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The Coming Battle Over Impact Fees

Not long ago, Menlo Park determined that a guy splitting his lot into two under SB 9 should pay \$127,000 in Quimby Fees.

No matter how high the fee may seem, the math is pretty straightforward: Menlo Park's standard is five acres of parkland for every 1,000 residents. Land in Menlo Park is priced at – super-high but not surprising for Silicon Valley – about \$10 million per acre. And the city assumed that the new house built on the split lot would be home to 2.59 persons.

So, 2.59 persons divided by 1,000 persons multiplied by 5 (acres) is 0.013. And 0.013% of \$10 million is \$127,000. So that's the Quimby Fee for a single-family home.

Needless to say, the guy splitting the lot isn't very happy. Also not surprisingly, neither was the California Department of Housing & Community Development, which wrote a letter to Menlo Park saying it can't charge an SB 9 lot split fees for offsite improvements. And, by the way, Menlo Park isn't using all the money it collects to buy more parkland but instead to fund improvements to existing parks. (Under § 66477(a)(1),

using Quimby Fees to pay for park improvements is legal so long as the subdivision's residents are served, whatever that means.)



Willow Oaks Park in Menlo Park, where high Quimby Fees have paid for improvements.

Nearby single-family homes run to \$4-5 million.

Nobody's sued anybody over the Menlo Park case, at least not yet. But the situation is suggestive of the coming battle over impact fees. They've been standard practice in California for almost 50 years now, ever since the passage of Proposition 13 reduced the flow of regular property tax dollars to cities. They're very high, especially if they are based on the need to buy land in coastal California. And they're increasingly getting pushback, especially from affordable housing advocates who say they increase the price of housing. The Turner Center recently reported that about half of all Low Income Housing Tax Credit projects in California pay \$15,000 or more in fees.

Furthermore, at least some courts have begun to reign in fees using the legal doctrine laid out by the U.S. Supreme Court in the *Sheetz* ruling back in

2024. *Sheetz* involved a guy who built an 1,800-square-foot manufactured home in a rural area in Placerville and had to pay a \$23,000 traffic impact fee based on the county's general plan. (Not as much as the Menlo Park Quimby Fee but still a lot.) The Supreme Court said California cities and counties had to stop the practice of basing fees on goals and calculations deriving from general plans and, instead, adhere to the so-called *Nollan/Dolan* rule that any impact fee has to have a "reasonable relationship" to a project and be "roughly proportional" to that impact.

I predicted at the time that, true to form in California, *Sheetz* may not lead to lower impact fees but just more – and more detailed – nexus studies detailing the connection between projects and fees. To a certain extent this has been true. The Supreme Court didn't rule *Sheetz*'s fee illegal, just changed the rules. And subsequently the appellate court in Sacramento decided that El Dorado County's methodology was okay. A different appellate court in San Diego subsequently ruled that the city's recent policy change to spend impact fees anywhere in the city, rather than just in the community where the project is located, was also okay.

But a couple of weeks ago a judge in Stanislaus County went the other way, saying that the City of Patterson violated the Mitigation Fee Act in imposing traffic fees by, among other things, producing an inadequate nexus study and never formally adopting a capital improvement program. (To give you an idea of how big a deal this is, that story is one of *CP&DR*'s most-viewed articles of the year – unusual for a court case and highly unusual for a Superior Court ruling.)

All this raises the question, once again, of how communities in California will pay for the things that they need. Because there are generally only two ways to raise that money: either from current residents (through property taxes and special districts) or from developers and the new residents who are their customers (though impact fees, community facilities districts, and increased property tax revenue).

Ever since Proposition 13 passed, the burden has been shifted from current residents to new ones. That's because Prop. 13 made it very difficult to get

more money out of current residents by allowing reassessment only on sale and limiting the overall property tax rate to 1% of assessed value. (Schools get most of that money, while counties get about a third and cities typically about 15%, though that can vary greatly. Menlo Park gets around 12%.)

This means that longtime homeowners, who are usually the loudest residents, don't usually contribute much tax revenue to a city (or a county).

So local jurisdictions are forced into an over-reliance on new development, which generates a lot of impact fees and also a significant one-time boost in property tax revenue. Over time, of course, this revenue increase erodes because impact fees are one-time revenue and new homeowners get locked into their property assessment. So in order to stay solvent, California cities (and, to a lesser extent, counties) have to keep pursuing the "high" of new development.

Or charge \$127,000 per house in fees for parks and then use that money to improve existing facilities.

There's no question that an impact fee reckoning is coming – most likely from the courts and the legislature. Obviously there will be more, and more detailed, nexus studies. But even though California courts have upheld fee systems under *Sheetz* so far, there will come a time when some court says the *Nollan/Dolan* test hasn't been met or the fees are being used correctly. And political pressure is mounting on the legislature to do put some kind of cap on impact fees, at least for affordable housing. And in any event, impact fees are a lot less predictable when you're talking about infill development; Menlo Park only collected a total of \$411,000 in Quimby Fees last year.

But it's not clear where that reckoning will leave California's local governments, since they use fees to improve their community generally or fall back on higher property taxes or (very easily) create new special assessment districts. Most likely the cities in particular will have to eat at least some of the cost of new parks and infrastructure – or reduce their standards and service levels in response.

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