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Coordinating Capital Planning, Zoning, and Land Development

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The Capital Improvement Program (CIP) is a tool to fund new public facilities to meet the demands from existing, approved, and planned development over time. Its profound effects on the public and private realms makes it a key tool for every planner to shape the timing, location, intensity, and character of development in a community.

While zoning ordinances primarily focus on the improvement and use of individual parcels, zoning map amendments are commonly used to control the timing of subdivision and large site development. This is particularly important in jurisdictions having less discretion to manage growth through subdivision regulations. Since each of the above development activities creates new demands for public facilities, it is vital that zoning and other development regulations ensure that the timing, location, and intensity of development is consistent with the availability of capital facilities to support those demands.

Even though the stated purposes of zoning and subdivision regulations generally cite the need to coordinate development decisions with local capacity, land development regulations (LDRs) often fail to describe how this should occur. More specifically, the linkage between LDRs and capital improvement planning is often too vague to provide meaningful guidance or to enable legally defensible decisions. Subject to the quirks of each state's laws, local governments can employ a range of regulatory strategies to improve this coordination.

Although not addressed in this article, coordinated capital planning and site development standards through zoning can play the equally important role of shaping the character of development. By coordinating public investments with zoning standards for the form of development, communities can ensure that investments in the public and private realms are mutually supportive of local goals for mobility, community vitality, and neighborhood stability.

This article focuses on the critical linkages between the CIP and LDRs, and how

they can influence the timing, location, and intensity of development in a community.

ROLES OF CAPITAL IMPROVEMENTS PROGRAMS

A CIP documents the ongoing process of providing and maintaining the infrastructure and services to support a specific quality of life in a community. At a minimum, the CIP should:

- Document the process and plans to achieve local infrastructure and service goals over time;
- List short-term and long-term capital needs in the CIP or separate facility master plans;
- Establish an annual schedule for infrastructure investments;
- Coordinate intradepartmental and inter-agency infrastructure improvements;
- Identify short-term and long-term funding needs and sources; and
- Engage the community in setting priorities for investment of available resources.

How well each of the above elements of capital planning is achieved depends on the relative importance that each community assigns the following purposes:

- Targeting investments to achieve community objectives for timing and location of growth, preservation, conservation, revitalization, and other changes
- Achieving or maintaining adopted levels of services to provide certainty for residents and businesses
- Maintaining, repairing, and replacing existing infrastructure
- Identifying existing and potential funding sources
- Making efficient use of limited funding and avoiding waste of limited resources



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➞ In addition to the equity and tax base implications of adequate housing, communities should think of housing as vital economic infrastructure required to sustain a community.

- Engaging the community in setting priorities
- Balancing spending with the community's capacity or willingness to pay

What Systems Should It Address?

Whether a community provides the facilities and services or not, local consideration of each is critical to ensure its resilience. Each jurisdiction focuses on a different mix of infrastructure improvements based on local and statutory assignments of responsibility, but generally the mix may include any of the following critical and overlapping types of infrastructure:

- Water resources, wastewater and stormwater management systems
- Transportation/mobility systems (streets, sidewalks, bikeways, and trails)
- Coastal and environmental lands management systems
- Educational facilities
- Energy and telecommunications infrastructure
- Other community facilities (including civic buildings, emergency management, parks/recreation, libraries, and public safety facilities)
- Emergency shelter
- Housing

ROLES OF LAND DEVELOPMENT REGULATIONS

Local governments have a host of regulatory tools that focus on the development and use of land and structures. Rules for public improvement designs, building codes, fire safety, flood hazard mitigation, stormwater management, historic preservation, and other aspects of site development may be included within the land development regulations or in separate chapters of local development codes. The key tools addressed in this article are subdivision regulations governing the division of land and the creation of lots that are ready for site improvement, and zoning regulations that address site improvement, building improvement, and land use.

The general purposes of these regulations are to achieve locally adopted goals and objectives while protecting the public's health, safety, and welfare. The specific purposes will vary widely, but they should, at a minimum, protect valued community assets and facilitate desired changes within communities by:

- Fostering smart, sustainable development that promotes resilient economic, environment, and social conditions
- Promoting compatible land-use transitions and mitigating potential nuisances
- Encouraging private investments in areas targeted for redevelopment, infill development, and new growth
- Facilitating the achievement and maintenance of targeted levels of services

RELATIONSHIP BETWEEN CAPITAL PLANS AND LAND DEVELOPMENT REGULATIONS

In the simplest terms, the CIP addresses the supplies of public facilities and services, while LDRs address the demands for those facilities and services. The CIP schedules public investments that directly affect a community's capacity to serve different areas of the community with essential public services that affect mobility, utility services, education, public safety, and recreation, among other public goods. LDRs shape the timing, intensity, and location of development activities and land uses that generate demands for public facilities and services. Neither the CIP nor the LDRs are absolutely determinant of demands and supplies. Local budgets, private service providers, and neighboring jurisdictions also play important

roles in public facility and service supplies. Demands also are influenced by changing demand patterns from existing development (e.g., whether conservation is encouraged), external demands (e.g., traffic from neighboring jurisdictions) and a variety of social and demographic factors.

Ensuring that supplies and demands are coordinated presents an ongoing challenge for most communities. While the free market responds to intended and unintended signals from local governments, it also responds to a variety of factors over which local governments have little control, such as the motivations of private property owners, fluctuations in the economy, changing demographic conditions, and changing revenues. These and other factors lead to uncertainty in funding capacity and both the timing and location of demands.

Supply Problems

For most communities, the pressure to minimize expenditures constrains CIP budgets to levels that force hard choices between maintaining existing infrastructure and providing additional capacity to serve existing and projected development. Deferred maintenance is an attractive way to increase available funding for new capacity but inevitably leads to higher rehabilitation costs that constrain future funding. Unfortunately, in addition to the pressures of local politics, many state and federal funding programs favor new capacity over routine operations and maintenance funding. These and other factors often lead local governments into one of the following traps:

Not having a fiscally constrained CIP.

For many communities, the CIP is little more than a wish list. A good indicator of this problem is a capital budget with committed first-year funding that is much less than the 20 percent of five-year costs that one would expect to see in the first year of a five-year budget. This may be appropriate if the CIP includes large projects that are being funded by external sources in future years, but if this is a repeating event, changes to funding or priority setting are called for.

Having a reactionary CIP. While some change in the current-year priorities should be expected due to emergencies, changes in project costs, project schedules, or external funding availability, regular changes to the CIP can reflect poor planning, lack of

consensus for the initial CIP, or lack of community focus. These changes make it very difficult for the private sector to make good investment decisions and can be a red flag for entities providing grants to supplement capital spending.

Even for communities that are very good at capital planning, fiscal constraints tend to be an ongoing problem—there is seldom enough money to maintain and replace the public facilities required to meet existing demands while expanding capacity to meet new demands. Capital funding is a continual exercise in trying to find grants to supplement revenues from user fees, tap fees, ad valorem taxes, sales taxes, and other revenue streams. Increasingly, where authorized, communities are turning to impact fees, mobility fees, excise taxes, and other devices to supplement capital funding. Each of these devices has its own sets of legal and

COMMON TERMS DEFINED

Impact Fees. One-time fees to offset the proportionate capital costs for public infrastructure attributable to and benefiting new development.

Mobility Fees. One-time fees to offset the proportionate transportation systems capital and service costs that are attributable to and benefit new development.

Excise Taxes. Charged on new development to fund infrastructure that may or may not directly benefit new developments for which the tax is paid.

Level of Service. A quantitative measure of the quality of service (e.g., emergency response time, traffic delays, percentage of permanent classroom capacity, water volumes and pressure, etc.) for the targeted service.

Concurrency. A regulatory tool to ensure adequate levels of service to meet the demands of new development at the time the demands are created.

political constraints that limit the timing that funds are available, the use of the funds, and the amount of money that can be collected.

Demand Problems

While most land development regulations include general purposes calling for adequate road and utility capacity, they fail to ensure adequacy for facilities and services other than for closed, revenue-generating facilities like water and sewer systems. The failures to ensure adequate facilities tend to fall into three categories:

No linkage between demand and capacity. Most land development regulations are silent about the relationship between development approvals (approvals of subdivisions, site development, or changes in use) and new demands. While general purpose language may cite the importance of emergency services, mobility, school systems, recreation facilities, libraries, and other public services, the codes lack clear, defensible means for denying a development based on a lack of capacity.

Nonspecific linkages between demand and capacity. While many LDRs reference the need for adequate capacity for some facilities (most commonly roads and utilities), the methodology for determining the

relationship between demands and capacities is lacking. These codes fail to identify how demands are projected or fail to establish the level of service (LOS) required to determine whether the facilities are adequate.

Lack of timing determinations and accounting rules. Even codes that establish demand factors and include LOS can fail to correlate the timing of demands with the timing of capacity to ensure that demands and capacity are available concurrently. To ensure that concurrency occurs, local service providers must have a system in place to account for existing demands, demands from approved but unbuilt development, demands from the proposed development, existing capacity, and capacity that will be available at the time demands from approved and proposed development are created.

RELATIONSHIP OF CIPS AND LOCAL DEVELOPMENT REGULATIONS TO SMART GROWTH

Ideally, both CIPs and LDRs should help achieve the smart growth principles shown in Table 1 below. A community’s CIP should invest in facility capacity required to serve efficient growth patterns and avoid investments that facilitate the loss of, or damage

to, community assets. CIPs should help fund public facilities in locations where facilities are insufficient to serve existing development and provide new or expanded facilities in areas where needed to promote desired private investment. LDRs should ensure that new development occurs in desired locations, is designed to create desired neighborhoods, and is timed so that public facilities and services are available as new demands are generated.

REGULATORY SOLUTIONS

Four general approaches to coordinating capital planning and land development regulation include the adoption of impact fees, growth tiers, adequate public facility ordinances (also known as concurrency programs), and rate of growth ordinances. Each of these tools has its own set of regulatory challenges and requires significant resources to manage. Each strategy also starts with the development and maintenance of an adequately funded CIP.

Impact Fees

Impact fees are an increasingly common source of supplemental capital funds. These fees are intended to cover the proportionate fair share of capital costs required to serve

TABLE 1. THE RELATIONSHIP BETWEEN CIPS, LDRS, AND SMART GROWTH (SMART GROWTH PRINCIPLES)

Smart Growth Principle	CIP	LDR
Mix land uses	✓	✓
Take advantage of compact building design		✓
Create a range of housing opportunities and choices	✓	✓
Create walkable neighborhoods	✓	✓
Foster distinctive, attractive communities with a strong sense of place	✓	✓
Preserve open space, farmland, natural beauty, and critical environmental areas	✓	✓
Strengthen and direct development toward existing communities	✓	✓
Provide a variety of transportation choices	✓	✓
Make development decisions predictable, fair, and cost effective	✓	✓
Encourage community and stakeholder collaboration in development decisions	✓	✓

the development that pays the fees. The most common and least scrutinized form of impact fees are tap fees routinely charged for water and sewer connections. The calculation of impact fees should be based on the costs of planned capital facility capacity that is attributable to new development.

While subject to a wide range of statutory provisions addressing their preparation, adoption, implementation, and maintenance, there are two key takings tests used to determine their defensibility:

- A rational nexus must exist between the need for the facility and the demands created by the applicable development application, as well as between the expenditure of the fee and the benefits accruing to the development.
- The amount of the fee must be roughly proportional to the cost of facilities required to serve the demand created by applicable development.

In addition to ensuring that impact fees pass legal muster, communities should make sure that the fees effectively support the above smart growth principles and local growth goals while avoiding unintended consequences. Without providing a primer on impact fee calculation or refinement, the following list summarizes some pitfalls to avoid:

Ignoring regional setting. Impact fees that apply within one community, but not adjacent jurisdictions, can create an economic incentive to move outside the community charging a fee. For recreational, library, or even emergency services, the advantage of access to the enhanced service may be enough of a benefit to offset the costs, but open access to parks and libraries, or mutual aid agreements for police and fire services, may eliminate the benefit.

Using average versus incremental costs. Average cost impact fees assume that development pays the same cost per demand unit regardless of its location. The proportionality of average cost fees is often very rough. Incremental costs tailor the amount of the fee to the location. An unintended consequence of using average costs is to encourage sprawl by charging the same fees for remote greenfield areas that lack adequate public facilities as for infill areas that may have a broader range of adequate

facilities in place. To avoid this problem, a traffic impact or mobility fee may be differentiated based on proximity to activity centers, access to transit, or projected vehicle miles traveled. Park, library, or fire service fees may be based on the LOS (e.g., availability of parks, libraries, or fire stations) in the applicable part of the community.

Fee reduction or waiver zones. In areas of a community where adequate facilities exist or the community is trying to foster development, the reduction or waiver of fees should be considered. Caution is required to ensure that the capital costs of reductions or waivers are not shifted to other fee payers.

Special uses. Local priorities for affordable and attainable housing, social services, economic development, and other uses suggest that fee structures should be adjusted to reduce the burden on favored uses. If favoring special uses, communities should ensure that fee reductions do not unfairly shift capital costs to uses that are subject to payment of full fees. Fee subsidies from tax funds are often used for this purpose.

Growth Tiers

Growth tiers are conceptually the simplest means of coordinating capital planning and development regulation. Depending on a long-term capital schedule for extending one or more services to new growth areas, this strategy would limit the amount and timing of growth based on the timing of planned capital facility development to serve each growth area. In 1969, the Town of Ramapo, New York, adopted a growth tier program that allowed subdivision development in a developing tier covered by the first six years of the town's CIP, and limited subdivisions in two future growth tiers that were targeted for years seven to 13 and 14 to 18 of the CIP.

Subsequently, other communities throughout the U.S. have used growth tiers or growth boundaries to limit the timing or intensity of development based on capital facilities. Growth tiers and growth



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- ➔ Average cost impact fees can encourage sprawl by charging the same fees for greenfield development as for infill areas that already have adequate facilities in place.

boundaries are generally created through comprehensive plans that provide the template for coordination between capital planning, zoning, and other land development regulations.

APFO/Concurrency

Adequate public facility ordinances (APFO) or concurrency programs ensure that development occurs concurrently with the availability of adequate capacity. More specifically, APFOs require that specified public facilities and services in defined areas are available at the adopted LOS standard at the time that the impacts of development will be felt so that adopted LOS are maintained. This requires a community to:

Designate which services will be subject to the requirement and the thresholds for requiring new facilities. Clearly adequate water and sewer service is essential for the public health and safety. Other services have less dire impacts. The decision of the thresholds for requiring new capacity requires careful consideration for each potential facility. For instance, providing fire services for the first occupants of an area would require annual operating costs that can be comparable to total capital costs of a new fire station for very little benefit. Similarly, providing a new school when an existing school exceeds capacity by one student is unfeasible.

Define service areas. This requires mapping areas that can reasonably be served by applicable capital facilities. Note that service area boundaries may not neatly correspond for different types of facilities. For instance,



➡ Monroe County's rate of growth ordinance is based on the capacity to evacuate residents due to hurricanes. The Overseas Highway, pictured here, is a critical link between the Florida Keys, which are in Monroe County, and mainland Florida.

a sewer service sub-basin may not align with a traffic analysis zone or a fire station service area.

Define LOS. Each included capital facility should have a measurable LOS standard. Response times are typically used for emergency services, pressure and volume for water service, congestion or traffic delay for streets, acreage per 1,000 residents for parks, and school capacity based on maximum class sizes for schools. Because schools may use temporary structures to increase capacity, it's critical to clearly define what capacity means. Where the existing LOS is below the adopted LOS, a community must have a plan in place to cure the deficiency before it conditions development approvals on that level. Failure to do so would create an indefinite moratorium that would be unlikely to withstand legal challenges.

Define concurrency. The timing of capacity must be related to the timing of demands. This requires a community to determine which development activity may occur and when in the capital improvement process it may occur. This may vary by facility and type of development. For instance, water and sewer service must be available before a certificate of occupancy may be approved. For streets and other more elastic facilities, a community may allow building permits to be issued in the year that a needed street improvement is projected to be constructed.

Define responses to inadequacy. While the starting point for an inadequacy finding is to deny the development application,

communities have a number of options that may vary by facility type. Communities may consider reducing development demands to match available capacity, waiting until capacity is provided through the CIP, allow the applicant to build the improvements required to cure the deficiency, or allow payment of the cost to cure the deficiency and proceeding with development (pay and go).

The best response to inadequacy depends upon the nature of the facility, the extent of the deficiency, and options available to cure the deficiency. For example, lack of sewer capacity would create an immediate health risk, so pay and go is not an appropriate response. Street capacity is more elastic and provides greater ability to tolerate excess congestion for limited time periods. In the case of school concurrency, the Florida Department of Community Affairs initially advocated for allowing the creation of a charter school to be a remedy for school capacity deficiencies. The problems with this proposal were twofold—first, there were no guarantees that the capacity would be available in subsequent years given the track record of charter schools, and second, the facility improvement standards for charter schools were minimal, so the cost of providing capacity was much lower than providing equivalent school capacity that met statutory public school building standards.

As many communities have discovered, the simple responses to the above tasks can lead to unintended consequences that can easily subvert efforts to achieve community goals. When available capacities do not meet established LOS, the most obvious—and

sometimes the correct—response is to increase capacity (e.g., plant or utility system expansion, school expansion, road widening). However, communities are well served to repeat the mantra “one size does not fit all” and to ask the following questions:

Can we afford the adopted LOS? If the combination of capital, operations, and maintenance costs of the facility is greater than the community's willingness to pay, then it may be necessary to reduce the adopted LOS or take other steps to better coordinate resources and expectations.

Do we want the higher LOS? In addition to cost considerations, communities need to consider the implications of LOS standards on the character and function of the community. Perhaps the best example of this is with street LOS. Congestion may be preferable to widened streets that disrupt the character of a neighborhood and create a hostile environment for bicyclists and pedestrians. Congestion also may be necessary to encourage desired behaviors such as changing modes or times of travel. Finally, there is a large body of evidence showing the limited LOS benefits of adding capacity to streets—efforts to eliminate congestion by increasing road capacity can be fruitless.

Should LOS vary by area? Transportation systems illustrate why one LOS doesn't benefit all communities. There tends to be less congestion in remote areas, which makes it easier to find sites with adequate capacity outside activity centers. Yet because of the lack of correlation between communities, and the homogeneity of jobs and housing throughout communities, shifting development to areas with little congestion tends to increase vehicle miles traveled and congestion delays while discouraging infill and decreasing the viability of alternative modes of transportation. The unintended consequences of traffic concurrency in Florida led beyond varied LOS by service area to the enabling of local exemption areas where concurrency requirements can be waived.

Rate of Growth Ordinances

Another regulatory approach, which has more limited applicability than impact fees, tiers, or adequate public facility requirements, is the establishment of rate of growth ordinances. These tend to apply when there



➡ Services crucial to public health, such as adequate sewer and water connections, should be a high priority when determining thresholds for new capacity.

is strong demand for growth and limited opportunity to expand capacities required to accommodate growth. For instance, Monroe County, Florida, enacted a rate of growth ordinance that was based on the capacity to evacuate residents in case of hurricanes. San Luis Obispo County, California, enacted a rate of growth ordinance to limit residential building permits to a rate of growth that “is consistent with the ability of community resources to support the growth, as established by the Resource Management System (RMS) of the county general plan.” Boulder City, Nevada, adopted a rate of growth ordinance to limit residential and hotel/motel building permits to a growth rate of three percent per year to avoid encroaching upon endangered species habitat and to retain the city’s small-town character.

Rate of growth ordinances are generally defensible if they allow a reasonable amount of growth, if the ordinances focus on the timing of growth, and if the community demonstrates its inability to address the negative impacts of more rapid growth due to lack of resources or physical constraints. In some instances, preservation of community character may be considered adequate justification for limiting the rate of growth. In all instances, a community wishing to limit the rate of growth should clearly document the costs of growth through its CIP process.

Note on Legal Authority

Planners in the United States face far more than 50 distinct legislative environs that

affect the ability to use the tools described above. Authority may be found in general police powers, broad authority granted to charter communities, or specific legislation. It may be limited by specific legislation, case law, or lack of express authority in Dillon’s Rule states. Dillon’s Rule states grant authority to act only when power is expressly granted by state law or a legally authorized charter, or when the authority is implied by expressly granted powers. Dillon’s Rule or some hybrid system that incorporates Dillon’s Rule applies to most states but does not apply to home-rule states such as Florida, South Carolina, Massachusetts, Ohio, Iowa, Montana, Utah, and Oregon.

Conclusion

Zoning and other land development regulations include a wide variety of tools to address the timing, location, and intensity of development. Zoning districts alone typically address the location and intensity of development activities, but only address the timing of development to the extent that desired zoning is withheld until needed. By coordinating zoning and land development regulations with CIPs, communities may achieve a far greater ability to ensure that

proposed development has access to adequate public facilities and that it does not significantly reduce LOS available to nearby properties. Armed with a fiscally constrained CIP, planners will find that their growth management toolbox enables them to shape neighborhoods and communities that better reflect local goals and objectives.

ABOUT THE AUTHOR

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