Innovations in New Impact Fee Systems:

The Experience of Lincoln, Nebraska

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In 1998, City officials and finance members saw a light at the end of the tunnel....unfortunately, it was not daylight. It was a freight train! Coming right at them! If the city of Lincoln continued to grow at the rate of it was and continued with construction, according to the Capital Improvements Program, at the end of 5 years, the city would be 10 years behind in infrastructure construction. This was a core group of people that realized this challenge. Their next challenge was to light a fire and send up the smoke signal for help, without burning the house down.

(analogy) Turning the wheel of government is much like "herding cats on horseback"! Public servants trying desperately to get all the people on the same page, going in the same direction, reaching for a common goal, and not step on anyone! No injury, damage or bloodshed wanted in this process!! Unfortunately there were a few clumsy horses and couple feisty cats. Some slashes, scrapes, words and one pace maker as a result of the 2 ½ year process.

June 2000 the City of Lincoln entered into a contract with Duncan and Associates to conduct an Infrastructure Financing Study. Concurrent with this study the City assembled an Infrastructure Finance Committee to work with Duncan and Associates. The charge of this IFS team was to determine how to fund the infrastructure and capital facilities required to serve development without reducing the levels of service provided to existing customers. Local voters were in severe opposition of general tax increases, many cities and counties across the country had turned to alternative financing techniques, such as impact fees, hook up fees, connection fees, developer fees, and special districts. Each of these funding techniques have a common theme: they shift the burden of the cost of new infrastructure from the general public to the new development that creates the need.

September 2000 Duncan and Associates had produced the "Infrastructure Financing Study - Financial Alternatives Memorandum" and "Infrastructure Financing Study - Capital Cost of Growth Memorandum" for public review. These two analysis reports represented order-of-magnitude estimates of the maximum potential impact fees that could be charged by the city of Lincoln for all the facilities surveyed. The analysis was not sufficient enough to to support the adoption of impact fee ordinance for all the facilities studied. No new capital facilities planning or engineering work was included as part of the analysis, and existing plans in some cases did not contain sufficient data to support legally-defensible impact fees.

November 2000 Duncan and Associates published the "Infrastructure Financing Study-Fiscal Impact Analysis". The study revealed that three major factors affected the city. Moderate rates of population growth, rates of job growth that exceed population growth, and greater productivity of the city's sales tax levy-greatly expanded the City's revenue base over the previous decade. While the City's revenue base was expanding rapidly, the expenditures increased only moderately. In real terms, per capita property taxes levied by the city had declined.

January 2001- publication of the "Infrastructure Financing Study -the Advisory Committee Final Report". The role of this group and generation of this report was to address the capital improvement costs to the local government. This did not include the needs of the school districts or jurisdictions outside of the city of Lincoln.

October 2002 Duncan and Associates published the "Lincoln Impact Fee Study". During the span of time several public meetings and discussions took place to provide input, to inform, and to generate support for alternative financing methods. (Going back to herding cats on horse back....Some cats were stepped on...both sides of the table.)

After many months of discussion and committee and community involvement, January 2003, the Lincoln City Council adopted the Impact Fee Ordinance which went into affect June 3, 2003. There was a great deal of posturing that followed, in particular with the development community that had annexation agreements in place requiring they pay for arterial streets and water/sewer mains at their expense. To pay an impact fee on top of those costs would be paying for the infrastructure twice, renegotiating the agreements would be a long and arduous task, therefore exemption areas were brought about. Exempted from paying the fees but new infrastructure could use the funds for CIP projects.

The concern that the down town area, and a $258MM multi-year special project area would use up all the funds...therefore the downtown corridor and the Antelope Valley area were excluded from impact fees. Excluded from paying impact fees, but also excluded from using impact fees to pay for new infrastructure.

The city is divided into 7 districts, each with it's own account codes for arterial streets, parks and trails, water system, water district, and wastewater. The money collected in each district is spent in that district within an 8 year time period. First in First out method. The funding must be spend on projects within the CIP.

Soon after adoption of the Ordinance, the Homebuilders Association filed a lawsuit against the city alleging that impact fees are illegal taxation. The case was heard in District Court. The city won. There was an appeal. Arguments were heard on September 8, 2005 and we are awaiting our fate. Nebraska is a home rule state, with Dillion's rule prevailing as part of the argument as a home rule state. i.e. this is a fee based on usage/consumption, and the legislature has not said the city cannot charge this fee.

Until the decision comes to pass, it is business as usual for Lincoln Nebraska, collecting impact fees at the building and safety business counter. Currently the City has collected close to $10,000,000 in impact fees.