

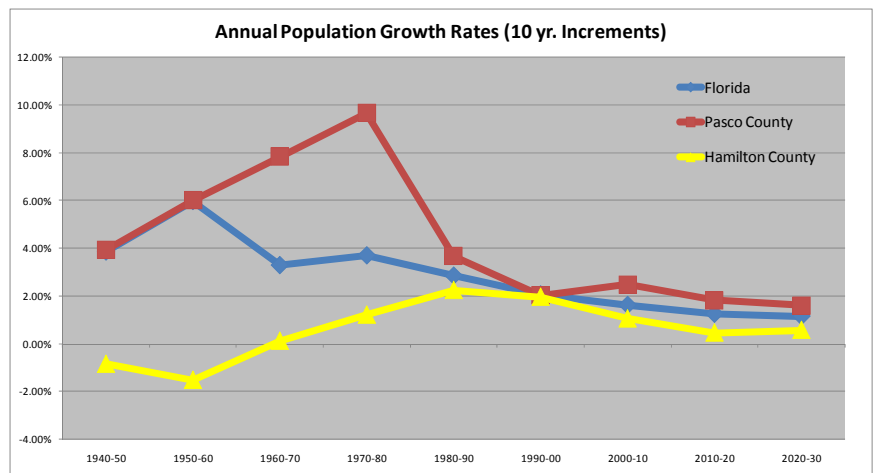
Public Finance & Infrastructure Planning News

How Can Impact Fees Promote Smart Growth Objectives?

By Steve Tindale, P.E, AICP & Nilgün Kamp, AICP

With lower growth rates, the question of the role of impact fees arises. Impact fees tend to be most effective during high growth periods, but are not needed as much during slow growth periods. However, growth rates within the geographic boundaries of a jurisdiction could fluctuate by subarea, which presents an opportunity to adjust impact fees geographically within a jurisdiction to help promote growth management goals.

Historically, Florida has experienced a significant level of population growth. From the 1970s to 2000, high growth counties experienced annual growth rates as high as 8 to 10 percent, while more rural counties experienced lower rates of growth. Figure 1 shows growth rates in 10-year increments for the state and two sample counties, indicating the range of growth between faster growing counties and more rural counties. Currently, average statewide growth is estimated to be about 2 percent and is projected to decrease to approximately 1 percent by 2030. At the same time, the difference in growth rates between urban and rural counties is declining.



Traditional transportation impact fees tend to charge either a single fee throughout the service area or differentiate the fee among fee districts generally through cost and/or demand components. In most cases, this approach results in urban areas having to pay higher impact fees than rural areas because, while cost and demand components vary geographically, revenue credits are not analyzed geographically.

TOA has developed a "Smart Growth" economic model that takes into consideration the level of revenues (such as gas tax, ad valorem tax, sales tax, etc.) received from the existing development in comparison to the growth rate in various geographic areas/fee districts. The ability of revenues received from the existing development to absorb the cost of growth is directly related to how fast a geographic area is growing. In areas where the growth rate is slow, such as more urbanized areas, revenues generated by the existing development are more likely to be able to absorb the cost of growth because the existing development base is relatively large and the need for additional roadway capacity is relatively small. However, in less developed areas experiencing rapid growth, revenues from the existing development in the area cannot assist at any significant level in absorbing the cost of growth necessitated improvements.

This issue was discussed at a luncheon presentation titled "Mobility Plans and Fees" at the Growth and Infrastructure Consortium on November 4, 2010. The presentation and a related article titled "Smart Growth and Impact Fees" can be found on the TOA website (www.tindaleoliver.com/gicpresentations.html).

Inside

Fire Facility Planning and Operations: Introducing the Incident Data Management System (IDMS) 3

The Growth and Infrastructure Consortium Case Law Update: A Preview 3

Hillsborough County Street Lighting Program (Project Highlight) 4



Fire Facility Planning and Operations: Introducing the Incident Data Management System (IDMS)

By Nilgün Kamp, AICP

As part of a recently completed Fire Facilities Master Plan for the City of Bartow, TOA evaluated several variables in determining whether the City needs to expand and/or relocate the existing station and build new stations. These included both economic and demographic variables, such as projected growth by geographic area, current and future expected densities, current and future transportation network, etc., as well as a detailed review of incident data.

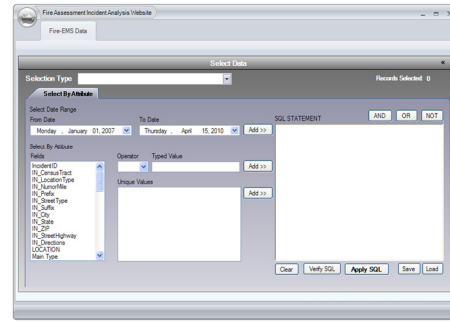
Incidents over the past five years were evaluated in terms of the following criteria:

- Incidents by year to review trends over time;
- Incidents by month to evaluate seasonality;
- Incidents by day of week to examine day to day fluctuations;
- Incidents by time of day to evaluate peak periods;
- Response time (both in terms of average and a histogram showing distribution of responses);
- Length of stay;
- Concurrent events to understand when additional trucks and companies are needed;
- Mutual/automatic aid received/provided to understand expansion of service area and frequency of need for additional support; and
- Incidents by property use to evaluate demand by land use.

Many of these variables are included in the *Standards of Cover* published by the Commission on Fire Accreditation International (CFAI). CFAI is an organization created to assist fire and emergency service agencies to achieve better service through self-assessment and accreditation in order to continually improve and enhance service to their communities. CFAI's self-assessment program identifies standard procedures that determine the distribution and concentration of fixed and mobile resources of an organization and measure the level of service provided to the community.

While preparing the Fire Facilities Master Plan for the City, TOA started developing the Incident Data Management System (IDMS), a user-friendly database that allows fire and emergency service providers to analyze their incident data efficiently and effectively. IDMS is an affordable tool designed to interact with agencies' existing databases/systems and is anticipated to complement dispatching systems by providing an analytical tool.

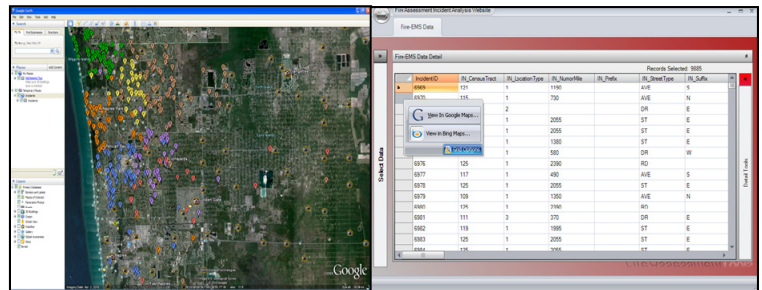
For the initial demonstrations, TOA downloaded incident data for the past several years from the National Fire Incident Reporting



System (NFIRS) for two different agencies. The database is designed to have the flexibility to select all or a portion of the data available and filter the data through various criteria (for example, incidents that took place over the past six months and have a response time greater than 15 minutes, or building structure fires resulting in property damage of over \$100,000, etc.).

The reporting feature of IDMS prepares a set of tables and charts showing the trends of the selected group of data. These reports can be expanded to include other variables, depending on the fire and emergency service providers' needs.

Finally, the selected incidents are mapped using ArcGIS to show their location. In addition, the maps include a link to Google Earth, where fire/EMS professionals can look at a street view of selected incidents as well as desired information regarding the incidents (type of incident, response time, etc.).



In addition to the variables evaluated as part of the study for the City of Bartow, IDMS currently also includes:

- Incidents by stations (all of the variables discussed previously can be shown for one single station, a group of stations, or for all of the stations).
- For any given variable, charts showing the performance of one stations compared to the average of all stations or a group of stations.
- Allocation of effort by incident type or land use type in terms of both time spent on scene as well as resources used (number of personnel and equipment).

TOA is continuing to expand the scope of IDMS based on the needs of our clients.



The Growth and Infrastructure Consortium Case Law Update: A Preview

By Tyson Smith, Esq., AICP



impact fees, capital planning and public finance

“Beyond Impact Fees: Alternative Methods of Infrastructure Finance” was the theme of this year’s annual conference of the Growth and Infrastructure Consortium – formerly known as the National Impact Fee Roundtable – and it took place in Tampa in November. As at past conferences, legal cases that affect the work we do as planners, designers, builders, and financiers of public infrastructure were reviewed. Although the current economic climate challenges traditional approaches, impact fees remain relevant. However, as our focus expands to cover other means of providing infrastructure to new development, a number of cases dealing with a number of funding mechanisms were examined at the conference’s closing luncheon. Some of the cases included the following:

This year, the Ohio Court of Appeals upheld impact fees imposed by a “limited home rule township,” despite the absence of express enabling legislation (*The Drees Co. v. Hamilton Township*, Case No. CA2009-11-150 (Ohio Ct. App. 12th Dist. 2010)). For purposes of the appeal, the developers and the Township stipulated that the fees were designed “to benefit *the property* by providing the Township with adequate funds to provide the same level of service to *that property* that the Township currently affords previously developed properties.” Rejecting the developer’s argument that the benefits from the fees were insufficiently direct because they were for community-wide services and thus indistinguishable from taxes, the Court held that providing current levels of service to new development was indeed a direct benefit and thus a valid fee.

Addressing the exhaustion issue, the Wisconsin Court of Appeals upheld the dismissal of an impact fee challenge because the plaintiffs failed to pursue the administrative appellate process required by state law and established by the impact fee ordinance itself (*St. Croix Valley Home Builders Association, Inc. v. Township of Oak*

Grove, Case No. 2009AP2166 [Wisc. App. 2010]). The HBA argued that since it was bringing a “facial challenge,” claiming the ordinance was invalid, not only unlawful as-applied to particular payors, they were not required to exhaust administrative remedies before filing suit. However, the Court of Appeals held that, regardless of the nature of the challenge (i.e., whether that challenge was facial or as-applied), administrative relief must be pursued before bringing the matter to court, due to the fact-intensive nature of the challenger’s claims, as well as the local government’s familiarity with the issues and ability to fashion a remedy. Unfortunately for the plaintiffs in this case, the time period for engaging the administrative appeals process had passed.

Moving beyond the impact fee issue, the Florida Court of Appeals recently held that an actionable exaction occurs when a public entity conditions permit approval on payments for off-site wetlands mitigation, the property owner *rejects* the offer, and the permit subsequently is denied (*St. Johns River Water Management Dist. v. Koontz*, 5. So.3d 8 [Fla. DCA5 2009]). Thus, having determined the “rejected condition” to be an exaction, and therefore subject to *Nollan/Dolan* analysis, the Court concluded the property owner need not exhaust local administrative remedies before bringing the taking action. The public service district had argued that no exaction had occurred because the property owner rejected the condition, no funds were ever expended, and, absent a “right to develop,” nothing had been taken. The majority rejected this argument, although the dissent portrayed the majority’s opinion as an inappropriate expansion of the *Nollan/Dolan* analysis.

These cases and more were reviewed at the conference. If you will like a copy of the overview, please contact Tyson Smith at tsmith@planningandlaw.com or (843) 937-0201.





Tindale-Oliver & Associates, Inc.
1000 N. Ashley Drive
Suite 100
Tampa, FL 33602-3059

PRSR STD
 U S POSTAGE
 PAID
 TAMPA FL
 PERMIT NO 778

Return Service Requested

Hillsborough County Street Lighting Assessment Program



Beginning in the fall of 2009, TOA was retained by the Hillsborough County Traffic Services Division to assist with the management of the County's Residential Street Lighting (RSL) program. This program is funded with a non-ad valorem assessment and includes over 122,000 parcels in 766 lighting districts with an annual gross revenue in excess of \$8 million. Assessment rates are based on the mix of lighting fixtures used in each district, a flat per-parcel fee, and a per-foot fee for parcels over 150 ft in roadway frontage.

As part of this project, TOA worked with the County to resolve the following issues:

- Overhead related to management of multiple complex, disconnected databases;
- Lack of automation in processing changes to lighting district parcel make-up (subdivision and consolidation of parcels); and
- Lack of automation in the process of creating new lighting districts and verifying correct parcel/billing information.

To accomplish these objectives, TOA designed a GIS database that combines and links the information currently contained in separate, unconnected Access databases maintained by the County, Property Appraiser, Tax Assessor, and utility company. Additionally, lighting district layers were created in the GIS map environment to assist in the Q/C of lighting district parcel information. Custom tools within the GIS interface were developed to assist in the Q/C process and to dramatically reduce the staff effort needed to establish new lighting districts. Other database automation was developed to expedite the billing process, again saving staff resources.

Because of these database management and automation processes, the existing County staff will be able to shift time saved in the areas of establishing new districts and producing annual billing statements to lighting district assessment quality control activities.

TOA Locations

Tampa:

1000 N. Ashley Dr., #100
 Tampa, FL 33602
 (813) 224-8862

Contact:

Nilgün Kamp, AICP
 nkamp@tindaleoliver.com

Orlando:

1595 S. Semoran Blvd., #1540
 Winter Park, FL 32792
 (407) 657-9210

Contact:

Bob Wallace, P.E., AICP
 bwallace@tindaleoliver.com

Bartow:

545 N. Broadway Ave.
 (863) 533-8454

Contact:

Richard Dreyer, AICP, CCTM
 rdreyer@tindaleoliver.com

www.tindaleoliver.com

