 3, 1990).

House Bill 444, which amends the Municipality Authorities Act of 1945, provides for the imposition of various fees, including tapping fees and connection fees. See HR 444 at § 4(T). The connection fee may not exceed the actual cost of connecting the subject property to the municipality's main. See id at § 4(T)(1)(I). A customer facilities fee may be charged in the instance where the municipality (not the developer/property owner) installs the customer facilities. See id at § 4(T)(1)(II). The fee may not exceed the actual cost of facilities serving the subject property. Id.

The tapping fee, which comes the closest to an impact fee, may only be imposed upon resolution by the municipality stating the fee. See id at § 4(T)(1)(III). The tapping fee may consist of the following components: a capacity part, which may not exceed the cost of the same (including facilities that shall provide future service), and which must be included in a duly adopted annual budget or a 5-year capital improvements plan, id at § 4(T)(1)(III)(A); and a distribution (or collection) part, which may not exceed the cost of distribution or collection facilities required to provide service (including such facilities that shall provide future service, not to exceed the reasonable estimated cost), and which per unit of capacity fee of capacity required by the new customer should not exceed the cost of the facilities divided by this design capacity. Id at § 4(T)(1)(III)(B).

The tapping fees may not include the cost of expanding, replacing, updating or upgrading existing facilities serving existing customers in order to meet stricter standards or to provide better service to existing customers. Id at § 4(T)(1)(III)(E).

Fundamental to an understanding of the effect of the MCI Article is an awareness of the standard required by the MCI Article to justify a particular impact fee. "The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted capital improvement plan within a given service area *attributable to and necessitated by new development* within the service area . . . ."[42] This standard appears not to apply to a specific development, but rather appears to be the standard applicable to all new development in a given service area taken as a whole. This discrepancy, in and of itself, weakens any requirement of a specific relationship between an impact fee and a particular development. Nonetheless, an analysis of how the courts might interpret the phrase "attributable to and necessitated by new development" is appropriate and would serve to illumine the probable impact of the MCI Article on developers.

The Pennsylvania courts, when looking to questions of attribution and necessity under similar circumstances have favored the so-called rational-nexus test. In *Robert Mueller Associates v Zoning Hearing Board*, the court observed that "some of the costs of off-site improvements can fairly be charged to a developer whose plans so burden existing facilities as to *necessitate* their accelerated improvement or construction."[43] Following this observation, the court concluded that the court below had not abused its discretion. In so concluding the court observed that the court below had applied the rational-nexus test, under which "a developer can only be forced to 'bear that portion of the cost which bears a rational nexus to the needs created by, and benefits conferred upon, the subdivision.' "[44] Consequently, the commonwealth court, at least implicitly, has approved the rational-nexus test.

The rational-nexus test consists of two elements. The first, similar to the "attributable to" language in the MCI Article, requires that the development upon which the assessment is being imposed shall have created the need for the additional facility or service.[45] The development, however, need not have solely created the

---

42. 53 Pa Stat § 10505-A(a)(1) (emphasis added).

43. 30 Pa Commw 386, 389, 373 A 2d 1173, 1175 (1977) (emphasis added). For a more thorough discussion of *Mueller*, see notes 105-112 and accompanying text.

44. *Mueller*, 373 A2d at 1175 n 1 (quoting *181 Inc. v Salem County Planning Bd.*, 133 NJ Super 350, 358, 336 A2d 501, 506 (Law Div 1975) (quoting *Longbridge Builders, Inc. v Planning Bd.*, 52 NJ 348, 350, 245 A2d 336, 337 (1968))).

45. Taub, *Exactions* at 531 (cited in note 2.)

need.[46] The second element, similar to the "necessitated by" language in the MCI Article, requires that some benefit accrue to the subject development with respect to the use of the funds collected.[47] The benefit need not accrue solely to the development, however, but may be enjoyed by the general public as well.[48]

The rational-nexus test lends itself to a breadth of interpretation. Some states — most notably California—have used the inherent flex in the standard to uphold exactions based upon "the loosest possible type of nexus,"[49] leading some to equate the rational-nexus test with the rational-basis test (an equal protection test)—"a test the government always passes."[50] Still other states—most notably Florida—have more strictly analyzed the rational-nexus test.[51] This strict interpretation consists of a two-prong analysis: the first prong calls for a real showing that a need will be created by the new development and that a proportional relationship exists between the amount of the fee and the portion of the need that is attributable to the development; the second prong requires that the funds collected be earmarked for a use that would provide some degree of benefit to the development.[52]

Inasmuch as one of the goals of an impact fee is a gain in predictability of the imposition at issue there, a test (such as the rational-nexus test) allowing for such varied interpretation may defeat the purpose. While it is true that a strict interpretation is available, there is no assurance that the Pennsylvania courts would

---

46. Id.

47. Id.

48. Id; see also Netter and Dilworth, *Local Government*, at 28 (cited in note 1) (citing *Longbridge Builders, Inc. v Planning Bd.*, 52 NJ 348, 245 A2d 336 (1968)).

49. Burke Bosselman and Nancy E. Stroud, *Mandatory Tithes: The Legality of Land Development Linkage*, 9 Nova L Rev 381, 397 (1985) (Bosselman and Stroud, "*Mandatory Tithes*") (citing *Liberty v Calif. Coastal Comm'n*, 113 Cal App 3d 491, 170 Cal Rptr 247 (1981); *J.W. Jones Co. v City of San Diego*, 157 Cal App 3d 745, 203 Cal Rptr 580 (1984); and *Kalaydjian v City of Los Angeles*, 149 Cal App 3d 690, 197 Cal Rptr 149 (1983)).

50. Bosselman and Stroud, *Mandatory Tithes* at 397; cf., *Blue Jeans Equities v City and County of San Francisco*, 3 Cal App 4th 164, 4 Cal Rptr 2d 114 (1992) (ruling that "heightened scrutiny" does not apply to "regulatory takings" under San Francisco's Transit Impact Development Fee Ordinance and upholding the requirement that the developer pay an impact fee of over $3.1 million for municipal railway to offset anticipated costs of increased ridership generated by the new construction).

51. See Lawrence A. Levy, *Impact Fees, Concurrency, and Reality: A Proposal for Financing Infrastructure*, 21 Urban Law 471, 479 & n 27 ("Levy, *Impact Fees*"); Bosselman and Stroud, *Mandatory Tithes* at 397 (cited in note 49).

52. Bosselman and Stroud, *Mandatory Tithes* at 397-98 (cited in note 49); see also Levy, *Impact Fees* at 479 n 27 (cited in note 51) (citing Bosselman and Stroud, *Mandatory Tithes*).

not reduce the test to no more than "a slogan used to justify any currently popular municipal policy."[53] Such an interpretation would effectively nullify the otherwise strict requirements of the MCI Article.

A Senate Bill,[54] similar in some respects to the House Bill that resulted in the MCI Article, would have specifically authorized the imposition of impact fees with respect to street improvements and water sewer line extensions. The Senate Bill, however, employed a more rigorous standard required to justify a particular impact fee. The Senate Bill would have required that "such off-site improvements are necessitated by and *specifically and uniquely attributable* to such subdivision or land development or improvements within such subdivision or land development."[55] Similarly, the fee authorized for off-site street improvements would have been limited to the "percentage [of the overall cost] that the peak traffic *specifically and uniquely attributable* to the subdivision or land development bears to the maximum peak traffic capacity of such street improvements at the level of service existing prior to the proposed subdivision or land development."[56]

Therefore, whereas the MCI Article relies upon the rational-nexus test, the Senate Bill would have employed the specifically and uniquely attributable test.[57] This latter test is a stricter one and one less capable of becoming a standard without meaning — the impact at issue must be specifically and uniquely attributable to the development upon which the imposition of a fee is sought.

A. *Analysis of the "Specifically and Uniquely Attributable" Standard*

Although not the majority standard,[58] a number of states have applied the specifically and uniquely attributable standard (the "SUA standard") in the arena of exactions.[59]

---

53. Bosselman and Stroud, *Mandatory Tithes* at 397 (cited in note 49).

54. S 923, Session of 1989 (Printer's No 1052).

55. S 923 at § 509(n) (emphasis added).

56. Id at § 509(q) (emphasis added).

57. It should be noted that the Senate Bill standard applies to the specific development at issue, rather than to development in general, as with the MCI Article. See text following note 42.

58. See Taub, *Exactions* at 529 (cited in note 2).

59. States adopting the SUA standard not specifically discussed in this Article include Connecticut. See *Aunt Hack Ridge Estates, Inc. v Planning Comm'n of the Town of Danbury*, 27 Conn Super 74, 77, 230 A2d 45, 47 ("[T]he developer may be required to assume those costs which are specifically and uniquely attributable to his activity and which

In *Rosen v Village of Downers Grove*,[60] the Supreme Court of Illinois addressed a challenge to the validity of a subdivision ordinance requiring, *inter alia*, the dedication of at least one acre of land for public use for every 75 family living units, as well as an amount of land "deemed necessary" for educational facilities.[61] The developer there was asked to pay $325.00, for each lot sold, for the benefit of the school districts. The court stated that "the developer of a subdivision may be required to assume those costs which are specifically and uniquely attributable to his activity . . . ."[62] The court cited as an example that "[t]he distinction between permissible and forbidden requirements . . . is that the municipality may require the developer to provide the streets which are required by the activity within the subdivision but can not [sic] require him to provide a major thoroughfare, the need for which stems from the total activity of the community."[63] The court found, *inter alia*, that the $325.00 amount arrived at by the board of education was based upon factors totally unrelated to the subdivision.[64] Consequently, the court held that the circuit court's enjoining such charges was correct.[65]

The language and analysis used by the court in *Rosen* demonstrates that the SUA standard is a more difficult one to meet than the rational-nexus test. In *Pioneer Trust and Savings Bank v Village of Mount Prospect*,[66] the court followed the standards that it had laid down in *Rosen*. In *Pioneer*, the court was faced with an ordinance calling for the dedication (for public grounds) of (i) one acre for every 60 residential building sites (or family living units), or (ii) one-tenth of an acre for every one acre of business or industrial building sites.[67] The land sought to be dedicated was for the use of an elementary school. While the court recognized "the obvious fact that the orderly development of a municipality must necessarily include a consideration of the present and future need for

---

would otherwise be borne by the public.").

60. 19 Ill 2d 448, 167 NE2d 230 (1960).

61. *Rosen*, 167 NE2d at 233.

62. Id.

63. Id at 234.

64. Id. The factors cited include the time lag between the date when homes were occupied and when taxes were collected on the completed homes. Id.

65. Id. It is interesting to note that the court, in reaching its conclusion, also observed that a portion of the ordinance relating to educational facilities "*fixes no standards* whatever to govern the plan commission in determining the amount of land to be dedicated." Id (emphasis added).

66. 22 Ill 2d 375, 176 NE2d 799 (1961).

67. *Pioneer*, 176 NE2d at 800.

school and public recreational facilities,"[68] in this instance the court found that the "record does not establish that the need for recreational and educational facilities . . . is one that is specifically and uniquely attributable to the addition of the subdivision . . . ."[69] The court observed that the then-present school facilities were near capacity, and that that was the result of the total development of the community. The court believed that the need for additional school facilities was caused by the development of the whole community and the then-current limits of the existing school facilities.[70] Consequently, the court affirmed the judgment of the lower court, noting that "the school problem which allegedly exists here is one which the subdivider should not be obliged to pay the total cost of remedying . . . ."[71]

Under the rational-nexus standard, such a result would have been unlikely, as the need was created by the development (albeit not solely so) and some benefit would have accrued to the development (again, albeit not solely).[72] *Pioneer* serves to demonstrate the problem with the rational-nexus standard, in that the developer, under that test, would have been liable for the dedication required where arguably poor planning and inadequate funding by the municipality there created a situation wherein there was no room for any growth with respect to educational facilities.

Conversely, in *Board of Education of School District No. 68 v Surety Developers, Inc.*,[73] the court upheld the imposition sought by the municipality.[74] The county board there desired, *inter alia*, $200.00 for each home built and occupied in the subdivision. In contrast to *Pioneer*, the impact of the subdivision was made clear by the fact that 98 percent of the schoolchildren in the two elementary schools in the subdivision (at the time the case was tried) were from the development at issue.[75] The court further emphasized the impact by noting that the developer chose to build in a rural area, which necessitated the construction of community facilities.[76] Not surprisingly, the court held that the school problem was specifically and uniquely attributable to the developer's activity

68. Id at 802.
69. Id.
70. Id.
71. Id.
72. See notes 45-48 and accompanying text.
73. 63 Ill 2d 193, 347 NE2d 149 (1975).
74. *Surety Developers*, 347 NE2d at 154.
75. Id.
76. Id.

and accordingly that the imposition at issue was in conformity with the SUA test articulated in *Rosen* and *Pioneer*.[77] *Surety Developers*, then, serves to demonstrate that the SUA standard can be met in those instances where the development has truly been the specific and unique cause of the problem at hand.[78]

The Supreme Court of Rhode Island adopted the SUA standard in *Frank Ansuini, Inc. v City of Cranston*.[79] In that case, the court held that "the involuntary dedication of land is a valid exercise of the police power only to the extent that the need for the land required to be donated results from the *specific and unique activity* attributable to the developer."[80] Based upon that standard, the court reasoned that the requirement at issue, a donation of "at least 7 [percent]" of the land to be developed, was clearly arbitrary on its face.[81]

The New Hampshire Supreme Court reaffirmed the precepts of the *Ansuini* holding in *J.E.D. Associates, Inc. v Town of Atkinson*.[82] In *J.E.D.*, at issue was a zoning ordinance requiring a subdeveloper to deed 7 ½ percent of the total acreage of the subdivision to the municipality.[83] Following the reasoning in *Ansuini*, the court, in refusing to uphold the exaction and ordering the reconveyance of the dedicated parcel, stated that the regulation was "an arbitrary blanket requirement."[84]

The Rhode Island and New Hampshire courts then, have used the SUA standard to strike down specific percentage requirements,

---

77. Id.

78. See also *Krughoff v City of Naperville*, 41 Ill App 3d 334, 354 NE2d 489 (1976), aff'd 68 Ill 2d 352, 369 NE2d 892 (1977) (stipulation by parties and implicit approval by court that ordinance requiring, *inter alia*, dedication of (i) 5.5 acres per 1000 population for park and recreational purposes and (ii) land for school sites or donation of $15,000 per acre in lieu of land dedication meets SUA standard).

79. 107 RI 63, 264 A2d 910 (1970).

80. *Ansuini*, 264 A2d at 914 (emphasis added).

81. Id.

82. 121 NH 581, 432 A2d 12 (1981).

83. *J.E.D.*, 432 A2d at 13.

84. Id at 15. The court also addressed the requirement that the developer bear the cost of removing an off-site ledge. The court reasoned:

> Unless the traffic has increased as the result of the subdivision, it is not constitutionally permissible for the town to require the plaintiff to bear any part of the cost of removing the ledge. . . . If traffic now is greater than before because of the subdivision, then the plaintiff can be required to contribute to the cost of removing the ledge, but only in the proportion that the increased use of the road attributable to the plaintiff's subdivision bears to the road's total use.

Id (citations omitted). Again, this requirement would likely meet the two elements of the rational-nexus test.

at least in terms of land dedication. Arguably, those courts would similarly strike down a specific dollar requirement, *i.e.*, an impact fee. While such a decision might, at first blush, be used to argue that the standard is too stringent to properly regulate impact fees, a more thorough analysis proves such an argument to be without merit.

In both *Ansuini* and *J.E.D.*, the courts seem to have focused their attention, with respect to a predetermined percentage, on the arbitrary nature of the given percentage. In neither decision were the underlying administrative and procedural requirements for proper adoption of an ordinance discussed. Those requirements appear to have been not nearly so thorough as those set forth in the MCI Article.[85] The very arduous nature of the MCI Article requirements would operate to eradicate the presumption of arbitrariness with respect to a set dollar figure as an impact fee—the ordinance would be, in effect, fine-tuned.[86]

Further, precisely because of the fine-tuned nature of any ordinance adopted under the MCI Article, the SUA standard is more appropriate than the rational-nexus standard. The many committees, reports and investigations required pursuant to the MCI Article to justify an impact fee lend a presumption of fairness to any results reached by a municipality thereunder.[87] The developer squaring off against a municipality armed with such an arsenal of committees, paperwork and studies, stands little chance of successfully challenging an overly burdensome impact fee when the municipality need only justify its fee by means of the rational-nexus standard. The SUA standard, then, represents the logical standard to be coupled with the MCI Article. Through such a modification to the MCI Article, the goal of ensuring that each development pay its fair share, and only its fair share, with respect to its impact on the community can be reached. Until such time, however, developers must face the uncertainty that the rational-nexus standard permits.

The MCI Article explicitly prohibits the imposition of any exaction fee unless "specifically authorized" under the MPC.[88] The question of specific authorization has been addressed by the Penn-

---

85. See notes 19-41 and accompanying text.

86. See, for example, *Ansuini*, 264 A2d at 913 ("It seems obvious to us that a fixed percentage requirement will inevitably create inequities, which will be less likely to arise under the specifically and uniquely attributable formula.").

87. See notes 21-30 and accompanying text.

88. 53 Pa Stat § 10503-A(b); see also note 20 and accompanying text.

sylvania courts (in addition to implied authorization) with respect to impact fees, in three recent cases. Part III of this Article will analyze and discuss those three decisions in order to better define the requirements of specific authorization.

III. The Pennsylvania Courts on Impact Fees

A. *Reserve Co. of Pennsylvania v Manheim Township Board of Commissioners*[89] *("Manheim I")*

In *Manheim I*, the Reserve Company sought to develop 169 lots of single family residential homes on 67.7 acres of property in Manheim Township.[90] The Township had enacted a transportation impact fee ordinance citing its general police power pursuant to the MPC.[91] Compliance with the ordinance would cost the Reserve Company $2,160.00 per unit.[92] As with the recreational impact fee under the MPC,[93] the monies would be placed in a special fund used to help pay for the cost of construction of or improvement to township street and highway facilities deemed to be required as a result of new developments in the township.[94]

The Reserve Company argued that the impact fee, rather than a land use ordinance, was a tax revenue ordinance unauthorized under the MPC.[95] The township contended that the ordinance was adopted pursuant to Article VI of the MPC,[96] which relates to zoning:[97] Section 10617.3(e) of the MPC permitted the township to "prescribe reasonable fees with respect to the administration of a zoning ordinance . . . ."[98] In rejecting the township's argument, the court stated that "[t]he impact fee enacted is clearly not intended to defray the expenses of administering the zoning ordinance,"[99] and concluded that the "defendant does not cite, nor can

89. 71 Lancaster L Rev 555 (CP Lancaster Co 1989).

90. *Manheim I*, 71 Lancaster L Rev at 556.

91. Id.

92. Id. The amount was calculated pursuant to a prescribed formula. See *Reserve Co. of Pennsylvania v Manheim Township Bd. of Comm'rs*, 72 Lancaster L Rev 61, 63 (CP Lancaster Co 1990) ("*Manheim II*").

93. See note 12 and accompanying text; see also note 37 and accompanying text (segregation requirement under MCI Article).

94. *Manheim I*, 71 Lancaster L Rev at 557; see also *Manheim II*, 72 Lancaster L Rev at 63.

95. *Manheim I*, 71 Lancaster L Rev at 557.

96. 53 Pa Stat §§ 10601-10619.1.

97. *Manheim I*, 71 Lancaster L Rev at 558.

98. 53 Pa Stat § 10617.3(e).

99. *Manheim I*, 71 Lancaster L Rev at 558.

we find any provision within Article VI, which either expressly or by fair implication, authorizes the enactment of any impact fee."[100]

In support of its conclusion, the court examined the legislative history of the MPC. Prior to enactment of the then-current amendment to the MPC, the legislative bill would have expressly permitted townships to impose impact fees generally, including transportation impact fees.[101] That provision, however, had been dropped from the MPC as then adopted.[102] The court went on to note that among the amendments to the MPC, as then currently adopted, was a provision authorizing recreation impact fees.[103] The court stated:

> We can only conclude that the legislature's action in authorizing municipalities to impose recreation impact fees, when at the same time refusing to grant them similar authority to enact transportation impact fees is convincing evidence that municipal authority to enact impact fee ordinances not otherwise expressly set forth in the Act, simply does not exist under the Planning Code.[104]

The court went on to distinguish the case of *Robert Mueller Associates v Zoning Hearing Board.*[105] In *Mueller*, the township granted tentative approval of a Planned Residential Development ("PRD") subject to a number of conditions.[106] The *Mueller* court impliedly approved the requirement that the developer pay for the costs of widening a road and for the off-site costs of installing water lines and a sewage disposal system.[107] The authority of the

---

100. Id; cf., Sweet and Symons, *Planning Code* at 86-87 (cited in note 1) (no statutory sanction exists for impact fees, and legislative intent was not to sanction such fees).

101. *Manheim I*, 71 Lancaster L Rev at 558. The provision in the bill provided:

> The governing body may require a developer, as a condition for approval of a subdivision or land development, to pay the cost of providing only reasonable and necessary transportation improvement, water, sewage and drainage facilities, the rights of way and easements therefore, located outside the property limits of the subdivision or land development but necessitated or created and required thereby . . . .

Id at 558-59 n 4 (citation omitted). For a general discussion of the pre-MCI Article legislative history of the MPC with respect to impact fees, see Sweet and Symons, *Planning Code* at 82-97 (cited in note 1).

102. *Manheim I*, 71 Lancaster L Rev at 558.

103. Id at 559. For a discussion of the recreational impact fee provision, see notes 10-18 and accompanying text.

104. *Manheim I*, 71 Lancaster L Rev at 559.

105. 30 Pa Commw 386, 373 A2d 1173 (1977).

106. *Mueller*, 373 A2d at 1174.

107. The *Mueller* court was not actually faced with the validity of these charges, as they were not appealed by the developer. Id. The issue in *Mueller* was whether the township should be required to pay the cost of acquiring off-site rights of way. Id. The court decided against the township and in favor of the developer on that issue. Id at 1175. Consequently, the analysis of the *Manheim I* court is inaccurate insofar as that court stated that "[t]he

township was derived from section 10709(a)(2) of the MPC,[108] which allows a township to impose conditions on a tentative approval. The *Manheim I* court noted other provisions of the MPC that provide similar authority.[109]

The *Manheim I* court properly observed, however, that this type of condition differed in many respects from the impact fee at issue.[110] The *Manheim I* impact fee established, by means of a prior determination, that every development creates an impact necessitating the payment of a predetermined fee; whereas *Mueller* addresses the right of the township to make individual site-specific determinations pursuant to an express right granted the township by the MPC.[111] Simply, the *Manheim I* court, here, has noted that the conditions addressed in *Mueller* were not impact fees by definition.[112]

Commonwealth Court upheld the imposition by a township board of supervisors of a fee imposed as one of the conditions of approval of a . . . [PRD]." *Manheim I*, 71 Lancaster L Rev at 559-60.

108. See *Manheim I*, 71 Lancaster L Rev at 560. 53 Pa Stat § 10709(a)(2) (Purdon Supp 1992) provides: "The governing body, or the planning agency, within 60 days following the conclusion of the public hearing provided for in this article, shall, by official written communication, to the landowner, . . . grant tentative approval *subject to specified conditions* not included in the development plan as submitted . . . ." 53 Pa Stat § 10709(a)(2) (emphasis added).

109. The court cited § 10910.2(b) as authorizing a zoning hearing board to impose such conditions with respect to the grant of a variance. *Manheim I*, 71 Lancaster L Rev at 560. Section 10910.2(b) provides: "In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance." 53 Pa Stat § 10910.2(b) (Purdon Supp 1992). The court cited § 10912.1 as authorizing a zoning hearing board to impose such conditions with respect to the grant of special exceptions. *Manheim I*, 71 Lancaster L Rev at 560. Section 10912.1 provides: " . . . In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to these expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance." 53 Pa Stat § 10912.1 (Purdon Supp 1992). The court cited § 10913.2 as providing similar authority with respect to the grant of conditional uses. *Manheim I*, 71 Lancaster L Rev at 560. Section 10913.2 provides: " . . . In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in [sic] the zoning ordinance." 53 Pa Stat § 10913.2 (Purdon Supp 1992). Finally, the court cited § 10503(9) as authorizing such conditions with respect to subdivision and land development approvals. *Manheim I*, 71 Lancaster L Rev at 560. Section 10503(9) allows for the inclusion, in a subdivision and land development ordinance of "[p]rovisions for the approval of a plat . . . subject to conditions acceptable to the applicant and a procedure for the applicant's acceptance or rejection of any conditions which may be imposed . . . ." 53 Pa Stat § 10503(9) (Purdon Supp 1992).

110. See *Manheim I*, 71 Lancaster L Rev at 560.

111. Id.

112. See note 1 and accompanying text.

The *Manheim I* court concluded that because the impact fee was not authorized by the MPC it was not a land use ordinance and consequently the court, rather than the zoning board, had jurisdiction.[113] The ultimate question of the validity of the ordinance, however, was not ruled upon by the court. Because "the question of transportation impact fee ordinance validity is one of first impression in the Commonwealth, [the court was] unwilling to consider the . . . issue on the [then] current briefs of the parties."[114]

B. *Builders Association v Cranberry Township*[115]

In *Builders*, an amalgam of developers and builders associations sought a summary judgment with respect to their challenge of the validity of a township zoning ordinance.[116] Under the ordinance, developers were required to guaranty the payment of impact fees to be used to finance highway improvements through the year 2000.[117] Through a detailed projected costs analysis, the township arrived at a figure of $91.82 as a unit cost of weekday vehicle trips.[118] The amount of the fee for any given developer would be calculated as the product of the average number of weekday trips to be generated by the development and unit cost per trip.[119] As with *Manheim I*, this impact fee is readily distinguishable from the monetary conditions in *Mueller* in that this fee was established by a prior determination that every development would create an impact requiring payment of a predetermined fee (in this instance, per weekday trip).[120]

The court stated: "The sole issue before the Court is the authority of the Township to enact an ordinance that requires new development (Plaintiffs) to pay impact fees prior to development or zoning approval."[121] As in *Manheim I*, the township looked to the MPC as providing the authority to enact the ordinance imposing the impact fees.[122] Specifically, the township cited section 10105 of

---

113. See *Manheim I*, 71 Lancaster L Rev at 561.

114. Id at 562.

115. 8 Butler County L J, Feb 9, 1990, No 111, 1 (CP Butler Co 1990).

116. *Builders*, 8 Butler County L J at 1.

117. Id.

118. Id at 2.

119. Id. The average amount of trips generated by each proposed development was established by the Traffic Engineers Trip Generation Manual (4th ed). Id.

120. See notes 111-112 and accompanying text.

121. *Builders*, 8 Butler County L J at 3.

122. Id. Additionally, the township cited the Second Class Township Code, 53 Pa Stat §§ 65101-67605, as providing the authority to impose impact fees.

the MPC, which, the township argued, allows townships to be flexible with respect to planning and zoning.[123] Also, the township cited section 10301, which authorizes the township to prepare, and sets forth the permissible parameters of, a comprehensive plan.[124] The township cited section 10501, which grants the township the authority to regulate subdivisions and land development by means of a subdivision and land development ordinance, and section 10503, which delineates the permissible contents of the subdivision and land development ordinances.[125] Further, the township cited section 10603, which sets forth the permissible parameters of zoning ordinances, and section 10604, which delineates the purposes of zoning ordinances.[126]

The court summarily found that the provisions of the MPC cited by the township did not specifically empower the township to impose impact fees.[127] The court concurred with the *Manheim I* court that Article VI of the MPC did "not expressly or by fair implication authorize the impact fee."[128] Also, as did the *Manheim I* court, the *Builders* court looked to the legislative history of the MPC as support for its position that the specific authority for impact fees was withheld from the MPC.[129]

The court then turned its attention to the question of whether the township had the authority to impose impact fees as a function

---

123. *Builders*, 8 Butler County L J at 3. Section 10105 of the MPC sets forth the purpose of the act. 53 Pa Stat § 10105 (Purdon Supp 1992).

124. *Builders*, 8 Butler County L J at 3.

125. Id. The only impact fees then authorized under this section of the MPC, relate to recreation impact fees. See notes 10-18, 101-104 and accompanying text.

126. *Builders*, 8 Butler County L J at 4. Section 10603(c)(2) of the MPC allows a township to " . . . attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance." 53 Pa Stat § 10603(c)(2) (Purdon Supp 1992). This provision is similar to those distinguished, by the *Manheim I* court, from impact fees. See notes 105-112 and accompanying text.

The township also cited the Second Class Township Code as providing the township with "broad powers to regulate the development, construction, timing and scheduling of road improvements necessary to serve new development." *Builders*, 8 Butler County LJ at 7. Specifically, the township referred to the following provisions: "53 Pa Stat § 65725 (power to enact zoning ordinances), § 65729 (power to enact health ordinances), § 65747 (power to take all means for securing safety of persons or property, including the power to adopt ordinances defining disturbing the peace), § 65762 (general powers), and § 66101 (power to lay out, open, widen and vacate roads)." *Builders*, 8 Butler County LJ at 7.

127. Id at 4. Additionally, the court found that none of the provisions of the Second Class Township Code empowered the township to impose impact fees. Id at 7.

128. Id at 6.

129. Id at 7.

of its general police powers.[130] The plaintiffs argued that the impact fees were actually taxes and therefore invalid as an exercise of police powers.[131] As did the *Manheim I* court,[132] the *Builders* court examined the license/tax dichotomy,[133] and concluded that because the magnitude of the impact fees at issue there was far in excess of the expense of license administration, it was not a valid license fee, but rather was an invalid tax.[134]

In sum, then, the court held that the ordinance

> was adopted without authority, express or implied, pursuant to the MPC or the Second Class Township Code. Further . . . the magnitude of the impact fees imposed . . . demonstrates that th[e] [o]rdinance [was] adopted under the guise of a zoning amendment or license [and] is in reality an unauthorized, and therefore, invalid tax.[135]

Accordingly, the court found that the township lacked the authority to require the payment of impact fees and declared invalid and unenforceable any agreements calling for the payment of impact fees at the time of building permit issuance.[136]

C. *Reserve Co. of Pennsylvania v Manheim Township Board of Commissioners*[137] ("*Manheim II*")

In *Manheim II*, the *Manheim I* court, as a result of a motion for summary judgment and judgment on the pleadings, faced the question that it had left open: "whether the impact fee ordinance [at issue] was a valid exercise of the Township's police power, the question of validity turning on whether the impact fee is a tax or a proper regulatory fee."[138]

The court preliminarily determined that specific authority to impose an impact fee pursuant to "clearly defined enabling legislation must be conferred by the legislature either expressly or by neces-

---

130. Id at 8. The township cited sections 65725, 65729, 65747, and 65762 of the Second Class Township Code as authority for the imposition of impact fees pursuant to general police powers. Id.

131. Id.

132. See notes 95-100 and accompanying text.

133. *Builders*, 8 Butler County L J at 8-9.

134. Id at 9.

135. Id.

136. Id at 10. The court specifically left open, however, the question of whether the Transportation Partnership Act preempts townships from imposing impact fees for roadway improvements. Id.

137. 72 Lancaster L Rev 61 (CP Lancaster Co 1990) ("*Manheim II*").

138. *Manheim II*, 72 Lancaster L Rev at 64 (citation omitted); see also note 115 and accompanying text.

sary implication."[139] The township relied on two legislative sources of authority: the MPC and the First Class Township Code.[140] Because the court, in *Manheim I*, had already concluded that the township derived no authority from the MPC,[141] the only remaining issue was whether the police power (pursuant to the First Class Township Code) provided authority for the subject impact fees ordinance. Because Pennsylvania law prohibits taxation pursuant to the police power,[142] the court focused on whether the impact fee was a tax or a regulatory fee.

"[T]he crucial difference [between a fee and a tax, according to the court, is] that a fee is based on the cost to the municipality of providing some service which is part of its official function, whereas a tax raises revenues for general government purposes."[143] The revenues raised by the impact fees were to be used for highway construction and improvement, rather than the costs of administration or supervision of the building permit process.[144] Further, the revenues were not to be used to defray the expense of supervision or administration of the ordinance, which expense was reduced by other fees imposed pursuant to the zoning ordinance.[145] Consequently, the court stated: "Because the revenue is considerable and bears no relationship to the municipal costs of either raising it or of administering the ordinance generating it, we must conclude the impact fee is a tax."[146] As with the *Builders* court, the *Manheim II* court concluded that the police power under the First Class Township Code did not authorize the imposition of such a tax.[147] The *Manheim II* court, however, went one step further in stating, "[t]here exists no statutory enabling authority for an im-

---

139. *Manheim II*, 72 Lancaster L Rev at 66; cf., 53 Pa Stat § 10503-A(b) (Purdon Supp 1992).

140. *Manheim II*, 72 Lancaster L Rev at 66. With respect to the First Class Township Code, the township relied upon sections 56510 (public safety), 56544 (health and cleanliness) and 56552 (general powers) thereof. Id at 66-67.

141. See notes 95-114 and accompanying text (discussing *Manheim I*).

142. See *Manheim II*, 72 Lancaster L Rev at 66-67, 70-71.

143. Id at 67 (citation omitted).

144. Id at 68.

145. Id at 68-69; cf., id at 70 n 6 (discussing other ways in which the ordinance qualifies as a tax).

146. Id at 70 (footnote omitted).

147. Id at 71. See also note 136 and accompanying text. Although the court in *Builders* faced the police powers under the Second Class Township Code, the *Manheim II* court observed that the underlying principles of both codes were the same. *Manheim II*, 72 Lancaster L Rev at 70 n 7.

pact fee/tax on residential development."[148] Finally, the court declared the impact fee invalid and unenforceable.[149]

D. *Summary and Analysis of Pennsylvania Impact Fee Caselaw*

While *Manheim I*, *Manheim II* and *Builders* addressed impact fees specifically targeted at transportation, now statutorily addressed by the MCI Article, those decisions establish useful parameters with respect to the imposition of impact fees generally. By extracting these parameters from the cases, a better understanding of the status of impact fees in Pennsylvania should result.

No provision of the MPC, with the sole exceptions of section 10503(11) regarding recreation impact fees, and section 10503-A(a) regarding transportation impact fees, expressly or impliedly authorizes impact fees.[150] Further, no statutory enabling authority exists outside of the MPC with regard to impact fees.[151] Because impact fees are likely to exceed the costs of raising the revenue and of administering the ordinance giving rise to the fees, they will not be construed by courts as regulatory fees, but rather, as taxes.[152] As such, they are not authorized by the general police power.[153]

Without clear and explicit statutory language conferring the authority to impose and collect impact fees, Pennsylvania courts are unwilling to validate them. Bolstering this conclusion is section 10503-A(b) of the MCI Article, requiring specific authority to impose impact fees.[154]

CONCLUSION

The recently enacted Article V-A of the Pennsylvania Municipalities Planning Code, together with the Pennsylvania courts have made it clear that specific legislative authorization is required to enable a municipality to impose impact fees on developers.[155] Cur-

---

148. *Manheim II*, 72 Lancaster L Rev at 71. In so stating, the court specifically took note of the Local Tax Enabling Act, 53 Pa Stat sections 6901-6923, and the Transportation Partnership Act, 53 Pa Stat sections 1621-1626. Id. By examining the Transportation Partnership Act, the *Manheim II* court may have partially addressed the question left open by the *Builders* court. See note 136. At any rate, it is clear that the Transportation Partnership Act does not provide the authority to impose impact fees. See Sweet and Symons, *Planning Code* at 90 (cited in note 1). It is important to note that this case was decided prior to enactment of the MCI Article.

149. *Manheim II*, 72 Lancaster L Rev at 73.

150. See notes 100, 104 and 128 and accompanying text.

151. See note 148 and accompanying text; see also 53 Pa Stat § 10503-A(b).

152. See notes 98-99, 134-135 and 146 and accompanying text.

153. See notes 142 and 147 and accompanying text.

154. See note 20 and accompanying text.

155. See notes 20 and 154 and accompanying text.

rently, only two such statutory provisions exist, authorizing impact fees for recreational facilities and for transportation. Article V-A provides strict requirements in terms of research and reports by the municipality prior to imposing impact fees. The standard it employs, however, is the rational-nexus standard, which is arguably a rubber-stamp. Senate Bill No 923, Session of 1989, unlike the MCI Article, would have incorporated the specifically and uniquely attributable standard with respect to impact fees, which is a strict standard requiring a close fit between the impact alleged and the development against which the impact fee is sought to be imposed. The coupling of the Senate Bill standard with the Article V-A requirements aforesaid would give rise to a law that would logically require the many studies and reports necessitated thereunder to be truly justified by the municipality. Until such time, however, given the inherent weakness of the rational-nexus standard, developers may find themselves at the mercy of goal-oriented municipalities.